

Date Printed: 02/09/2009

JTS Box Number: IFES_52

Tab Number: 24

Document Title: FEDERAL ELECTION LAW 91: A SUMMARY OF
SELECTED FEDERAL ELECTION LAWS THAT

Document Date: 1991

Document Country: USA

Document Language: ENG

IFES ID: EL00778



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Federal Election Law 91

A Summary of
Selected Federal
Election Laws
That Pertain to
Registration
and Voting



**Return to Resource Center
International Foundation
for Electoral Systems
1620 I St. NW, Suite 611
Washington, D.C. 20006**

Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting

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Published by:

National Clearinghouse on Election Administration
Federal Election Commission
Washington, DC 20463

May 1991

Introduction by the Clearinghouse

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 and voting procedures. 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 89* also published by the National Clearinghouse on Election Administration and available from the Government Printing Office [see back cover] or at 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 and to those in the Federal Voting Assistance Program in the Department of Defense 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:

States Conduct Congressional Elections

“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.”

(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:

States Conduct Presidential Elections

“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.”

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

Presidential 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).

House 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).

Senate 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).

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, Redistricting, 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 pages 6 and 7).

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)

Absentee Ballot Application and Return Deadlines

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

Absentee Voting for Interstate Movers

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

Absentee Registration

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

- **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.)

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. 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 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:

The Accessibility Officer
National Clearinghouse on
Election Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Direct Tele: 202/376-5670
Toll Free: 800/424-9530
FAX: 202/376-5280
TDD: 202/376-3136

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 Military

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

Absentee Voting for Overseas Citizens

- Permits civilian U.S. citizens residing abroad, 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 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 military (as well as their spouses and dependents) and for overseas citizens.

Registration for Military and Overseas Citizens

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

The (Blank) Federal Write-In Ballot

- Permits voters in the Uniformed Services (including their spouses and dependents) and citizens residing outside the United States who are **absent** from the United States and its territories to cast a federal write-in ballot (or so-called "blank ballot") in **general elections 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) Blank ballots are obtained by voters from U.S. embassies, consulates, or military installations. (2) Should the voter cast a blank ballot but then receive, vote, and return the regular absentee ballot on time, the regular ballot takes precedence over the blank ballot.)

- 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 late registration for persons recently separated from the Armed Forces.
- Prohibits persons from 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 1B-457
Washington, DC 20301
Tele: 703/695-0663
FAX: 703/693-5507

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.)

Specific 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:

Prohibited Acts

- 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.

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).

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

False Information 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 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 roles. A "payment" encompasses **anything** of material value including lottery chances.

Vote Buying

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 Hatch Act (5 U.S.C. 7321 through 7328)

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

The first category is ***federal employees*** (who are those persons employed directly by the United States federal government). Under the Hatch Act, federal employees ***may not***:

Activities Prohibited to Federal Employees

- be candidates for public office in partisan elections
- campaign for or against a candidate in partisan elections
- make campaign speeches or engage in other campaign activities to elect partisan candidates
- collect contributions or sell tickets to political fundraising events
- distribute campaign material in partisan elections
- organize or manage political rallies or meetings
- hold office in political clubs or parties
- circulate nominating petitions
- work to register voters for one party only
- act as a recorder, watcher, challenger, or other officer at the polls on behalf of a political party or candidate in a partisan election.

Federal employees ***may***, however:

Activities Permitted to Federal Employees

- register and vote as they choose
- assist in non-partisan voter registration activities
- participate in campaigns where none of the candidates represents a political party
- join political clubs and parties
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, and municipal ordinances.

The second category of employees affected by the Hatch Act includes **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** but does not include individuals 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.

This category of employees is **not** prohibited from participating in many of the partisan political activities prohibited to full-fledged federal employees. Such employees **may**, for example,

Activities Permitted to Federally Funded Employees

- actively campaign for candidates for public office in *both* partisan and non-partisan elections
- contribute money to political organizations or attend political fundraising events
- campaign for and hold elective office in political clubs and organizations, and
- be a candidate for public office in a non-partisan election.

Such employees **may not**, however,

Activities Prohibited to Federally Funded Employees

- be a candidate for public office in a partisan election
- use official authority or influence for the purposes of interfering with or affecting the results of an election or nomination for office, or
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(NOTE: An employee's conduct may also be subject to the laws of the State and the regulations of the employing agency.)

