

# EXAMINING UNIFORMITY IN ELECTION STANDARDS

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## HEARING BEFORE THE SUBCOMMITTEE ON ELECTIONS OF THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS FIRST SESSION

HELD IN WASHINGTON, DC, JULY 15, 2009

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## EXAMINING UNIFORMITY IN ELECTION STANDARDS

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WEDNESDAY, JULY 15, 2009

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ELECTIONS,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 2 p.m., in room 1310, Longworth House Office Building, Hon. Zoe Lofgren (chairwoman of the subcommittee) presiding.

Present: Representatives Lofgren, Gonzalez, Davis of California, Davis of Alabama, McCarthy and Harper.

Staff Present: Jamie Fleet, Staff Director; Tom Hicks, Senior Election Counsel; Janelle Hu, Election Counsel; Jennifer Daehn, Election Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Kyle Anderson, Press Director; Kristin McCowan, Chief Legislative Clerk; Daniel Favarulo, Legislative Assistant, Elections; Joe Wallace, Legislative Clerk; Peter Schalestock, Minority Counsel; Karin Moore, Minority Legislative Counsel; and Salley Collins, Minority Press Secretary.

Ms. LOFGREN. Good afternoon, and welcome to the Committee on House Administration's Subcommittee on Elections. Our hearing is on Examining the Uniformity in Election Standards.

Now, the purpose of today's hearing is to explore uniform standards in the administration of elections, primarily in three areas: pollworker training, provisional balloting, and emergency paper ballots. I note that it was the subcommittee's intention to invite stakeholders interested in creating uniform standards for overseas absentee voting, but the Uniform Law Commission is hosting a convention on the same date as our hearing to discuss this very same issue. And so the witnesses were not available and hopefully we will get back to that subject at a future date.

The American election system, as we know, is not uniform. There are various local, State as well as Federal election laws and policies. Now, we are not questioning that the responsibility to administer elections rests with the State and locals. However, this has led to inconsistency and inequality in the voting process in some cases.

We explored in hearings in the 110th Congress the fact that pollworkers play an absolutely key role in administering elections. The Federal elections require over 2 million pollworkers, but often training is left to local jurisdictions with little guidance, requirements, and, importantly, funding. There are currently no Federal requirements related to pollworker training, and less than half the

States have developed uniform training materials. This ad hoc approach to training can result in deficiencies.

The next area we will hear about today is provisional ballots. Now, under HAVA, these ballots were supposed to provide voters whose eligibility could not be determined at the polling place on election day an opportunity to nevertheless vote on that election day. Unfortunately, provisional ballots are administered very differently in each State and even within the States. And this lack of uniformity could create unfair disparities, creating opportunities even for partisanship in tallying ballots or contributing to confusion among pollworkers or among voters and disenfranchising, in some cases, eligible voters.

Finally, we will address voting equipment allocation and the issuance of emergency paper ballot standards. In most States allocation of voting equipment is largely determined by local election officials. There is oftentimes little or no allocation plan for polling places, and that can result in polls being ill-prepared and voters experiencing long lines. Directly related to this is the need to supply jurisdictions with emergency and backup paper ballots for when voting equipment breaks down.

Now, in all of these matters the question comes down to: Should the Federal Government develop uniform standards to ensure that an equal and fair voting process occurs everywhere in the United States? And if the answer is yes, what form should the standards take and should they be mandatory or voluntary? And what funding is required to ensure compliance with consistencies in these standards?

I look forward to our witnesses addressing these issues today, and I appreciate that they have, all four, come to lend their expertise and guidance.

[The statement of Ms. Lofgren follows:]

**Committee on House Administration  
Subcommittee on Elections  
“Examining Uniformity in Election Standards”  
Wednesday, July 15, 2009  
Chairwoman Lofgren Opening Statement**

Good afternoon and welcome to the Committee on House Administration Subcommittee on Elections hearing on “Examining Uniformity in Election Standards.” The purpose of today’s hearing is to explore uniform standards in the administration of elections, primarily in three areas: pollworker training, provisional balloting, and emergency paper ballots. I’d note that it was the subcommittee’s intention to invite stakeholders interested in creating uniform standards for overseas absentee voting, but the Uniform Law Commission is hosting a convention on the same date as our hearing to discuss this issue and so could not testify.

The American election system is not uniform; there are various local, state, as well as federal election laws and policies. We are not questioning that the responsibility to administer elections rests with the state and locals; however, this has led to inconsistency and inequality in the voting process.

As we explored in hearings in the 110<sup>th</sup> Congress, pollworkers play a key role in administering elections. Federal elections require over two million pollworkers, but often training is left to local jurisdictions with little guidance, requirements, or funding. There are currently no federal requirements related to pollworker training and less than half the states have developed uniform training materials. This ad hoc approach to training results in serious deficiencies.

The next area we will hear about today is provisional ballots. Under HAVA, these ballots were supposed to provide voters whose eligibility could not be determined at the polling place an opportunity to vote on Election Day. Unfortunately, provisional ballots are administered very differently in each state and even within states. This lack of uniformity is unfair, creating opportunities for partisanship in tallying ballots, contributing to pollworker and voter confusion, and disenfranchising eligible voters.

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In all of these matters, the question comes down to, should the federal government develop uniform standards to ensure that an equal and fair voting process occurs everywhere in the United States? If so, what form should the standards take and should they be mandatory or voluntary and what funding is required to ensure compliance with and consistency in these standards? I look forward to our witnesses addressing those issues today.

Ms. LOFGREN. And now I would turn to Mr. Harper for any opening statement that he may have, and we will certainly give Mr. McCarthy an opportunity when he arrives.

Mr. HARPER. I want to thank the Chair for calling today's hearing. As we address the application of election procedure today, I hope that we will approach this issue not in terms of federally required standards, but how to make the various standard election procedures as effective as possible.

It is important to recognize from the outset that a great strength of this Nation is the diversity of its States. States have different election cultures, histories and practices. The States know best which policies will be most effective in their unique circumstances. Allowing States the flexibility to meet their specific needs provides an environment for innovation in the operation of elections.

It would be shortsighted of this body to presume that the Federal Government can best direct that process by imposing the same rules for each State. However, with that deference, I mean to be clear that election procedures, once established, should be applied consistently statewide.

Recent history offers two case studies where inconsistent application led to challenged outcomes. The 2004 Governor's election in Washington and the 2008 U.S. Senator's election in Minnesota.

We have seen the adaptability and success of our current system in bringing more people into the voting process. The Pew Research Center, in a report published April 30, 2009, observed that the electorate in last year's Presidential election was the most racially and ethnically diverse in U.S. history.

As we receive the testimonies of our witnesses, I urge my colleagues to approach the issue with a view to ways we can incentivize the States to make election procedures simpler and more accessible to the voter. At the same time, we must not implement mandates that may restrict States' abilities to install necessary safeguards against voter fraud.

With that, I want to thank each of you for being here. We look forward to receiving your testimony today. Thank you very much.

Ms. LOFGREN. Thank you, Mr. Harper.

[The information follows:]

**[COMMITTEE INSERT]**

[The statement of Mr. McCarthy follows:]



***[After Chairwoman Lofgren's opening remarks]***

I want to thank the Chair for calling today's hearing. As we address the application of election procedure today, I hope that we will approach this issue not in terms of federally required standards, but how to make the various states' election procedures as effective as possible.

It is important to recognize from the outset that a great strength of this nation is the diversity of its states. States have different election cultures, histories, and practices. The states know best what policies will be most effective in their unique circumstances.

Allowing states the flexibility to meet their specific needs provides an environment for innovation in the operation of elections. It would be shortsighted of this body to presume that the federal government can best direct that process by imposing the same rules on every state.



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COMMITTEE ON  
HOUSE ADMINISTRATION  
REPUBLICAN OFFICE

**Subcommittee on Elections Hearing**  
"Examining Uniformity of Election Standards"  
*Rep. Kevin McCarthy, Ranking Member*  
July 13, 2009

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With that, I want to thank each of our witnesses for their participation in today's hearing, and I look forward to their testimony.

***Thank you.***

Ms. LOFGREN. And unless the gentlelady from California has an opening statement?

Mr. HARPER. Madam Chair, if I may, I have two articles I would like to submit for the record. One pertains to the 2004 Governor's election in Washington, and one about the 2008 Senate race in Minnesota.

Ms. LOFGREN. Those will be made a part of the record, by unanimous consent.

[The information follows:]

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## Carver County's handling of absentee ballots a focus of Coleman's argument

A stricter standard for witness signatures disenfranchised voters, the campaign says. Franken's team says Coleman's argument is laying ground for a likely appeal.

By PAT DOYLE, Star Tribune

Last update: February 18, 2009 - 8:12 AM

How far must county elections officials go to make sure a vote is valid?

In Carver County, they check to make sure witnesses for an absentee voter are registered voters. In Scott County, it's a different story.

Lawyers for Republican Norm Coleman seized on the different approaches Tuesday as evidence of varying practices by local elections officials, a theme they have sounded during the trial over Minnesota's disputed U.S. Senate election.

"Carver County rejected 181 of its absentee ballots because the witnesses were unregistered," Coleman legal spokesman Ben

Ginsberg said after the day's proceedings. "Scott County said they don't even check for that. That presents a classic case of the voters of one county having a greater chance of being disenfranchised than the other county."

But a lawyer for DFLer Al Franken said different practices don't demonstrate unfair standards.

"There is one standard -- the law," said Marc Elias. "It doesn't mean that counties don't make mistakes within that standard. But if Mr. Coleman wants to do away with that, then he's going to ... do away with county involvement altogether and we're going to move to a national elections board."

Coleman's camp has often raised the possibility that the conduct of absentee voting in Minnesota violated the equal protection clause of the U.S. Constitution. Elias says Coleman is setting the stage for an appeal to the Minnesota or U.S. Supreme Court, if he loses.

### Carver County focus

Since the Canvassing Board certified a 225-vote lead for Franken last month, Coleman lawyers have focused attention on Carver

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County, a GOP stronghold that went for him by nearly 26 percentage points in November. Coleman seeks to overcome Franken's lead in large part by persuading the three-judge panel to count absentee ballots rejected by counties. Coleman has identified Carver as holding more wrongly rejected ballots than any other county.

On Tuesday, Carver County elections supervisor Kendra Olson testified that her elections officials checked witness addresses and the state voter registration database. "That is why there is such a higher number of rejected ballots in Carver County," she said.

State statutes say the return envelope of an absentee voter must be signed by the voter and be witnessed "by a person who is registered to vote in Minnesota" or by a notary public.

Scott County elections supervisor Mary Kay Kes and Wright County elections overseer Robert Hiivala said their counties don't check whether a witness is registered.

Coleman lawyer Joe Friedberg used their testimony to advance the argument that varying practices could create a violation of equal protection.

But Elias noted that the panel, in a ruling on Friday, said there was no evidence of systemic problems with absentee voting. And the panel, in an earlier order, sounded skeptical of Coleman's argument that problems with absentee voting here were comparable to problems in the 2000 presidential election in Florida, which the U. S. Supreme Court said lacked "specific standards" to ensure equal protection. "Unlike the situation presented in Florida ... the Minnesota Legislature has enacted a standard clearly and unambiguously" the panel said.

In another development, the judges approved Franken's request to submit an updated list of rejected absentee ballots to be potentially considered for counting. Franken wants to refine his 771-ballot list to make it compatible with the ruling Friday that narrowed the scope of issues to be considered in the review of absentee ballots.

About 3,300 rejected ballots that Coleman wants reconsidered remain in the mix after the panel's ruling.

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## The Seattle Times

Sunday, December 19, 2004 - Page updated at 12:00 AM

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### Ballot checks vary widely across state

By Christine Willmsen and Susan Kelleher  
Seattle Times staff reporters

It never mattered much — until this election.

But the fact that one county in Washington verifies ballot signatures differently than another county has taken on more significance as the gubernatorial election hangs on a handful of votes.

A Seattle Times survey of counties shows that procedures for evaluating signatures are highly subjective and vary widely from county to county.

More than 3,400 ballots in Washington were rejected in the November election because the signatures didn't match those on file with elections officials. And counties excluded them at wildly different rates.

Signature-related rejections made up more than half of all rejections in Skamania County, about one-third in King County and less than 1 percent in Skagit. Some counties rejected no signatures at all.

While all 39 counties in Washington follow the state's minimum requirements to verify voters' signatures, many of them go much further. At issue are absentee ballots, which voters sign and mail in, and provisional ballots, which voters fill out when they go to polling places other than their own or their names don't appear in poll books.

Voters with signatures that don't match those on file with elections officials are not notified in some counties, while in others they're telephoned or even tracked down through relatives.

Signatures might go through four levels of review in one county and just one in another. Workers in some counties scrutinize absentee signatures to find six identifying traits, while others merely eyeball the handwriting.

This has created an imbalance in Washington that's potentially unfair to voters, said John Pearson, deputy director of elections for the Secretary of State's Office. "We have such an ingrained desire to facilitate the process to make every vote count," Pearson said. "Some counties have gone above and beyond what's required by law."

But in the record-close gubernatorial election between Republican Dino Rossi and Democrat Christine Gregoire, counties that have followed the minimum requirements have taken heat for not doing more, he added.

Political parties continue to wrangle for votes as a statewide hand recount continues. Rossi led Gregoire by 42 votes before the recount started Dec. 8.

The state Supreme Court last week rejected one of the arguments by the Democratic Party that counties have disenfranchised voters by handling mismatched signatures so differently. The court decision means that counties will not be ordered to re-evaluate thousands of ballots that were rejected for signature problems.

In the wake of the disputed 2000 presidential election, Congress and elected officials nationwide have called for more consistency in how ballots are handled county to county within the states. The concern, raised by the U.S. Supreme Court in the case that ended the Florida recount, is that uneven standards could mean someone in one county could

have a better chance of having a vote counted than someone in a neighboring county.

Pearson said county-by-county handling of signatures should be addressed by administrative rule or by the Washington Legislature, which convenes in January.

"Consistency is a good thing in elections, as we are finding out ... if it means some counties have to stop things they've been doing or do more, that's the way it goes," he said.

#### **Absentee ballots**

Under state regulations, counties are required to contact absentee voters by mail or phone only if the voter forgot to sign the outer envelope that contains an envelope with the secret ballot. The county must ask the voter to sign a copy of the envelope and mail it back or come into the elections office to complete a new signature.

For voters who did sign the envelope but whose signature did not match the one on file with their county, officials have no legal obligation to contact the voter. But many counties do so anyway.

In this election, at least 11 counties — including Adams, Douglas, San Juan, Thurston, Jefferson, King and Pierce — sent letters to absentee voters telling them to sign another envelope and mail it back or sign a new voter-registration form in the office.

When the King County elections office sent a letter to absentee voter Liz Ungar Mintek of Seattle stating there was a problem with her signature, she was surprised and confused.

"Any human being comparing them would agree it's the same person," she said.

She was asked to sign the envelope again, but not knowing how she signed her voter-registration card years ago, Mintek had no idea how to sign.

Elections staff accepted her vote after she mailed an envelope with three different signatures, she said.

But Mintek said she would have been upset if she lived in counties like Snohomish or Whitman, which don't contact absentee voters with signature issues.

"I suppose it depends on where you live ... that just seems so egregiously wrong," she said.

Election officials in small counties often give voters extra attention, sometimes because they know them.

In Lincoln County, which received just under 6,000 ballots in this election, auditor Shelly Johnston said she knows one couple that usually heads south for the winter. So when their absentee ballot came back to the county as undeliverable, she called the couple's daughter and got a forwarding address.

Another voter, a young woman whose signature had changed while she was away at law school, signed a new registration card after Johnston contacted her family on the hunch that "Martha" had simply chosen to change the way she signed.

"I know my voters," Johnston said. "You know what their kids are doing. ... We talk about it at church."

In Ferry County, where all 3,409 ballots were cast by mail, every signature had to be checked.

If a signature didn't match the one on file, the county sent that voter a letter asking for a new signature. Those who didn't respond to the letter were given a courtesy call on the day of the election, said Auditor Clydene Bolinger.

"Our goal in Ferry County is we don't ever want to disenfranchise any voter at all," she said. "When people take the

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effort to vote, we want to make sure their vote is counted."

They rejected only one ballot for a mismatched signature.

#### **Provisional ballots**

In some counties, provisional ballots were treated differently from absenteees. The state does not require counties to notify provisional voters about signature problems.

In King and Snohomish counties, officials didn't alert them. The Republican and Democratic parties, hoping to gain votes, stepped in and attempted to notify these voters, giving them a chance to correct the problems. King County election officials rejected 415 provisional votes because the signatures didn't match.

In other counties, including Thurston, Pierce, Pend Oreille and Jefferson, officials sent letters to provisional voters asking them to sign another envelope and mail it back or come into the elections office to rectify the problem.

#### **Layers of review**

Another discrepancy among the counties is how many steps they take in reviewing signatures. Some counties require a canvassing board to review all signature problems, while others rely on election staff. There is no state standard.

In King County, where about a third of the state's voters reside, election workers — not the three-person canvassing board — usually make the final call on whether a ballot signature is valid.

County Elections Director Dean Logan pointed out that the county processed more than 560,000 absentee and provisional ballots this year.

"Given that volume, it doesn't make sense that the canvassing board would go through each of those," said Logan.

The county this year rejected 1,976 absentee and provisional ballots due to signature problems. Of those, 735 are absentee votes still in dispute after they were incorrectly set aside.

Some counties require signatures to go through several layers of review before they reach the canvassing board.

In Thurston County, for example, signatures were reviewed by at least three people, including supervisors, to determine if they matched signatures on file. If at least one of the employees saw similarities, then the vote was counted. If they couldn't be certain of a match, they forwarded it to the canvassing board.

#### **What's a match?**

But what's considered a match depends on who reviews the signature and what they are looking for — such as slants, curves and loops.

Some county officials simply look at the signatures. Others compare just the first letters of names. And still others, like Jefferson County, try to find six points in the signature that match.

State law is vague on how a county must determine a match, stating that the county must look at the signature to determine if it matches the signature on the voter registration file. It doesn't provide a mechanism or procedure for the county to follow, nor does it require anyone to be trained.

"It doesn't require a three-point match or anything like that," Pearson said.

King, Thurston and Whitman counties try to find three points to match.

And yet, "Our canvassing board is really quite lenient," Whitman County elections supervisor Debbie Hooper said. "As an election official, I probably would have rejected all of them. I'm a little more hard-core. They were giving more the benefit of the doubt that they were voters."

Election staffs across the state have received a wide spectrum of training on matching signatures.

Officials in Pierce, Jefferson, Ferry and Wahkiakum counties have attended FBI signature training during election conferences in the past several years.

In other counties, supervisors and longtime staff pass their knowledge onto new employees to decipher signatures.

"Staff training is on-the-job training," Thurston County Auditor Kim Wyman said. "They are trained by more-experienced staff who've done it for several elections. They show examples, using real ballots and signatures on file."

