



# Funders' Committee for Civic Participation

## Summary and Discussion of Survey of State Legislative Activity February 2007

*Prepared for the Funders' Committee for Civic Participation  
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### INTRODUCTION

While not claiming to be a complete summary, the survey results supplied by a number of national groups and several organizations working at the state level<sup>1</sup> provides a helpful snapshot of legislative activity on a wide range of democracy reforms.

Full survey results are provided in the accompanying excel file with 561 entries on over 90 pages. Some groups discuss the same bill, however, so it is estimated that at around 500 bills are under discussion across the country in 46 states. Duplicate entries on legislation provide an opportunity to see different angles on a bill, but also indicate opportunities for sharing information between national groups tracking the same legislative topics. Entries also vary in their level of detail, particularly in regard to opponents, supporters, and levels of “on the ground” effort, but still provide a good indication of topics under legislative discussion. In addition, contact information is typically provided to enable obtaining an update on legislative status.

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<sup>1</sup> Advancement Project, Brennan Center, Common Cause, Center for Governmental Studies, Center for Public Integrity, Demos, Democracy North Carolina, Fair Vote, Illinois Campaign for Political Reform, Oregon Money in Politics Research Action Project, National Committee for Black Civic Participation, Progressive American Fund, Public Campaign, People for the American Way, Project Vote, and Vote by Mail Project.

## KEY FINDINGS

### INCREASING VOTER REGISTRATION AND TURNOUT

Election Day Registration (EDR) and automatic registration methods are being discussed in 21 and 11 states, respectively. Automatic (sometimes called universal) registration is when high school graduates or applicants for driver's licenses or state ID cards are registered to vote as a matter of course, though the option of not registering is provided. Affirmative efforts and responsibility on the part of the government to register all eligible voters is commonly required in other advanced democracies. Aside from the interest in expanding turnout, many of these reforms are designed to address concerns about administrative efficiency and voter convenience. One example is allowing voters to register electronically, a bill that has passed the Washington House with success in Senate considered likely. An example from an administrative perspective is that local election officials are major supporters of Minnesota's automatic registration efforts because it will reduce their data entry workload that results from needing to process the large number of voter registration cards that come in on Election Day because of the EDR option.

This level of discussion is very encouraging because of growing indications that these options provide the best opportunities to increase voter registration and turnout. One caution is that in states with rules requiring passages of bond or other money measures with a majority of registered voters rather than just a majority of actual voters, automatic registration can increase voter rolls and make such elections more difficult. For example, Oregon has this kind of majority requirement for off-elections and interest in reversing that policy is being increased because of the negative intersection with an interest in automatic registration.

Permanent, no-excuse absentee ballots are a possible stepping-stone to vote by mail and both ideas are under consideration in 13 and 9 states respectively. A twist on vote by mail is a pilot project under consideration in Texas to send ballots by email to members of the military serving overseas. It may not be a coincidence that the initiative option is available in over half the states considering vote by mail. One factor in Oregon's being a vote by mail pioneer is the convenience "kitchen table" voting provides when confronted with large number of ballot measures. Nevertheless, these options seem to be less significant in increasing voter turnout, particularly by younger voters and other constituencies more likely to frequently move and not receive a mail ballot. While there is some evidence of expanded turnout in low-efficacy elections, it appears to benefit already mobilized (more partisan) voters and does not address concerns about the skewed composition of the electorate. Others have questioned the potential for coercion in voting systems that are becoming increasingly reliant on voting outside of a precinct.

Three states should be highlighted in this discussion of methods to increase voter registration and turnout, Minnesota, Idaho, and Oregon. Minnesota is one of the most successful EDR states with a new reform minded Secretary of State hoping to pioneer automatic voter registration linked to driver's license applications. Idaho is an EDR state where county elections officials are also the major proponents of adding vote by mail. In the opposite order, Oregon is a vote by mail state where there is an interest in EDR. In both of these states there could be unique opportunities to assess the interactions between EDR and vote by mail strategies.

### LOWERING THE AGE FOR VOTER REGISTRATION

Allowing voter registration at 16 or 17 is under consideration in 4 states. Prospects are rated "very good" in Maryland but uncertain in that state's House of Delegates. This legislation passed in Rhode Island last year but it was vetoed. Prospects are "very good" this year, but it isn't clear if the governor will sign the bill.

