

Online Voter Registration

The Time Has Arrived

By Christopher M. Thomas

FAST FACTS

Online voter registration has come of age and needs to be implemented in Michigan.

Voter registration laws in Michigan have balanced access with security.

Michigan voter registration innovations formed the basis of two important federal election laws.

The time has arrived in Michigan to empower our citizens to register to vote securely online at the time of their choosing. There is no need for citizens to find a local clerk's office or a Secretary of State branch office to register to vote. Today, 12 states offer 24/7, secure online voter registration and another six states are implementing online registration.¹ It is time for Michigan to adopt this commonsense, secure service to empower our citizens to participate fully in the electoral process.

A caveat: This column advocates for online voter registration, *not* online voting. Online voting is not yet ready for prime time.

In Michigan, online registration is available to individuals who are already registered to vote and change their driver's license or state-issued personal identification card address on the Secretary of State ExpressSOS website. However, if a person is not already registered to vote, this service is not available. The change advocated here is to allow all citizens with a valid Michigan driver's license or state-issued personal ID card to register to vote online.

An online voter registration system would operate in a similar fashion as the online driver's license services offered by the Secretary of State. A citizen using a computer, tablet, or smartphone would log into a voter registration website maintained by the state of Michigan. The required sign-in elements would include:

- Last four digits of the applicant's Social Security number
- Driver's license or personal ID card number
- Full name as it appears on the license or personal ID card
- Date of birth
- Eye color as it appears on the license or personal ID card

These identification elements would be verified with the data in the state driver file before the voter registration transaction could proceed.

Voter registration: the good and the bad

Voter registration has traditionally had two primary purposes: control who is eligible to vote and manage the election process.

The first purpose obviously prevents voter fraud by allowing only those meeting the legal requirements to vote. Citizenship, age, and residence are the common requirements for defining a qualified elector. In the early 1800s, voter registration was introduced in this country to keep the increasing foreign-born population from participating in the election process. Later in that century, voter registration became the tool of the southern states to eliminate African Americans from the voter registration rolls. Between 1888 and 1908, massive disenfranchisement resulted from the ratification of revised state constitutions requiring poll taxes and literacy tests, through violence and intimidation—and with assistance from corrupt election officials—preventing African Americans from voting as they had since the 1870s. In 1888, Louisiana had 126,884 white voters and 127,923 black voters registered; by 1910, however, only 730 black voters remained on the registration rolls.²

In a seminal United States Supreme Court case, *Giles v Harris*,³ Justice Oliver Wendell Holmes concluded that even if the Court held that Alabama's registration provisions were a fraud on the U.S. Constitution, the Court could not order the state to register the black plaintiffs because such an order would require the



Court to participate in an illegal registration process. Holmes correctly perceived what was taking place but nevertheless concluded that an order of the Court could not defeat the political leadership of Alabama. Professor Richard H. Pildes observed that *Giles* is an important case in twentieth-century disenfranchisement of African Americans as it made clear that even though the Fifteenth Amendment forbade disenfranchisement, the Supreme Court would not intervene.⁴

The wholesale disenfranchisement of African Americans was not adequately addressed until the passage of the Voting Rights Act of 1965.

The second purpose of voter registration concerns management of the election process. To properly administer elections, it is important to know where voters reside. Voting precincts are created to serve as the place to vote for a specified number of registered voters within a certain geographic area. The number of ballots and voting devices or stations depends on the number of registered voters expected to vote in each precinct. Election results are then reported using these same precincts. Finally, election precincts are now used to reapportion congressional and legislative districts as census data are conformed to the precinct boundaries so election returns may be added to geographic tracts and blocs containing a wealth of demographic data.

Michigan's experience with voter registration post-1960s

Viewing Michigan's voter registration system from the 1960s to the present shows a major shift from voter-initiated registration

transactions to government-initiated transactions. It is important to understand this move in light of the benefits to be gained by transferring the process back to the voter without eliminating existing government opportunities. A review of the shift is helpful in assessing a move to online voter registration.

Beginning in the late 1960s, a number of changes occurred that began to open access to voter registration and voting.