Here is a sampling of counties and a description of how they handled absentee and provisional ballots in this election:

#### **Pend Oreille County**

##### ***6,262 ballots counted***

In Pend Oreille County, where all ballots are sent by mail, voters had the opportunity to fix problems with signatures. Voters whose signatures on the envelopes didn't match those on file were sent letters asking them to sign another envelope and mail it or to come into the elections office and sign.

County Auditor Carla Heckford said the canvassing board accepted signatures when the first letters of the first and last name matched the scanned image. She said a telltale sign of mismatched signatures is the curve of the letters.

"People don't change the direction of the way they write ... your signature has the same curve for years," she said.

#### **King County**

##### ***898,238 ballots counted***

Each absentee and provisional ballot signature is checked by an election worker, who tries to find three points in the envelope signature that match the registration form.

If that worker determines that the signature does not match, the ballot is reviewed by a second worker. If the second worker agrees that the signature doesn't match, the ballot is set aside and not counted. If there is a dispute over whether to accept a signature, the canvassing board reviews it. The county rejected 1,976 ballots due to signature problems — the most in the state.

"I think there's a pretty high public demand that we hold those ballots to a strict standard," Elections Director Logan said.

When an absentee ballot is set aside, the county sends a letter informing the voter of the signature problem and how to fix it. With provisional ballots, the county does not attempt to contact voters whose signatures do not match.

#### **Thurston County**

##### ***113,994 ballots counted***

The county sent letters to all voters with signatures problems because Auditor Kim Wyman said the canvassing board didn't see a difference between absentee and provisional ballots.



If there was a discrepancy in the signature, several layers of people studied it.

"Our signature checkers are temporary employees that work during high-volume season," she said. "They are looking for the slant of the writing, the tail of the first or last letter. If the staffer can't find three matching points it goes to a more-experienced elections employee. It's only presented to the canvassing board when it failed to pass three people."

The canvassing board factors in the age of the voter. For example, a very young female voter may have a flowery signature, then go to college or become a professional and have a different signature, Wyman said.

#### **Whatcom County**

##### **91,497 ballots counted**

The county had no provisional ballots with mismatched signatures. Absentee voters with signature problems were sent letters asking for new signatures. In reviewing the signatures, the canvassing board looked at the upward slant of letters and even turned signatures upside down to look for similarities. They rejected 35 absentee ballots because of mismatched signatures.

#### **Adams County**

##### **5,204 ballots counted**

Elections staff sent letters and even called voters to make sure provisional and absentee voters were aware of problems with their signatures.

"We make phone calls if necessary," elections administrator Heidi Hunt said. "We ask if they received an absentee ballot, and if they did, whether they returned it."

#### **Jefferson County**

##### **18,772 ballots counted**

County staff have taken advantage of FBI training on signature matching in the past.

"We try to look for six points," County Auditor Donna Eldridge said. "We look at capital letters, letters in the middle and we'll look for other points."

She said voters benefit from the county being a small community.

"If the wife had a stroke and [the signature] looks a little shaky, we know what happened," Eldridge said.

#### **Whitman County**

##### **18,119 ballots counted**

When the county didn't notify voters whose signatures were in question, the state Democratic Party started calling voters to resolve problems.

Debbie Hooper, the elections supervisor, said the county is revamping the way it deals with mismatched signatures:

"We're going to set up a system for contacting voters [for the next election] so they're not all ticked off when they come in."

*Christine Willmsen: 206-464-3261*

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or [cwillmsen@seattletimes.com](mailto:cwillmsen@seattletimes.com).

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Seattle Times reporters Ralph Thomas and David Postman contributed  
to this report.

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Ms. LOFGREN. And since we are doing that, I would like to note also that, by unanimous consent, I would ask that the following documents be made part of this hearing: a statement from the Federation of American Women's Club Overseas; a statement from the Pew Center on the States; the Pew Report on Provisional Voting; and the Pew Data for Democracy Report.

[The information follows:]



THE FEDERATION OF AMERICAN WOMEN'S CLUBS OVERSEAS, INC.  
Founded 1931

July 14, 2009

The Honorable Robert A. Brady, Chairman  
Committee on House Administration  
1309 Longworth House Office Building  
Washington, D.C. 20515

**Re: Hearing on "Examining Uniformity in Election Standards", July 15, 2009**

Dear Chairman Brady,

On behalf of my federation, with over 75 independent member organizations in 38 countries around the world and a membership of more than 15,000, I would like to commend you and your committee for exploring the question of uniformity in election standards. Since the founding of FAWCO in 1931, voting has been a major priority, and we heartily endorse your efforts to protect the rights of not only domestic voters but also the large population of military and overseas citizens, who care deeply about effectively exercising their right to vote.

Overseas Americans have historically had higher election participation rates than their state-side counterparts – the FVAP has estimated that UOCAVA voters represent >3% of votes cast, although we comprise only about 2% of the electorate. Unfortunately – and despite some recent reforms – overseas voters continue to face a range of obstacles and bureaucratic pitfalls that all too frequently frustrate their efforts to exercise their democratic rights. One of the most serious problems, as you well know, is the plethora of different, often baffling and sometimes impossible requirements imposed by the various states.

We therefore support all efforts to harmonize registration and ballot requirements, deadlines and formats as, from the perspective of those trying, as we do, to help register overseas voters, non-uniformity leads to confusion and error and, in the end, to disenfranchisement of many voters.

One of the major obstacles for military and overseas voters is of course the time needed to send out unvoted ballots and return voted ballots in time to be counted. We are therefore heartened by the move in many states (Washington, Alabama, Florida, New York, California, Minnesota and others) to make improvements in this regard: considering advancing primaries to allow for earlier sending out of ballots, extending the deadline for receipt of overseas ballots, allowing electronic transmission of blank ballots to voters, and recognizing that the internet is the solution of choice for this rather than the now-outdated fax.

On the day of your hearing, the Uniform Law Commission will have the first reading of a model uniform law on voting by the two UOCAVA populations, absent military and overseas civilian voters. This recognition by that highly respected group and by your committee that harmonization is needed to enhance the voting rights of all is extremely encouraging for groups like FAWCO which devote such efforts to informing and registering America's overseas voters.

We look forward to working with you in any way possible to make progress in reaching greater uniformity in voting procedures for all American voters.

Yours sincerely,

Lucy Stensland Laederich, FAWCO U.S. Liaison

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July 14, 2009

The Honorable Zoe Lofgren  
 Chairwoman, Subcommittee on Elections  
 Committee on House Administration  
 United States House of Representatives  
 1309 Longworth House Office Building  
 Washington, DC 20515

RE: Request to include materials for the written record of July 15, 2009 Subcommittee hearing

Dear Chairwoman Lofgren:

On behalf of all of my colleagues at the Pew Center on the States, I would like to thank you for the opportunity to provide materials for the written record of the Subcommittee's July 15, 2009 hearing "Examining Uniformity in Election Standards."

As you know, the issue of provisional ballots has been one of great interest to election officials, policymakers and the media ever since the Help America Vote Act of 2002 made them mandatory in federal elections. In particular, the debate has revolved around how many provisional votes are ultimately counted—with particular focus on the impact of some laws requiring provisional ballots to be cast in the correct precinct.

However, a new Pew Center on the States report entitled *Provisional Ballots: An Imperfect Solution* shows that the issue of provisional ballots is far more complex. According to the report, more than two million provisional ballots were submitted nationwide during the November 2008 election. Of these, more than 1.4 million, or approximately 70 percent of all provisional ballots, were counted. I respectfully request that a copy of the report be included in the record of the hearing.

These national numbers, however, tell only part of the story. State-by-state data indicate the rates at which states and local jurisdictions issued and counted provisional ballots varied greatly, as did the reasons why these same ballots were rejected. For example:

- Four states account for two-thirds of all provisional ballots submitted nationwide—Arizona, California, New York and Ohio;
- Ten states counted over 75 percent of their provisional ballots, while 17 states counted under 45 percent; and
- Over 200,000 provisional ballots were rejected because the person was not on the state's voter list.

Provisional ballots provide a partial, but imperfect solution to underlying problems in our election system. They have successfully allowed millions of voters who otherwise would be unable to cast ballots to have their voices heard. Each provisional ballot submitted, however, also represents a citizen who, for whatever reason, has countered some sort of problem in the voting process. Over time, more complete data could provide

opportunities to rigorously assess specific problems and identify the means to build an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

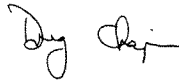
This report is just the latest example of Pew's commitment to the use of data to diagnose and address problems in election administration. We also have about two dozen research projects currently underway studying various aspects of the election system—projects which will all yield data that will suggest new approaches to the ways in which Americans register to vote, cast their ballots, and have their votes counted.

In addition, Pew co-sponsored a conference last year with the JEHT Foundation entitled Data for Democracy, which highlighted the promise of evidence-based policymaking in the election arena. I respectfully request that the attached copy of the publication from that conference be submitted for the record of the hearing.

In conclusion, all of us at Pew applaud you—and more importantly, stand ready to work with you—as the Subcommittee continues its efforts to make our nation's election system work better.

If you have any questions, I may be reached at 202-552-2113 or via email at [dchapin@pewtrusts.org](mailto:dchapin@pewtrusts.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Chapin". The signature is fluid and cursive, with the first name "Doug" being more prominent than the last name "Chapin".

Doug Chapin  
Director, Election Initiatives  
Pew Center on the States

Issue Brief

JULY 2009

THE PEW CENTER ON THE STATES

# Provisional Ballots: An Imperfect Solution

## Introduction

"Provisional ballots" are used when a person's eligibility to vote is in question for various reasons, including when a person is not on a voter registration list, or when he or she does not have the correct state-required identification.

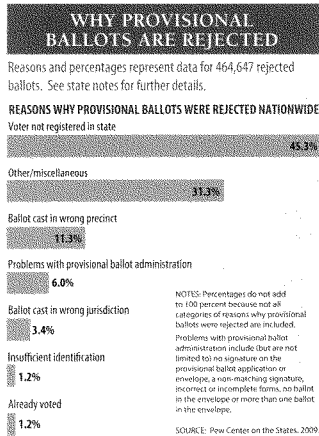
According to new research by the Pew Center on the States, more than two million provisional ballots were submitted nationwide during the 2008 presidential election. Of these, more than 1.4 million, or approximately 70 percent of all provisional ballots, were counted.<sup>1</sup> Nearly 600,000 were rejected.

These national numbers, however, tell only part of the story. State-by-state data indicate the rates at which states and local jurisdictions issued and counted provisional ballots varied greatly, as did the reasons why these same ballots were rejected.

The Pew Center on the States collected provisional ballot data for the 2008 general election from the District of Columbia and 43 of the 46 states that issue provisional ballots. Four states do not use provisional ballots: Idaho, Minnesota and New Hampshire, because they allow Election Day registration, and North Dakota, because the state does not have voter registration.<sup>2</sup>

Our efforts to collect and analyze these data are part of a larger initiative by Pew, working with election officials, policy makers and advocacy groups, to improve both the quality and quantity of data available to evaluate how well our election system is working.

This brief also serves as an introduction to a larger discussion regarding the role of provisional ballots as a partial solution to underlying problems in our election system. To launch such a discussion, we invited several election scholars, including Heather Gerken, Yale Law professor and author of *The Democracy Index*, Ned Foley, professor of law at The Ohio State University and Charles Stewart, political science professor at the Massachusetts Institute of Technology, to write a series of essays providing more in-depth analyses of the data we collected. The essays will be available online at [www.pewcenteronthestates.org/elections](http://www.pewcenteronthestates.org/elections).



### A Brief History

The 2000 presidential election marked a turning point for U.S. election administration. It went from a topic that was rarely discussed to a story on the front pages of newspapers across the globe. And while many remember the hanging, dangling and dimpled chad of Florida's punch-card ballots, the Sunshine State also saw hundreds if not thousands of legitimate voters turned away from the polls because they had been incorrectly removed from the voter rolls.<sup>2</sup>

In approximately half of the states that year, individuals not on the rolls would have been offered some form of a provisional ballot that would allow a voter's eligibility to be verified post-election.<sup>3</sup> Florida, however, was not one of these states.

Responding to the troubled election and public outcry, Congress passed the Help America Vote Act (HAVA) in 2002 in an attempt to address this and many other issues.

Specifically, HAVA mandated that a voter whose eligibility is in question at the polls may cast a provisional ballot that can be examined after the election.<sup>4</sup>

In 2004, the first year provisional ballots were required by HAVA, approximately 1.9 million ballots were submitted nationwide, of which 65 percent were deemed eligible to be counted. In 2006, nearly 800,000 provisional ballots were submitted and almost 80 percent were counted.<sup>5</sup>

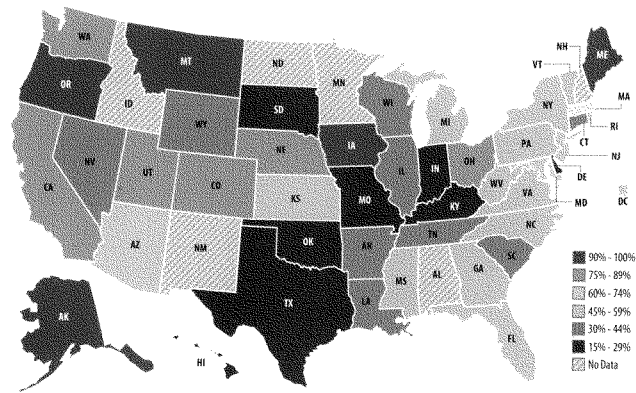
### State Variation

HAVA left states with a great deal of latitude in creating and managing their provisional voting process, which has led to continued variation in how these ballots are issued and counted.

Depending on state laws and local rules, provisional ballots are issued for a variety of reasons, including the following: a voter's name is not on the registration list; a voter does not have proper identification; a voter has

## PERCENTAGE OF PROVISIONAL BALLOTS COUNTED

Map shows percentage of provisional ballots counted by state in the November 2008 election.



SOURCE: Pew Center on the States, 2009



moved within a county, a vote is recorded as having already been cast, or polling place hours are extended beyond regular hours.

Ohio, for example, issues provisional ballots for 13 reasons—including change of address within a county. In 2008, the state issued more than 200,000 provisional ballots, more than 3.6 percent of those cast for president.<sup>7</sup> Kentucky, on the other hand, allows registered voters who have moved within a county but have not updated their address before the close of voter registration to sign an affirmation at the polling place and cast a regular ballot.<sup>8</sup> In November 2008, Kentucky voters submitted 856 provisional ballots, .05 percent of those cast for president.

The variation in issuance is such that four states account for two-thirds of all provisional ballots submitted nationwide—Arizona, California, New York and Ohio. (See table on page 6.)

Once provisional ballots are cast by voters, their chances of being counted vary considerably. Ten states counted more than 75 percent of their provisional ballots, while 17 states counted less than 45 percent.

### Local Variation

Variation occurs not only among states, but in some cases within states. In Florida, slightly more than 35,000 provisional ballots were submitted and about half of them were counted. However, some of the state's most populous counties saw significantly different counting rates.

For example, more than 80 percent of provisional ballots were counted in Duval County while fewer than 60 percent were counted in Hillsborough County. In south Florida, approximately one third were counted in Miami-Dade and just over six percent were counted in Broward County.

The precise causes of these variations within Florida are unclear, but the reasons why these ballots were rejected provide a slightly more detailed picture. In Broward County, 100 percent of rejected provisional ballots were not counted because they were cast by voters not

### PROVISIONAL BALLOT SUBMISSION RATES

Figures represent provisional ballots submitted as a percentage of total ballots cast for president in the November 2008 election.

STATES WITH TEN HIGHEST RATES	STATES WITH TEN LOWEST RATES
1. Arizona 6.61%	1. Wisconsin 0.01%
2. Alaska 6.27	2. Vermont 0.01
3. California 5.89	3. Wyoming 0.02
4. DC 5.53	4. Maine 0.04
5. Utah 4.45	5. Connecticut 0.04
6. Ohio 3.63	6. Kentucky 0.05
7. Kansas 3.25	7. Michigan 0.08
8. New York 2.66	8. South Dakota 0.09
9. Colorado 2.17	9. Delaware 0.10
10. Maryland 1.94	10. Hawaii 0.11

NOTE: Wisconsin, Wyoming and Maine allow Election Day registration.  
SOURCE: Pew Center on the States, 2009.

registered in the state. In Hillsborough County, more than 40 percent of rejected provisional ballots were rejected for being cast in the wrong precinct. Both Duval and Miami-Dade counties saw substantial numbers of rejected provisional ballots because voters' eligibility could not be established.<sup>9</sup> (See table on page 4.)

Generally, variation within states, whatever its causes, has led some observers to express concern about the potentially different treatment of voters who should be subject to the same rules within the same state.

"It is important that local authorities follow the rules for counting provisional ballots that the state has set. This is necessary to ensure that voters are treated consistently across jurisdictions within the state," wrote election law experts in the book, *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*.<sup>10</sup>

### Imperfect Solution, Imperfect System

What do all these data tell us? First, they tell us that more than two million voters who showed up at the polls on November 4, 2008, did not cast regular ballots for various reasons. Second, more than 600,000 of these voters' provisional ballots did not count. Furthermore, more

## FLORIDA: A CASE STUDY

Variations in provisional ballots counted in the November 2008 election are shown for the ten counties with the most registered voters.

COUNTY	REGISTERED VOTERS	TOTAL BALLOTS CAST FOR PRESIDENT	PROVISIONAL BALLOTS SUBMITTED	PROVISIONAL BALLOTS COUNTED	PERCENTAGE COUNTED
Miami-Dade	1,243,315	872,260	3,696	1,255	33.96%
Broward	1,008,656	739,873	4,222	264	6.25%
Palm Beach	831,423	594,854	2,713	1,016	48.56%
Hillsborough	701,464	515,783	4,659	2,764	59.33%
Pinellas	643,423	468,700	1,065	495	46.48%
Orange	604,243	466,002	1,590	503	31.64%
Duval	536,588	417,666	2,910	2,371	81.48%
Brevard	351,488	289,931	576	291	50.52%
Polk	332,015	246,538	1,272	402	31.60%
Volusia	326,854	245,842	468	262	55.98%

SOURCE: Florida Department of State, 2009.

than 1.4 million voters (1.2 percent of all ballots cast for president) were able to have all or part of their votes counted through provisional ballots.

For some people whose eligibility to vote is in question, provisional ballots represent a last chance opportunity to cast a ballot that can be verified after an election. For others, provisional ballots represent a breakdown in the voting process.

While the data tell us how many people were able to vote due to the availability of provisional ballots, the findings also reveal that underlying challenges remain in the elections process for both voters and election officials.

### Voter Registration

Pew was able to collect data on why 460,000 provisional ballots were rejected. More than 200,000 of these were rejected because the person was not registered in the state. While some likely never registered, it is probable that at some point between registering to vote and casting a ballot, many experienced a voter or administrative error due to an outdated, inefficient registration system.

For example, some voters may have inadvertently registered after their state's registration deadline; others may have registered at the department of motor vehicles, another state agency or with a third party that didn't submit their registration form in a

timely manner (or at all). Additionally, their information may have been incorrectly entered or dropped from the voter registration database.