## VOTING RIGHTS FOR EX-OFFENDERS

Bills on this critically important topic have been introduced in 19 states. Winning appears to be difficult, but opportunities in Arizona, Kentucky, and Washington seem to have the brightest prospects. Several states are also tackling the issue of accommodating the voting rights of sex-offenders when polling places are in schools or other locations where they have restricted access.

## VOTING IDENTIFICATION

Fueled by concerns about homeland security and immigration, 34 states are considering changes in voter registration ID provisions. Some of the particularly restrictive bills have already died, but others are considered likely to pass in states as different as Texas and Massachusetts.

## REGULATION of VOTER REGISTRATION ASSISTANCE PROGRAMS

Colorado and Missouri are working to loosen burdensome restrictions on groups conducting voter registration drives. Only Washington seems to be moving in the direction of adding restrictions and they relate more to timing of turning in voter registration cards. Two states, New York and Oregon, are considering bills to bar the payment of voter registration assistance program employees on a per card basis.

## ELECTION and VOTING ISSUES – QUESTIONS and NEEDS

Minimal discussion of some topics raises questions and helps identify potential needs for additional work to elevate the importance of certain issues. For example, it is striking that only three states appear to be considering bills regarding maintenance of voter registration lists and only two are discussing legislation on provisional ballots. One question this raises is whether or not these topics are more likely to be discussed in administrative proceedings by either state or local election officials rather than in legislation or whether they simply lack a mobilized and educated constituency.

There may also be topics that are being missed because they might be buried in comprehensive election bills. For example, only three states seem to be considering voting center legislation and in two of those states this topic is part of a broader bill.

Finally, there are few legislative discussions on audits and recounts, the needs of disabled voters, and increasing the number of and training for poll workers.

## CAMPAIGN FINANCE REFORM

Public funding is the major campaign finance strategy under discussion in 20 states. While most are considering models based upon the systems in Arizona and Maine, Massachusetts is considering a matching funds approach.

Judicial public funding is a major focus of discussion with particularly bright prospects in New Mexico. The best chance for statewide and legislative public funding reform appears to be in Maryland.

Defense against bad bills and legislative fixes is a topic in Maine and Arizona with the latter state facing the greatest defensive challenge. Reformers are confident of defeating any negative bills in Maine. Proactive efforts in Maine are focused on imposing contribution limits on PACs or allowing for publicly financed leadership committees to address their challenge of participating candidates raising private funds for leadership PACs.

## USE OF CAMPAIGN FUNDS

Restricting use of campaign funds is under discussion in New Mexico and Oregon and provides a glimpse into interactions between ethics and campaign finance reform. In those states, limits on gifts, meals, entertainment, and trips are under discussion as one part of a comprehensive ethics reform package. But using campaign funds for such purposes is an obvious way to circumvent limits on “freebies” given to legislators by lobbyists. This topic also raises the need to ensure adequate budgets for office expenses and living and traveling expenses to reduce pressure on legislators to use campaign war chests for these costs. All of these steps will facilitate adoption of restrictions on campaign funds and reduce the need for office holder accounts in the context of possible future discussions of public financing reform.

## ETHICS AND LOBBYING

Survey results on state ethics and lobbying reform bills are very likely to be low estimates of legislative activities in this arena. For example, the Ethics Center of the National Conference of State Legislatures indicates that over 200 bills were discussed across the country in 2006. The survey includes about 40 bills or concepts from only 16 states. Not surprisingly, the reports come from state level groups most likely to know about this topic, Common Cause whose affiliates have a history of working on ethics reform, and from press reports compiled by the Center for Public Integrity.

On this issue the survey results identify an “attention gap” with minimal attention being paid to lobbying and ethics reform by the national groups involved in this survey effort. Indeed, the request to the Center for Public Integrity was made only after it was realized that the initial pool of survey respondents wasn’t likely to provide adequate information on legislative activity on these topics. It also doesn’t seem that there is a national group focused on these issues, but this hunch should be confirmed.

This attention gap is particularly troubling since the national focus on ethics has increased opportunities for reform at the state level. In general, it may be helpful to talk with state level reformers to learn more about synergistic opportunities from a policy as well as an organizing perspective for work on both campaign finance and ethics reforms. Based on survey results information on these opportunities would be available from reform groups in North Carolina, Oregon, and New Mexico.

## REDISTRICTING

Independent commissions are the focus of the 8 states considering legislation on this topic. The best prospect for success appears to be in Nebraska where legislation is putting into statute redistricting procedures successfully used in 2000. Legislative action after pushing for voluntary use of key principles by the existing redistricting players may be an idea worth emulating.

