



## North Dakota...The Only State Without Voter Registration

### No Voter Registration

North Dakota is the only state in the nation without some form of voter registration. There are several states that register voters on Election Day. This is known as same-day registration. The state of Minnesota is an example of a same-day registration state.

Although North Dakota was one of the first states to adopt voter registration prior to the turn of the century, it was the first state to abolish it in 1951. It is also worth noting that North Dakota law still provides cities with the ability to register voters for city elections. However, only one city registers its voters for city elections – Medora - a small city located in southwestern North Dakota.

North Dakota is a rural state and its communities maintain close ties and networks. North Dakota's system of voting, and lack of voter registration, is rooted in its rural character by providing for numerous small precincts. Establishing numerous, yet relatively small precincts, is intended to ensure that election boards know the voters who come to the polls to vote on Election Day and can easily detect those who should not be voting in the precinct. This network of numerous yet small precincts reduces the need for voter registration.

### Voting in North Dakota

A large percentage of precincts in North Dakota maintain a list of voters who have voted in previous elections. When a voter approaches a polling location they are asked to provide an acceptable form of identification. Then the election board will attempt to locate the voter's name on the voting list. If the voter's name is on the list, the voter's name and address are verified and the voter is then allowed to vote. In precincts that do not maintain a list of voters the election board begins each Election Day with a blank poll book. As each voter's name and address are verified, a member of the election board enters the information into the poll book.

If the voter is not on the list, either because the voter is new to the precinct or for some other reason, or if the voter is suspected of not being a qualified elector of the precinct, the voter may be challenged. As part of the challenge, the voter is asked to sign an affidavit swearing to the fact that he or she is a qualified elector of the precinct and therefore qualified to vote in the precinct. If the voter agrees to sign the affidavit, the voter must be allowed to vote. If the voter refuses to sign the affidavit, the voter may be denied the right to vote.

### Voters Who Move Within the State

According to North Dakota law, if a qualified elector moves from one precinct to another precinct within the state, the elector is entitled to vote in the precinct from which the elector moved until the elector has established a new residence pursuant to section 16.1-01-04 of the North Dakota Century Code.

However, this does not authorize an elector to continue voting in his or her former precinct because he or she has not yet voted in the precinct in which he or she actually resides.

### Challenging Voters

Any member of the election board may challenge the right of an individual to vote if the election board member has knowledge or has reason to believe the individual is not a qualified elector. A poll challenger may request members of the election board to challenge the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:

1. The individual offering to vote does not meet the age or citizenship requirements.
2. The individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
3. Except as provided in section 16.1-01-05, the individual offering to vote physically resides outside of the precinct.
4. The individual offering to vote does not meet the residency requirements provided in section 16.1-01-04.
5. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.

If after an election board member has requested that the individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed above. And the identification is not provided or does not adequately confirm the eligibility of the challenged individual, the challenged individual may not vote unless the challenged individual executes an affidavit, known as a Voter's Affidavit, acknowledged before the election inspector, that the challenged individual is a legally qualified elector of the precinct.

If a voter refuses to sign an affidavit, and is therefore denied the right to vote, as a practical matter he or she may attempt to prove his or her qualifications by providing additional information (e.g. ID, phone bill, tax record, support of a qualified elector, etc.)

Falsely swearing to be a qualified elector is a class A misdemeanor and carries a maximum penalty of one-year imprisonment, a fine of \$2,000, or both. When completing the affidavit, a voter is made aware of these penalties along with the fact that affidavits are subject to review by the County Auditor and County State's Attorney for further investigation.

Military personnel stationed in North Dakota who are residents of the state and choose to vote in North Dakota should not be

alarmed if they are challenged at the polls. The challenge process is not intended to be a threatening encounter or a form of intimidation. Rather, the challenge process is a normal component of the Election Day process in North Dakota. Absent voter registration, the challenge process is the only safeguard election boards can rely upon to screen persons wishing to vote in North Dakota.

## **Voter Qualifications**

In order to vote in North Dakota, you must be:

- A U.S. citizen;
- At least 18 years old on the day of election;
- A resident of North Dakota; and
- A resident in the precinct for 30 days preceding the election.

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## **Fraudulent Voting and Election Contests**

You may ask - what happens to a vote that is cast fraudulently - even if the fraudulent voter is discovered, investigated, and prosecuted? As is the case with many other states, the vote is still cast. Since the vote is secret, it is still counted and canvassed. However, a candidate, or group of electors still have the ability to contest an election regardless of whether or not a prosecution of voter fraud takes place or may take place. The contesting process must be initiated in a court of original jurisdiction (e.g. District Court). As a result of an election contest, a court may determine to alter the outcome of the election.

The contesting process is very similar to the contesting process in other states that have voter registration. However, North Dakota does not employ the initial restrictive and costly barrier of voter registration.

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## **Voter Fraud**

Is voter fraud possible in North Dakota? Yes.

Have there been incidents of widespread voter fraud in North Dakota? No.

Does North Dakota have widespread problems with non-citizens voting? No.

Is voter fraud possible in voter registration states? Yes - absolutely - and we hear about examples of it during every election season.

Although voter fraud has not been widespread in North Dakota, and we have had very few, if any, known incidents of voter fraud and none that have been prosecuted, the possibility of voter fraud is still of great concern. This is especially true as North Dakotans move to cities and growing communities where once smaller precincts are growing larger and larger and the rural character of North Dakota diminishes. As an example, precincts in the cities of Fargo and Bismarck have grown several thousand qualified electors and nearly two thousand actual voters. These growing precincts are certainly larger than the small precincts that North Dakota's unique election system is based upon.

## **Enacting Voter Registration in North Dakota**

Enacting voter registration has been presented frequently during sessions of the Legislative Assembly since its repeal in 1951. Every time it was either turned down by legislative action or by gubernatorial veto.

The position of the Secretary of State's office towards adopting voter registration in the past has been one of caution due to the presence of the National Voter Registration Act enacted by Congress in 1993.

Secretary of State Al Jaeger has said, "Let's wait to pursue the possibility of enacting voter registration in North Dakota until the challenges and disagreements with the National Voter Registration Act have been resolved. Once that takes place, North Dakota will be in a much better position to weigh the potential benefits, drawbacks, and costs associated with enacting a statewide voter registration system."

Now that many states impacted by the National Voter Registration Act have resolved their legal disputes over implementation and the other states have successfully integrated the act into their voter registration process, now is the time for North Dakota to study the impacts of voter registration. Studying the impacts of adopting and implementing voter registration also makes sense before making a decision to draft voter registration legislation. For these reasons, the Secretary of State's office supports studying the issue despite having strong reservations about the ultimate need for voter registration.

In addition, many of the concerns that have prompted the discussion over voter registration are related to the question of voting and residence. Therefore it will be extremely important and valuable to study residency and voter qualifications in North Dakota at the same time as studying the need for voter registration.

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## **Other References About Voting in North Dakota**

Kusler, Jim, *Are Fraud Free Elections Possible Without Voter Registration?*, Legislative Bulletin, 1992, pgs. 16-17 and 19.

Omdahl, Lloyd, Bureau of Governmental Affairs, *Fraud Free Elections Are Possible Without Voter Registration*, 1971.