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Federal Election Law 1966

**A Summary of
Selected Federal
Laws Pertaining
to Registration,
Voting, and
Public Employee
Participation**



Federal Election Law 96: A Summary of Federal Laws Pertaining to Registration, Voting, and Public Employee Participation

Prepared by:

William Kimberling
Deputy Director

Peggy Sims

Election Research Specialist

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**RETURN TO RESOURCE CENTER
INTERNATIONAL FOUNDATION
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WASHINGTON, DC 20005**

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Introduction by the Office of Election Administration

In a formal sense, there are no federal elections in the United States. There are only State elections to fill federal offices. As a consequence, elections in the United States (federal as well as State and local) are for the most part governed by the laws of each individual State.

There are, however, a few Constitutional provisions and federal statutes that do affect State election procedures. But because these various federal statutes were adopted at different times and for different purposes, they form a complicated and sometimes confusing patchwork quilt of requirements. Some of them, for example, apply to all elections, others apply only to federal elections, and still others apply only to presidential general elections. By the same token, most of them apply to all States, although a few (such as certain provisions in the Voting Rights Act) apply only to State or local jurisdictions that meet specific criteria. And too, some procedures (such as absentee voting) are affected by several different statutes at once.

In an effort to simplify matters for State and local election officials, this report offers a summary, in everyday language, of selected federal provisions that affect registration, voting, and public employee participation. Each statute, along with its United States Code citation, is identified and summarized individually. For those interested in finding which federal laws pertain to a particular topic (again, such as absentee voting), we have provided in the back a detailed subject index directing you to the relevant provisions of each pertinent statute. Finally, should you have specific questions regarding any of these statutes, we have provided where possible the appropriate source of further information.

Readers are cautioned, however, that we have summarized only *selected* federal provisions. And any summary by its very nature loses information which, in the field of election law, can often be crucial. Moreover, a mere summary of the statute does not address how the law has been interpreted and applied by the courts. (Those interested in related court decisions may wish to consult *Election Case Law 93* also published by the Office of Election Administration and available from federal depository libraries throughout the nation). We therefore emphasize to readers that *this document is intended only as a general reference tool. No decision regarding legal issues should be made on the basis of this document alone. Such decisions should be made only after consultation with your State election authorities and legal counsel.*

Acknowledgments

We are extremely grateful to those in the Voting Section of the Civil Rights Division in the Department of Justice, to those in the Federal Voting Assistance Program in the Department of Defense, and to those in the Office of Special Counsel who reviewed and improved this report. And we are especially grateful to Mr. Craig Donsanto, Director of the Election Crimes Branch in the Criminal Division of the Department of Justice, not only for his review and comment but also for his superb volume on *Federal Prosecution of Election Offenses* from which we borrowed liberally.

Any errors or misinterpretations are, however, solely the responsibility of the authors.

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Selected Constitutional Provisions

Article I, section 4, of the Constitution

This section establishes the right of the States to conduct Congressional elections and reads, in part:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”

**States Conduct
Congressional
Elections**

(NOTE: U.S. Senators were originally chosen by their respective State Legislatures until the passage in 1913 of the 17th Amendment which provides for the direct popular election of Senators)

Article II, section 1, of the Constitution

This section establishes the right of the States to conduct presidential elections or, more precisely, to appoint Electors to the Electoral College. It reads, in part:

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

**States Conduct
Presidential
Elections**

and later

“The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

(NOTES: (1) The clause separating these two paragraphs describes the original manner in which presidential Electors were to cast their votes for president and vice president — a procedure which was slightly altered in 1804 by the passage of the 12th Amendment. (2) There is nothing in the Constitution — or for that matter in federal statute — that requires States to conduct a direct popular vote for president (or for presidential Electors). The manner of choosing presidential Electors remains a matter for each State, although all States since 1860 have employed the direct popular vote for presidential Electors. Before that, however, several States chose their presidential Electors by a vote of their State legislature rather than by popular vote.)

The 15th Amendment to the Constitution (1870)

This Amendment eliminates racial barriers to voting and reads, in part:

Racial Barriers

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

The 19th Amendment to the Constitution (1920)

This Amendment eliminates sexual barriers to voting and reads, in part:

Sexual Barriers

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”

The 24th Amendment to the Constitution (1964)

This Amendment eliminates poll taxes as a condition to voting in federal elections and reads, in part:

Poll Tax

“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”

(NOTE: The Voting Rights Act of 1965, as amended, extends the prohibition on poll taxes to cover **all** elections by virtue of the 14th, 15th and 24th Amendments to the Constitution (see also *Harper v. Virginia State Board of Elections* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966)).

The 26th Amendment to the Constitution (1971)

This Amendment prohibits States from establishing any age over 18 as the minimum age for voting (although they may, if they choose, adopt a lower age). It reads in part:

Age Barriers

“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

Selected Federal Statutes



The Time of Conducting Federal Elections

- The time for appointing presidential Electors (and, hence, for conducting presidential elections by today's practice of appointing them by direct popular vote) was established in 1845 as being "on the Tuesday next after the first Monday in November, in every fourth year..." (3 U.S.C. 1). **Presidential Elections**
- The time for electing Representatives was established in 1875 as being "The Tuesday next after the 1st Monday in November, in every even numbered year..." (2 U.S.C. 7). **House Elections**
- The time for electing Senators was established in 1914 as being "At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen..." (2 U.S.C. 1). **Senate Elections**

The Number and Apportionment of Representatives (2 U.S.C. 2a and 2b)

This statute fixes the number of members in the U.S. House of Representatives at 435 (as first established in 1911) and provides for their decennial reapportionment according to the "method of equal proportions, no State to receive less than one Member."