## ALTERNATIVE VOTING

Only one state, Vermont, seems to have much of a prospect of adopting state level instant run-off voting, but studies and pilot projects are garnering broader legislative discussion and may represent useful stepping-stone strategies.

Fusion voting is considered to be a very good prospect in Maine, but is also under consideration in three other states. This voting reform allows endorsements of candidates by multiple parties and helps ensure that third party candidates aren’t spoilers.

National popular vote looks to be most winnable in the Massachusetts legislature and discussions are underway in many more states. This strategy, however, requires “critical mass” because it

circumvents the Electoral College by participating states entering into an interstate compact and agreeing to award all their electoral votes as a block to the presidential candidate who wins the popular vote in all 50 states and the District of Columbia.

## **SUMMARIES BY CATEGORIES – Codes facilitate search in the excel file**

### **A. VOTER REGISTRATION**

A1 Election day registration and changes in voter registration deadlines are under consideration in 21 states with good chances for significant gains in Iowa, Massachusetts, New Mexico, North Carolina, and Vermont. Election day registration is under consideration in Oregon, the nation's pioneering state in vote by mail. Advocates are going slowly because the Oregon constitution must be amended in a popular vote and the likelihood of success at the polls is being assessed before legislation moves. A bill to repeal Montana's Election Day registration program has been introduced, but is not expected to pass the Senate.

A2 Regulation of voter registration assistance programs is the subject of legislation in five states. The Washington Secretary of State has introduced legislation requiring voter registration drive groups to turn in forms within five days rather than the current requirement for weekly submittal. This bill is moving but opponents, including unions and the trial lawyers, are hopeful of making amendments. Missouri legislation improving previous restrictive language on voter registration drive activities faces an uphill battle. This topic is also the subject of several bills in Colorado. Not allowing payment of voter registration drive employees on a per voter registration card basis are under consideration in New York and Oregon. In Oregon, reform groups support this change as part of a larger legislative package addressing fraudulent signature gathering procedures in that state's initiative process and its passage is likely.

A3 Expanding voter registration opportunities is under consideration in 11 states ranging from improving implementation of the National Voter Registration Act by expanded efforts for voter registration in public assistance agencies to lowering the voting age to electronic registration to affirmatively registering voters (with an opt-out procedure) at high school graduation or when obtaining driver's license and state identification cards. One state provides a link to voter registration information on websites for obtaining hunting and fishing licenses. Minnesota is the leader in consideration of automatic registration, but prospects for session in 2007 are uncertain. A bill allowing electronic voter registration has passed in the House in Washington and moved onto the Senate where prospects would seem good given the overwhelmingly positive House vote.

Allowing voter registration at 16 is under consideration in Maryland, Minnesota, and Rhode Island with Wisconsin considering expanding franchise to 17 year-olds. Prospects are rated "very good" in Maryland but uncertain in that state's House of Delegates. This legislation passed in Rhode Island last year and its prospects are "very good" this year but the Governor vetoed it before and it isn't clear if he will sign it this year. Michigan is considering allowing 16 year-olds to preregister to vote when they get drivers licenses. They could then vote once they turn 18.

A4 Ex-offender registration legislation in various forms has been introduced in 19 states. Several of these states are also tackling the issue of allowing sex-offenders to vote when polling places are in schools or other settings to which their access is restricted. Most of these bills appear to face uphill battles, but chances for success are rated “fair” in Arizona and “good” for a Kentucky constitutional amendment pertaining to restoring voting rights after probation and “good” for a Washington bill restoring voting rights after release that also includes a requirement to notify ex-offenders of their right to vote.

A5 Maintenance of voter registration lists is the subject of only three bills. A Kansas bill provides for comparison of state corrections lists and statewide voter registration files for purging. In Louisiana legislation is under consideration to delay removing voters from registration lists in the aftermath of Hurricane Katrina. A Virginia bill allows victims of domestic violence to provide a post office box instead of a residential address on voter registration lists. A question raised by the low number of states addressing this issue is whether or not this topic is more frequently addressed in administrative rulemaking. If not, then this issue could require more effort to raise its visibility.

## B. CASTING BALLOTS

B1 Voting machines are the subject of legislation introduced in 11 states. Most common are requirements for verifiable paper trails, but a voting machine audit is the focus of legislation in Maine, a Georgia bill increases penalties for tampering with voting machines, and a New York bill pertains to secure storage of voting equipment. This category of bills is typically considered to have relatively good chances for passage.

