

# Memo

## Election Day Registration Feasible Nebraska

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### Introduction

Traditionally, voting registration processes have been more cumbersome than the voting process itself.<sup>1</sup> Voter registration processes have been used to both protect the eligible voter and to limit accessibility of less popular voter demographics.<sup>2</sup>

In an effort to secure the access of eligible voters to the voting process, The Voting Rights Act of 1970 contained a provision requiring states to allow voter registration up to 30 days before the election. The Supreme Court has required jurisdictions to demonstrate that specific voter registration deadlines are necessary “to accommodate (the) specific needs of election administration.”<sup>3</sup> Recent legal challenges suggest that courts might eventually narrow the voter registration timeline to less than 30 days, as a matter of constitutional right.<sup>4</sup> In today’s advanced technological climate it is becoming increasingly difficult to argue against Election Day Registration (EDR).

Approximately twelve states continue to close registration 30 days prior to an election.<sup>5</sup> Eight states allow Election Day registration.<sup>6</sup> One state, North Dakota, has no voter registration requirements.<sup>7</sup>

Nebraska law prohibits in person registrations after the second Friday preceding an election. Mail in and third party registrations must be received by the third Friday preceding an election. A limited exception does exist, so that under exceptional circumstances an individual that misses the customary deadlines can cast a “presidential only ballot” in a federal election.<sup>8</sup>

### Updating Voter Registration Rosters

On Election Day, poll workers typically utilize a voter registration roster to determine which ballot a particular voter should cast.<sup>9</sup> In Election Day Registration (EDR) states, these lists often include every address that exists within a precinct, regardless of whether or not a registered voter resides there.<sup>10</sup> Although not always utilized, Nebraska jurisdictions appear to have the ability to create similar lists utilizing current software applications.

Traditionally, states require that these lists be updated and printed between the time voter registration closes and Election Day.<sup>11</sup> In at least one Nebraska County, that is ten days before the election.<sup>12</sup> How these lists are updated in the State of Nebraska is difficult to ascertain. A random and anonymous poll of several Nebraska counties resulted in inconsistent, incomplete or unresponsive replies.<sup>13</sup> Counties appear to rely on the Secretary of State’s Centralized Voter Registration System for some information.<sup>14</sup> This system automatically determines which precinct a voter resides in when their registration information is recorded.<sup>15</sup>

Counties also report that the voter rosters are not printed directly from the Secretary of State’s database, but instead are printed from information that county elections administration gathers.<sup>16</sup> Presumably the Centralized Voter Registration System is one resource. One county reported receiving updated address information from municipalities within the county.<sup>17</sup> None of

the counties polled were willing or able to disclose the exact source from which their information was updated.<sup>18</sup>

Nebraska election administrators sometimes express concern that it would be difficult to facilitate EDR because of the number of complex ballot splits that exist within precincts. This problem is not dissimilar to those presented in other EDR jurisdictions. A simple solution is to develop a roster which includes all physical addresses within a precinct and the corresponding ballot style assigned to the address. In at least some counties, this list can be generated with pre-existing software applications.

### **Administrative Costs**

It is difficult to calculate the exact costs of EDR. Often this is because these costs are included as part of budgets that reflect the entire costs of election administration.<sup>19</sup> States that have implemented Election Day Voter Registration (EDR) report however, that administrative costs have been marginal.<sup>20</sup> Many assert that the costs associated with EDR are offset by the decrease in provisional ballot and other administrative costs.<sup>21</sup> In Iowa, provisional ballots cast decreased by 67% in 2008.<sup>22</sup> Other jurisdictions report only a handful of provisional ballots being cast on Election Day.<sup>23</sup>

The initial costs of the program are typically the most expensive. These costs include the training of additional Election Day staff and post election clerical staff. Cost estimates from various counties around the country range from less than \$2,000 to \$39,000. However, these costs may not be additional costs. They may instead represent a reallocation of election resources.<sup>24</sup>

The State of Iowa did not allot any general fund monies for EDR implementation.<sup>25</sup> The Secretary of State's office did invest monies from its own budget. In Iowa, a little over \$18,000 was spent on the development of an EDR training video.<sup>26</sup> A copy of the video was distributed to each of the state's 99 counties.<sup>27</sup> Approximately \$21,000 was spent on establishing an EDR kit for each of Iowa's 1,774 precincts.<sup>28</sup> These kits included voter registration forms, a canvas bag for storage of EDR materials, and other incidental items.<sup>29</sup> The Secretary of State's office also provided training, free of charge, at the annual county officers' meeting.<sup>30</sup> Other ancillary costs were also incurred. The total initial expenditure was \$42,401.51.<sup>31</sup>