The Number of Congressional Districts and the Number of Representatives from Each District (2 U.S.C. 2c)

This statute formally establishes, as of 1967, the single-member-district (or "nominal") system of representation in the U.S. House of Representatives requiring each State to contain as many Congressional districts as it has members in the House with one member being elected from each district.

The Voting Rights Act of 1965, as amended

The Voting Rights Act of 1965 was originally designed to protect and facilitate the voting rights of racial minority groups. Subsequent amendments have, however, expanded it to include members of language minority groups as well as other more general matters regarding voting qualifications and procedures. As a result, some portions of the Voting Rights Act now apply to all elections nationwide, other portions apply nationwide but only to presidential general elections, and still other portions apply to all elections but only in certain States or political subdivisions. (In order to find out whether your jurisdiction is covered by these latter provisions, we suggest that you contact your State election authority or the Department of Justice guidelines).

Salient features of the Voting Rights Act include the following:

Discriminatory Laws, Procedures, or Electoral Systems

- **A General Prohibition on Discriminatory Voting Laws** (42 U.S.C. 1973) applies to **all elections** and prohibits **all States and political subdivisions** from imposing or applying election laws or procedures which discriminate against individuals on account of race, color, or language minority status. Section 2, as this section is generally known, also prohibits the use of discriminatory redistricting plans and of electoral systems that dilute minority voting strength.

(NOTES: (1) Those currently engaged in redistricting at any level will want to bear this prohibition in mind so as to avoid time-consuming and expensive litigation. (2) In addition to this general provision, which applies everywhere, there are four special antidiscrimination provisions that apply only in certain jurisdictions. Because of their narrower application, these special provisions regarding preclearance, minority languages, federal observers, and federal examiners are identified at the end of this section on page 8.

Literacy Tests

- **A Prohibition on Literacy Tests and Other Devices** (42 U.S.C. 1973aa) applies to **all elections in all jurisdictions** and bans literacy tests and other devices as a condition for voter registration.
- **Residency Requirements for Voting for President and Vice President** (42 U.S.C. 1973aa-1) apply only to **general elections for U.S. President and Vice president** and their Electors in all jurisdictions. This provision:

Registration Deadlines

- Permits otherwise qualified residents of a State to vote in presidential elections regardless of any State durational residency

requirement provided such residents apply for registration no later than 30 days prior to the election (or lesser period if State law permits);

Permits duly qualified (i.e. registered) residents of a State who may be absent on election day to vote absentee in presidential elections provided they have applied for an absentee ballot no later than 7 days before the election (or a lesser period if State law permits) and have returned the ballot to the appropriate election official no later than the close of polls;

Permits persons who move to a new State within 30 days prior to the election (and who may therefore fail to qualify for registration in their new State) to vote absentee for president and vice president in their State of former residence if they otherwise fulfill the requirements (including the voter registration requirements) of their previous State's law; and

Prohibits States from denying a U.S. citizen who is otherwise qualified to vote by absentee ballot the right to vote simply because the State has no provision for absentee registration. (In other words, States that prohibit otherwise qualified residents from registering absentee must nevertheless permit them to **vote** absentee for the offices of President and Vice President.)

(NOTE: Despite a popular misconception, these provisions do **not** constitute a blanket guarantee of the right to vote for president and vice president regardless of whether or not the individual is registered. On the contrary, State voter registration requirements — except in those few States that do not provide for absentee registration — are specifically respected.)

- **Voter Assistance Provisions** (42 U.S.C. 1973aa-6) apply to **all elections in all jurisdictions**. This portion of the law, commonly referred to as Section 208, reads in its entirety:

“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.”

(NOTE: This provision supersedes any incompatible State law that may restrict the number of voters a person may assist or that may place restrictions, such as on children, on who may enter a polling booth with a voter requiring assistance. It does not, however, preclude obtaining a signed and sworn affidavit from any person providing a voter assistance.)

Absentee Ballot Application Deadlines

Absentee Voting for Interstate Movers

Absentee Registration

Voter Assistance

Special provisions of the Voting Rights Act include the following:

Bilingual Election Services

- **Bilingual Election Requirements** (42 U.S.C. 1973aa- 1a and 1973b(f)(4)) apply to **all elections** but only in **certain covered jurisdictions** requiring them to provide registration and voting materials and oral assistance in the language of a qualified language minority group as well as English. Such language minority groups include persons of Spanish heritage, American Indians, Alaskan Natives, and Asian Americans.

Section 5 Preclearance of Changes

- **Preclearance of Changes in Voting Laws** (42 U.S.C. 1973c) applies to laws and procedures affecting **all elections** but only in **certain covered States and political subdivisions** and prohibits them from using new election laws and procedures without preclearance from the U.S. Attorney General or from the U.S. District Court for the District of Columbia.

(Note: The purpose of this requirement, commonly referred to as Section 5, is to prevent the implementation of voting changes that have the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.)

Federal Examiners

- **Voter Registration by Federal Examiners** (42 U.S.C. 1973a and 1973d) applies to **all elections** but only in **certain covered States** and authorizes the U.S. Office of Personnel Management to register eligible voters in political subdivisions of such States when the U.S. Attorney General certifies it as being necessary to protect the right to vote from racial discrimination.

Federal Observers

- **Federal Election Observers** (42 U.S.C. 1973a and 1973f) applies to **all elections** but only in **certain covered States** and authorizes the Department of Justice to request the Office of Personnel Management to provide persons to observe elections in political subdivisions where there is a prospect of racial discrimination.

(NOTE: In order to ascertain whether your jurisdiction is covered by any of the last four provisions listed above, or for advice concerning them, the Department of Justice offers both Section 5 and minority language guidelines which may be obtained from the address below.)