B2 Vote by mail is being considered in nine states. Steps to vote by mail include a nine county pilot project in California, an Ohio bill that permits election boards to conduct mail elections if only issues appear on the ballot. This is a topic that often merges with the following subject, absentee ballots and other methods to allow for early voting, because allowing permanent absentee voting can be a stepping-stone to total voting by mail. Of particular interest is legislation proposed by county elections officers in Idaho who want the vote by mail option in addition to their current Election Day registration opportunity. This bill is considered “possible” in terms of prospects. Another angle on vote by mail is a pilot project under consideration in Texas that would allow overseas military ballots to be sent by email.

B3 Absentee ballots/early voting bills are under consideration in legislation in 13 states that range from allowing early voting by permanent absentee ballots as well as other adjustments in absentee voting procedures. Bills to allow permanent no-excuse absentee registration are considered likely to be adopted in Colorado and Minnesota. A similar bill is considered less likely to succeed in Oklahoma, but an interesting angle in that state is that postal unions are evidently key supporters. As noted above, this approach can be a step towards vote by mail balloting. Prospects for an early voting pilot project in certain counties has passed the Mississippi House and has good prospects for enactment.

Some bills are very targeted such as California legislation on absentee voting by those in the military. While it isn’t considered very likely to pass, it is worth noting that a bill to add ID requirements to absentee ballot procedures is under consideration in Indiana. Other bills appear to address regulations and guidelines to evaluate the timely receipt of absentee ballots. While these could be legitimate clarifications, such legislation could provide opportunities to limit absentee voting. In addition, when legislation allows for details to get worked out in rule making, there is a need for advocates to monitor those administrative procedures. Finally, a couple of

states, New York, and Virginia, are considering absentee voting bills targeted to facilitating voting by the elderly, people in V.A. facilities and people with disabilities or illness.

**B4 Voter centers** are considered in a stand alone bill in Texas with a proposal allowing countywide voting locations in certain elections. Voter centers are part of broader bills in North Carolina and Colorado. Indeed, voter centers may be embedded in early voting bills in ways that aren't evident when just reviewing bill titles.

**B5 Voter identification requirements for registration** are under consideration in 34 states. Some onerous bills, such as Colorado legislation requiring proof of citizenship, have already died or are considered very unlikely to pass. But restrictive ID requirements opposed by reform groups are considered likely to pass in Massachusetts and Texas, while passage in Wisconsin is considered unlikely.

**B6 Provisional voting** is only being considered in Arkansas and Maryland with prospects rated as "possible" in Maryland. A question is whether or not the omission of this topic in legislation is a true reflection of inaction or if this issue is more likely to be discussed in administrative rules.

**B7 Other – polling hours, poll workers, poll watchers, audits, and recounts**

Only one state, Louisiana, is proposing changes in voting hours with a proposal to shorten time allowed for voting. New York is considering a bill to exclude nonresidents and unregistered voters from being poll watchers. Arizona is considering legislation on election audit and recount procedures. Passage of legislation requiring election recounts to be done manually is considered "very good" in Nebraska. Given the importance of poll workers, it is troubling that only 3 states are considering legislation to provide training and/or to expand who can be poll workers. One Ohio proposal, however, seems to be of questionable efficacy since it would adopt procedures similar to jury selection to obtain poll workers. Another Ohio bill considers a wide range of activities including poll worker training, recount procedures, and changes in the Americans with Disabilities coordinator in the Secretary of State's office.

## C. CAMPAIGN FINANCE REFORM

**C1 Disclosure** provisions are the subject of legislation in 6 states with an emphasis on improved electronic reporting. In South Dakota, prospects are considered good for a Secretary of State bill expanding disclosure requirements and increasing penalties with a particular focus on ballot measure campaign finance disclosure. A bill has already been passed in Connecticut addressing resistance by state contractors affected by limits included in that state's public funding reform.

**C2 Public funding** legislation has either been proposed or is expected in 20 states. Judicial public funding is of particular interest in Georgia, Illinois, New Mexico, and Washington with prospects rated as "very good" in New Mexico. The prospects for a North Carolina public funding bill for the 8 Council of State offices is rated as "possible." The best chance for full public funding reform for statewide and legislative elections is in Maryland with a "very good" prospect for success. A 3 to 1 matching funds reform bill has been introduced in Massachusetts with prospects rated as "very likely."

Various bills with improvements to Maine's Clean Elections Act are expected with good prospects for success while regressive bills such as one increasing the difficulty of qualification are expected to fail. Legislation has also been introduced in Arizona for a repeal to be referred to the voters as well as a change in the name to Publicly Funded Elections, although attempts have been defeated in all previous legislative sessions.