Although the Iowa Secretary of State's office maintains information on expenditures at the state level, it does not track costs at the county level.<sup>32</sup> Some counties elected to hire one additional poll worker to oversee EDR implementation.<sup>33</sup> The average cost per official was about \$100.<sup>34</sup> Some counties also provided voter education on the topic.<sup>35</sup>

In other EDR jurisdictions, costs have been offset internally. For example, costs associated with employing temporary or overtime workers to process the influx of deadline registrations has in some jurisdictions been shifted to post election EDR workers. Because these workers input registration information post election, the need for overtime and costly temporary employees is often reduced or eliminated.<sup>36</sup> Other administrative costs might also represent a shift in operations.

Although one does not typically think of it, third party costs associated with elections should also decrease with the implementation of EDR. Currently political candidates, political parties, and other election participants must motivate voters to participate on two unique occasions (registration and actual voting). EDR enables these third parties to concentrate resources and messaging on one comprehensive event.<sup>37</sup>

### **Provisional Ballots**

EDR also reduces the need for and the costly processing of provisional ballots.<sup>38</sup> EDR has the potential of virtually eliminating the need for provisional ballots in some states.<sup>39</sup> In Nebraska, one medium-sized county estimated that provisional ballots cost an average of \$3.36 per ballot.<sup>40</sup> The entire cost in this county was \$4,770.48 for one election. This cost is

particularly concerning considering the fact that significant numbers of provisional ballots are rejected in each election.<sup>41</sup>

Administrative difficulties also arise with regard to provisional ballots, because it is difficult to apply consistent rules across all counties, particularly when provisional ballots are cast for various reasons. EDR eliminates the need for multiple standards. The same uniform rules that currently govern regular voter registration also apply to EDR.

### **Other Advantages of EDR**

EDR jurisdictions also report an increase in accuracy and efficiency. Administrators report that inexperienced staff makes costly mistakes when responding to traditional registration deadlines.<sup>42</sup> These mistakes often result in qualified voters being rejected at the polls.<sup>43</sup> It has been estimated that between 1.5 and 3 million qualified voters were rejected during the 2000 presidential election due to registration errors.<sup>44</sup>

EDR enables administrators to procure qualified staff to process paperwork after the time sensitive deadlines of elections have passed.<sup>45</sup> EDR administrators report that registration roles are more accurate as a result of EDR.<sup>46</sup> The process of implementing EDR can also inspire better organization and traffic control at polling places.<sup>47</sup>

### **Election Security**

Critics of EDR are often most concerned with maintaining election integrity/security.<sup>48</sup> EDR states assert that incidents of voter fraud have not increased as a result of EDR.<sup>49</sup> In at least one jurisdiction there has never been an alleged case of voter fraud associated with EDR.<sup>50</sup> Most EDR jurisdictions have found previously existing fraud statutes to be applicable to EDR.<sup>51</sup> However, some have seen it as an opportunity to increase the security of election processes.<sup>52</sup>

One jurisdiction enables election observers to challenge an individual's eligibility to vote.<sup>53</sup> Several jurisdictions have unique audit functions that enable them to make sure that voters are not registered to vote more than once in the same election.<sup>54</sup> At least one jurisdiction investigates every incident for fraud.<sup>55</sup> They have found however, that most double registrations are the result of a voter attempt to update their personal information.<sup>56</sup> Most EDR jurisdictions have seen EDR as an opportunity to increase awareness about the consequences associated with voting or registering to vote more than once, in the same election.<sup>57</sup>

### **Implementation**

EDR implementation does not require the development of new procedures.<sup>58</sup> Recent advancements in technology now make it possible to perform tasks in real time that once required more preparation and less portable equipment. Procedures used in voter registration offices and at other voter registration sites may now be made available at polling places.<sup>59</sup> Several jurisdictions use laptops at polling places to assist with EDR.<sup>60</sup> Minnesota is moving towards an automatic voter registration system. Once this system is fully implemented, anyone that completes a United States Postal Service Change of Address form will automatically have their voter registration updated, unless they choose to opt out.<sup>61</sup> These enhancements prove to make the already existing election systems more accessible, convenient and secure.