For further information regarding the Hatch Act (or for useful brochures summarizing its requirements) contact:

Office of Special Counsel
U.S. Merit System Protection Board
1120 Vermont Avenue, NW
Washington, DC 20005
Direct Tele: 202/653-7143
Toll Free: 800/872-9855

The Federal Election Campaign Act of 1971, as amended (2 U.S.C. 441b (b)(2)(B) and FEC Regulations at 11 CFR 106.5, 106.6, 114.1, 114.3, 114.4, and 431(9)(B)(ii))

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:

Corporate and Labor Non-Partisan Registration and Voting Information Activities

■ **Nonpartisan Registration or Voting Information in Connection with a Federal Election** (11 CFR 114.4(b)(2) and(3)). This provision:

- permits corporations and labor unions to provide nonpartisan registration or voting information to the general public
- permits corporations and labor unions to distribute, or reprint in whole and distribute, official registration or voting information produced by the State or local election administrator to the general public in a nonpartisan manner, and
- permits corporations and labor unions to donate funds to State or local administrators to help defray the cost of printing or distributing official voter registration or voting information and forms.

Corporate and Labor Non-Partisan Registration and Voting Drives

■ **Nonpartisan Voter Registration or Get-Out-The-Vote Drives in Connection With A Federal Election** (11 CFR 114.4(c)). This provision:

- permits corporations and labor unions to donate funds to be used for nonpartisan voter registration or get-out-the-vote drives to:
 - State or local agencies, and
 - non-profit organizations exempt from taxes under 26 U.S.C. 501(c)(3) or (4) which do not support, endorse, or oppose candidates or political parties.

permits corporations and labor unions to participate in nonpartisan registration or get-out-the-vote drives that are not restricted to specific classes of people connected with the organization if:

- the drive is jointly sponsored with a State or local election agency or with a non-profit organization exempt from taxes under 26 U.S.C. 501 (c)(3) or (4) which does not support, endorse, or oppose candidates or political parties;
- the activities are conducted by the State or local agency or the tax-exempt organization; **and**
- the services are available without regard to the voter's political preference.

permits the tax-exempt organization or person authorized by the State or local election agency to use the employees and facilities of a corporation or the members and facilities of a labor union in conducting nonpartisan voter registration or get-out-the-vote activities.

permits non-profit organizations exempt from federal taxation under 2 U.S.C 501(c)(3) or (4) and which do not support, endorse, or oppose candidates or political parties to conduct non-partisan voter registration or get-out-the-vote drives on their own, without a sponsor.

requires all materials prepared for distribution to the general public in connection with such registration or voting drives to include the full names of all drive sponsors.

**Corporate and
Labor Partisan
Registration and
Voting Activities**

- **Partisan Registration and Get-Out-The-Vote Drives in Connection With A Federal Election** (11 CFR 114.3(c)(4)). This provision restricts partisan voter registration communications and drives conducted by corporations and labor unions to a specified class of people connected with the organization.

Allocation of Funds for Registration and Voting Activities by Political Parties

■ **Political Party Allocation of Generic Voter Identification, Voter Registration, and Get-Out-The-Vote Drives Between Federal and Non-federal Funds (11 CFR 106.5(a)(1) and (2)(iv)).** This provision requires party committees registered under the Federal Election Campaign Act (FECA) and party organizations not registered under the FECA to allocate between federal funds (those permissible under the FECA) and non-federal funds all expenses for generic voter registration or get-out-the-vote drives (i.e., drives that do not mention specific candidates).

(NOTE: Party committees and organizations always have the option of exclusively using federal funds for these purposes.)

Allocation of Funds for Registration and Voting Activities by PACs

■ **PAC Allocation of Generic Voter Identification, Voter Registration, and Get-Out-The-Vote Drives Between Federal and Non-federal Funds (11 CFR 106.6(a) and (b)(1)(iii) and (2)(iii)).** This provision requires separate segregated funds (corporate and labor PACs) and non-connected political committees that make disbursements in connection with both federal and non-federal elections to allocate between federal funds (those permissible under the FECA) and non-federal funds all expenses for general public, generic voter registration or get-out-the-vote drives (i.e., drives that do not mention specific candidates).

(NOTE: Committees always have the option of exclusively using federal funds for these purposes).

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: 202/376-3120
Toll Free: 800/424-9530

**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

Citizenship

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.

Dual Citizenship

It is also worth noting that, according to the Immigration and Naturalization Service, the United States does not recognize dual citizenship. The only question for election officials, then, is whether or not the individual is a United States citizen regardless of what other citizenship he might claim in addition. Moreover, the INS has indicated that 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, is therefore irrelevant. The only relevant issue is whether the person is a United States citizen.