C3 Contribution limits are under consideration in four states. Illinois is considering a bill with “very good” prospects that bans contributions from state contractors. Nebraska is considering a bill preventing Public Service Commissioners from accepting campaign contributions from the utilities they regulate. Maine is considering various bills that limit contributions to PACs intended to address ways in which private fundraising by publicly funded candidates undermines that state’s Clean Elections Act. Massachusetts advocates rate as “very good” the prospects for a bill that bans corporate electioneering and requires individuals and groups to disclose electioneering communications made within 90 days of the election. Another component in the Massachusetts bills seems to address the next topic concerning 527 regulation with language requiring that groups that solicit for electioneering communications will need to register as political committee and be subject to contribution limits.

C4 527 Regulation is being considered in three states with the best prospects for success in Colorado with a bill requiring activities by 527s to comply with disclosure requirements imposed on political committees. It seems possible that more states are considering bills requiring disclosure and/or limits on independent spending that could apply to 527 groups even if that terminology isn’t explicitly used in the legislation.

C5 Other legislation includes bills in Oregon and New Mexico pertaining to use of campaign funds. These bills point to the interplay between use of campaign funds and ethics discussions that are surfacing in Oregon and New Mexico because of proposed limits on gifts, meals, entertainment, and trips given to legislators by lobbyists. One way to undermine such limits is to allow elected officials to use campaign funds for these purposes. However, restrictions on use of campaign funds is resisted by legislators without increases in funds for office expenses as well as expenses for living and travel expenses. In both states providing more dollars for such official expense seem reasonable, but present political challenges as legislators don’t want to be accused of “feathering their own nest.” Regardless, ensuring that campaign funds are only used for legitimate campaign expenses not only increase the effectiveness of limits on gifts, meals, and other freebies from legislators, but also facilitate imposing additional restrictions on use of campaign funds in the context of public funding reform.

#### D. ETHICS/LOBBYING

D1 Disclosure improvements regarding spending by lobbyists or economic interest reporting by public officials are under discussion in 5 states with “very likely” prospects for success in Oregon and “possible” prospects in Massachusetts and Mississippi.

D2 Lobbying reform legislation in North Carolina prohibits lobbyists from soliciting campaign contributions for statewide and legislative candidates. In Vermont lobbying firms will be required to register with increased disclosure of compensation.

D3 Revolving door bills or such a provision in a more general package are under consideration in 4 states with best prospects for package in Arkansas and Oregon.

D4 Gift ban/limits bills have been introduced in 6 states with passage considered likely in Oregon and New York.

D5 Other bills cover a range of ethics topics with a particular focus on appointment and legislative procedures and strengthening ethics agencies.



## E. REDISTRICTING

Eight states are considering bills pertaining to redistricting, most with a focus on establishment of independent commissions. Though several bills are rated as “possible” the best prospect for success, rated “very good” is legislation in Nebraska. Its better prospects may be due to the bill putting into statute redistricting procedures that were successfully used during 2000.

## F. ALTERNATIVE VOTING

F1 Instant run-off voting or some alternative voting method is addressed in bills in 12 states. Several of the bills focus on pilot projects or establish a study commission. The best prospect, rated “highly plausible” is in Vermont for instant run-off voting for federal and statewide offices in 2008. Also likely is a Colorado bill calling for a voting reform study.

F2 Fusion voting allows candidates to be endorsed by more than one party and appear on the ballot on multiple lines. This option allows for third parties and more voter choice without the spoiler effect. A bill is likely to be introduced in New Mexico. Prospects are “unlikely” in Montana, “possible” in Oregon, and “very good” in Maine.

F3 National popular vote discussions are reportedly underway in 40 states, though, it isn’t clear that bill introduction has been this extensive. Prospects are rated “good” in Massachusetts. The way this works is that participating states enter into an interstate compact in which they agree to award all of their electoral votes as a block to the presidential candidate who wins the most popular vote in all 50 states and the District of Columbia. The compact only becomes active if in July of a presidential election year, the number of participating states collectively represents a majority of electoral votes, enough to guarantee election of the national popular vote winner. This critical mass has not yet been achieved.

## G. OTHER

Legislation has been introduced, typically in a small number of states, on miscellaneous topics ranging from voter education, nonpartisan judicial elections, nonpartisan or other methods of selecting elections officials as well as reforms of the initiative process.