### **Conclusion**

Although the law has not yet dictated that jurisdictions provide Election Day Registration, one questions how long local jurisdictions will be able to defend the position that, additional time is required between a voter's registration and an election to properly administer an election. At least three bills in the 111<sup>th</sup> Congress sought to mandate registration on election days in federal elections.<sup>62</sup> With the aid of technology, states like Iowa have successfully transferred to an EDR system with little increase in cost, while ensuring more accuracy and security in the voting process. States like Nebraska can benefit from these advancements, while at the same time provide a more accessible and convenient voting experience for eligible voters.

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<sup>1</sup> Steven Carbo & Brenda Wright, *The Promise and Practice of Election Day Registration, Excerpted from Voting Rights*, (Benjamin E Groffith ed., American Bar Association 2008).

<sup>2</sup> *Testimony on Election Day Voter Registration*, before H. Sub-Comm. on Elections, 110<sup>th</sup> Cong. (2007) (statement of Miles Rapoport, President, Demos).

<sup>3</sup> *Id.* at 72.

<sup>4</sup> *Id.* at ft nt 30.

<sup>5</sup> See *Id.* at ft nt 29.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See [http://www.sos.ne.gov/elec/voter\\_info.html](http://www.sos.ne.gov/elec/voter_info.html).

<sup>9</sup> See Arizona Secretary of State, Arizona Secretary of State Election Procedures Manual, (2007); Email from Anonymous 1, (Wed August 4, 2010 7:26 PM) (on file with the author); Telephone Interview, with Iowa Secretary of State's Office, (August 10, 2010).

<sup>10</sup> *Id.*

<sup>11</sup> E.g. Arizona Secretary of State, Arizona Secretary of State Election Procedures Manual, (2007); Email from Anonymous 1, (Wed August 4, 2010 7:26 PM) (on file with the author); Telephone Interview, with Iowa Secretary of State's Office, (August 10, 2010).

<sup>12</sup> Demos, *Voters Win with Election Day Registration*, (2009); see also Telephone Interview, with Iowa Secretary of State's Office, (August 10, 2010)

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<sup>19</sup> Carbo *supra* at 76.

<sup>20</sup> *Testimony on Interim study to examine the issue of Election Day Registration*, before Nebraska Unicameral Legislative Government, Military and Veterans Affairs Committee, (2009) (statement of Allegra Chapman, Staff Counsel, Demos).

<sup>21</sup> *Id.*; see also Carbo *supra*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (reports that Wisconsin used 374 and Wyoming used 95 provisional ballots).

<sup>24</sup> Carbo *supra*.

<sup>25</sup> Iowa Secretary of State's Office, *Election Day Registration Implementation Costs*, (2010) (Unpublished, on file with author).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Iowa Secretary of State's Office, *supra*.

<sup>33</sup> *Id.*; see Chapman, *supra*.

<sup>34</sup> *Id.*

<sup>35</sup> Iowa Secretary of State's Office, *supra*.

<sup>36</sup> Carbo, *supra*.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 77.

<sup>40</sup> Email from Anonymous 2, (Thu, Oct 8, 2009 at 8:26 AM) (on file with author).

<sup>41</sup> Pew Foundation, *Provisional Ballots an Imperfect Solution*, Issue Brief, July 2009.

<sup>42</sup> *Id.* at 77.

<sup>43</sup> *Id.*

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *Id.*

<sup>47</sup> Cristina Vasile & Regina Eaton, *Election Day Registration Best Practices*, at 13 (Demos, 2009).

<sup>48</sup> Carbo, *Supra*.

<sup>49</sup> *Id.*; see also Vasile, *supra* at 26.

<sup>50</sup> Carbo, *supra*.

<sup>51</sup> *Id.*

<sup>52</sup> Vaile, *supra* at 26.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* (examples include address change, name change, or clerical error)

<sup>57</sup> *Id.*

<sup>58</sup> Vasile, *supra*.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 29.

<sup>61</sup> *Id.* at 28.

<sup>62</sup> Charlie Hendrix, *Proposed Amendments to the Help America Vote Act of 2002* (June 24, 2010) (Unpublished, on file with NCR staff).