Specific questions regarding any of the provisions of the Voting Rights Act should be addressed to:

The Voting Section
Civil Rights Division
U.S. Department of Justice
P.O. Box-66128
Washington D.C. 20035
Tele: 202/307-3266
FAX: 202/307-3961

The National Voter Registration Act of 1993 (42 U.S.C 1973gg and 11 CFR 8)

This Act applies to **all federal elections** in all States except Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming which are exempted by 42 U.S.C. 1973gg-2 as amended. In all other States, this Act:

- requires that individuals be given an opportunity to register to vote (or to update their voter registration data) when applying for or renewing a driver's license or other personal identification document issued by a State motor vehicle authority. Further, any change of address submitted for a motor vehicle driver's license shall also serve as a notice of change of address for voter registration purposes unless the individual states on the application that the change of address is not for voter registration purposes.
- requires that individuals be given the opportunity to register to vote (or to change their voter registration address) when applying for services or assistance:
- at any office in the State that provides public assistance including but not limited to the Food Stamp program; the Medicaid program; the Special Supplemental Food Program for Women, Infants, and Children (WIC) program; and the Aid to Families with Dependent Children (AFDC) program;
 - at or through any office in the State that provides State funded programs primarily engaged in providing services to persons with disabilities;
 - at other offices designated by the State; and
 - at Armed Forces recruitment offices.

**Motor Voter
Registration**

**Agency
Registration**

Individuals must be provided this opportunity not only at the time of their original application for services, but also when filing any recertification, renewal, or change of address relating to such services.

Agencies providing voter registration services must offer the same degree of assistance to individuals in completing a voter registration form as they offer to individuals in completing the agency's own forms, unless the applicant refuses such assistance. Moreover, the person who provides such services in the agency is prohibited from:

- seeking to influence an applicant's party preference or party registration;
- displaying any such political preference or party allegiance;
- making any statement or taking any action whose purpose or effect is to discourage the applicant from registering to vote; and
- making any statement or taking any action whose purpose or effect is to lead the applicant to believe that a decision whether or not to register has any bearing on the availability of services or benefits.

Mail Registration

- requires that States accept a national voter registration form (prescribed by the Federal Election Commission) as a means of applying for voter registration or updating voter registration data. In addition, States are permitted to use their own State mail registration form provided that it meets the criteria laid out in 42 U.S.C. 1973gg-7 — the same criteria as pertain to the contents of the national form. National and State forms (if any) are to be made available by the chief State election official through governmental and private entities with particular emphasis on organized voter registration programs.

Registration Deadlines

- establishes 30 days before the election (or the State's own registration deadline if it is later) as the last day on which an applicant may submit a voter registration form. Motor vehicle and agency offices have up to five days to transmit to the election office any applications they receive within the last five days of voter registration and up to ten days to transmit applications at other times. Election offices must also accept and process mailed voter registration applications that are postmarked not later than the voter registration deadline.

Notice of Disposition

- requires the appropriate election official to send notice to each applicant of the disposition of the application.

Removing Names from the Voting List

- prohibits removing names of individuals from the voter registration list for their failure to vote or for their having changed address within the registrar's jurisdiction.
- permits removing the names of individuals from the voter registration list:
 - upon the request of the registrant;
 - upon the death of the registrant;
 - for mental incapacity of the registrant as provided for in State law;

- upon criminal conviction of the registrant as provided for in State law;
- upon written notification by the registrant that the registrant has changed address to a location outside the registrar's jurisdiction; and
- upon notification by a motor vehicle or agency office of a registrant's change of address for voting purposes to a location outside the registrar's jurisdiction (this information is presumed to have originated by a written notification from the registrant to the relevant motor vehicle or agency office).
- requires States to conduct a uniform and non-discriminatory general program (to be completed prior to 90 days before a federal election) that makes a reasonable effort to remove the names of ineligible voters:
 - upon their death;
 - upon their written confirmation that their address has changed to a location outside the registrar's jurisdiction; and
 - upon their failure to respond to certain confirmation mailings along with their failure to offer to vote in any election within two general federal elections subsequent to the mailing. (The confirmation mailings in this case are those mailed out to registrants who, based on information received from the Postal Service, have apparently changed address to a location outside the registrar's jurisdiction).
- permits certain classes of registrants to vote regardless of the fact that:
 - they have failed to respond to a confirmation mailing that was triggered by information indicating that they may no longer reside in the registrar's jurisdiction if they affirm that they still reside in the jurisdiction;
 - they have failed to respond to a confirmation mailing triggered by information indicating that they have moved within the registrar's jurisdiction if they affirm that they still reside in the jurisdiction; or
 - they have not been sent a confirmation mailing but affirm that they:
 - have moved within the same precinct;
 - have moved from one precinct to another within the registrar's jurisdiction;

Fail-Safe Voting

- have not moved, even though the voter registration records incorrectly show that they have.

■ requires States to:

designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under the Act;

maintain for at least two years and to make available for public inspection all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular is registered. These records are to include:

lists of the names and addresses of all persons to whom confirmation mailings were sent;

information concerning whether or not each such person responded to the mailing as of the date that the records are inspected; and

collect and report certain items of information prescribed by the Federal Election Commission regarding the impact of the Act on the administration of elections for federal office.

■ requires the Federal Election Commission to:

develop a mail voter registration application form for federal office;

submit to the Congress not later than June 30 of each odd-numbered year a report assessing the impact of the Act on the administration of elections for federal office;

provide information to the States with respect to the responsibilities of the States under the Act; and

prescribe regulations necessary to developing the national voter registration form and submitting the report to Congress.