### Voting Information

In more than 30 states and the District of Columbia, provisional ballots are not eligible to be counted if they are cast in the wrong precinct.<sup>11</sup> Nationally, more than 50,000 provisional ballots were rejected for being cast in the wrong precinct. These statistics imply that voters possibly lacked the information they needed to verify their registration and precinct, and locate their polling place prior to Election Day. Additionally, voters may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration systems.

Finally, more than 27,000, or 6 percent, of rejected ballots were disallowed because of various errors, including incomplete provisional ballot envelopes, missing or non-matching signatures on the provisional ballot applications, incomplete applications, and envelopes that contained no provisional ballots. While a number of these errors were likely committed by voters themselves, some were the result of administrative problems at the polls. Several jurisdictions have developed new poll worker training and polling place procedures to improve the administration of the provisional ballot process.<sup>12</sup>

### Data Collection

Our data, while informative, are incomplete, partially because a number of states do not collect consistent information and could not provide complete county-level information. For example, precinct-level data on why provisional ballots are issued and why they are rejected, could offer more insight into the differences in the ways poll workers interpret and actually administer provisional ballot rules in the polling place. Data collected at the precinct level by five states under a Congressional pilot program, released by the Election Assistance Commission in July 2009 provided more clarity, as well.<sup>13</sup>

### Conclusion

Provisional ballots provide a partial, but imperfect solution to underlying problems in our election system. Several state election officials have expressed interest in reducing their use.<sup>14</sup> States and counties that rely heavily on provisional ballots face the perennial risk of having a close election turn on whether provisional voters have their votes counted.

Some advocates have called for simplifying the provisional ballot process by standardizing it across the country. Many want more states to allow Election Day registration. Others want to go further and preclude the need for most provisional ballots by modernizing the voter registration system and automatically registering all eligible voters.<sup>15</sup>

Whatever the future of provisional ballots, today they represent both a solution and a problem. They have successfully allowed millions of voters who otherwise would be unable to cast ballots to have their voices heard. Each provisional ballot submitted, however, also represents a citizen who, for whatever reason, has encountered some sort of problem in the voting process. Over time, more complete data could provide opportunities to rigorously assess specific problems and identify the means to building an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

### Methodology

State data were collected via a survey of state election officials from March to May 2009. Survey responses were received from 40 states and the District of Columbia. Statewide data for Arizona, Indiana and Virginia were provided by the Research Triangle Institute. Three states were unable to provide data or did not respond to the survey—Alabama, Massachusetts and New Mexico. Four states do not issue provisional ballots—Idaho, Minnesota, New Hampshire and North Dakota.

Registered voter data and total ballots cast for president are from the United States Election Project ([elections.gmu.edu/index.html](http://elections.gmu.edu/index.html)). Provisional ballot data from 2004 and 2006 are from the U.S. Election Assistance Commission (EAC) Election Day Surveys ([www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results](http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results)).

### About Election Initiatives

The Pew Center on the States Election Initiatives aim to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security by supporting research that examines the most pressing election problems and undertaking an array of pilot projects to address issues identified during elections. Pew's research and experiments inform our approach to identifying efficient, cost-effective solutions—policies, practices and technologies—that address the key challenges facing the election process.

### Acknowledgments

We would like to thank the following people for their contributions to this project: Sean Greene, Doug Chapin, Kat Zambon, Melissa Maynard, Zach Markovits, Matt Morse, Carla Uriona, Evan Porter, Andrew McDonald, Stacie Temple, Janet Lane and Conny McCormack. We would also like to thank Toby Moore and the Research Triangle Institute for their research support, Kathy Litzenberg for her editorial assistance and John Fierno for his graphics assistance. All questions or comments regarding this report should be directed to Sean Greene, manager for research, at [sgreene@pewtrusts.org](mailto:sgreene@pewtrusts.org).

## Provisional Ballots Submitted and Counted by State, November 2008

State	Registered voters	Total ballots cast for president	Provisional ballots submitted	Provisional ballots as a percentage of total ballots	Provisional ballots counted	Percentage of provisional ballots counted
Alaska	495,731	326,197	20,441	6.27%	20,184	98.74%
Arizona	3,441,141	2,293,475	151,688	6.61%	107,288	70.73%
Arkansas	1,684,240	1,086,617	2,645	0.24%	840	31.76%
California	17,304,091	13,561,900	798,332	5.89%	657,053	82.30%
Colorado	3,210,258	2,401,361	52,113	2.17%	43,752	83.96%
Connecticut	2,091,980	1,646,792	715	0.04%	768	37.48%
District of Columbia	426,761	265,853	14,713	5.53%	10,544	71.66%
Delaware	601,348	412,398	397	0.10%	69	17.38%
Florida	11,247,634	8,390,744	35,635	0.42%	17,314	48.59%
Georgia	5,755,750	3,924,440	17,360	0.44%	8,371	48.20%
Hawaii	691,356	453,568	516	0.11%	119	23.06%
Illinois	7,732,908	5,523,051	41,707	0.76%	14,540	34.86%
Indiana	4,513,615	2,751,054	7,239	0.26%	2,045	28.25%
Iowa	2,190,158	1,537,123	4,309	0.28%	3,921	91.00%
Kansas	1,749,759	1,235,872	40,214	3.25%	27,808	69.15%
Kentucky	2,906,809	1,826,308	856	0.05%	178	20.79%
Louisiana	2,945,618	1,960,761	8,071	0.41%	3,359	41.62%
Maine	1,068,481	731,183	291	0.04%	291	100.00%
Maryland	3,432,645	2,631,596	51,163	1.94%	34,012	66.48%
Michigan	7,470,764	5,001,766	3,797	0.08%	1,823	48.01%
Mississippi	1,895,583	1,289,856	11,793	0.91%	6,510	55.20%
Missouri	4,205,774	2,925,205	6,994	0.24%	1,772	25.56%
Montana	668,085	491,960	3,762	0.76%	3,642	96.81%
Nebraska	1,157,034	801,281	15,490	1.93%	12,069	77.91%
Nevada	1,446,425	967,848	6,588	0.68%	2,785	42.27%
New Jersey	5,401,528	3,868,237	71,536	1.85%	53,504	74.79%
New York	12,031,312	7,640,640	203,257	2.66%	91,831	45.08%
North Carolina	6,233,330	4,310,789	53,976	1.25%	26,507	49.11%
Ohio	8,291,239	5,698,260	206,859	3.63%	166,870	80.67%
Oklahoma	2,184,092	1,462,601	2,817	0.19%	469	16.65%
Oregon	2,153,914	1,827,864	3,150	0.17%	2,863	90.89%
Pennsylvania	8,758,031	6,012,692	32,903	0.55%	18,348	55.76%
Rhode Island	701,307	409,767	918	0.20%	549	59.80%
South Carolina	2,553,923	1,920,969	8,752	0.46%	3,762	42.98%
South Dakota	575,622	381,975	325	0.09%	88	27.08%
Tennessee	3,946,481	2,599,749	4,392	0.17%	1,622	36.93%
Texas	13,575,062	8,077,795	41,196	0.51%	9,459	22.96%
Utah	1,433,525	952,370	42,390	4.45%	35,227	83.81%
Vermont	454,466	325,046	34	0.01%	17	50.00%
Virginia	5,039,680	3,723,260	4,575	0.12%	2,352	51.28%
Washington	3,830,718	3,036,878	54,047	1.78%	40,786	75.46%
West Virginia	1,212,177	713,362	3,938	0.56%	4,354	46.86%
Wisconsin	3,688,195	2,983,417	211	0.01%	94	44.55%
Wyoming	287,389	254,658	58	0.02%	26	35.71%
<b>Totals</b>	<b>172,474,249</b>	<b>120,698,778</b>	<b>2,037,887</b>	<b>1.69%</b>	<b>1,439,779</b>	<b>70.65%</b>

NOTE: Provisional ballots counted includes both fully and partially counted ballots. Alaska, California, Colorado, Florida, Kansas, Maryland, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island and Washington provided data that included partially counted provisional ballots. Nationwide partially counted ballots account for approximately eight percent of all provisional ballots counted. Alabama, Idaho, Massachusetts, Minnesota, New Hampshire, New Mexico and North Dakota did not provide data or do not issue provisional ballots.

SOURCE: Pew Center on the States, 2009.

## Appendix A: State Data Notes

**Alabama:** No statewide data available.

**Arizona:** State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

**Arkansas:** State-provided data of total provisional ballots submitted statewide do not equal the sum of state-provided data for provisional ballots counted and rejected.

**California:** Total number of provisional ballots counted and rejected does not equal the total provisional ballots issued, because not all counties provided complete or correct data.

**Connecticut:** County-level data for reasons provisional ballots were rejected were not provided.

**District of Columbia:** City-provided data of total provisional ballots submitted citywide do not equal the sum of city-provided data for provisional ballots counted and rejected.

**Georgia:** County-level data for reasons provisional ballots were rejected were not provided.

**Illinois:** County-level data for reasons provisional ballots were rejected were not provided for most counties.

**Indiana:** State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

**Iowa:** State-provided data of total provisional ballots submitted statewide do not equal the sum of state-provided data provided for provisional ballots counted and rejected. Additionally, some counties included reasons absentee ballots were rejected in the reasons provisional ballots were rejected totals.

**Kansas:** State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

**Maine:** According to the state's survey response, provisional ballots, called challenged ballots in Maine, are counted at the close of polls on election night. If there is a recount, and the number of challenged ballots could change the outcome of the race, then voters casting provisional ballots would be required to provide proof of ID and residency for their ballots to be counted. To date, the state has not had a statewide election where the challenged ballots were not counted.

**Massachusetts:** State did not respond to Pew survey.

**Mississippi:** Incomplete data was provided—data not provided for the majority of counties.

**Missouri:** State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

**New Mexico:** State did not respond to Pew Survey.

**New York:** State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

**Ohio:** Among reasons provisional ballots were rejected, the wrong precinct category includes ballots cast in both the wrong precinct and the wrong jurisdiction categories. Data provided by the state do not differentiate between the two.

**Oregon:** Totals of provisional ballots counted and rejected do not equal the total number of provisional ballots issued, because not all counties provided complete data.

**Pennsylvania:** State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

**Rhode Island:** County-level data for reasons provisional ballots were rejected was not provided.

**South Dakota:** County-level data for reasons provisional ballots were rejected was not provided.

**Tennessee:** State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

**Texas:** County-level data for reasons provisional ballots were rejected were not provided for most counties.

**Vermont:** According to the state's survey response, state law allows voters at the polls who sign an affidavit swearing they submitted a registration before the state deadline will be allowed to cast a regular ballot.

**Virginia:** State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

**Washington:** Some counties did not differentiate between fully and partially counted ballots—these all have been included in the fully counted ballots category. Additionally, 1,714 provisional ballots were sent to other counties and are not included in counted or rejected totals. State-provided data of provisional ballots rejected statewide do not equal the sum of data provided for county-by-county data for reasons provisional ballots were rejected.

**Wisconsin:** County-level data for reasons provisional ballots were rejected were not provided.

## Endnotes

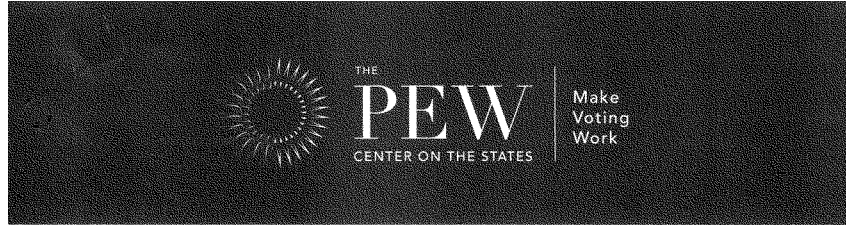
- 1 Approximately 1.25 million provisional ballots were counted in their entirety. Another 165,000 were partially counted, meaning the votes for the races for which the voter was eligible to cast a ballot were counted.
- 2 Other states that allow Election Day registration— Iowa, Maine, Montana, Wisconsin and Wyoming—issue provisional ballots.
- 3 Robert F. Peoni, "Battered Name: Pledge Denied Some the Right to Vote," *The Washington Post*, May 31, 2001.
- 4 Anne Gearty, "Backup voting system could cause problems," *The Associated Press*, October 11, 2004.
- 5 HAVA Title 101-752, sec. 302.
- 6 For detailed provisional ballot data from 2004 and 2008, see the following U.S. Election Assistance Commission Reports: *The 2004 Election Day Survey and The 2008 Election Administration and Voting Survey*, which can be found at [www.eac.gov/programs/research-reports-and-reports/compiled-research-and-reports-of-election-day-survey-reports](http://www.eac.gov/programs/research-reports-and-reports/compiled-research-and-reports-of-election-day-survey-reports).
- 7 *Election Enhancements for Ohio: A Report to the Governor and the General Assembly, Office of the Ohio Secretary of State*, April 22, 2007, [www.ohio.gov/upload/news/20070422/electionenhancementsreport.pdf](http://www.ohio.gov/upload/news/20070422/electionenhancementsreport.pdf).
- 8 E-mail correspondence with Sarah Ball-Johnson, executive director, Kentucky State Board of Elections, March 31, 2009.
- 9 Data provided via e-mail correspondence with Joyce A. Durbin, Florida Department of State, Division of Elections, (LNA Section), March 9, 2009.
- 10 Steven J. Boehm, Daniel P. Cook, and Edward S. Foley, with Nathan A. Cernuska, *From Registration to Reports: The Election Ecosystem of Five Midwestern States* (Columbus, Ohio State University-Markus College of Law, 2007).
- 11 [electionline.org](http://electionline.org), "Election Preview 2008: What If We Had an Election and Everyone Came?" (October 2008), p. 12.
- 12 Some counties have changed their provisional ballot procedures in hopes of reducing voter error. After the November 2006 election Butler County, Ohio, changed its post-workout registration and mailing list included adding a double check of both provisional ballot eligibility by a second poll worker before the voter is given a provisional ballot. Post-workout on provisional ballots decreased from 1.7 percent in November 2006 to 0.6 percent in November 2008. This data was provided by Jane A. Bennett, Manager, Poll Worker Department, Butler County Ohio Board of Elections via e-mail correspondence, June 8, 2009.
- 13 Additionally, the EAC plans to release its 2008 Election Day survey, which will include provisional ballot data, in the next several months. These data will likely differ slightly from the data we have collected, because the EAC may receive more, less, and potentially complete data.
- 14 Election Enhancements for Ohio.
- 15 The Ohio Secretary of State's office report, *Election Enhancements for Ohio: A Report to the Governor and the General Assembly*, issued earlier this year proposed several changes to streamline the state's provisional ballot process. Clerks and the majority of Workers Voters have cited the reduction of provisional ballot usage as a possible effect of allowing Election Day registration. See Russ Longoria (R-Ohio), has cited this reason as well in introducing legislation allowing Election Day registration. The Brennan Center for Justice at New York University off-line has cited the problems with provisional ballots as one reason to make more the voter registration system for more information, see "Voter Registration Policy Summary," [www.brennancenter.org/press/2008/06/03/voter\\_registration\\_policy\\_summary](http://www.brennancenter.org/press/2008/06/03/voter_registration_policy_summary).



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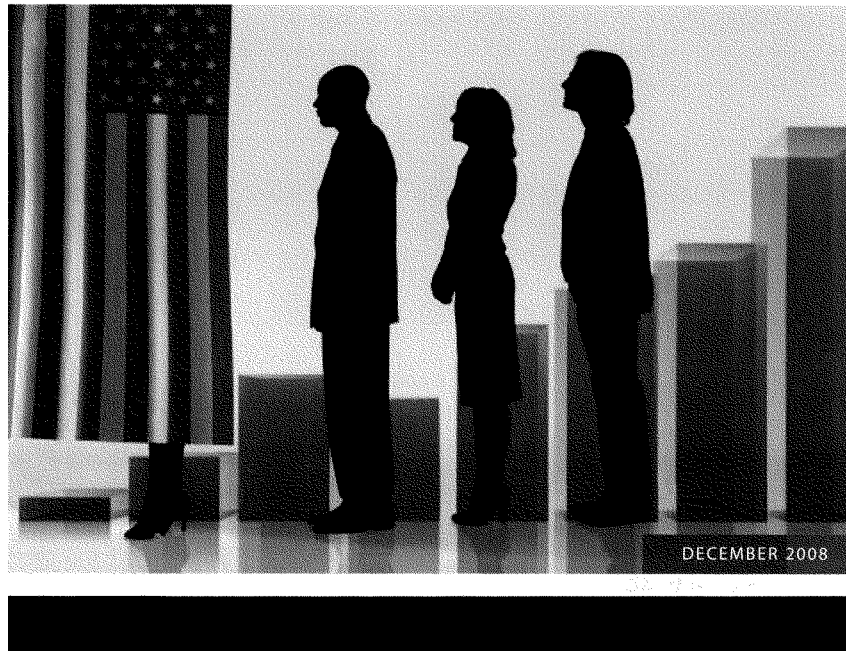
Election Initiatives seeks to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

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# Data for Democracy

IMPROVING ELECTIONS THROUGH METRICS AND MEASUREMENT





## ACKNOWLEDGEMENTS

In our Age of Information, it's easy to get used to having numbers at your fingertips. Elections are no different. There is a dizzying array of websites and portals dedicated to the political junkie, collecting, aggregating and distilling the results of hundreds of pre-election polls, news stories and expert commentary. In the aftermath of the election, however, when the results come in, the situation changes dramatically.

For the analyst, activist, scholar and policy maker who want to assess not who won or lost, but how well the system performed, appropriate data can be frustratingly difficult to find and exceedingly time-consuming to assemble. This makes monitoring and improving election performance in the United States unnecessarily difficult.

While the clash of values over election reform is the stuff of politics, political debates should not be handicapped by unavailable and unreliable elections data.

In May 2008, the Pew Center on the States' Make Voting Work initiative and the JEHF Foundation assembled a broad set of stakeholders with the expertise to comment on the importance and challenges of prioritizing, collecting and applying elections data to provide and improve information for the public on election performance and management. (The conference program and attendees are listed in the appendix).

The goal of the Data for Democracy conference was to start a conversation. This compendium broadens that conversation to a larger audience of policymakers, academics, advocates and elections officials.

The compendium includes:

- A set of overview essays that address broad-ranging issues of elections data collection, usage and management.
- A set of topic essays that deal with seven specific areas of elections data reporting, each including a set of detailed policy recommendations.
- A 50-state assessment of data reporting, covering two areas: voter registration and history files, comparing the cost and comprehensiveness of these files, and state response rates to the federally mandated U.S. Election Assistance Commission Election Administration and Election Day Survey conducted in 2006.

The compendium strives to advance the study of election information by assessing the **scope** of data reporting. The assessment highlights those states that do a particularly robust job of data collection and reporting; comments on the challenges facing other states in emulating those models; and examines the diversity of both data and data collection mechanisms among local governments within states.

We hope this compendium will provide helpful insight for policy debates in Congress; for the Election Assistance Commission as they think about their own data collection efforts; for state legislatures as they consider reform legislation; and for state and local election officials in their implementation and maintenance of our election system.

