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PERSPECTIVE

## A lawyer's guide to voter registration

By Laura W. Brill

With closely watched races in Virginia and New Jersey now over, the 2018 midterm elections will be the focus of enormous attention for the next 12 months. Many of contests are expected to be decided by razor thin margins, and voter registration rates will play a critical role.

Lawyers have a leading role to play in ensuring that democratic principles function properly in our city, state and country. Lawyers help to translate the legal landscape to the public at large. Many lawyers focus on the most controversial aspects of the laws governing elections, such as partisan gerrymandering, restrictive voter ID laws, the Electoral College and foreign interference. Yet, the basics of many state laws governing elections are surprisingly unknown but can be just as important in ensuring fair elections with wide participation. Here are the top seven things every California lawyer should know.

1. *Californians can register to vote online.* The secretary of state has a very useful and easy to use website, available in many different languages, in which voters can get most of their questions answered and have access to most of what they need to know about voting. Through the website, eligible Californians can register to vote online. Hundreds of thousands of people took advantage of this in the period leading to the 2016 election. Voters can also check and update their registration status through the website (e.g., if they move, want to request permanent vote by mail status, or want to change party preference).

2. *16- and 17-year olds can pre-register to vote.* Most of us learned in civics class that you have to be 18 in order to vote. That may be true, but in California, citizens can pre-register when they are 16 or 17. If they do so, they will be automatically registered to vote when they turn 18.



New York Times Photo Service

Voters cast ballots at a polling station in Fire Station No. 85 in El Dorado Hills, June 7, 2016.

The secretary of state's website offers the opportunity to pre-register online and includes many resources that schools can use to publicize and help their students pre-register.

3. *As of January 2017, California allows same-day voter registration.* Another effort to encourage electoral participation is a recent law that will allow same-day voter registration. Under Elections Code Section 2170, 14 days before an election through Election Day, a voter can fill out a conditional voter registration. Votes associated with that conditional registration will be included in the vote count upon verification of eligibility by the secretary of state.

4. *Strict ID rules do not apply.* Strict voter ID laws are often in the news, along with baseless allegations about voter fraud. California has not joined that bandwagon. Registration requires a driver's license or state ID number where available, and if not, a would-be voter can provide the last four digits of a Social Security number. A person without any of these can still register, and the state will assign a unique ID number.

5. *"Automatic" voter registration is coming to the DMV, but it is not here yet.* In 2015, the Legislature enacted the California New Motor

Voter Program to make voter registration easier. The law provides that DMV driver's license and state identification application forms are to include information relating to voting eligibility. Upon completion, the DMV will provide the information to the secretary of state, and eligible voters will be automatically registered to vote with a single DMV form unless they specifically opt out. The law, which requires coordination between the DMV and secretary of state, is still in the implementation phase, but current plans called for the program to be operational by April 2018, before mid-term elections. Even when fully implemented, it will not be a perfect substitute for other registration methods since not everyone registers with the DMV or interacts with the DMV on a regular basis. But it is expected to increase registration substantially statewide.

6. *Registering as no party preference might prevent participation in a presidential primary.* Voters who identify themselves as having "no party preference" when they register to vote now account for nearly 25 percent of all registered voters in California. While Californians may like the feeling of individuality and openness that this designation implies, it

also comes with drawbacks. Specifically, the political parties define who can vote in their presidential primary elections. While Democrats in California have consistently allowed no party preference voters to cast ballots in Democratic presidential primaries, Republicans have not. And the parties can change the relevant rules from one election cycle to the next, so there is no guarantee of how such registration may affect primary participation in the years to come.

7. *We have a long way to go to improve registration rates.* These reforms should help to improve political participation rates in California, but they should not blind us to how much work there is to do beyond simply passing laws. California has nearly 25 million eligible voters, but only about 19.4 million are registered to vote, leaving a 5.6 million voter gap. In Southern California, Los Angeles County alone has about 1 million eligible voters who are not registered, and Orange County and San Diego County have approximately 500,000 each. And there's around 1 million eligible voters who are not registered across the Bay Area in Northern California as well. With better laws in place to improve registration rates, we also need the lawyers to inform the public and make sure that the laws get put to good use.

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