The enforcement of these provisions rests with the United States Attorney General or with any person who is aggrieved by noncompliance, either of whom may bring an action for declaratory or injunctive relief in the appropriate court. Private plaintiffs should take note of the notification requirements and time constraints described in 42 U.S.C. 1973gg-9.

Record Keeping

Reporting

Specific questions regarding the provisions of the National Voter Registration Act should be addressed either to your State's chief election official or to:

Office of Election Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Direct Tele: 202/219-3670
Toll free: 800/424-9530
FAX: 202/219-8500
e-mail: bkimberling@fec.gov

Matters regarding the enforcement of the National Voter Registration Act may be addressed to:

Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128
Tele: 202/307-2767
FAX 202/307-3961

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C. 1973ff through 1973ff-6, 39 U.S.C. 3406, and 18 U.S.C. 608-609)

This law consolidates and supersedes the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975. It applies to all **general, primary, and special elections for federal office in all jurisdictions** and:

Absentee Voting for Uniformed Services

- Permits members of the Uniformed Services and Merchant Marine, and their eligible family members, to register and vote absentee in elections for federal offices.

Absentee Voting for Overseas Citizens

- Permits civilian U.S. citizens residing outside the U.S., who may no longer maintain a residence in the United States, to register and vote absentee in federal elections in the jurisdiction (or precinct) of their last residence in the United States.

The Federal Post Card Application (FPCA)

- Provides for voter registration and application for an absentee ballot by mail using the Federal Post Card Application (FPCA) form for members of the Uniformed Services and their eligible family members and for all other citizens outside the U.S.

Registration for Uniformed Services and Overseas Citizens

- Requires the acceptance of any valid voter registration application for elections for federal office from absent uniformed or overseas voters and their eligible family members if received at least 30 days before the election (or lesser period if State law permits).

The Federal Write-In Absentee Ballot (FWAB)

- Permits members of the Uniformed Services and their eligible family members and all other citizens residing outside the United States who are **absent** from the United States and its territories to cast a Federal Write-In Absentee Ballot (FWAB) in the **general election for federal offices* provided:**
 - the voter has complied with the State's legal requirements concerning absentee voting (in such matters as registration, notarization, etc.);
 - the voter has made a timely request for a regular absentee ballot ("timely" being defined as having been received by the local election official at least 30 days before the election);

-
- the voter has not received the regular absentee ballot in time to vote and return it (this decision is left largely to the voter); and
 - the ballot is submitted from a location outside the United States or its territories.*

*NOTES: (1) The FWAB is obtained by voters from U.S. embassies, consulates, and military installations, as well as overseas political organizations and U.S. corporations overseas that employ U.S. citizens. (2) Should the voter cast a ballot using the FWAB but then receive, vote, and return the regular absentee ballot on time, the regular ballot takes precedence over the FWAB. (3) At the time this publication went to press, the U.S. House of Representatives had passed legislation that would, if passed by the Senate and signed by the President, extend the use of the FWAB to primary, run-off, and special elections for federal office (H.R. 3058). (4) Some States allow the FWAB to be used by voters in other than the general election and for other than federal offices. Some States do not require the voter to be overseas.

- Recommends that the States take action to eliminate obstacles to absentee voting encountered by military and overseas citizens.
- Recommends that, if an application other than the Federal Post Card Application (FPCA) is required for absentee registration, it should be sent to the voter along with the absentee ballot, to be returned with the ballot.
- Encourages the provision of later registration for persons recently separated from the Armed Forces.
- Provides penalties for furnishing false information to establish eligibility to vote under this Act.

For further information regarding any of the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (or for assistance in providing election services to uniformed or overseas citizens) contact:

The Federal Voting Assistance Program
Pentagon Rm 1B457
Washington, DC 20301
Direct Tele: 703/695-0663
Toll Free: 800/438-8683
Fax: 703/693-5507
Internet: fvap@fvo.osd.mil

The Voting Accessibility for the Elderly and Handicapped Act of 1984 (42 U.S.C. 1973ee through 1973ee-6)

This Act applies to all **general, primary, and special federal elections in all jurisdictions** and requires:

Accessibility of Polling Places

- that each political subdivision responsible for conducting elections within each State assure that all polling places for federal elections are accessible to elderly and handicapped voters **except** in the case of an emergency as determined by the State's chief election officer or **unless** the State's chief election officer

(1) determines, by surveying all potential polling places, that no such place in the area is accessible or can be made temporarily accessible, **and**

(2) assures that any handicapped voter assigned to an inaccessible polling place will, upon advance request under established State procedures, either be assigned to an accessible polling place or be provided an alternative means of casting a ballot on election day.

Accessibility of Registration Sites

- that each State or political subdivision responsible for voter registration for federal elections provide a reasonable number of accessible permanent registration facilities **unless** the State has in effect a system which provides potential voters an opportunity to register by mail or at their residence;

Voting Aids

- that each State make available to handicapped and elderly individuals registration and voting aids for federal elections **including** large-type instructions conspicuously displayed in every permanent registration facility and polling place and information by telecommunication devices (TDD's) for the deaf;

Notarization or Medical Certification

- the elimination of any notarization or medical certification requirement for handicapped voters to obtain (or apply for) an absentee ballot **except** for medical certifications required to establish eligibility, under State law, for automatically receiving such an application or ballot on a continuing basis or for applying for an absentee ballot after the deadline has passed;

Public Notices

- that each State's chief election officer provide (not later than when general public notice of registration and voting is provided) public notice calculated to reach elderly and handicapped voters regarding the availability

-
- of the registration and voting aids required above
 - of the voter assistance provisions under section 208 of the Voting Rights Act of 1965 (see above), and
 - of the procedures for voting by absentee ballot.