We would like to thank the following people for their tremendous contributions to the Data for Democracy project:

Alysoun McLaughlin, who organized the conference and was integral in engaging state and local election officials;

Dan Seligson of electionline.org, and Sharon Nuskey of the Pew Center on the States who, along with Paul Gronke, made sure this compendium reached completion by editing, drafting essays and communicating with authors.

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November 2008  
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## Introduction: Why Data Matters

Doug Chapin, [electionline.org](http://electionline.org), Pew Center on the States

This compendium — and the Data for Democracy conference from which it derives — rests on a single bedrock assumption: better data is a foundation for any meaningful effort to understand and improve the functioning of the American election system.

Indeed, data is vitally important to any undertaking and matters tremendously in choosing the direction and assessing the success of an endeavor. This is a fundamental tenet of the move toward evidence-based management across sectors and professions.

Data is not valuable in and of itself; its value resides in what it makes possible in the hands of thoughtful and creative analysts and decision-makers. It gives us a sixth sense, another way to view the challenges and opportunities that lie ahead.

Data matters because it expands and sharpens our view of the world and turns that focus on us as well, clarifying our thinking and reasoning. Specifically:

**Data provides context and counterpoint for the strong forces that color decision-making.**

Elections are not the only field dominated by powerful political and emotional forces that steer debate through the telling and re-telling of anecdotes in the policy arena.

Anecdotal evidence (or “anecdata”) is better suited to storytelling than dispassionate analysis. My journalist colleagues at Pew’s [electionline.org](http://electionline.org) remind me that the media generally isn’t interested in planes that don’t crash or houses that don’t burn. This is why these stories do not typically appear on the front page of a newspaper or the lead story of a broadcast.

The problem, of course, is that the beautiful disaster can be (and frequently is) mistaken for the state of affairs everywhere. Reality is usually much less beautiful, much less disastrous, and much less newsworthy.

In these situations, data becomes what Steve Weir, Contra Costa County Clerk-Recorder, calls “an antidote to an anecdote.”

Data will never replace these anecdotes — policymaking being an exercise in storytelling, after all — but the commitment to collecting and analyzing data offers an opportunity to balance perceptions with measurement via context.

**Data offers a consistent and ongoing foundation for assessing the success of an endeavor.**

Anyone launching a business, mounting a policy initiative or trying to run an election will want to know how well it’s going. Reliable, repeated, and transparent data collection efforts are the starting point.

Properly designed, a data-gathering effort can also be used to identify, diagnose and react to



## WHY BETTER DATA?

events in real time. One voter in the wrong polling place is unfortunate; many voters with the same problem suggests something else is amiss. In these situations, data is like a thermometer in a child's mouth. The body temperature it reports is data that illuminates a larger condition that may or may not need immediate attention.

**Data forces us to think systematically, bringing values to the surface.**

Deciding what data to collect and how to obtain it requires the kind of systematic thinking that focuses inquiry in a powerful (and thus useful) way. Words like "profitability," "customer satisfaction," even "fairness" or "equality" are so value-laden (and thus likely to mean different things to different people) that the commitment to data and data measurement forces those values to the surface.

Consider the controversy over requirements for identification at the polls. The 2008 U.S. Supreme Court decision upholding Indiana's photo ID requirements rekindled debates about how data might shed some light on the issue. Indeed, Spencer Overton of The George Washington University has written convincingly about the need to approach voter identification with a sense of cost-benefit analysis — using empirical data about both fraud and disenfranchisement to weigh the impact of any new law such as photo ID:<sup>2</sup>

But collecting some data involves value judgments as well.

If we believe that ID requirements are a barrier not only to registered voters but to eligible unregistered citizens, then we would want to

look at the impact of ID requirements on that population. If, on the other hand, we are concerned not just about impersonation fraud (A pretending to be B) but also eligibility fraud (C pretending to be of age, a citizen, or a resident when he/she is not) then we have to assess the impact of ID on potential fraud by that larger set of people. We need to choose carefully; too much data could lead to weak conclusions that satisfy few and frustrate many.

We also need to understand that data merely illuminates problems. It does not solve them. Disagreements over values are resolved in the political arena — but data helps put flesh on the bones of what is often a skeletal debate over values.

A new law that will enfranchise hundreds of new voters but also opens the door to dozens of fraudulent votes will be acceptable to some and an anathema to others. Conversely, measures preventing fraud but also preventing otherwise eligible voters from casting ballots will spark similar disagreement. Data helps put these discussions on an empirical level, but the decisions themselves will go far beyond the data. Still, these disagreements are better, not worse, for the availability of data.

The articles that follow are a first step toward creating a culture of evidence-based election administration, a real-world application of the notion of Data for Democracy. On behalf of all of us at Make Voting Work, electionline.org, and the Pew Center on the States, we thank the authors for their effort.

## How Data Has Improved Election Management

Dan Seligson, electionline.org, Pew Center on the States

The use of data collection in election administration is a relatively new field, prompted by the controversial 2000 election and the resulting Help America Vote Act.

In the last six years, however, collecting and using data have increased. The best-known recent example is probably the U.S. Election Assistance Commission's Election Day Survey. The data collection effort — discussed in detail elsewhere in this publication — is the vehicle through which the federal agency can meet its mandate "to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections."<sup>1</sup>

While the Election Day Survey represents a massive data collection effort on a national scale — involving more than 3,000 jurisdictions and scores of survey questions — less ambitious efforts have been underway in localities around the country with eye-opening results.

Examples have included surveys of local election officials, analyses of voter-wait times in Northern California, examinations of turnout by hour at vote centers in Indiana, observations of the performance of electronic poll books in Maryland and an electronic election reporting system in Arizona.

### Berkeley Wait-Time Study

A team of graduate students at the Goldman School of Public Policy at the University of California-Berkeley wanted to find out why lines formed at polling places. The question is basic, but requires detailed observation to get information beyond anecdotes.

In 2008, teams of 120 student volunteers traveled to three California counties to observe and record the functioning of polling places during the presidential primary. Teams of two observers recorded arrival and departure rates, the number of people in line at all times, and the number of poll workers engaged in assisting voters. Spikes in activity, they posited, would help explain differences in service rates.

They also surveyed poll workers, seeking basic information including age, education and sex. In all, more than 2,000 voters were tracked and 153 questionnaires were administered.

The preliminary findings indicate that the evening rush represents the busiest time for voting, with 25 percent of all voters casting ballots between 5 p.m. and 7 p.m. Researchers also discovered there are few last-minute voters, with new arrivals dropping drastically after 7:30 p.m. (polls in California close at 8 p.m.).<sup>2</sup>

DATA FOR MANAGEMENT

Other findings:

- Voting on DRE machines took significantly longer than casting an optical-scan ballot. On average, San Mateo County voters took four-and-a-half minutes to cast their vote on eSlate DRE voting machines. Napa County voters, who cast paper optical-scan ballots centrally counted at the end of the day, took just over three minutes. Precinct-count optical-scan ballots in Alameda County took voters just under three-and-a-half minutes to cast.<sup>5</sup>

to receive a number of different data sets, many of them illuminating for future elections.

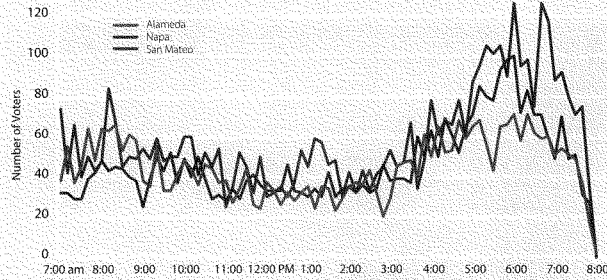
Just as Berkeley students used their clipboards to find out who checked in and when in California counties, electronic poll books allowed Maryland administrators to track voting patterns throughout the day. The information they received was similar to the sample in California, except with direct feedback from e-poll books in use throughout the state.

Maryland's Electronic Poll-Book Check-in Study

State officials in Maryland undertook a similar study with a broader sample. With 5,500 electronic poll books deployed for the September 2006 primary, election administrators were able

The information ranged from the trivial — 11 percent of male voters cast ballots within the first hour that polls were open — to the unexpected; the patterns of the youngest voters (18-24 years old) were nearly identical to the oldest (65 years plus).

VOTER ARRIVALS IN THREE CALIFORNIA COUNTIES, 2008 PRIMARY



As part of an investigation into voter wait times in three California counties, graduate students at University of California, Berkeley talked when voters arrived at polls and cast ballots during the February 2008 election. They noted that while polls were open for 13 hours on Election Day, a quarter of all voters cast ballots during a two-hour period from 5 p.m. to 7 p.m. They also found voting activity was almost non-existent in the final 36 minutes. Their data matched similar findings in Maryland, also indicating a sharp drop in participation during the last hour of voting. Such information could assist voting jurisdictions in making staffing decisions. (Zachary Markowitz and Douglas Spenser, University of California Berkeley)

DATA FOR MANAGEMENT

Most importantly for management, however, is that the data suggests how best to use limited resources to meet what appears to be predictable voter demand.

"The state has discovered that precincts tend to fall into distinct groups of hourly turnout patterns...and that these patterns seem to hold true from one election to the next. Given that the supply of voting equipment and poll workers is limited, and given the goal of minimizing line lengths and wait times, the hourly turnout profile data has provided a useful tool for allocating election-day resources," a state report noted.

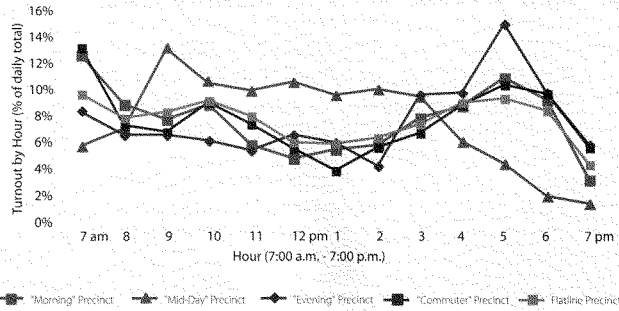
Maricopa County, Arizona's Election Reporting System

The challenges of managing thousands of pieces of information from voters, poll workers, field trouble shooters, political party observers, city clerks, town clerks and staff members on Election Day led Maricopa County, Arizona to institute an

electronic Election Reporting System. This single online repository, officials say, has become an indispensable tool.

Not only is it a more effective substitute for tracking information on paper call slips on Election Day — when feedback on the convenience of a polling place, the efficacy of signage, performance of poll workers and subsequent reaction time can be critical — but it allows for up-to-the-minute trend analysis that previously was time-consuming and usually occurred after Election Day. The system responds to increasing public interest in the conduct of elections, problem resolution, accountability tracking and results reporting. It consolidates and centralizes information and allows rapid input from multiple locations, instant notification for timely resolution and summary analysis — with numerous sorting and reporting abilities available to local officials throughout three locations in the county.

COMPARATIVE HOURLY TURNOUT PATTERNS IN MARYLAND





## DATA FOR MANAGEMENT

The county finds that this system effectively provides quantifiable documentation to support or debunk proposals in election related legislation, media reports, and administrative decisions. It allows employees to spend more time analyzing, not gathering, data in order to continually improve election administration.

#### Local Election Official Survey

A February 2008 survey of approximately 1,400 local election officials sponsored by the Congressional Research Service was undertaken following the 2004 and 2006 federal elections.<sup>5</sup> It revealed much about the American election system through the eyes of the ones responsible for administering the vote<sup>6</sup> — largely middle-aged white women earning under \$50,000 a year.

Election officials are leery of the influence of the federal government, the media and political parties in decisions about voting-system usage while being highly satisfied with the equipment being used in their jurisdictions. Those administrators who have used lever-voting machines were particularly satisfied. Those using direct-recording electronic (DRE or touch-screen machines) and optical-scan systems were less so, particularly in 2006.<sup>6</sup>

While not offering any concrete recommendations for polling-place management, the study nonetheless provides a window into attitudes of election officials, particularly concerning satisfaction with voting systems. It also looks at attitudes toward training, voter-verified paper audit trails with electronic voting systems, difficulty in implementing HAVA and other issues.



## Basic Principles of Data Collection

Paul Gronke, Reed College and Charles Stewart III, Massachusetts Institute of Technology

As Doug Chapin notes in the opening to this compendium, “better data is a foundation for any meaningful effort to understand and improve the functioning of the American election system.” Cases highlighted in this compendium show how data has helped election officials allocate staff and voting machines, determine early and Election Day voting locations as well as proactively address trouble spots on Election Day. The Data for Democracy conference participants and authors point to ways that better-quality election data can help us register more citizens, attract more voters, count more ballots, and reduce polling place incidents.

All of this is empty rhetoric, however, without high-quality data that is applicable, accessible and usable by elections officials, policy makers, advocates, citizens and scholars.

While election reforms since HAVA have, in many ways, transformed how elections are conducted in the United States, increased scrutiny and funding have not yielded better systematic measures by which we can judge the effectiveness of these reforms.

Without systematic measures of election performance, we don’t know if any of the goals of election reform have been met.” We don’t know whether elections are run any better in 2008 than they were eight years ago.

In this essay, we identify four principles for gathering and reporting data that will improve the quality, accessibility and usability of elections data.<sup>11</sup> We show how each can play a valuable role in elections data collection. We end by highlighting the continuing challenges to collecting and reporting high-quality elections data.

### Data Collection Principles

**Uniformity:** The most important ingredient in valid data analysis is data that is readily comparable across the units being studied. The biggest barrier to using data to improve elections in America is that states, counties and cities adopt different definitions for the most basic concepts in election administration. What passes for “voter turnout” in South Carolina is different from turnout in Kansas. To improve American elections, election jurisdictions must adopt a common set of definitions and metrics for elections data. As Michael McDonald points out later in this compendium, failing to do so undermines our ability to make even the most basic comparisons of turnout across states and over time.

The U.S. Election Assistance Commission (EAC) and professional associations of state and local elections officials can make substantial contributions by working to establish common definitions for the most frequently measured elections data elements.

## DATA FOR MANAGEMENT

**Transparency:** In all areas of governmental performance, a basic principle of holding officials accountable is making data related to that performance not only readily available to citizens, but in a form they can easily understand. In the great explosion of election reform that occurred in the Progressive Era in the early 20th century, states accompanied reforms by publishing voluminous data to document elections, including data about turnout and election returns, often at the precinct level.

A century later, most states are still stuck in a series of data practices that have not advanced past the horse-and-buggy age. Given the power of the software that is now used to help tabulate elections, there is no reason why these reports cannot be routinely reported in very fine detail, such as at the precinct level, or by breaking out results according to mode of voting (in-precinct, early, absentee, etc.) and published online in a way that can be imported into basic data-analysis software.

### THE VOTING CHAIN: ACCURATE DATA IS NEEDED AT EVERY LINK

1

#### Registering to vote

Did the voter's registration card arrive in the mail — at both ends? Did it contain errors?  
Did the office clerk process everything correctly?

2

#### Checking in at the polling place

Was the registration properly processed?  
Did the voter come to the correct precinct?  
Does the voter have an identification problem?

3

#### Casting the ballot

Is the voting machine working properly?  
Does the voter understand how to use the machine?  
How high are residual vote rates?

4

#### Counting the votes

How do the officials deal with ambiguity?  
How do states conduct audits, and on what scale — if they do so at all?  
How can we confirm accurately recorded voter intent, given the secret ballot process?

Improving elections in the United States requires that we collect applicable data at every link in the voting chain, because a breakdown at any link can abrogate a citizen's voting rights.

## DATA FOR MANAGEMENT

Election data should be electronically available in well-documented and easily accessible formats, as part of the public record. In our 50-state comparison, we found wide disparities in the fees states charge political parties and candidates for voter registration files. We also found that some of these files were poorly documented and provided in data formats that only experienced analysts could use.

State elections offices should take the lead in helping make registration figures, turnout by all modes, voting machine usage, audit results, and other key data easily and readily accessible. State legislatures should make certain that elections offices have sufficient resources to meet this transparency requirement.

**Speed:** For voting to be an effective tool of governmental accountability, there must be a relatively small window between when elections are conducted and when officials take office. Yet this narrow window also puts a premium on reporting detailed election data, allowing all stakeholders sufficient time to check for inconsistencies in the current election and to prepare for the next one.

**Multiple Sources:** An important principle of effective oversight is having multiple perspectives from which to judge government activity. The most fundamental source of data used to assess how well elections are run is the results themselves, but election data provides only one perspective from which to assess the quality of election administration.

While registration rolls and election returns form the core of elections data, federal, state, and local officials need to think creatively about better

ways to collect information about the performance of the elections system. Examples include random sample surveys of local elections officials and of the population (Make Voting Work is currently funding just such a survey), and even structured observation at the polling place.

### Challenges and Obstacles

**The Challenge of Diversity:** There are 10,071 jurisdictions in the nation that conduct elections on a regular basis. Slightly more than 3,100 of them are counties; nearly 7,000 are towns, townships and cities in New England, Michigan, Minnesota and Wisconsin. Their size and complexity varies dramatically — over half have fewer than 1,400 registered voters, and 7,654 of the 10,071 have fewer than 10,000 registered voters. At the other extreme, 340 jurisdictions have more than 100,000 registered voters and 15 counties have more than one million registered voters.<sup>17</sup> Tailoring a one-size-fits-all set of data collection standards and procedures is a daunting prospect.

**The Challenge of Federalism:** Diversity in size is matched, if not exceeded, by diversity in laws, procedures, and administrative capacities. Kenneth Mayer, professor of Political Science at the University of Wisconsin, recently wrote of his year studying and lecturing about election reform in Australia:

*When I described electoral practices in the U.S., these international audiences were genuinely stunned about the voting process here, finding it difficult to believe that we leave the administrative machinery largely in the hands of thousands of openly partisan state and local officials.<sup>18</sup>*

### THE ROLE OF STRUCTURED OBSERVATION IN ELECTION RESEARCH

Kelly Patterson, Center for the Study of Elections and Democracy, Brigham Young University

Election data has been traditionally thought of as consisting of three kinds of information: voter registration rolls, election results and post-election auditing materials. However, some scholars have recently suggested a new alternative — sending observers to the polling places to monitor line lengths, time voters and to record information about precinct activities. While we don't expect this to be adopted nationwide, it is a new and creative way to think about elections data collection.

In 2006, researchers from Utah and Ohio used a method of structured observation to assess conditions at the polling locations in those two states. Structured observation is “systematic, careful observation based on written rules [which] explain how to categorize and classify observations.”<sup>1</sup>

Observational data can provide valuable information about polling place conditions that is unobtainable by other methods and that can help improve election administration. First, structured observation allows for replication of studies and improves the reliability of results.<sup>2</sup>

Second, observers can be trained to measure specific aspects of the voting experience, whereas within the limits of survey questions voters' or poll workers' judgments about these aspects are less standardized and less reliable. Third, structured observation provides researchers an opportunity to be precise and to develop more objective documentation of abstract concepts related to the voting experience. Finally, structured observation can benefit from random sampling that allows generalizations beyond the set of polling places observed.

