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Inactive Voter Compromise:

The Secretary of State's office and Denver Elections work together for Colorado's voters

Introduction

During the 2012 legislative session, Senator Johnston, at the request of the Denver Elections Division, introduced Senate Bill 12-109, which, among other things, allowed county clerks to send mail-in ballots to voters whose registration records were marked as “Inactive - Failed to Vote” (“IFTV”). The bill also allowed county clerks to unilaterally update a voter’s address should the post office indicate that the voter had moved. Because of increased chances of fraud and mistake, respectively, the Secretary of State’s office officially opposed Senate Bill 12-109, which subsequently died. Since the bill’s defeat, the Secretary’s office has worked closely and amicably with the Denver Clerk and Recorder and her elections staff to craft a compromise bill that gives Denver the elections efficiencies they seek while, at the same time, gives Colorado voters the protection and election integrity they rightly demand. This paper briefly highlights the new compromise legislation.

1. The compromise bill greatly simplifies Active and Inactive registration statuses.

Recently, a handful of county clerks expressed the desire to mail ballots to Inactive voters, reasoning that doing so would increase voter participation. While the Secretary of State’s office certainly shares the desire to increase voter turnout, it’s questionable whether mailing ballots to addresses that have gone unconfirmed for potentially several election cycles is the most effective way to do so. Additionally, each ballot delivered to unconfirmed voters increases the risk of election fraud. The compromise legislation takes a novel approach that will likely increase voter participation and reduce the risk of fraud.

Eliminating Inactive subcategories

Currently, voters are either “Active,” “Inactive - Returned Mail,” or “Inactive - Failed to Vote.” As the titles indicate, an active voter will become inactive if a piece of mail sent to the voter bounces back as undeliverable or if the voter fails to vote in a general election.

Prospective cancellation is one reason for the differing inactive subcategories. A voter marked “Inactive - Returned Mail” can be canceled if she fails to vote in two subsequent federal elections, while a voter marked “Inactive - Failed to Vote” can never be canceled for simply failing to vote. Though the categories are different, the result is essentially the same: clerks do not send mail ballots to inactive voters in general elections.

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The draft legislation eliminates the Inactive subcategories of “Returned Mail” and “Failed to Vote.” This greatly simplifies both terminology and registration processes. If the legislation becomes law, registered voters will simply be Active or Inactive.

Resetting all IFTV voters to Active status

In addition to eliminating the Inactive subcategories, the compromise legislation contains a one-time reset of all IFTV voters to Active, which essentially provides a clean slate for clerks to implement the new Active and Inactive procedures. Voters who are currently registered as Inactive - Returned Mail will be marked simply as Inactive.

Changing a voter's status from Active to Inactive

Under the compromise legislation, a voter will never again become Inactive for simply failing to vote. That is, if a voter fails to vote in an election, that voter will remain Active unless and until a piece of mail (ballot, confirmation card, etc.) is returned to the county clerk as “undeliverable.” Clerks send several mailings over the course of an election cycle. If no mail is ever returned by the postal service as undeliverable, the voter will remain Active and will continue to receive a ballot and other mailings from the clerk.

If a voter fails to vote in a presidential election, the clerk will mail a confirmation card to the voter. If the voter returns the card and confirms his or her information, or if the voter chooses to not return the confirmation card, the clerk will take no further action and the voter will remain Active. Again, a clerk will only change the voter's status to Inactive if the confirmation card is returned as undeliverable.

Changing a voter's status from Inactive to Active

Aside from the one-time reset of IFTV voters to Active, a clerk would change a voter's status from Inactive to Active if:

- The voter updates his or her registration information
- The voter votes in any election conducted or coordinated by the clerk
- The voter applies for a mail-in ballot for an election conducted by the clerk, regardless of whether the voter returns the ballot
- The voter completes, signs, and returns a voter information card or confirmation card

Canceling an Inactive voter

Under the new bill, a clerk will only cancel an Inactive voter if each of the following occur over the course of two consecutive general elections:

- The voter fails to vote in any election conducted by the clerk
- The voter fails to respond to any change of address card, confirmation card, or voter information card
- The voter fails to update his or her registration information

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Note that the above conditions apply only to voters who are already Inactive; nothing in the compromise legislation allows a clerk to cancel a voter solely for failure to vote.

2. The compromise legislation will improve registration roll accuracy through change of address searches.

Conducting and following up on the results of monthly address change searches will make for much cleaner voter registration rolls. More accurate voter rolls significantly lessen the chances for vote fraud, which in turn allows for voters to remain Active if they don't participate in an election.

The new bill requires the Secretary of State's office to conduct a monthly search of several national address change databases for all registered voters. After the search, the secretary's office will forward the names of voters who may have moved to the appropriate county clerk, who will then take the following action:

If the voter moved within the county

- The clerk must automatically update the voter's registration record and send a confirmation card to the new and old address
- If the voter returns the confirmation card indicating that he or she has not moved, the clerk will change the voter's record back to the previous address
- Note: Automatic updates without voter confirmation are not permitted during the 60 days immediately preceding an election

If the voter moved to a different county

- The clerk must mark the voter's record as Inactive and send a confirmation card to the new and old address
- If the voter returns the confirmation card indicating that he or she has not moved, the clerk will change the voter's record back to the previous address and mark the record Active
- If the voter returns the card and confirms the new address, the clerk must notify the clerk of the voter's new county who, in turn, must update the voter's address and mark the voter's record Active
- If the voter does not return the card, he or she will remain Inactive

If the voter moved to a different state

- The clerk must mark the voter's record as Inactive and send a confirmation card to the new and old address
- If the voter returns the confirmation card indicating that he or she has not moved, the clerk will change the voter's record back to the previous address and mark the record Active
- If the voter returns the card and confirms the new address, the clerk must cancel the voter's registration
- If the voter does not return the card, he or she will remain Inactive

3. The new bill contains innovative ways for county clerks to communicate with voters.

When county clerks and other stakeholders discuss new elections initiatives, cutting costs and increasing efficiency are always at the forefront of the conversation. And the new compromise bill is no different; allowing clerks to use new ways to reach voters will save counties money and keep voters more informed.

Email opt-in

The email opt-in is the most innovative communication method in the compromise legislation. Under this program, a county clerk will send voter information cards and other election notices by email to voters who request the service. This program will eliminate substantial printing and mailing costs. If a clerk, after sending

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an email to a voter, receives an undeliverable message, the clerk will send the information card by regular mail to ensure the voter receives the communication. The clerk will also cease any future emails until the voter updates his or her email address.

Alternative mail services

The new bill also contains a provision that would allow a county clerk to use an alternate mail carrier such FedEx, UPS, DHL, or other carrier approved by the Secretary of State's office. Providing clerks with this kind of flexibility will result in lower costs and more efficient communication.

Conclusion

The Secretary of State's office worked closely with the Denver Elections Division to craft a piece of legislation that will increase election participation and, at the same time, reduce the chances for fraud. And Colorado voters will be the ultimate beneficiaries of the compromise bill.