

On November 6, 2018, Michigan voters will decide whether to adopt a constitutional amendment preserving for Michigan voters certain rights related to voting and voter registration. The result of a petition drive, Proposal 18-3 will appear on the ballot as follows:

PROPOSAL 18-3

A PROPOSAL TO AUTHORIZE AUTOMATIC AND ELECTION DAY VOTER REGISTRATION, NO-REASON ABSENTEE VOTING, AND STRAIGHT TICKET VOTING; AND ADD CURRENT LEGAL REQUIREMENTS FOR MILITARY AND OVERSEAS VOTING AND POST-ELECTION AUDITS TO THE MICHIGAN CONSTITUTION

This proposed constitutional amendment would allow a United States citizen who is qualified to vote in Michigan to:

- Become automatically registered to vote when applying for, updating or renewing a driver's license or state-issued personal identification card, unless the person declines.
- Simultaneously register to vote with proof of residency and obtain a ballot during the 2-week period prior to an election, up to and including Election Day.
- Obtain an absent voter ballot without providing a reason.
- Cast a straight-ticket vote for all candidates of a particular political party when voting in a partisan general election.

Should this proposal be adopted?

YES []
NO []

If a majority of the electors vote "yes" on Proposal 18-3, Article II, Section 4 of the State Constitution will be amended to include the proposed language.

Background on Straight-Ticket Voting

According to the National Conference of State Legislatures, straight-ticket voting (STV) allows electors to choose a party's entire slate of candidates with a single ballot mark or punch. A total of eight states allow or offer straight-ticket

voting. In the states that allow it, the straight-ticket option is available in all general elections, and applies to all partisan offices on the ticket, including Federal, state and local races.

In 1964 and 2001, legislation was enacted to eliminate straight-ticket voting in Michigan but was rejected by the voters. First, Public Act 240 of 1964 would have made a number of amendments to the Michigan Election Law, including the deletion of provisions that allowed straight-ticket voting. As a result of a petition drive, the legislation was placed before the voters in a 1964 election and was not approved.

Essentially the same thing occurred almost 40 years later. In addition to making various other amendments to the Election Law, Public Act 269 of 2001 would have prohibited electors from voting for all the candidates on the ballot from a single political party with a single selection on the ballot. Again, a petition drive was held and the legislation was placed before the voters, who rejected it in a 2002 election.

Public Act 268 of 2016 eliminated STV, but a suit challenging the Act was filed in the U.S. District Court for the Eastern District of Michigan. In July 2016, the court issued a preliminary injunction against enforcing the law for the 2016 general election, finding that the plaintiffs were likely to succeed on the merits of their Equal Protection and Voting Rights Act claims. In August 2018, after a trial, the court issued a permanent injunction against enforcing the Act, determining that the Act infringed on African-Americans' voting rights in violation of the Equal Protection Clause and the Voting Rights Act. The Secretary of State (SOS) appealed the injunction to the U.S. Court of Appeals for the Sixth Circuit and moved for a stay. In September 2018, the Sixth Circuit granted the stay, noting that there were "very serious problems with both the factual underpinnings and the legal analysis of the district court's opinion". The plaintiffs filed with the U.S. Supreme Court an emergency application to vacate the stay. The application was denied on September 7, 2018, which preserves the elimination of STV in Michigan for the 2018 general election.

Impact on Absentee Voting

The Uniformed and Overseas Citizens Absentee Voting Act guarantees to U.S. citizens residing overseas who are otherwise eligible the right to vote in Federal elections by absentee ballot. Similarly, the Military Overseas Voting Empowerment Act requires states to permit military members on active duty (and their family members) overseas to register to vote and request an absentee ballot early enough for the voter to receive it, vote it, and send it back. The Acts require ballots to be sent to these individuals at least 45 days before a Federal election. Proposal 18-3 would include substantially the same right within the Michigan Constitution.

More generally, a registered voter may obtain an absent voter ballot if he or she meets any of the following:

- Is 60 years old or older.
- Unable to vote without assistance at the polls.
- Expecting to be out of town on Election Day.
- In jail awaiting arraignment or trial.
- Unable to attend the polls due to religious reasons.
- Appointed to work as an election inspector in a precinct outside of his or her precinct of residence.

A person who registers to vote by mail must vote in person in the first election in which he or she participates, unless he or she is an overseas voter, a voter who is disabled, or who is 60 years of age or older. Under Proposal 18-3, an elector would have the right to vote an absent voter ballot without giving a reason during the 40 days before an election.

Impact on Existing State Laws

The Michigan Election Law provides that each person who has the specified qualifications of an elector, or who will have those qualifications at the next election or primary election, is entitled to register as an elector in the township, city, or village in which he or she resides. The person must be a citizen of the United States; at least 18 years of age; a resident of Michigan for not less than 30

days; and a resident of the township, city, or village on or before the 30th day before the next regular or special election or primary election.

Voter registrations accepted fewer than 30 days before an election are not valid for that election but are valid for subsequent elections. Under Proposal 18-3, registrations, under certain conditions, would be accepted up to the date of the election and would be valid for that election.