Until 1968, a person could not register to vote 30 days before an election. During this period, local clerks were barred by law from accepting registration applications, requiring applicants to make a return trip to the clerk's office (or house in the rural areas). In election years, registration was closed during the 30-day period before the August primary and 30 days before the November general election. This meant that for two months of the year, no registrations could be accepted.

It was not unusual for special elections to be held to fill vacancies during election years, meaning that for 30 days before a special primary and 30 days before a special general election, no registrations could take place. Under these circumstances, there were occasions when there were four blacked-out months of the year during which no registrations could be taken. Public Act 46 of 1968 put an end to this significant roadblock by allowing clerks to accept registrations during the 30 days before an election, though these newly registered voters could not vote in that particular election. This was a quiet, but extremely significant, reform.

In 1971—the same year the Twenty-sixth Amendment to the U.S. Constitution was ratified, granting the right to vote to individuals aged 18–20—the Michigan Supreme Court invalidated the restrictions placed on college students attempting to register in

their college towns in *Wilkins v Ann Arbor City Clerk*.⁵ Before *Wilkins*, college students bore a rebuttable burden to prove they were residents of a college town when applying to register to vote. The Court found these requirements violated the Fourteenth Amendment's Equal Protection Clause as well as Article 2, Section 1 of the Michigan Constitution.

In 1972, the Michigan Supreme Court addressed the "purge" provisions of the election law. In voter registration, there are two sides to the registration coin.⁶ On one side is the ease or difficulty in registering to vote; on the other side is the ease or difficulty of removing a voter from the registration file. Section 509 of the Michigan Election Law, MCL 168.509, required local election officials to review their files each December and suspend the registrations of all electors who had not voted, recorded a change of address on their registration, or continued their registration within a two-year period. A notice was sent to these voters, and their registrations were cancelled if they did not respond within 30 days. In *Michigan State UAW Community Action Program Council v Secretary of State*,⁷ the Court found this statutory provision added a qualification to vote not authorized by Michigan's Constitution.

While the two-year purge was extremely efficient, many qualified voters were kicked off the registration file, requiring them to re-register before the next election. The general pattern saw voter rolls greatly expand in presidential election years and then two years later, immediately following the November gubernatorial election, most of the voters who had voted in the presidential election but not the gubernatorial election were purged. Between 1960 and 1970, more than 600,000 registrations were cancelled in Detroit under this program. The net result of all these purges was the need for aggressive voter registration drives before each presidential election.

The Court entered a permanent injunction prohibiting local election officials from removing voters under this program. This left no effective means for removing voters who had moved to another community. In 1974, section 502a of the Michigan Election Law, MCL 168.502a, was enacted to establish a four-year active file and a six-year inactive file. If a voter has no activity for four years, the voter's registration record is placed into the inactive file where it remains for an additional six years. After a total of 10 years of inactivity, the voter is sent a notice and canceled if no reply is received within 30 days. This provision was never

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challenged in court, leaving open the question of whether a 10-year purge period was an unconstitutional qualification to vote, as the Court had previously found for a two-year purge period.

Before 1975, voters had to initiate each voter registration transaction. These transactions took place in city and township clerk offices, which were not very accessible in rural areas as there were no regular office hours and were difficult to access in urban areas as the offices were only open during regular business hours when most voters were at work. In the more populated areas, voter registration drives were held before presidential elections as assistants authorized by local clerks registered voters at various events.

In 1975, Michigan enacted the nation's first motor-voter law, offering a convenient opportunity for drivers to register to vote or change their voter registration address when applying for or renewing their driver's licenses or changing their license address. The impact was a dramatic increase in registration across the state, especially in rural areas where voter registration opportunities were limited. With the advent of state-issued personal ID cards, motor-voter reached many more citizens. Today, approximately 80 percent of Michigan's annual voter registration transactions are generated through Secretary of State branch offices as drivers apply to register to vote or change their addresses.