The enforcement of these provisions rests with the United States Attorney General or with any person who is personally aggrieved by noncompliance, either of whom may bring an action for declaratory or injunctive relief in the appropriate court provided that the plaintiff notify the State's chief election officer of the noncompliance and a period of 45 days has elapsed since the date of notification.

Specific questions regarding any of the provisions of the Voting Accessibility for the Elderly and Handicapped Act should be addressed either to your State's chief election officer or directly to:

Office of Election Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Direct Tele: 202/219-3670
Toll Free: 800/424-9530
FAX: 202/219-8500
E-mail: bkimberling@fec.gov

Retention of Voting Documentation (42 U.S.C. 1974 through 1974e)

Record Retention

This statute applies in **all jurisdictions** and to **all elections** in which a federal candidate is on a ballot. It requires election officials to **preserve for 22 months** “all records and papers which came into (their) possession relating to an application, registration, payment of a poll tax, or other act requisite to voting.”

(NOTE: The Department of Justice considers this law to cover all voter registration records, all poll lists and similar documents reflecting the identity of voters casting ballots at the polls, all applications for absentee ballots, all envelopes in which absentee ballots are returned for tabulation, all documents containing oaths of voters, all documents relating to challenges to voters or absentee ballots, all tally sheets and canvass reports, all records reflecting the appointment of persons entitled to act as poll officials or poll watchers, and all computer programs used to tabulate votes electronically. In addition, it is the Department of Justice’s view that the phrase “other act requisite to voting” requires the retention of the ballots themselves, at least in those jurisdictions where a voter’s electoral preference is manifested by marking a piece of paper or by punching holes in a computer card.)

More details regarding the coverage of this law are provided in *Innovations in Election Administration 8: Election Document Retention in an Age of High Technology* available free of charge from the FEC’s Office of Election Administration.

Any additional questions regarding the retention of voting documentation should be addressed to Mr. Craig Donsanto in the Election Crimes Branch of the Department of Justice (see below).

Conspiring Against the Rights of Citizens and Deprivation of Rights Under Color of Law (18 U.S.C. 241 and 242)

This statute applies in **all jurisdictions** and in **all elections** should a public official (poll worker, deputy registrar, election official, etc.) be involved in the criminal act. If a public official is not involved, it applies only to vote fraud directly or indirectly affecting federal candidates on the ballot. Prohibited acts include, among others:

- intentionally preventing a qualified voter from casting a ballot
- ballot box stuffing
- forging or altering ballots
- impersonating qualified voters
- illegally registering voters, and
- casting absentee ballots in their name.

Prohibited Acts

Specific questions regarding this statute or its appropriate application should also be addressed to Mr. Craig Donsanto in the Election Crimes Branch of the Department of Justice (see below).

Denying the Right of Individuals to Vote Because of Errors or Omissions on their Voter Registration Application (42 U.S.C. 1971(a)(2)(B))

This statute applies in all jurisdictions and to all elections. It specifically prohibits any person acting under color of law from denying “the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.”

Incomplete Registration Applications

Specific questions regarding this provision should be addressed to The Voting Section of the Civil Rights Division in the Department of Justice (whose address and phone are provided in the previous section on the Voting Rights Act).

False Information in, and Payments for, Registering or Voting (42 U.S.C. 1973i(c))

This statute applies in all jurisdictions and prohibits giving materially false information (false name, home address, and/or period of residence in voting district) to an election official for the purpose of establishing one’s eligibility to register or to vote. Although the law applies only to elections in which a federal candidate is on the ballot, **any registration which would qualify the applicant to cast a ballot in a federal**

False Information

Vote Buying

contest would fall under this provision. This statute also prohibits “vote buying” in the broadest terms possible by forbidding any “payment” or “offer of payment” that is made to a would-be voter “for voting” or to induce unregistered individuals to get onto the electoral rolls. A “payment” encompasses **anything** of material value including lottery chances.

Questions regarding this law or its appropriate application should also be addressed to Mr. Craig Donsanto in the Election Crimes Branch of the Department of Justice (see below).

Voting More Than Once (42 U.S.C. 1973i(e))

Multiple Voting

This statute makes it unlawful to “vote more than once” in connection with any **general, special, or primary election** in which a **federal candidate** is on the ballot.

(NOTE: According to the Department of Justice, the concept of “voting more than once” is not necessarily restricted to situations where members of a criminal enterprise actually mark more than one ballot. It may also apply in situations involving the intimidation of voters, or where it can otherwise fairly be said that a defendant purposely sought to subvert the free exercise of the electoral will of other voters, and thereby multiply the value of his own franchise beyond the one vote accorded to him under our electoral system.)

Questions regarding this law or its appropriate application should also be addressed to:

Mr. Craig Donsanto, Director
Election Crimes Branch
Department of Justice
1400 New York Avenue, NW 12th Flr
Washington, DC 20005

The Federal Election Campaign Act of 1971, As Amended

Although this statute pertains, for the most part, to the financing of campaigns for federal office, it does contain provisions that may be of particular interest to State and local election officials. These include:

Information, Voter Registration, and Get-Out-The-Vote Activities Conducted by Corporations or Labor Unions in Connection With A Federal Election and Aimed at the General Public (2 U.S.C. 431(9)(B)(ii) and 11 CFR 114.4). Among other things, these provisions permit corporations and labor unions to:

**Corporate and
Labor Information,
Registration, and
Voting Activities
Aimed at the
General Public**

- donate funds to State or local election administrators to help defray the cost of printing or distributing official voter registration or voting information and forms;
- distribute, or reprint in whole and distribute to the general public any registration or voting information (such as instructional materials) that was produced by the State or local election administrator if the corporation or labor organization does **not**:
 - expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party in connection with the distribution;
 - encourage registration with any particular political party in connection with the distribution; or
 - reproduce or distribute the materials in coordination with any candidate(s) or political party;
- make registration and get-out-the-vote communications to the general public if the communications:
 - do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party in connection with the distribution;
 - do not encourage registration with any particular political party in connection with the distribution;
 - are not reproduced or distributed in coordination with any candidate(s) or political party;

- distribute to the general public the official registration-by-mail forms and, if permitted by State law, absentee ballots if the distribution is not coordinated with any candidate(s) or political party; and
- support or conduct voter registration and get-out-the vote drives aimed at the general public if:
 - the corporation or labor organization does not make any communications expressly advocating the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party as part of the activity;
 - the drive is not coordinated with any candidate(s) or political party;
 - the drive is not directed primarily to individuals previously registered with, intending to register with, or currently registered with the political party favored by the corporation or labor union;
 - services are made available without regard to the voter's political preference, and the corporation or labor union notifies those receiving information or assistance of that fact in writing at the time of the drive; and
 - individuals conducting the registration or get-out-the-vote drive are not paid on the basis of the number of individuals registered or transported who support one or more particular candidates or political party.

Corporate and Labor Information, Registration and Voting Activities Involving Express Advocacy

Information, Registration, and Get-Out-The-Vote Activities Conducted by Corporations and Labor Unions Involving Express Advocacy in Connection with a Federal Election (2 U.S.C. 431(9)(B)(iii) and 441b(b)(2) and 11 CFR 100.22, 114.1 and 114.3). These provisions restrict information, voter registration, and get-out-the-vote activities by corporations and labor unions when they include communications expressly advocating the election or defeat of a candidate or political party. Such communications must be limited to their stockholders, members, executive and administrative personnel, and their families. Corporations and labor unions are prohibited from withholding registration or voting information or assistance on the basis of support for or opposition to particular candidates or a particular party, and must abide by certain requirements for reporting disbursements for such communications.

Voter Information, Registration, and Get-Out-The-Vote Activities of Political Parties in Connection with a Federal Election (2 U.S.C. 431(8)(B)(v), (x) and (xii) and 431(9)(B)(iv), (viii) and (ix), and 11 CFR 104.10, 106.1, and 106.5). These provisions require political party committees registered under the Federal Election Campaign Act (FECA) and party organizations not registered under FECA to:

**Information,
Registration, and
Voting Activities of
Political Parties**

- make disbursements in connection with both federal and non-federal elections entirely from federal funds (those permissible under FECA) or to allocate those costs between separate federal and non-federal accounts of the committee, including the costs of:
 - generic voter registration and get-out-the-vote drives, or any other activities that urge the general public to register, vote, or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate; and
 - the production and distribution by State and local party committees of slate cards and sample ballots, certain campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's Presidential and Vice-Presidential nominees, where such activities are conducted in conjunction with non-federal election activities;
- allocate among the candidates those disbursements made on behalf of more than one clearly identified candidate for federal office, or a combination of federal and non-federal candidates, including voter registration drives or get-out-the-vote activities urging support of specific candidates (but not the cost of certain voter registration and get-out-the-vote activities conducted by State or local political party organizations on behalf of any Presidential and Vice-Presidential candidate(s));
- abide by certain rules for determining the amount to be allocated and for payment of allocable expenses when separate accounts are used; and
- if required to register under the FECA, abide by certain reporting requirements.

**Information,
Registration, and
Voting Activities of
Political Action
Committees**

Voter Information, Registration, and Get-Out-The-Vote Activities of Political Action Committees in Connection with a Federal Election (11 CFR 104.10, 106.1, and 106.6). These provisions require separate segregated funds (corporate and labor PACs) and non-connected political committees registered under the Federal Election Campaign Act (FECA) to:

- make disbursements in connection with both federal and non-federal elections for generic voter registration and get-out-the-vote drives, or any other activities that urge the general public to register, vote, or support candidates of a particular party or associated with a particular issue (yet do not mention a specific candidate) entirely from federal funds (those permissible under FECA) or to allocate those costs between separate federal and non-federal accounts of the committee;
- allocate among the candidates those disbursements made on behalf of more than one clearly identified candidate for federal office, or a combination of federal and non-federal candidates, including voter registration drives or get-out-the-vote activities urging support of specific candidates; and
- abide by certain rules for determining the amount to be allocated, for payment of allocable expenses when separate accounts are used, and for reporting these expenses.

NOTE: The term “clearly identified candidate” means that the name, photograph, or drawing appears, or the identity of the candidate is apparent by unambiguous reference. (2 U.S.C. 431(18) and 11 CFR 100.17)

Specific questions regarding these provisions or other provisions of the Federal Election Campaign Act should be addressed to:

The Public Information Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Direct Tele: 202/219-3420
Toll Free: 800/424-9530 #1
Fax: 202/219-8504
Website: <http://www.fec.gov>

The Hatch Act (5 U.S.C. 1501 through 1508 and 7321 through 7326) and Office of Personnel Management Regulations (5 CFR 151, 733, and 734)

The Hatch Act applies to four categories of civilian public employees, and the restrictions imposed vary accordingly.

The first category includes **most persons employed by the United States federal government** (5 U.S.C. 7321 through 7326 and 5 CFR 733 and 734).