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 five States permit convicted felons to vote. 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* by Richard Scammon and Alice McGillivray (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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Other Clearinghouse Reports

The following reports are available at most federal depository libraries (State, university, and major metropolitan libraries). They may also be purchased from the Government Printing Office. Orders should include the title and stock number with a check for the appropriate amount payable to the Superintendent of Documents. Address orders to: Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

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|---|-----------------|---------|
| ■ Election Case Law 89: A Summary of Judicial Precedent on Election Issues Other Than Campaign Financing | 052-006-00043-1 | \$18.00 |
|---|-----------------|---------|

This volume is intended to provide those without a legal background with an informative survey of the judicial treatment of the major issues in the area of elections and to serve as a helpful reference tool and starting point for attorneys who wish to conduct research on a specific election-related legal issue.

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|--|-----------------|---------|
| ■ Campaign Finance Law 90: A Summary of State Campaign Finance Laws with Quick Reference Charts | 052-006-00045-7 | \$23.00 |
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This volume provides State-by-State summaries of their campaign finance laws and regulations including contribution and solicitation limits, expenditure limits, reporting requirements, public financing, and the like.

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This series addresses the process by which parties and candidates come to appear on the ballot. Volume 1, designed primarily for State policy makers, offers a step-by-step guide through the ballot access process examining at each point alternative procedures in light of their policy, administrative, and legal ramifications. Volumes 2 and 3 describe for each State the ballot access requirements in both primary and general elections for major party, minor party, independent, and write-in candidates for Congress and President, respectively. Volume 4 describes the rules and procedures in each State regarding the formation, recognition, ballot access, and continuation or termination of political parties.

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| ■ Contested Elections and Recounts | | |
| Vol 1: Issues and Options in Resolving Disputed Federal Elections | 052-006-00049-0 | \$ 4.25 |
| Vol 2: A Summary of State Procedures for Resolving Disputed Federal Elections | 052-006-00050-3 | \$ 9.00 |

This series addresses the process by which disputed federal elections are resolved. Volume 1, designed primarily for State policy makers, offers a step-by-step guide through contested election and recount procedures examining at each point alternative procedures. Volume 2 describes the processes employed by each State with regard to standing, grounds, filing forms, requisite conditions, forums, scope of review, costs, and types of relief available.

Voting System Standards

The Federal Election Commission has officially issued the *Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems* prepared by the National Clearinghouse on Election Administration. This publication, the result of long-term research and dialogue, presents voluntary performance and testing standards that may be used by States and by voting system vendors to ensure the accuracy, integrity, and reliability of computer-based voting systems.

The Commission issued three advisory plans in conjunction with these standards: *A Plan for Implementing the FEC Voting Systems Standards*, *A System Escrow Plan for the Voting System Standards Program*, and *A Process for Evaluating Independent Test Authorities*. These documents sequentially discuss issues that States may wish to consider when implementing the standards, the placement of voting system proprietary information in escrow, and a method of assessing the qualifications and capabilities of independent authorities that are willing to test computer-based ballot tabulation systems against the standards.

Those interested in obtaining copies of the Voting System Standards package may purchase it from the Government Printing Office. Orders should include the title and stock number below with a check payable to the Superintendent of Documents. Address orders to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Voting System Standards 052-006-00044-9 \$25.00

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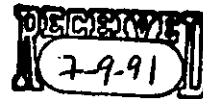


FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 2, 1991

Richard Soudriette, Director
International Foundation for
Electoral Systems
1620 I St N.W. Ste 611
Washington DC 20006



RICHARD
Dear Mr. Soudriette:

Please find enclosed copies of the latest Clearinghouse product, Federal Election Law 91: A Summary of Selected Federal Election Laws That Pertain to Registration and Voting.

This report represents something of a departure from our previous volumes in that (1) it was prepared entirely in house, and (2) it is intended primarily for local rather than State election officials.

Strange as it may seem, this is the first time (at least to our knowledge) that federal registration and voting laws have ever been compiled and summarized in a single convenient document. We hope that by doing so, we will reduce confusion and facilitate compliance. To that end, we have tried to present the various federal requirements in simple, everyday English without sacrificing accuracy. By the same token, we have employed appropriate citations (for State and local attorneys), provided a detailed subject index (for finding the answers to problems quickly), and identified where possible sources of further information or assistance.

We hope you find this report useful. Should you need additional copies, please do not hesitate to contact me toll free on 800/424-9530 or direct on 202/376-5670.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill".

William C. Kimberling
Deputy Director
National Clearinghouse on
Election Administration