Michigan's innovative motor-voter system was incorporated into federal law in 1993 with the passage of the National Voter Registration Act, 42 USC 1973gg. The act was a far-reaching adjustment to voter registration in the country. In addition to



requiring all states except those with election-day registration to implement the motor-voter system, the act added a number of other programs:

- Extended the motor-voter program to agencies providing public assistance and disability services
- Implemented mail-in voter registration
- Eliminated purges and required file maintenance to establish reliable information that voters had moved before starting the cancellation process
- Prohibited the initiation of a cancellation based on the failure to vote

The National Voter Registration Act posed serious issues to voter registration management in Michigan. There are 1,512 cities and townships serving as registration jurisdictions. In most states, voter registration is handled at the county level, making it much easier for voters to deliver their mail-in applications to the correct jurisdiction. The elimination of the purge process meant that a more expensive process would have to be developed to handle cancellations and voter moves between jurisdictions.

In response to this challenge, the Qualified Voter File was enacted in 1994 in the same law that implemented the National Voter Registration Act in Michigan—PA 441 of 1994. The Qualified Voter File is a statewide, electronic voter registration system that provides voter registration data for all the counties, cities, and townships. The beauty of motor-voter is that each transaction provides easy access to the voter registration system and a simple and accurate method for removing a voter from a former jurisdiction when he or she moves to a new one. The Qualified Voter File transmits the electronic data from each driver's license or personal ID transaction that registers a voter or changes an address to the election official in the jurisdiction where the voter resides. If the transaction is a change of address between two jurisdictions, the election officials in both jurisdictions receive information regarding the voter's old and new residences. This keeps the file current without the need for expensive notices cancelling the voter in the former jurisdiction. The Qualified Voter File seamlessly moves voters around as if Michigan were a single registration jurisdiction rather than 1,512 separate jurisdictions. By using the driver's license number as the voter number, the Qualified Voter File removed more than 600,000 duplicate registrations during its implementation in 1997–1998.

Michigan's Qualified Voter File served as the model state program used by Congress when enacting the Help America Vote Act of 2002⁸ to address election issues revealed in the 2000 presidential recount in Florida. Now all states have electronic, statewide voter registration files similar to the Qualified Voter File. This has opened the way to cross-checks with other states to determine whether Michigan voters have moved to another state and registered to vote. The Qualified Voter File and advances under the Help America Vote Act have set the stage for online voter

registration, and it is time for Michigan to move forward with an online voter registration system to supplement existing registration opportunities.

The benefits of online voter registration

By providing each citizen the opportunity to register to vote or update his or her registration online at any time, the shift to a voter-controlled registration process would enhance Michigan's registration system in the following ways:

- The accuracy of registration will increase as voters enter their data online. Local election officials will not have to decipher obscure handwriting on mail-in applications.
- Delays on Election Day and the number of provisional ballots cast will decrease when addresses are current and accurate. Election Day lines will be shorter.
- Military personnel and citizens living and working overseas will be able to register online. Printing, signing, and mailing an application can prove difficult in such situations.
- Cost savings to state and local governments may result as voters will no longer have to appear in person at government offices to register to vote.
- Voters will appreciate the convenience of registering and updating their records online.

It is time to place this tool in the hands of our citizens. ■



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ENDNOTES

1. NCLS, *Online Voter Registration* <<http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx#table>> (accessed December 12, 2013).
2. Perman, *Struggle for Mastery: Disfranchisement in the South 1888–1908* (Chapel Hill: University of North Carolina Press, 2001).
3. *Giles v Harris*, 189 US 475; 23 S Ct 639; 47 L Ed 909 (1903).
4. Pildes, *Democracy, anti-democracy, and the canon*, 17 Const Comm 293 (2000).
5. *Wilkins v Ann Arbor City Clerk*, 385 Mich 670; 189 NW2d 423 (1971).
6. "Purge" is a pejorative term in election administration parlance. Today, the phrase "file maintenance" is preferred because a finding of reliable information that an individual has moved is necessary before the cancellation process may begin.
7. *Michigan State UAW Community Action Program Council v Secretary of State*, 387 Mich 506; 198 NW2d 385 (1972).
8. 42 USC 15301 *et seq.*