Under the Hatch Act, as amended in 1993, such employees **may**:

- be a candidate for public office in a nonpartisan election;
- register and vote as they choose;
- sign ballot access petitions for candidates and ballot issues;
- assist in both partisan and nonpartisan voter registration drives;
- serve as a poll worker in a partisan or nonpartisan capacity;
- act as a poll watcher for a candidate or political committee;
- campaign for or against candidates in both partisan and nonpartisan elections, including making campaign speeches, distributing campaign literature, and assisting in get-out-the-vote efforts;
- be an active member or officer (including delegate to a convention) of a political party or club, and take an active part at political rallies, meetings, and nominating caucuses and conventions;
- contribute money to political organizations and candidates, and attend political fundraising functions;
- campaign for or against ballot issues; and
- express opinions about candidates and issues.

**Activities
Permitted to
Most Federal
Employees**

These employees **may not**:

- be a candidate for public office in partisan elections;
- use their official authority or influence to interfere with an election;
- wear political buttons while on duty;

**Activities
Prohibited to
Most Federal
Employees**

- engage in partisan political activity while on duty, while in any government office, while wearing an official uniform, or while using a government vehicle;
- solicit, accept or receive political contributions under most circumstances; or
- knowingly solicit or discourage the partisan political activity of any person who has business before the agency.

The second category of employees affected by the Hatch Act comprises **employees of the United States federal government who were specifically excluded from provisions of the 1993 amendments to the Act that eased restrictions on the other categories of federal employees.** Those excluded include career members of the Senior Executive Service, Administrative Law Judges, and Contract Appeals Board members, along with employees of the: Federal Election Commission; Federal Bureau of Investigation; Secret Service; Central Intelligence Agency; National Security Council; National Security Agency; Defense Intelligence Agency; Merit Systems Protection Board; Office of Special Counsel; Office of Criminal Investigation of the Internal Revenue Service; Office of Investigative Programs of the Customs Service; Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; and Criminal Division of the Department of Justice (5 U.S.C. 7321 through 7326 and 5 CFR 733 and 734).

Activities Prohibited to Excluded Federal Employees

This category of federal employees is **subject to all the prohibitions of the first category identified above; plus they are prohibited from actively engaging in any partisan political efforts.**

Activities Permitted to Excluded Federal Employees

They may, however:

- register and vote as they choose;
- sign ballot access petitions for candidates and ballot issues;
- assist in nonpartisan voter registration activities;
- serve as a poll worker in a nonpartisan capacity only;
- take an active part as, or in support of, a candidate in a nonpartisan election;
- campaign for or against ballot issues not specifically identified with a political party;

- participate in the nonpartisan activities of a civic, community, social, labor or professional organization;
- be a member of a political party or other partisan political group (but not an officer or committee member of such group) and participate in its activities to the extent permitted by other federal statutes and Executive orders governing standards of conduct and ethics;
- attend political conventions (but not as a delegate, alternate, or proxy to a political party convention) and rallies or other political gatherings (but cannot address such gatherings in support of or opposition to a candidate for partisan office if such speech is made in concert with a candidate, political party, or partisan political group and cannot participate in demonstrations or parades which are sponsored by a political party, partisan group, or candidate for partisan office);
- contribute to political organizations and candidates (with additional restrictions on employees of the Federal Election Commission), and attend political fundraising functions; and
- express opinions about candidates and issues (if such statements are not made in concert with a political party, partisan political group, or a candidate for partisan political office).

The third category of employees affected by the Hatch Act are **federal employees who are political appointees** serving at the pleasure of the President of the United States (5 U.S.C. 7321 through 7326 and 5 CFR 733 and 734).

These employees are subject to the same allowances and restrictions as the first category except that they **may** participate in political activities while on duty, while in any government office, while wearing an official uniform, or while using a government vehicle.

They **may not**, however:

- pay for costs associated with such activity from U.S. Treasury funds; or
- act contrary to any additional restrictions imposed by the Administration on political appointees.

Activities Permitted to Political Appointees

Activities Prohibited to Political Appointees

The fourth category comprises the **employees of State or local government who are principally employed in connection with an activity which is funded in whole or in part by loans or grants made by the United States or a federal agency** (except individuals who exercise no functions in connection with financial activity and those employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization). (5 U.S.C. 1501 through 1508 and 5 CFR 151)

Activities Permitted to Covered State & Local Employees

Under the Hatch Act these employees **may** participate in the same partisan and nonpartisan activities as are permitted most federal employees (see the first category, above, for examples of permitted activity.)

Activities Prohibited to Covered State & Local Employees

These employees **may not**, however:

- be a candidate for public office in partisan elections;
- use their official authority or influence to interfere with an election; or
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

For further information regarding the Hatch Act contact:

Office of Special Counsel
1730 M Street, NW - Third Floor
Washington, DC 20036-4505
Direct Tele: 202/653-7188
Toll Free: 800/85-HATCH (854-2824)
Fax: 202/653-5151
Website: <http://www.access.gpo.gov/OSC>

Political Activities by Members of the Armed Forces (Department of Defense Directive 1344.10)

This Directive applies to members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty.

These members **may**:

- register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces;
- promote and encourage other military members to vote, if it does not constitute an attempt to influence or interfere with the outcome of an election;
- serve as an election official in a nonpartisan capacity as long as:
 - the duty is performed out of uniform;
 - the duty does not interfere with military duties; **and**
 - the member has obtained prior approval of the appropriate Secretary (Army, Navy, Air Force, Marine Corps, Coast Guard);
- sign ballot access petitions for candidates and ballot issues, if the signing does not obligate the member to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces;
- join a political club and attend its meetings when not in uniform;
- make monetary contributions to a political organization, party, or committee favoring a candidate or particular slate of candidates;
- write a letter to the editor of a newspaper expressing the member's personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party or partisan cause or candidate; and
- display a political sticker on the member's private vehicle.