While there are many advantages to structured observation, election officials and researchers should be aware of some disadvantages. Because structured observation alone cannot reveal the intentions of individuals, it should be combined with other data on polling place administration. Second, structured observation may raise ethical concerns if there are possible risks to a subject's confidentiality. Election officials and voters may understandably have heightened sensitivity to this issue.

While we are not taking a position here on the issues of partisan election officials, there is no denying the fact that federalism is a major obstacle in the way of improving the quality of elections data. The source of many of the conflicting definitions resides in state laws and in state and local procedures, and, unfortunately, many well-intentioned improvements in data

reporting can get caught in the buzz saw of partisan competition.

**The Challenge of Money:** While many jurisdictions — particularly large ones — are well-staffed and have highly professionalized information technology departments, other elections departments are staffed by single, part-



## DATA FOR MANAGEMENT

time recorders and clerks. In a recent survey of local elections officials, more than half reported spending less than 20 hours/week on elections-related duties, and over 60 percent made less than \$40,000 annually.<sup>13</sup> Many election departments are already operating with severely constrained budgets, so any improvements in data reporting will ideally improve the conduct and reduce the costs of elections.

Improving elections in the United States requires that we collect applicable data at every link in the voting chain, because a breakdown at any link can abrogate a citizen's voting rights.

Most states have a well-developed data collection capacity at some points along the chain, such as voter registration. But at other links, data is virtually nonexistent, such as the length of time voters spend checking in and waiting in line, or the accuracy of ballot counting.

## How Data Can Improve Elections Management

Alysoun McLaughlin, Make Voting Work, Pew Center on the States

### The Issue

Despite heightened public scrutiny of election officials since November 2000 and dramatic changes in election administration nationwide, there has been far more research on the machinery of democracy than its management. The study of elections focuses primarily on law and technology with comparatively little attention to such questions as: How are elections financed? Who administers them? Who are the poll workers in whose hands voters entrust their ballots on Election Day? What motivates poll workers? How do they make decisions under pressure? How can they be effectively trained and managed to perform such critical tasks without direct supervision?

Elections are an increasingly complicated function of government that requires dedicated personnel, professional management and technological savvy. Citizens now demand a flawless, transparent election process. Striving toward that goal strains the resources of jurisdictions that have new and unexpected financial demands to administer elections; the capacity and imagination of local officials who are overseeing election logistics in a constantly changing environment; and, the patience and agility of poll workers who must keep up with myriad changing legal requirements, technologies and procedures.

### Current Practices

Dialogue and research on election administration primarily focus on election results, technology and specific responsibilities and requirements that are dictated by state laws and regulations. That lens fails to bring day-to-day management of election operations into focus, obscuring a broad diversity of practices and an enormous disparity of resources both within and across states. Both significantly impact the voter's experience on Election Day.

Studying election administration at the local level in a comprehensive manner is challenging. (See page 10, "Challenge of Diversity" for details.)

It is hardly surprising that most dialogue and research on election administration focus on the largest jurisdictions, where the primary local election official may earn a six-figure income and oversee a staff of hundreds. However, large jurisdictions provide just one lens through which we can view election administration. Focusing exclusively on the challenges they face neglects important management issues in smaller jurisdictions and rural areas.

Local election officials in jurisdictions with more than a million voters and dedicated information technology staff face entirely different challenges in securing, maintaining and operating voting technology than their brethren in smaller jurisdictions. In many rural areas, election

## REAL-WORLD DATA

administrators are not full-time employees and often lack information technology expertise and a dedicated facility for warehousing that equipment. Election functions in rural areas are frequently handled not by a separate department but as one of many tasks. Rural jurisdictions are likely to elect officials, while urban areas tend to appoint an individual or board to administer elections.<sup>15</sup> Larger jurisdictions also hold more elections than smaller jurisdictions.<sup>16</sup>

Unlike more established areas of expertise such as public health management and law enforcement, election administrators have few professional development resources at their disposal.<sup>16</sup>

According to the Congressional Research Service:

- The typical local election official is a white woman between 50 and 60 years old who is a high school graduate.
- She was elected to her current office, works full-time in election administration, has been in the profession for about 10 years, and earns under \$50,000 per year.
- Two-thirds are elected rather than appointed.

The profile of election administrators is changing rapidly. The field is experiencing a turnover rate of about 10 percent each election cycle. From 2004 to 2006, local election officials who: 1) were elected decreased from 65 percent to 58 percent;<sup>17</sup> 2) worked full-time increased from 66 percent to 76 percent; and, 3) spent more than 20 hours per week on election duties increased from 41 percent to 47 percent. Those who had served for more than a decade in their current position decreased from 47 percent to 44 percent and those earning a salary under \$40,000 decreased from 47 percent to 39 percent.<sup>17</sup>

Less is known about the approximately 1.4 million poll workers who serve as the “street-level bureaucrats” of election administration.<sup>17</sup> On Election Day, this largely volunteer army is entrusted with the custody and management of ballots, responsible for determining who is eligible to vote; ensuring that each voter casts only one ballot; and making certain that provisional ballots are used appropriately.<sup>18</sup>

Anecdotally, many jurisdictions report that their costs for administering elections have doubled, tripled or even quadrupled since enactment of the Help America Vote Act.

In testimony to the U.S. House of Representatives Committee on House Administration, Ray Feikert, former county commissioner of Holmes County, Ohio, testified that in his rural jurisdiction, it cost approximately \$4,000 to run a special election for school board before enactment of the Help America Vote Act. That price tag increased to more than \$20,000 by 2007 because of costs for personnel, training and storage or service contracts on new voting equipment. The diversity of practices in cost accounting makes nationwide comparison and trend analysis difficult.

In many cases, costs are shared among different constitutional offices within a local jurisdiction and they can often be difficult to parse from other functions of a local office. Primary elections, municipal elections, recounts, and other significant cost drivers in some cases are borne by the administering jurisdiction and at other times are administered directly by, or are billed to, a local jurisdiction, political party or candidate.

For many jurisdictions, election performance management is more an art than a science. There

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has been little quantitative study of broader practices in election performance measurement and management.

### Challenges

Our election system faces significant management challenges. The rapid pace of change, implementation of new technology, and escalating public demand for flawless election administration and a choice of voting methods are placing enormous pressures on policymakers, administrators and poll workers in a difficult budget environment. Recognition of that strain, however, provides new opportunities for innovation in voting methods and administrative practices. Good elections data can help this process.

Improving elections requires an unaccustomed level of commitment to performance management. Elections are notoriously messy; the logistical challenges of administering them in multiple locations on a single day make it difficult to supervise front-line employees in a traditional manner. The unpredictability of elections — from the weather to traffic jams to last-minute court decisions — contributes to a sense of learned helplessness among many officials, who perceive the ultimate success or failure of an election as being largely outside their control. In addition, because election management occurs in a high stakes, highly politicized environment, many officials are reluctant to move toward more rigorous performance measurement that would shine a spotlight on failure and embarrass poll workers or staff when failures are not significant enough to have changed the outcome of an election.

As policymakers increasingly back away from quick fixes and focus on structural reform of election procedures, as election officials

increasingly focus on demonstrating what works and what doesn't to external audiences of activists and policymakers; and, as researchers increasingly focus on election management as well as law and technology, more and better data will help inform election policy and the performance. But this progression is still in its infancy.

### Recommendations

- More research is needed to help us better understand election administration: not simply how the law says elections should be run, but how they are actually conducted in polling places. The role of poll workers as “street-level bureaucrats” — front-line personnel who actively interpret and reinvent laws in administering them — must be better understood and incorporated into decisionmaking. Otherwise, they will “modify their objectives to match their ability to perform.”<sup>24</sup>
- As the tasks of administering elections become more complex, state and local governments need to assess the critical responsibilities and required skills. They should evaluate their existing training and provide professional development opportunities for officials and poll workers.
- Officials should use evidence-based data to identify meaningful and achievable benchmarks for performance and success.
- Officials must account for and report on the costs of election management, especially when implementing new reforms or absorbing extraordinary expenditures. Researchers and advocates must understand the financial and administrative costs of any reform, as well as its proximate effects, replicability and interaction with other aspects of the process.<sup>25</sup>





## How Data Improves Policymaking

Eric Fischer, Congressional Research Service

Election data can play a role in lawmaking on Capitol Hill, but timing, content and relevancy are critical.

Data is integral to policy making, but is of greatest utility to policy makers when it relates clearly to current issues, constituent concerns or oversight of previously enacted legislation.

In short, data that is relevant, properly gathered and critically analyzed can contribute to informed and effective policy making. Conversely, its absence can lead to poor decisions and misspent funds.

Election data — either statistical or derived from experimental research — has the potential to shape and inform policy debates. Debates about appropriations bills could be elevated by hard statistical data about the costs of implementing Help America Vote Act (HAVA) requirements — information that is not currently available (and that did not inform the initial passage of HAVA). A paucity of accurate and meaningful data makes it difficult to assess the policy implications of many of the election administration issues before Congress, including absentee voting, voter identification, allocation of equipment among polling places and poll worker competence.

The absence of such vital information may result in insufficient financing and effectively impose an unfunded mandate on states. Another potential consequence is overfunding, which

arguably wastes federal dollars or, at a minimum, diverts them from other priorities.

Cost information is often lacking and creates problems during debates about bills that would impose new requirements on the states. An example is the proposal to require voter-verifiable paper ballot records to address concerns about the security and reliability of direct-recording electronic (DRE) voting systems. The costs of implementing such a mandate are unclear — as are the benefits. While the media focus on problems with DREs, two recent national surveys found very little difference in local election officials' ratings of both the security and reliability of voting systems. Regardless of the system they used, they rated them very highly.

Experimental research data that is relevant to elections and useful to policy makers is even more scarce than accurate statistical information. This deficit — in the absence of a well-established field of election science — is especially difficult to address.

### Constraints in Election Data Collection

Whether statistical or experimental, data must be scientifically valid in order to be useful, and the complexities of election administration make it difficult to conduct studies that are both useful and valid. The Congressional Research Service wrestled with many of these issues while designing our surveys of local elections officials (LEOs).



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State and local variations in administrative setups — some states have as few as 10 LEOs, while others have more than 1,000 — complicate the design of surveys of LEOs.

For example, a random sample of the total number of election officials in the country would result in a disproportionate number of Wisconsin officials, because Wisconsin's LEOs constitute 25 percent of LEOs nationwide. Yet, in terms of total population, Wisconsin constitutes just 1.8 percent of the country.

Alternative ways to weight the data (according to state, voting-age population or portion of LEOs)

would present similar problems. Absent a simple solution, the two surveys employed a sampling strategy to reasonably balance population and geographic representation. The strategy increases the relative influence of states with fewer LEOs while ensuring a relatively strong influence of those with large numbers.

Some observers may argue that this casts doubt on the utility of the results. Yet the inherent complexity requires that data collection efforts are carefully designed and necessitates compromise. Only data that is accurate, reliable, and appropriately designed with policymakers in mind can help guide decision making.



## How Data Improves Campaign Strategy

Christopher Mann, MHSC Partners and Yale University

Campaigns care most about the election data that comes from precincts when polls close. But they also rely heavily on other data in shaping their strategies.

Indeed, the foundation of every campaign strategy is data about the electorate.

Campaign data comes via computerized voter files, often accessed through online database interfaces with sophisticated selection, mapping and analysis tools. However, this data is not all that different from the note cards in a shoebox held by precinct captains. Like the note cards, it reveals who is registered and who votes. The difference today is that the data is much more widely, rapidly, and, one would hope, more cheaply, available.

Campaigns make use of both aggregate data (e.g. prior election returns by precinct) and individual level data about voters. Aggregate-level data is vitally important for high-level strategic decisions in campaigns, so accuracy is essential.

Acquiring election data is expensive for campaigns in both time and money. But the investment pays off in targeted, efficient communication with registered voters — the population candidates most want to reach. No campaign wishes to reach every voter in the electorate, and certainly not with every communication. At the simplest level, campaigns don't want to waste precious resources on individuals who cannot cast a ballot. Selecting

registered voters depends on accurate and up-to-date voter registration rolls.

Campaigns craft communication strategies around the understanding that all voters are not equally likely to cast a ballot.

Two types are priorities for communication: undecided ones who are highly likely to vote and supporters who are unlikely to turn out. The measurement of undecided and supporters relies on campaign data, including polling and micro-targeting, but the likelihood of voting relies on information about past voting history and, to a lesser extent, date of registration. Voters of many other types are targeted for various reasons, but the likelihood of voting always plays a role in selection.

To a casual observer, the solution is easy: simply head to your county or state election office and pick up a copy of the voter file. However, anyone with experience working with voter files will tell you that this solution is far from adequate — the barriers are illustrated well in the 50-state assessment included in this compendium (see page 50).

Election officials face a data-management task far larger and more complicated than any in the consumer world, yet catalogs, online shopping sites and banks all invest significantly more resources in data management.

The accuracy, timeliness and hygiene of election data are vital to good campaigning. Unfortunately, despite the goals, incentives and penalties of the

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Help America Vote Act, data management practices for election data remain highly fragmented.

Within some states, counties differ in how they track vote history, update registrations, purge registrations and maintain other critical data.

Despite considerable investment by the parties in national voter files, campaigns still rely heavily on people with local knowledge to standardize and scrub election data.

### A wish list

Political campaigns can't have everything. They expect to pay for the data they need to win elections. However, campaigners have extensive experience in the uses — and abuses — of elections data. I provide a short wish list for campaigns, but I think it will benefit every user of election data, including election administrators themselves.

**Keep it fresh.** Accurate information, timely updates and standard definitions and practices top the list for campaigners.

They want frequently updated lists with consistent formats at a reasonable price. States sometimes wait weeks or months for one overdue county before making the statewide file available, leaving campaigns in painful limbo about decision-making.

**Keep it clean.** Basic data hygiene procedures find large numbers of duplicate records based on name, address, date of birth, other unique identifiers and combinations of these factors, making unclean rolls quite unwieldy. This duplication causes headaches for the campaigns that must try to sort out the arbitrary on-the-fly decisions made about duplicate records by election administrators in order to get accurate information for their own decision making.

One of the most common reasons that files become bloated is voters who have changed residences. The United States Postal Service offers a National Change of Address (NCOA) database with forwarding addresses, but few election agencies compare their files with it. Public agencies could use NCOA matches to update registration or mailing addresses or to contact voters to do so themselves.

No paper trail exists for voters who are purged from the rolls, and one would be beneficial. Information about the reason for removal, for example, is of great value to campaigns, voter protection advocates and others interested in the conduct of elections. In computerized databases, keeping these purged records and the reasons for removal would require only a trivial cost for hard drive storage.

**Keep it consistent.** Among the most maddening idiosyncrasies in voter files is the treatment of registration dates. Some election officials record the date when the registration is entered into the computer rather than when it is received — often weeks or months after a voter may have cast a ballot.

The delay in entering registrations creates additional provisional ballots, and over the long term causes confusion in the voting records of individual voters.

**Keep the history.** Many jurisdictions do an excellent job of retaining vote history, while others do little or none. This information — including the type of voting (Election Day, early, mail, provisional) — is critical for campaigns. The information is valuable not only for general elections, but also for primaries, special elections and local elections.

## How Data is Used by Advocates

Justin Levitt, The Brennan Center for Justice, New York University

In many respects, data is an election advocate's lifeblood. Data helps advocates identify and diagnose problems and opportunities, set priorities, persuade policymakers, generate publicity, secure relief from the courts and monitor policy change and compliance.

### Diagnosis

Advocates strive for tangible impact; few have the luxury of time or resources to devote attention to practices that seem suboptimal but are not overtly harmful. There are substantial disagreements about the nature or magnitude of the effect that any given policy may have; one man's triviality may be to another the end of democracy as we know it. But at heart, these disagreements boil down to a question of data.

Election advocates look to two basic kinds of data to diagnose problems and identify opportunities. The first is qualitative: descriptions of how a jurisdiction operates and voter and administrator experiences. Qualitative data helps advocates set benchmarks and identify policy outliers, both good and bad.

Advocates also aim to establish a common vocabulary. Federal elections are still extremely decentralized; consequently people in different states use different words to describe the same thing and the same words to describe different things. Whether a registration record is "pending" or "suspended" or "inactive" or "provisional" might have different consequences for a voter (or not), leading to attention from advocates (or not).

Qualitative data helps advocates understand what they are looking at.

The second and more familiar type of data is quantitative. Here too, it helps set benchmarks and identify outliers. It also helps assess the magnitude of the impact of certain policies, and the differential effect on various populations. The more detailed the data, the better able advocates are to identify issues and to determine the real drivers of change.

There are pitfalls to diagnosing and responding to problems based solely on readily available data, however. Sometimes it's a long way from the available, measured item to the question that truly demands an answer. Advocates must constantly remind themselves of the possibility that as-yet-unmeasured variables represent the real cause of (or solution to) a particular issue, and that the current state of the art in measured data may be just sophisticated enough to be distracting.

### Priorities

Advocates will naturally turn to the issues that yield the most bang for the buck. Data helps separate bangs from whimpers.

With limited time and resources, they also face the need to set priorities. Sometimes, priorities are based on public opinion or individual anecdotes. But they can also be driven by information of the sort we are discussing here: qualitative data about election practices, and quantitative data about the



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impact of those practices on populations of interest.

Advocates are keenly aware that policymakers have limited time and that elections are seldom at the top of the list of pressing reforms. Even for those policymakers with specific elections responsibility, simply administering the status quo is hardly simple. Reforms are usually greeted — often appropriately — with a skeptical eye.

Data is essential to persuading policymakers that reform is necessary, or that a particular proposal is more or less worthwhile.

### Publicity

Publicity is a critical tool for advocates, especially in a crowded public policy environment.

Most publicity efforts will feature an anecdotal hook and a particular narrative frame. But any advocate skilled in dealing with the media knows that reporters will also demand data, particularly quantitative data. New media outlets — blogs, online publications, and email lists — provide ripe opportunities for disseminating quantitative results because they are less constrained for space. Reporters routinely ask for numbers and statistics demonstrating how many people are affected; whether some populations are affected more than others; and how many states or countries experience the issue.

### Courts

Given the time, expense and uncertainty of litigation, a lawsuit is almost always an advocate's last resort. In exceptional circumstances, however, she may turn to the courts for policy reform on discrete issues, and in those cases, data is crucial to her success.

Indeed, advocates were given a stark reminder of the importance of data in the Supreme Court's recent *Crawford v. Marion County Election Board* case, confronting a challenge to Indiana's photo identification rule.

The Court's emphasis on specific facts — who was affected by the voter ID rule and to what degree — indicates that it is no longer possible for any litigant to challenge election procedures on constitutional grounds to question the importance of reliable data.

### Funding

Finally, most advocacy efforts rely on fundraising from an external constituency. And whether that constituency consists of individuals at the end of an email, or foundations with sophisticated appraisal-and-review operations, all donors like to know that they're getting their money's worth. Quantitative data is certainly not the only metric by which funders determine how to spend their charitable dollars, but data undoubtedly represents a valued piece of the development portfolio.