The Election Law also requires the SOS to afford a person who appears in a Department of State branch office or a person who applies for renewal of a driver license an opportunity to complete a voting registration application or to change the person's voting registration name or address, if he or she is qualified to be an elector on the date of application or will possess those qualifications at the next election. A registered elector is not required to reregister periodically or to renew his or her registration. This essentially serves as an opt-in policy. Proposal 18-3 would require the SOS to conduct an opt-out policy. Specifically, the proposal would give citizens the right to be *automatically* registered to vote as a result of conducting business with the Secretary of State regarding a driver's license or personal identification card, *unless the person declines such registration*.

The Election Law specifies that the operation of a voting machine by an elector while voting must be secret and obscure from all other individuals. Also, under Article II, Section 4 of the Michigan Constitution, the Legislature must "enact laws to...preserve the secrecy of the ballot". Proposal 18-3 would specify, in addition to the current language, that an elector qualified to vote in Michigan would have the right, once registered, to a secret ballot in all elections.

Discussion

Proponents of Proposal 18-3 point to a study performed by the National Conference of State Legislatures that analyzes data from different states with different methods of registering voters and voting in the 2012 election. The study notes that early voting actually decreases voter turnout, and that the best way to increase turnout would be



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An Overview

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to use certain combinations of reforms typically seen in other states, such as registration on Election Day. Many of the suggested reforms, proponents note, are included in Proposal 18-3.

Proponents of Proposal 18-3 also contend that eliminating straight-ticket voting could cause confusion and frustration among voters and could result in longer lines at polling places. Proponents note that increased waiting times likely would discourage people from voting and that the State should not take steps that could further reduce turnout. In addition, having to select each partisan candidate separately, after a long wait to vote, could decrease a voters' attention to the remainder of the ballot, instead of increasing votes in nonpartisan races and on ballot questions. Requiring a voter to select each candidate individually also could increase the chances of an incomplete mark or mistake, resulting in more spoiled ballots.

Opponents of Proposal 18-3 argue that electors should vote for individual candidates. Without the option of straight-ticket voting, prospective voters would be encouraged to educate themselves about the individuals on the ballot, their qualifications, and what they stand for. By familiarizing themselves with the individual candidates and making separate choices for each office, voters would be more fully involved in the democratic process. If a voter wished to vote for all of the candidates of one party, he or she could continue to do so. The elimination of STV does not eliminate straight-party voting; it eliminates the option of voting for a party's entire slate of candidates by making a single selection.

Opponents also note that when an individual votes a straight ticket, he or she might neglect to vote for candidates who are running in nonpartisan races or to vote on ballot proposals, thinking that he or she has finished after making a single mark. The people who hold nonpartisan offices, however, typically have the most direct impact on the daily lives of their constituents. These include, for example, city and county clerks, city council members, county commissioners, and school board members. By failing to select the individuals who hold these offices, the voters do themselves a disservice. The

same applies to State and local ballot measures, which often relate to the amount of taxes or assessments people pay. Removing the straight-ticket option could help ensure that electors completed their ballots before leaving the voting booth.

Fiscal Impact

Passage of Proposal 18-3 likely would have a negative fiscal impact on the Department of State; however, the cost is indeterminate and would depend on the process that the Department used to implement its provisions. The requirement to register a person to vote automatically when he or she updated or renewed a driver license or personal identification card (PID) would be the most likely to have cost implications. The other requirements, election day voter registration, no-reason absentee voting, and straight ticket voting, would not have a significant fiscal impact on the State. The adoption of Proposal 18-3 also would require absentee ballots to be mailed to all military service members from Michigan serving overseas, as well as post-election audits. The Department already completes these requirements, so they would have no fiscal impact.

The Department has indicated that the cost to automatically register a person to vote when he or she updated or renewed a driver license or PID, including an enhanced driver license or PID, would depend on whether to include a mechanism for opting out of the automatic registration or if there would be a change to the update or renewal form that is already mailed to all registered drivers and individuals with a PID. Thus, the cost for mailings would depend on whether an additional insert was included or if there were a change to the existing form.

The Department's average cost for a mailing ranges from \$0.55 cents to \$1 per piece of mail. There were an estimated 1,855,200 individuals who renewed an operator's license or a personal identification card in 2017. In addition, there are approximately 7,786,500 registered voters in Michigan. This represents 95% of all eligible voters, leaving an estimated 409,800 eligible voters who are not registered. Assuming the higher cost of \$1

per mailing, the estimated cost of sending a notification only to those who were not registered (assuming a mailing could be sent to this population) is approximately \$400,000. In addition, the aforementioned 1.9 million individuals who renewed a driver license or PID would be given the option to opt-out of registering to vote. Accordingly, the mailing costs could increase depending on whether an additional insert was the method the Department of State selected. The cost for that mailing would be added to the cost of sending the renewal forms; however, anticipated increased cost would be minimal.

Moreover, there are an estimated 102,000 new drivers aged 16 to 17 who receive a driver license each year. Although the Department of State has not yet adopted a plan for registering these individuals when they become eligible to vote upon reaching 18 years of age, it is likely that an additional mailing to this population would be required. As mentioned above, the average mailing costs for the Department ranges from \$0.55 cents to \$1. Assuming the higher cost of postage, these mailings would cost the Department approximately \$102,000 annually.