**Activities
Permitted to
Members of the
Armed Forces on
Active Duty**

**Activities
Prohibited to
Members of the
Armed Forces on
Active Duty**

Active duty members of the U.S. Armed Forces **may not:**

- use official authority or influence to:
 - interfere with, or affect the course or outcome of an election;
 - solicit votes for a particular candidate or issue; or
 - require or solicit political contributions from others;
- attend partisan political events as an official representative of the Armed Forces;
- be a candidate for civil office in federal, State or local government, or engage in public or organized soliciting of others to become partisan candidates for nomination or election to civil office;
- serve in any official capacity for or be listed as a sponsor of a partisan political club;
- participate in any effort to transport voters to the polls if the effort is organized by, or associated with, a partisan political party or candidate;
- perform clerical or other duties for a partisan political committee during a campaign or on election day;
- participate in partisan political management or campaigns, or make public speeches in the course thereof;
- make a campaign contribution to, or solicit or receive a campaign contribution from, another member of the Armed Forces or a civilian officer or employee of the United States for promoting a political objective or cause;
- solicit or otherwise engage in fundraising activities in Federal offices or facilities, including military reservations, for a partisan political cause or candidate;
- sell tickets for, or otherwise actively promote, political dinners and similar fundraising events;
- allow or cause to be published political articles signed or written by the member that solicit votes for or against a partisan political party or candidate;

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- participate in any media or group discussions as a partisan advocate;
 - speak before a partisan political gathering of any kind for promoting a partisan political party or candidate;
 - march or ride in a partisan political parade;
 - conduct a political survey under the auspices of a partisan political group;
 - display a large political sign, banner or poster on the top or side of a private vehicle;
 - distribute partisan political literature; or
 - use contemptuous words against officeholders.

Specific questions regarding this Directive should be addressed to:

The Federal Voting Assistance Program
Pentagon, Room 1B-457
Washington, DC 20301
Direct Tele: 703/695-0663
Toll Free: 800/438-8683
Fax: 703/693-5507
Internet: fvap@fvo.osd.mil



**Issues That Are
Not Directly a
Matter of
Federal Law**



There are a number of issues that, despite popular misconceptions, are not directly a matter of federal law.

Citizenship as a Qualification for Voting

Except for the Constitutional Amendments regarding race, sex, and age (see page 2), qualifications for registering and voting (even in “federal” elections) are matters of State law. Yet virtually all of the States have chosen to require United States citizenship as a prerequisite for voter registration. Some States, but not all of them, implement this prerequisite through voter registration forms that clearly alert prospective registrants of the citizenship requirement and require registrants to affirmatively assert their citizenship. In such States, noncitizens who illegally register and vote may be prosecuted federally under 18 U.S.C. 911 which prohibits the knowing and false assertion of United States citizenship by an alien. Thus, while requiring United States citizenship as a qualification for voting is a matter of State law, noncitizens who register and vote may be prosecuted under federal law **provided** that they asserted United States citizenship on a signed voter registration document which specifies that requirement.

Citizenship

It is also worth noting that, according to the Immigration and Naturalization Service, “Dual citizenship does not impose any impediment upon the enjoyment of full rights and responsibilities of U.S. citizenship under the laws of the United States.” Sections 1481(a) and 1483 of 8 U.S.C. provide that certain expatriative acts will result in a person’s loss of nationality if, in accordance with Supreme Court rulings, such acts coincide with a person’s “requisite intent to relinquish citizenship.” However, the INS has indicated that merely voting in a foreign election does not, in and of itself, threaten one’s United States citizenship. An individual’s claim of dual citizenship or claim to have voted in a foreign election do not, therefore, jeopardize their right to register and vote in U.S. elections.

Dual Citizenship

Voting in Foreign Elections

The Voting Rights of Convicted Felons and Other Institutionalized Persons

Just as in the case of citizenship, the voting rights of convicted felons and other institutionalized persons are matters of State law. There is no federal law that prohibits such persons from registering or voting. While nearly all States disenfranchise persons who have been declared *non compos mentis*, at least four States permit convicted felons to vote while incarcerated. The right of States to disenfranchise convicted felons was upheld by the U.S. Supreme Court in *Richardson v. Ramirez*, 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974).

Time Off Work for Voting

There is no federal law requiring employers to grant employees time off from work for the purposes of registering or voting. There is such a federal executive policy, but it pertains only to certain **federal** employees. Details of that policy appear in Subchapter S11-2 of the *Federal Personnel Manual*.

Flying the Flag at Polling Places

Federal law encourages but does not **require** that the flag be flown at polling places. Title 36 U.S.C. 174(f) reads in its entirety:

“The flag should be displayed in or near every polling place on election days.”

Note the use of “should” rather than “shall.”

Official Election Results

From an administrative standpoint, there are no federal elections. There are only State elections for federal offices. Accordingly, the responsibility for compiling and certifying official election results for federal offices rests entirely with the individual States. Nor are the States legally required to report popular vote totals to any federal agency (although they are, of course, required to forward their Presidential Electoral votes to the Congress). As a public service, however, the Federal Election Commission and the Clerk of the U.S. House of Representatives routinely obtain, compile, and publish the State-certified results of general elections for federal offices. There are also private sources of such information available in most libraries. Notable among these is *America Votes* (published by Congressional Quarterly) which provides primary as well as general election results for both federal and gubernatorial offices, presidential election results by county, historical data, and Congressional district maps.

Detailed Election Procedures

Except as provided for in the federal election laws cited in this volume, detailed registration and election procedures (registration times, forms, and procedures; polling hours; voting equipment, ballots, and balloting procedures; poll worker recruitment and training; campaigning at the polls; and other such details) are matters of State law.

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