## Voter Registration Databases

Michael McDonald, George Mason University

### The Issue

For nearly all Americans, voting is a two-step process that requires registration before casting a ballot.<sup>15</sup> Understanding who registers is, therefore, important to understanding who votes, and ultimately, the policies the American representative government adopts. In addition to creating a record of citizen engagement, voter registration rolls provide information to election administrators for allocating Election Day resources and to political campaigns for developing voter outreach strategies.

The Help America Vote Act of 2002 (HAVA) requires states to implement "a single, uniform, official, centralized, interactive, computerized statewide voter registration list."<sup>16</sup> At a minimum, these databases contain names and addresses to direct a voter to his or her correct precinct, though most capture more information. Nearly all provide birthdates and some provide gender and race as shown in the 50-state assessment (see page 52).

As Chris Mann noted, campaigns are increasingly supplementing these databases with information from consumer finance databases for "micro-targeting" efforts. States often collect additional election administration information, such as each election a voter participated in, the voting method (in-person, early in-person, absentee, or provisional), the processing status of absentee ballots (when a ballot is requested, sent, returned, and counted), when a registration record has been updated (e.g., for a change of address) and

the source of a voter registration (e.g., at a motor vehicles office).

Registration data provides opportunities to investigate and improve many aspects of America's voting system, from understanding voting patterns by minorities for Voting Rights claims to meeting more effectively the absentee voting needs of our overseas military.

### Current Practices

Some states have struggled to meet HAVA's statewide voter registration database mandate. Some local election officials believe that their old system works better than the new statewide one that has been imposed upon them. Yet, further database integration is necessary if state election officials and their local counterparts will develop a single system to manage voter registration, report election returns, track absentee and provisional ballots, and produce reports on voting technology. Integrated systems provide new opportunities to evaluate performance.

Jurisdictions benefit from lowered election administrative costs by using statewide databases to identify and purge registered voters who move between jurisdictions within a state. Statewide voter registration databases could enable cross-checking of registrations between states, too, a project a consortium of Midwestern states started undertaking in 2005.

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Other innovations continue. Throughout Arizona and in most Washington counties, voters can register entirely online, which could help reduce data entry errors and streamline the process. Washington is also digitizing registration application signatures as a means to electronically verify the identity of those voting by absentee ballot. A number of jurisdictions are experimenting with automatic change of address updating and eligibility verification by matching registration and other databases, such as U.S. post office change of address and corrections' lists of incarcerated felons.

### Challenges

Perhaps the greatest challenge of working with this data arises from the historical legacy of administering elections at the local level. Prior to modern computing technology, local election officials maintained lists of registered voters by pen and paper. These lists were unlikely to be in a single format across a state. Although states must now maintain a statewide electronic database, local election officials continue to be the primary point of contact for registration applications. In some states, election administration data such as voting history may be available only from localities. Registration records — particularly older legacy records — may contain errors from carelessly completed applications, poor or misinterpreted handwriting, or data keying errors.

Migration of voter registration records into centralized vertical databases raises interoperability issues between locality and state software, particularly when states join regional or national compacts to track and audit registration rolls.

Software solutions are usually fashioned for specific applications and a common solution among all states remains elusive. The decentralized approach, lack of standardized file formatting, and inconsistent availability of data items continually challenge those who work with multi-state databases. The absence of common definitions among states further complicates efforts. Some states identify voters who have voted in a recent election as 'active,' and all others as 'inactive.' Other states use dissimilar terms, and it is unclear if states that differentiate use consistent definitions of active and inactive voters. Whether or not a state differentiates between these voters can produce misleading comparisons of the size of registration rolls and turnout rates across jurisdictions.

Common spelling variations can affect proper names and street addresses. Variations frequently occur for people who have an apostrophe or other punctuation in their name or have a common name variant, such as "Steven" or "Stephen." Data entry errors would be the most likely explanation for birthdates that are correct only for visitors from the future or persons having lived for over 200 years. These seemingly minor mistakes multiply when dealing with millions of records. The lack of an exact match between voter registration and drivers' license databases, for example, can result in the denial of a right to vote. While it may seem unlikely for two people to share the same name and birth date, such false matches occur with surprising frequency. Incorrect matches with felons, for example, have led some to falsely overstate levels of double voting.





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## Recommendations

- The U.S. Election Assistance Commission or a comparable organization needs to develop a common data format for all state-level election data, including voter registration files. Vocabulary needs to be standardized and universally adopted so that meaningful between-state comparisons can be made.
- Database integration safeguards must be developed to protect eligible voters from being dropped due to a false positive or false negative match with another database.
- As states continue experimenting with innovative policies such as on-line registration — which will hopefully reduce data entry errors — they should build database systems that capture as much information as possible, and thus assess the efficacy of these new policies. Public access to registration source data — which is restricted by the 1993 National Voter Registration Act — should be granted to responsible researchers and policy advocates. This would permit studies to increase transparency, improve election administration and encourage confidence in the electoral system.

### VOTER REGISTRATION AND THE LEGALITY OF THE PROPOSED "RE-DO" OF THE 2008 FLORIDA PRESIDENTIAL PRIMARY

Seemingly innocent errors in voter registration files, such as common name spelling variations, street addresses without apartment numbers or incomplete and improperly formatted zip codes multiply quickly when processing millions of records.

These errors became part of the debate over the 2008 Florida primary when the state Democratic Party proposed a "re-do" of the primary using a vote-by-mail system.

My analysis of the Florida statewide voter registration file shows that African Americans are more frequently affected by easily detectable address errors on the Florida voter registration file. This calls into serious question the legality of a full by-mail election in Florida unless these errors are rectified.

Among the information recorded on the Florida voter registration file is a registered voter's race. The overall statistics are:

- Total number of records on the Florida voter registration file: 11,428,946
- Total number of African Americans: 1,353,272
- Percentage of African Americans: 11.8

#### Missing Apartment Numbers

The first problem I discovered in the Florida file is that a large number of addresses fail to include an apartment number, even though the record is apparently at an apartment building. Because African Americans are disproportionately likely to rent, they are also disproportionately affected by this error:

- Total number of potential records lacking an apartment number: 189,186
- Total number of African Americans: 36,193
- Percentage of African Americans: 19.1

#### Missing and Erroneous Zip Codes

A second easily detectable error on the Florida voter registration file is missing or obviously erroneous zip codes. These errors are far less frequent statewide, but once again disproportionately affect African Americans.

- Total number of records with missing or erroneous zip codes: 1,708
- Total number of African Americans: 432
- Percentage of African Americans: 25.3

## Data Collection and the National Voter Registration Act

Michael J. Hanmer, University of Maryland<sup>18</sup>

### The Issue

Unlike most democracies, the United States has long placed the burden of voter registration on the individual citizen. The National Voter Registration Act of 1993 (NVRA), also known as “Motor Voter,” sought to streamline the process by intertwining the registration process with other state-citizen interactions, including obtaining or renewing driver’s licenses and dealings with

public service agencies. Lawmakers envisioned the NVRA increasing the number of registered voters and simultaneously broadening the electorate with lower-income citizens who were (and remain) drastically underrepresented in the electorate.

While the states subject to the NVRA were required to implement the law at the beginning

### REGISTRATIONS AT PUBLIC ASSISTANCE AGENCIES DROP

Project Vote, a nonprofit organization that promotes voting in low-income and minority communities, has been at the forefront of attempts to evaluate the NVRA, particularly its public assistance agency registration provisions. The table on page 27, reproduced from a 2008 Project Vote report, shows the dramatic decline in public assistance agency-based registration, suggesting failed or inconsistent implementation of this aspect of the NVRA.<sup>19</sup> The report also notes that many states do not comply with reporting requirements — and that the U.S. Department of Justice fails to remedy noncompliance. Important information was gleaned from existing data sources, but a full evaluation was not possible because of varied reporting practices in the states, their agencies and local jurisdictions.

Motor vehicle agencies have also been called into question for their handling of NVRA requirements. In 2008, 13 years after the implementation date for NVRA — and after complaints and Election Assistance Commission (EAC) evidence<sup>20</sup> — the New Jersey Department of the Public Advocate conducted an investigation. It reported that only 8 percent of surveyed state residents who completed motor vehicle transactions were offered an opportunity to complete a voter registration form. A paper by a recent arrival to New Jersey cites the report and notes that “a new resident with a valid out-of-state driver’s license can pay \$10 at the Department of Motor Vehicles to ‘skip all that.’ All that includes both the driver’s examination on New Jersey law and the voter registration form.”<sup>21</sup>



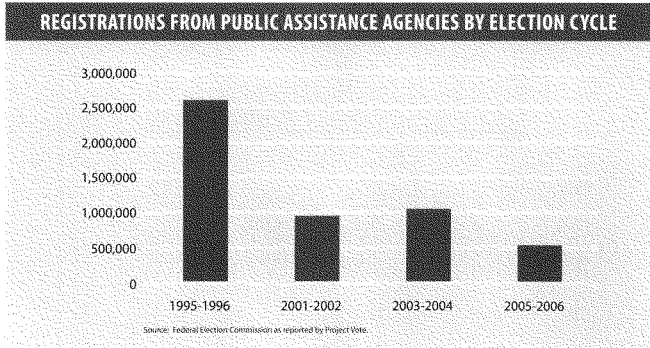
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of 1995, NVRA encountered resistance from state officials and others.<sup>32</sup> Some charged that it was rigged to benefit Democrats. Others thought the law would bloat rolls with inactive voters and increase election fraud. And finally, some worried that the law would put voter registration in the hands of agencies that have neither the equipment nor experience to handle and transfer forms.<sup>34</sup>

Despite strict enforcement language in the legislation, there is mounting evidence of lax implementation of the NVRA in some states.<sup>36</sup> Given the decentralized nature of election administration — with vast authority granted to states and local jurisdictions — there is little standardization of data collection and minimal evaluation of the NVRA provisions.

Current Practices

Data on NVRA registration transactions comes from two primary sources: the EAC and the U.S. Census Bureau's Current Population Survey (CPS): Voter Supplement File. The CPS provides representative samples from each state. Information reported to the EAC varies widely (shown in the 50-state comparison at the end of this compendium), as do the NVRA-mandated procedures for removing registrants from the rolls. The Voter Supplement File of the CPS asks: 1) if the respondent registered before or after implementation of the NVRA; and, 2) the method of registration. That information can be combined with CPS voter participation data to calculate the turnout rate among registrants in various categories.<sup>35</sup> It is difficult, if not impossible, to collect information on NVRA transactions from other sources, such as individual states or localities.





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### Challenges

Election administrators perform a complex set of tasks with limited resources. The NVRA brought voter registration into areas and agencies that have different missions; they must strike a balance between fulfilling new roles and their core duties. The decentralized structure of election administration further complicates matters because every state — and sometimes every county and city — functions differently.

The EAC survey seeks to provide information crucial to the evaluation of the NVRA overall as well as in individual states. Yet, requests for information have not been accompanied by sufficient suggestions, guidance or support to facilitate its collection.

Moreover, even with detailed coding systems, the volume of transactions can overwhelm election officials' ability to record details about matters as simple as the origination of registration (e.g. motor vehicle office, public assistance agency, etc). The Census/CPS questions voters about the timing and method of registration years afterward.<sup>47</sup>

### Recommendations

- Develop standard definitions for all aspects of voter registration.
- Establish a system for local election officials to record information about the timing and method of registration. Provide training and integrate the system with a statewide database to allow for real-time updating.
- Investigate states that fail to report or provide incomplete or suspicious information to the EAC.
- Record information on all transactions, including those that do not result in a valid registration and the reasons for the failure.

## Voting Technology and Data Collection

Paul Herrnson, University of Maryland; Tammy Patrick, Maricopa County, Arizona, Board of Elections; Pamela Smith, Verified Voting Foundation

### The Issue

Voting technology and ballot design affect voters' experiences and the integrity of the electoral system in significant ways. Researchers are gaining a better understanding of the forces at play. Aggregate measures — the residual vote, for example — provide a general sense of how often voting system and ballot design lead to voter errors.<sup>17</sup> Usability research — including an examination of voters' confidence in the system, their need for help when voting and likely errors — lends further insight to the issue.<sup>18</sup> However, this remains a relatively new field.

New voting systems are being introduced, existing systems are being refined and ballots are being improved. Innovative approaches to studying voting systems and ballots are also underway. Nevertheless, data collection efforts and reporting methods would benefit from greater uniformity. The federal government is developing Voluntary Voting Systems Guidelines, a set of standards that could aid data collection efforts.

### Voting Technology and Data Collection Case Study

Since the passage of the Help America Vote Act in 2002, most jurisdictions have modified their voting system technology, administrative procedures or both. Implementing such sweeping change requires months of preparation

and planning as well as a post-election evaluation.

Maricopa County, Ariz., created a reporting system to track and analyze categorized information from a variety of sources. The new system enables the jurisdiction to review voting machine performance, supply or distribution problems and poll worker effectiveness. It also helps the county identify best practices for future elections. An analysis found that hand-held electronic devices or electronic poll books for poll workers could provide at least two benefits: 1) access to information, such as county-wide registration lists and polling place locations, necessary for answering frequently asked questions, and 2) records of the accessed information. (See page 7 for more details.)

Both could, in turn, yield valuable data on turnout trends, the number of voters who cast their ballots at their correct precinct polling location, as well as the number of voters who arrive at the wrong precinct. The technology could also assess the effectiveness of administrative changes and equipment performance. Such opportunities for applying technology in elections are only beginning to be explored.



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### Current Practices

Data collection has been uneven in some parts of the country and almost nonexistent in others. Few states, for example, report vote totals for each machine and some do not even keep records of the technology they use. Inconsistent collection practices require researchers to look to the county or local levels for this information. Many states do not systematically maintain records of ballots and of machine malfunctions originating from hardware, software or human error.

All voting systems, associated auxiliary equipment and administrative procedures should be regularly evaluated in the context of the entire process to assess security vulnerabilities. Direct comparisons of the security of voting systems — including direct-electronic recording machine and paper-based ones — should be conducted.

Analyses of electronic poll books and other new technologies should be undertaken as well. Finally, end-to-end studies beginning with the design of ballots and concluding with the certification of an election are needed.

### Challenges

Problems continue with the usability, security and ballot design of both electronic and paper ballot systems. The sparsely populated voting industry faces pressure to make its source codes public,

and must meet certification requirements when making even minor modifications to products. New voting machines often require additional recruitment and training of poll workers. The increasing use of central-count paper-ballot systems raises the likelihood of additional errors and a variety of issues related to data collection remains.

### Recommendations

- Conduct additional research on the impact of specific system and ballot features on the voting experience. Collect and analyze data to assess the impact of various voting systems and other relevant technology on post-election audits
- Immediately report incidences of voter intimidation, polling place distribution of misleading information and other questionable practices to a "hotline" or responsive authority.
- Search for a consensus among election officials, security experts, advocates and vendors about what constitutes usability and election security, the relevant data for measuring them and the systematic comparative studies to conduct.
- Encourage comprehensive, end-to-end studies of the voting process, from programming ballots to auditing election results.

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**LOS ANGELES COUNTY'S "DOUBLE BUBBLE":  
HOW DATA AND TRANSPARENCY CAN AVOID PROBLEMS**

Dean C. Logan, Los Angeles County Registrar-Recorder/County Clerk

The 2008 presidential preference primary election in Los Angeles County showcased the consequences of poor ballot design. It also underscored that data collection and analysis can help solve election problems.

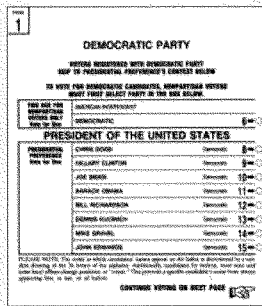
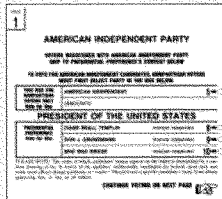
As shown in the accompanying images, the optical-scan ballot design required voters without partisan affiliations who wished to vote in either the Democratic Party or American Independent Party primary to mark an extra "bubble" on their ballots to designate their party choice as well as the corresponding "bubble" to vote for a presidential nominee. Voters who failed to mark the extra bubble unknowingly invalidated their selection for president. Upon learning of the problem, I issued a statement committing to conduct a thorough review of the nonpartisan ballots cast and to identify the extent to which potential voter disenfranchisement may have occurred in relation to ballot layout.<sup>19</sup>

Although the scope of the problem was undetermined, initial media reports estimated nearly 100,000 ballots out of an estimated 2.2

million cast were not counted. The Los Angeles County Registrar-Recorder (LACRR) took a random sample of its 1 percent manual tally and determined that there were approximately 50,000 erroneous ballots. While still unacceptable, the estimate established a baseline for constructing a solution to narrow the number of invalidated votes to 12,000.

As I testified before the California Senate Select Committee on Integrity of Elections, the LACRR convened a working group of community stakeholders to study the existing ballot and produce a revised design and instructions to satisfy usability, legal and administrative requirements.<sup>20</sup> The findings formed the foundation for a new ballot that was implemented in the June primary election.

The situation revealed that election administrators often possess the tools to analytically examine and correct voter and administrative issues. Properly used, the tools can mine the data to identify possible solutions and inform decisions.





## Election Results

Karin Mac Donald, University of California-Berkeley

### The Issue

Election result summaries — which include information about turnout as well as votes for measures, candidates and parties — are generally reported at the precinct level. Numerous groups use these data for a variety of purposes.

Advocacy groups and service providers, for example, use them to gauge the political temperament of the electorate and to lobby elected officials. Watchdog organizations reference the data for assessing compliance with the Voting Rights Act and employ them for redistricting jurisdictions.

Correlated to a wide range of issues — including ballot design and voting technology — the results can illuminate successes, failures and challenges. Turnout information, for example, helps determine voter participation rates and provides local election officials with a tool for accountability. Although data can draw attention to problems, it is important to keep in mind that they do not independently explain causes.

### Current Practices

Thousands of local jurisdictions collect election results. Most states have a great deal of autonomy and independently decide what to collect and report. However, the data — which lack uniformity in reporting, quality and reliability — are inconsistently reported to state and federal authorities. Most local election offices use management systems with the capacity to produce reports and thus satisfy the majority of

requests (assuming they are asked for in advance and programmed by the vendor). Nonetheless, administrative practices in some jurisdictions do not lend themselves to data collection. A request to them to track and identify the reasons for spoiled ballots, for example, would therefore require additional staff.

Election results played a critical role in identifying voting discrepancies in the 13th Congressional District election in Florida, 2006. In a close race, Sarasota County, one of the four main counties that comprise the 13th Congressional District, had an unusually large residual vote — 18,000 ballots showed that no votes were cast for a race that fewer than 400 votes decided. The initial focus of the investigation was voting machine error; the second was ballot layout; and, the third was the hypothesis that a negative and bitter campaign led voters to avoid the race.<sup>8</sup> A February 2008 GAO report relayed researchers' findings that "significantly reduced the possibility" that the machines were responsible. Rather, it concluded that a combination of poor ballot design and weak voter participation in the race in question likely accounted for the discrepancy.<sup>9</sup>



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### Challenges

Local election officials (LEOs) have little incentive to cooperate with unfunded data requests, which often involve extra work and expense for understaffed and underfunded offices. In addition, the data may be used to criticize or, in some cases, even sue them. Non-compliance, on the other hand, results in infrequent and relatively minor negative repercussions that are rarely more than embarrassing.

Requests for data which are even slightly dissimilar to previous ones can require time-consuming work. Collaborative collection efforts among state and federal agencies are infrequent, and the absence of uniform terminology in local jurisdictions further complicates efforts. Are absentee votes, for example, provided with precinct results, or are they allocated to non-geographic "mail ballot" precincts? Inconsistent, incorrectly produced, and often unavailable data have compromised the reliability of national surveys.

### Recommendations

- Structure surveys so LEOs can use the results to assess their procedures.
- Include LEOs in the planning of data requests, and provide them sufficient notice to make changes to their election management systems.
- Define the reporting mode of each indicator and strive for intra-state consistency among jurisdictions.
- Leave poll workers to focus on their already complex job duties rather than data collection efforts.
- Have LEOs track spoiled ballots locally for accountability purposes.
- Distinguish between early- and Election-Day voting in national surveys.
- Supplement election results with qualitative information such as a description of the administrative environment and an overview of the processes and procedures.
- Increase data sharing and language uniformity among agencies to reduce the demands of multiple, similar requests on LEOs.
- Implement shorter, high-quality national surveys and supplement them with in-depth studies with a sample of states.

## Convenience Voting

Eva Galanes-Rosenbaum, Early Voting Information Center, Reed College

### The Issue

Over the last decade, alternative methods of balloting have become increasingly popular among voters, election officials and campaigns. "Convenience voting," the umbrella term for absentee, early in-person, vote-by-mail and other alternatives to traditional election-day precinct voting, has the potential to be either a gold mine or a land mine for every group concerned with elections.

While election officials might have to manage two separate voting systems, they can ease the strain on polling places on Election Day when voters choose to cast ballots early.

While campaigns must maintain maximum intensity for a longer period — Election Day is extended over a period of weeks or even months — resources can be more effectively targeted toward undecided voters and get-out-the-vote efforts, banking those who have already cast their ballots.

And voters, while required to make up their minds earlier if they choose convenience voting, can skip the lines, parking hassles and other inconveniences associated with Election-Day voting.

For those charged with running elections, there are compelling reasons to consider convenience voting as a tool for more effective election administration. In order to evaluate the benefits or drawbacks of convenience voting,

however, it is essential to have high-quality uniform data.

### Current Practices

Alternative modes of voting have rapidly gained popularity. More than a quarter of the American electorate cast ballots outside of traditional voting precincts in 2006. Election data, however, has not kept pace. Some states can track the method by which a citizen casts the ballot, the machine on which the ballot was cast or counted (since jurisdictions may use different machinery for absentee, early in-person, and precinct place voting), and even the date that the absentee ballot was returned to the local office or the in-person early vote was cast. In some cases, campaigns and get-out-the-vote organizations can access this information in real-time during the campaign, allowing them to target their mobilization efforts (as noted by Chris Mann in his essay).

But not all states have not kept up with the pace of change. In many, real-time information is available only at the county level and can be needlessly expensive. Some states don't separate non-precinct place votes from precinct place votes. In Florida, state law requires election officials to keep no-excuse absentee votes confidential while making in-person early voting records readily available on the Web. This is a case where state law has tied the hands of elections officials.

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**Terms and Rules:** The terms and rules that states apply to the same or only slightly different administrative practices vary widely. "Vote-by-mail," for example, describes Oregon's system of all-mail elections for all registered voters or an opt-in system, such as that employed California and Colorado, where voters can elect to receive absentee ballots on a permanent basis. Similarly, "in-person early voting," "one-stop absentee voting," and "in-person absentee voting" all share some characteristics — voters cast ballots at election offices or central polling locations rather than traditional precincts — but the rules and terms are swapped and combined in a seemingly-infinite array of particular situations.

**Reporting Mode:** While a growing number of states report their election statistics by mode of voting (traditional polling place, absentee, early in-person, etc.), most still do not. Separating early/absentee voting statistics from election-day balloting is essential to analyze the impact on the election system.

### Challenges

**Evaluating Cost:** Some states, including Oregon and Washington, have reported significant cost savings when administering the vote by mail rather than at precincts. With limited data on the cost of elections, it is difficult to evaluate these claims. Others suggest that the costs are actually higher when a jurisdiction must run a "hybrid" election system — that is, one with both traditional election day polling places and one or more methods of convenience voting — because of additional staffing and equipment needs. How can election costs be evaluated, and how much are we willing to pay for convenience?

**Ballot Security:** Many critics of convenience voting — especially of no-excuse absentee balloting and vote-by-mail — suggest that ballot security is compromised between the time that the ballot leaves the election office and the time it returns. The potential for fraud, tampering, stolen ballots and undue influence on voters are all reasons for caution, but how significant is the risk?

**Voter Error and Regret:** Absentee ballots, like all paper ballots, hold the potential for voters to skip races mistakenly or overvote. Unlike polling-place voters, absentee voters do not have the chance to correct a ballot once it has been dropped in the mailbox. Similarly, any voter who votes before Election Day might encounter information to change his or her mind after the ballot has been cast. Studies analyzing voting systems have indicated that centrally counted optical-scan ballots, the system most frequently used for absentee voting, leads to more uncounted votes than many other systems.<sup>45</sup> A study of vote rates conducted by David Kimball of the University of Missouri St. Louis indicated centrally counted optical-scan ballots had a residual (ballots cast that failed to record a valid vote for president) rate of 1.8 percent in 2004, a figure twice as high as that for precinct-based optically scanned ballots.<sup>46</sup>

### Recommendations

- States should assess the cost of elections by voting method. The cost per voter of each type of voting, including polling place precinct, in-person early, by-mail absentee, and other convenience methods should be determined.



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- Working with the EAC and their own professional organizations, such as the National Association of Secretaries of State and the National Association of State Election Directors, states and local jurisdictions should strive to adopt a uniform set of terms describing convenience voting practices. Where possible, they should adhere to a common set of guidelines and rules.
- All states should report turnout statistics by mode of balloting.

**USING DATA TO INCREASE EFFECTIVENESS AND DECREASE COST OF ADVANCE/EARLY VOTING SITES IN FORSYTH COUNTY GEORGIA**

Gary Smith, Chairman, Board of Registrations and Elections, Forsyth County

Four years after the implementation of Georgia's advance/early voting, interest continues to be high and there is demand from voters for longer hours, more days, and additional locations.

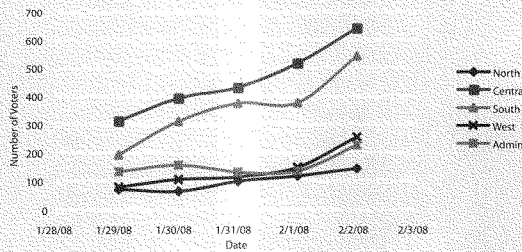
The Forsyth County Elections Office collects data on how many voters cast their ballots at various early voting locations as well as where these voters live. This data is invaluable in managing early voting, by helping us meet voter demand while simultaneously attending to budgetary and staffing constraints.

**Using Advance Voting Statistics to Manage Staffing**

Data from our Early Voting sites is collected on a dynamic basis, enabling us to increase or decrease the number of poll workers present on an as-needed basis. This is important for counties that have limited or reduced budgets and need to ensure that their funds are spent judiciously. Additionally, it decreases the pressure on the precinct during Election Day and increases the positive experience that a voter has as a result of reduced wait time.

For instance, in the 2008 presidential preference primary, we tracked daily turnout at five advance voting sites. This data was used to help us allocate additional poll workers and other staff to the sites with increasing turnout. In the three sites with unusually low turnout, we reviewed our policies and procedures to see if there were ways to increase turnout in those areas.

**ADVANCE VOTING STATISTICS FOR THE 2008 PRESIDENTIAL PRIMARY**



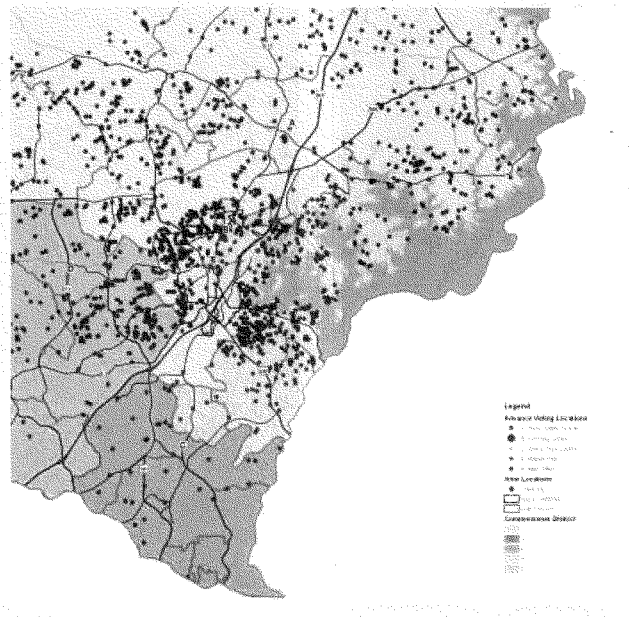


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Geographic Information Systems and Early Voting

To better understand the geography of early voting, Forsyth County uses geographic information systems (GIS) to evaluate the placement of our early voting stations. GIS data allows us to track where early voters live and how far they are willing to travel to vote. The maps below plot the residential location of early voters for each early voting station. We have learned that some sites draw voters from across the county while others appeal to those living nearby.

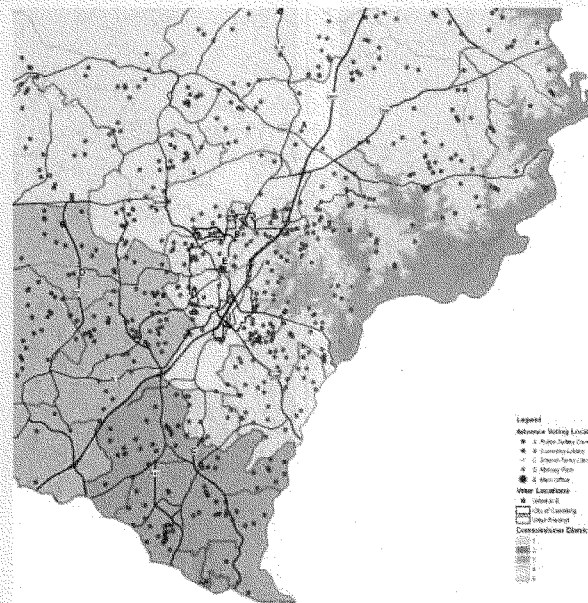
Site 1 is located in the central part of our county at the Central Library. It was one of our first early voting sites. While, as expected, this site drew voters from across the county, we were not expecting the large number of elderly voters at this location coming from a senior center located adjacent to the library. These data allowed us to adjust and provide sufficient accommodations for voters with limited mobility.



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Site 2 is located in the County Administration Building. As expected, voters come to this location from across the county, reflecting all the reasons that people come to this building — to pay water bills, check with tax assessor, get building permits etc. This site will always have a good turnout but we have faced challenges in making certain that we have sufficient parking.

We have conducted parallel analyses in our other three early voting sites. In two sites, we realized that a location off of a main highway was not sufficiently visible to commuters, and we were able to increase turnout by adding signage and in one case, adding information to a regular county mailing. In the third location, in a public library, voters are drawn predominantly from nearby locales.





## Election Data and Provisional Voting

Edward Foley, Moritz School of Law, Ohio State University

### The Issue

Fail-safe voting — which allows those not on registration rolls to cast ballots and have their eligibility established later — existed in many states before the 2000 election. All but 13 states provided some recourse to voters who went to the polls on Election Day believing they were registered, but whose names did not appear on the rolls.<sup>48</sup>

The Help America Vote Act (HAVA), passed in 2002, mandates the use of provisional ballots nationwide. According to Section 302 of the Act, any individual who declares herself a registered voter in her jurisdiction can cast a provisional ballot, that is then segregated from regular ballots and counted upon verification of eligibility. It also states that the voter can confirm that the ballot was counted, or the reason it was not tallied.<sup>49</sup>

This relatively new method of provisional voting is badly measured and poorly understood.

The mandate is applied in varying degrees across states and localities; some, for instance, require the voter be in her correct precinct to cast a provisional ballot, while others allow anyone within a jurisdiction to do so.

The extent to which the federal mandate is achieving the hoped-for objectives — as well as the degree to which jurisdictions are complying — is unknown. U.S. Election Assistance Committee (EAC) surveys conducted in both 2004 and 2006 reveal considerable variation in the rates of casting, counting and rejecting provisional ballots.

The lack of reliable measurement carries troubling legal and political implications. Moreover, lacking such measurement, there is little to do but speculate about the causes of the variations.

### Current Practices

More and better data is essential for two reasons.

First, information on the procedures that local election boards undertake in determining whether or not to count a provisional ballot is usually unreliable.

Anecdotal evidence suggests that counties exercise varying degrees of effort to determine a provisional voter's registration status, which could be the primary reason for differing rejection rates. Does a county, for example, merely consult a computerized database? Or does it go further, and check voter registration cards and other state agencies (like the DMV) for inaccuracies and systemic delays?

### PROVISIONAL BALLOTS IN OHIO

The different treatment of similarly situated provisional voters raises serious questions about the fairness of the electoral process.

For example, in many jurisdictions, the primary reason for rejecting a provisional ballot is that the voter is "not registered." Yet, pursuant to HAVA, each voter must sign a statement that she believes herself to be registered in order to receive a provisional ballot.

The table below shows the percentages of provisional ballots that were rejected in the state's six largest urban counties because a voter was deemed to be not registered:

Lucas (Toledo)	11.24%	Hamilton (Cincinnati)	6.24%
Cuyahoga (Cleveland)	8.05%	Summit (Akron)	5.68%
Montgomery (Dayton)	7.95%	Franklin (Columbus)	3.37%

While the variation in this table is striking, it tells only part of the story. In 10 percent of precincts within Cuyahoga, at least one quarter of provisional ballots were rejected for being "not registered." In more than 40 percent of the precincts, however, none of the provisional ballots were rejected for the same reason.

What explains these discrepancies, especially between extremes? Do voters in demographically comparable jurisdictions vary so considerably in understanding their registration status? Do dissimilar administrative practices contribute to the variation? Without more data and careful analysis, one can only surmise.

Provisional voting exists precisely for those circumstances in which the voter thinks that he or she is registered, while the poll worker thinks the opposite is true.

Unfortunately, in most circumstances we rarely know whether the provisional ballot was counted, or was not. And we know virtually nothing about how the local board made that determination; the steps it took and the amount of time it deliberated are a mystery. We also do

not know about the voter's effort (if any) to confirm her registration after the election.

Second, improved data is necessary to explain the wide variation in acceptance rates. Are the differences due to administrative practices or to citizens' failure to register?

Ohio (see box above) illustrates the need for better provisional voting data.

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Provisional voting is an “insurance policy” for citizens. When debating HAVA, Congress called it “fail-safe voting.”<sup>11</sup> Provisional policies are a means of protecting voters against administrative errors in the same way that title insurance safeguards property owners from mistakes with deeds.

We need to know how well — or how poorly — provisional voting is living up to its promise and purpose. When the subject is the equal right of citizens to participate in democratic elections, knowing the effectiveness of the mechanism is vital.

### Challenges

The primary challenges to collecting and reporting valid data on the use of provisional ballots are the same challenges that have been reiterated throughout this compendium: fifty separate and sometimes conflicting legal regimes, inconsistent application of state laws by local officials, irregular collection of data, and disagreements on basic definitions and categories. While changes in election administration over the past six years have dramatically improved the ability of voters to cast a “fail-safe” ballot when their registration is challenged, there has been no similar improvement in how local jurisdictions and states report this information. This makes it nearly impossible to monitor how well provisional ballots are working as a true fail safe, or whether they are just a paper tiger.

### Recommendations

- Report the number of provisional ballots requested, accepted, and rejected as well as the reasons for rejection, for all precincts in each state. In order to reassure the public that access to the ballot was as full and fair as possible, this data needs to be released as soon as possible after an election, ideally within a week. Waiting until the EAC survey is administered is too late.
- Where possible, develop common, cross-state standards for administering provisional ballots, possibly coordinating with the EAC.
- Recognize that the emergence of new voting systems, such as early in-person voting and voting centers, may affect the use of provisional ballots. Develop standards for the use of provisional ballots in out-of-precinct situations.

## Conclusion—The (Winding) Road Ahead

Heather Gerken, Yale Law School

This compendium represents just the first step on the road toward the use of better data in making decisions about election administration. The conference that inspired it revealed a number of important insights about how exciting—and yet how difficult—this process will be. Comments made during this conference fell into two broad categories: those suggesting that the push for data is inevitable, and those who worry about the obstacles. So a key question remains: What happens when an irresistible force meets an immovable object?

### Data-driven policy making: an irresistible force?

The idea that data for democracy is inevitable is based on several key observations:

#### 1. Good data leads to better management.

Good data is a crucial component of good management. Election administrators offer numerous examples of ways that data allows them to make real-time corrections on Election Day and set better long-term policy, and some of these are represented in this volume. Good data helps election administrators allocate resources, monitor performance and identify best practices.

Just as significantly, bad data makes for bad choices and policy.

Information provides a context for any decision. Without good data, it is hard to tell what is being

done right, let alone figure out ways to improve. Without good data, it is impossible to distinguish between a glitch and a trend. Just think about the way economic policy used to work. During the 19th century, economic downturns were called “panics” precisely because no one could tell the difference between an economic blip and a troubling trend. Because we now possess reliable economic data, economists can tell us when we have entered a recession—a pronouncement that triggers a series of policy correctives.

#### 2. Data is a sword and a shield.

Election administrators often worry that data will be used against them by reformers and the like. As one participant admitted, “no one wants to look stupid.” But we have also found that good data can serve as a sword and a shield for election administrators.

First, comparative data can serve as a sword by enabling election administrators to make the case for the resources they need. Data helps them identify precisely the problems they wish to address while providing comparative information about resources. Both are essential in order to convince an elected official that additional funding is necessary.

Second, in today’s highly partisan environment, data provides election administrators with a shield against unfounded accusations. Good data can reassure advocacy groups that a problem is

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not serious and/or that it is being addressed. Moreover, good data can put to rest the rumors and unfounded speculation that too often arise from haphazard reporting and minor glitches.

Because voters—and the media—learn about problems only when there is a crisis, they lack a comparative baseline for assessing what's going on—and can be quick to leap to the conclusion that the problem was deliberately engineered. After all, most voters operate in a virtual black box. They know there's a crisis; they don't see other places experiencing the same problem; and, they may even be aware of the partisan affiliation of the person in charge. It is all too easy to connect the dots. Providing valid and reliable data helps ensure that the information vacuum doesn't lead the media and the public to the wrong conclusions.

As L.A. County's recent "double bubble trouble" has shown (see page 31), transparency about the problem and its source can be extremely effective in shutting down a partisan maelstrom.

### 3. Data-driven policy making is the wave of the future.

Conference participants also made clear that data-driven policy making is the wave of the future and thus assumed that election administration will be swept up in this broader trend. Data is the lifeblood of business. Walmart, for instance, has such a refined data-collection system that when a hurricane approaches, it knows to stock local stores not just with flashlights and back-up generators, but with strawberry Pop Tarts (which data says people buy before hurricanes).

It's not just private businesses that depend on data to drive policy. Government agencies across the country use programs like Citistat to manage problems and set policies. Witness the remarkable work done in places like New York City and Baltimore using data-driven analysis.

### 4. If we don't generate the data, someone else will.

Another argument heard during this conference was that if election administrators and experts don't create data, someone else will, without the necessary rigor. Now that election administration has become a salient public issue, people are hungry for a baseline—some means for assessing how well their election system is performing.

### Barriers to collecting good data—an immovable object?

Of course, if the notion of data for democracy were easy, it would already exist. Several very real obstacles currently prevent the collection of good data. These obstacles are so formidable that they seem like immovable objects.

#### 1. Resources, resources, resources

Good data collection will require more resources. Election administrators—particularly those in small jurisdictions and rural areas—are already doing too much with too little. The absence of sufficient resources poses an important hurdle for those who want better elections data.

#### 2. Infrastructure

The absence of a data infrastructure makes good data collection quite difficult. In some states, data would have to be collected by hundreds of local jurisdictions. At present, there is no agreement on the proper definition of basic terms, which makes it impossible to compare data across jurisdictions.

Even if agreement existed, the software used by jurisdictions (even within the same jurisdictions) is utterly incompatible, making collective "data dumps" virtually impossible.

### 3. The private worries of election administrators

Election administrators also harbor private worries about the push for more data. Congress has a tendency to pass unfunded mandates. As a result, election administrators worry about being saddled with another duty without being given the resources they need to fulfill it.

Scholars currently play an important role in generating what little data exists. But they have no incentive to coordinate their efforts (which means some election administrators are flooded with requests), and often don't share the data sets they generate. If election administrators were to create more data, would this problem worsen? Election administrators also worry about how advocacy groups will use the data. Will they, for example, sacrifice long-term credibility for short-term publicity? Finally, local officials express concern that imperfect data might lead to unnecessary, even bad, reforms if not used wisely. Data can play a powerful role in debates; the key is to make sure that role is also productive.

### 4. Is the game worth the candle?

Finally, people in the immovable object camp worry that the game may not be worth the candle. The fear is that we will devote a lot of resources to getting data only to discover that it isn't as reliable or useful as we had hoped.

### What should be taken from this?

Collectively, the comments from the two sides of the irresistible force/immovable object conversation provide some useful lessons about how to think about data for democracy going forward.

#### 1. Recognize the trade-offs

One obvious lesson is to acknowledge the costs and trade-offs involved in collecting data. As tempting as it may be to "collect it all," that is an unrealistic goal, at least in the short term. Instead, resources should be targeted at what matters most, keeping in mind precisely why we are collecting the data.

At the Data for Democracy conference, Charles Stewart of MIT suggested that "it is better to measure a few things well than lots of things badly." Take the residual vote rate. It's an elegant, easy-to-understand metric for evaluating the quality of one small but important part of the voting process.

Eric Fischer of the Congressional Research Service offered another useful strategy for thinking about the problem. He suggested careful consideration of what data is needed at each level of government: national, state and local. Data collectors would make a choice akin to that made by the U.S. Census Bureau in devising short and long survey forms. Information desired from everyone goes on the short form. Other information will suffice as long as it's drawn from a large enough random sample.

I have my own suggestion. Many federal regulatory statutes exempt small businesses because of the belief that some requirements are just too onerous for them—instances where the



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game is simply not worth it. Perhaps election administrators should follow the same lesson and exempt the smallest localities from the reporting requirements we impose elsewhere.

### 2. Easing the burden on election officials

While there are surely election officials who will prove recalcitrant about collecting and sharing data, it is nonetheless clear that the reasons that election officials give for not collecting good data are quite real and quite serious. We should do everything we can to ease those burdens. Obvious steps include:

*(a) Money, money, money*

Data matters, but money does, too. We need to be able to persuade local, state and federal officials to invest in the election system. This, of course, is why Congress' recent decision to allocate \$10 million to fund model data collection at the state level is so important. You can't ask Congress to fund data collection until you can document how much you need.

*(b) Capacity*

We can take steps to increase capacity, giving election officials the tools they need to collect good data, whether it is software that prompts local officials to collect the right information, pilot programs, reports on useful case studies, development of a set of best practices, or even direct technical assistance to states and localities.

*(c) Standardization*

We need standard terms in order for the data we collect to be meaningful. Throughout the conference, inconsistencies and ambiguities were discovered that the EAC, along with local officials, can and should eliminate over time.

### 3. Align the incentives of local officials

The quality and quantity of data that is ultimately collected will depend largely on the cooperation of local officials. We need to align the incentives of local officials with the interests of voters in order to encourage them to collect the data that everyone agrees we should have. Let me suggest a few possible strategies for doing so:

*(a) Establish a standing army of political scientists to referee controversies over the data*

Political scientists are always happy to have data. Data leads to papers—the coin of the academic realm. I suggest a *quid pro quo*. In exchange for assistance from election administrators, political scientists should agree to help sort out data controversies that call the election system into question.

*(b) Consolidate*

There is a tragedy of the commons in the world of election administration. Political scientists want data, but sometimes they forget that many of them are knocking at election administrators' doors. Rather than everyone acting as a free agent, perhaps political scientists should coordinate and prioritize data requests as they do with big, national surveys. Finally, political scientists should share their data—not just the underlying information, but the scripts and widgets they use to process that data—so that we can all reap the benefit of the work that election administrators and political scientists have done.



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### The good news

In closing, there are three grounds for optimism about the future of data for democracy:

#### 1. We are so far behind that curve that we're ahead of it.

Election administration is far behind the rest of the country on the data-collection front. And yet it can sometimes be useful to be behind the curve. The position allows us to learn from others' mistakes and take advantage of the many advances in software and computer capacity. Consider the African phone system. Many people once believed it impossible for Africa to build the phone lines it needed to modernize. And then came the cell phone, which doesn't require land lines or complicated infrastructure. As a result, Africa was able to make remarkable advances in telecommunications without the costly interim steps more advanced nations had made to arrive in the same place.

#### 2. We can talk to each other.

Rumors of discord are greatly exaggerated. It is tempting to describe election officials, political scientists and advocates as separate tribes, but the conversation to date has made it clear that areas of agreement predominate. These conversations across professional tribes work and should be continued.

#### 3. Everyone has gone through this.

I am currently finishing a book on the concept of data for democracy and the Democracy Index. During that process, I did a lot of research on the experience of other people who have assembled data on topics ranging from educational quality to international aid, from governmental performance to environmental policy. Virtually everyone with whom I spoke was convinced at the outset that collecting the data would be impossible. And still, they all succeeded. I'm guessing we will, too.



## A 50-State Assessment of Data Availability and Data Reporting

Paul Gronke and Bailey Schreiber, Early Voting Information Center, Reed College

### Introduction

A vital part of the Data for Democracy initiative is not just to show ways that data can improve elections management, but also to assess states on their current level of data reporting. This 50 state assessment provides this information.

The data that is reported in the following pages is the first and, we hope, not the last word on the performance of states in providing the vital information necessary to evaluate, reform, and improve elections performance in the United States. The 50-state assessment puts some meat on the bones of the discussions that animated the Data for Democracy conference and the essays that comprise this volume.

In addition, we purposely do not grade states on the quality of their data reporting. The Data for Democracy initiative is at too early a stage to rank states based on this information, because the field has not yet come to any consensus about what constitutes essential and secondary data elements.

We let the data speak for itself. It is not our intention to suggest, for example, that voter registration files should be available at no cost, or that a file that costs more than \$1,000 is expensive.

There are many things that could have gone into such a comparison, but in the interest of space, are not included here. We do not, for example,

examine the accuracy of voter registration files, as Professors Michael Hamner and Michael McDonald and campaign consultant Christopher Mann argue for in the compendium. We have not explored how easily election results are made available on the internet, as Karin Mac Donald urges in her essay, nor do we list which states report results by different methods of voting, as Eva Galanes-Rosenbaum suggests. We leave these tasks for future analysts and future reports.

Instead, we focus on what most observers agree are two central elements of state elections data reporting: voter registration files, and responses to the federally mandated Election Administration and Election Day survey of the Election Assistance Commission.

### The Costs and Accessibility of Voter Registration Files

Voter registration is the first step in the voting chain — the first entry point by which citizens transform into voters. Statewide voter registration files were a primary part of the reforms enshrined in the Help America Voting Act (HAVA). Many of the commentators at the Data for Democracy conference, like a recent National Academy of Sciences committee, argued for easily accessible, inexpensive, and interoperable voter registration files.<sup>48</sup>



REAL-WORLD DATA

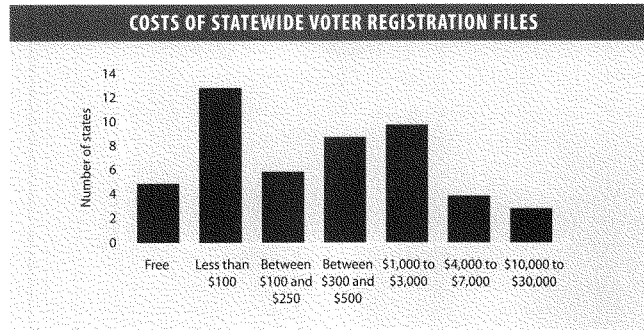
In this section, we evaluate the information contained in statewide voter registration files. In order to collect this information, staff at the Pew Center on the States and at the Early Voting Information Center at Reed College contacted the state elections office and requested information on how end users are able to obtain statewide voter registration and voter history files. In some cases, we were directed to a form on the Web; in other cases, forms were mailed or faxed to us. In all cases, if necessary, we followed up to find out in what format the data are disseminated and what restrictions, if any, there were on data use.

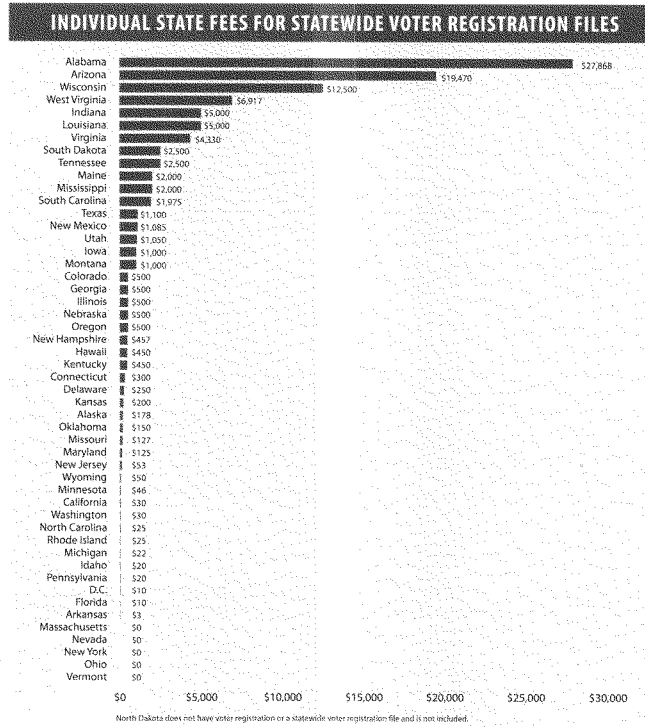
As the table on page 52 shows, the information available in these files varies substantially. The good news is that all files are currently disseminated in electronic formats that are easily read by spreadsheeting and statistical programs. All but four states include the data of registration, and all but six include the date of birth.

Other data elements are less consistently reported. Twelve states fail to separate inactive

from active voters in their files, rendering it very difficult for a political campaign or a get out the vote organization to efficiently target voters. Only 27 states report gender. Nine states report race / ethnicity in their files, but these states do so because the Voting Rights Act requires them to. Similarly, not all states require voters to register with a political party, so there is no reason to expect that to be in the files (we have not attempted to compare state laws with data reporting).

The bad news concerns cost: there is tremendous variation in what states charge for access to these files. As shown in the attached figures, which display the range and relative costs of voter registration files, the bulk of states have determined that voter registration files can be provided for a nominal fee, less than \$100. Five states charge nothing at all for the files. Yet, more than one-quarter of the states charge at least \$1000 for these files. Three states charge over \$10,000.





We don't know what the ideal cost of a voter registration file is. A file that is too inexpensive may be requested too often; a small fee to recover costs may not seem unreasonable. We also do not show how the policy decision has

been made to set these costs. But to have such a disparity across states does seem unreasonable. There is no apparent pattern to these costs — it is not as if larger states, or states with more election jurisdictions, charge more.

**ACCESS VS. PRIVACY IN VOTER REGISTRATION**

James Hicks, Early Voting Information Center, Reed College

While technological advances have eased access to election data for many small campaigns, grassroots political organizations, and academia, this increased dissemination also carries a potential cost. Advocates for privacy argue that since voter registration files contain extensive personal information, their circulation should be carefully controlled. Others argue that voter registration and turnout information are public records, and should be easily and cheaply available.

Arizona is one of a number of states that severely restricts access to voter registration information. It also differs from other states in that it does not provide a statewide file — the end user must go county to county to obtain a file. The cost element we report is based on summarizing county information.

In Arizona, state statute ARS§16-168(E) provides for the release of voter registration files only for purposes relating to political party activity or elections. While the state provides major political parties with a free copy of the data, other authorized users are charged 1¢ per record (statewide, a substantial \$19,470 based on recent registration figures — and this cost was 10 times higher before a recent change in state law).

In 1996, the Phoenix-based *Arizona Republic* filed a complaint against Maricopa County and its Recorder, Helen Purcell, after being quoted what the newspaper considered a prohibitive fee. Both the trial and appellate courts ruled in favor of the state, the latter finding that the statute bore a "rational relationship to a legitimate legislative objective." That court further dismissed the media groups' claims of violation of both equal protection, and the state's policy of access and openness.

While Arizona is currently an outlier in the fierceness of its protection of voter registration files, it is far from the only state to erect significant barriers—financial or otherwise—to the access of this data, and the privacy argument echoes in other states.



REAL-WORLD DATA

State	Voter Information							
	inactives separated?	race	gender	political party	dob/age	reg date	reg method	permanent status
Alabama	✓	✓	✓	✓	✓	✓	✓	N/A
Alaska				✓	✓	✓	✓	N/A
Arizona*				✓	✓	✓	✓	N/A
Arkansas	✓			✓	✓	✓	✓	N/A
California	✓		✓	✓	✓	✓	✓	✓
Colorado	✓			✓	✓	✓	✓	✓
Connecticut	✓		✓	✓	✓	✓	✓	N/A
D.C.				✓	✓	✓	✓	N/A
Delaware				✓	✓	✓	✓	N/A
Florida	✓	✓	✓	✓	✓	✓	✓	N/A
Georgia	✓	✓	✓	✓	✓	✓	✓	N/A
Hawaii	✓			✓	✓	✓	✓	N/A
Idaho				✓	✓	✓	✓	N/A
Illinois	✓		✓	✓	✓	✓	✓	N/A
Indiana	✓		✓	✓	✓	✓	✓	N/A
Iowa	✓		✓	✓	✓	✓	✓	N/A
Kansas	✓		✓	✓	✓	✓	✓	N/A
Kentucky			✓	✓	✓	✓	✓	N/A
Louisiana	✓	✓	✓	✓	✓	✓	✓	N/A
Maine	✓			✓	✓	✓	✓	N/A
Maryland	✓		✓	✓	✓	✓	✓	N/A
Massachusetts	✓		✓	✓	✓	✓	✓	N/A
Michigan	✓		✓	✓	✓	✓	✓	N/A
Minnesota	✓			✓	✓	✓	✓	N/A
Mississippi	✓			✓	✓	✓	✓	N/A
Missouri	✓			✓	✓	✓	✓	N/A
Montana	✓			✓	✓	✓	✓	✓
Nebraska				✓	✓	✓	✓	N/A
Nevada	✓			✓	✓	✓	✓	N/A
New Hampshire				✓	✓	✓	✓	N/A
New Jersey	✓			✓	✓	✓	✓	N/A
New Mexico	✓		✓	✓	✓	✓	✓	N/A
New York	✓		✓	✓	✓	✓	✓	N/A
North Carolina	✓	✓	✓	✓	✓	✓	✓	N/A
North Dakota**				✓	✓	✓	✓	N/A
Ohio				✓	✓	✓	✓	N/A
Oklahoma	✓			✓	✓	✓	✓	N/A
Oregon	✓			✓	✓	✓	✓	N/A
Pennsylvania	✓		✓	✓	✓	✓	✓	N/A
Rhode Island	✓		✓	✓	✓	✓	✓	N/A
South Carolina	✓	✓	✓	✓	✓	✓	✓	N/A
South Dakota	✓			✓	✓	✓	✓	N/A
Tennessee	✓	✓	✓	✓	✓	✓	✓	N/A
Texas	✓		✓	✓	✓	✓	✓	N/A
Utah	✓			✓	✓	✓	✓	N/A
Vermont	✓			✓	✓	✓	✓	N/A
Virginia	✓		✓	✓	✓	✓	✓	N/A
Washington	✓			✓	✓	✓	✓	✓
West Virginia	✓			✓	✓	✓	✓	N/A
Wisconsin	✓			✓	✓	✓	✓	N/A
Wyoming	✓			✓	✓	✓	✓	N/A

\*Arizona only provides voter registration files at the county level. The price recorded here is the sum of what all counties charge: \$0.1 per voter. See case study for more information.

\*\*North Dakota has no voter registration and is therefore exempt from this comparison.

REAL-WORLD DATA

Formats Available			Voter History			Restrictions/Requirements		
xls .csv .txt	data available online	pdf paper	provided?	add'l charge	includes mode?	Rest./ Regs. Scale (1, 2, or 3)	must be registered to vote in state	affidavit
✓		✓	✓	\$0.00		1		
✓			✓	\$0.00	✓	1		
				N/A		3	see footnote/see study	
	✓		✓	\$2.50		1		
✓			✓	\$0.00		2		
✓			✓	\$250.00	✓	1		
✓			✓	\$0.00	✓	1		
✓			✓	\$300.00	✓	1		
✓			✓	\$0.00		1		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	3		✓
✓			✓	\$0.00	✓	3		
✓			✓	\$0.00	✓	3		
✓		✓	✓	\$0.00	✓	2		
✓			✓	\$0.00		1		
✓			✓	\$0.00		2		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	2		
✓			✓	\$0.00	✓	3	✓	
✓			✓	\$0.00	✓	3		✓
✓			✓	\$0.00	✓	3		
✓			✓	\$0.00	✓	1		
✓	✓		✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	2		✓
✓			✓	\$0.00		1		
✓	✓		✓	\$0.00		3		
✓			✓	\$0.00		2		
✓	✓		✓	\$4,340.00	✓	2		
✓			✓	\$0.00	✓	1		
✓	✓		✓	\$0.00	✓	1		
✓	✓		✓	\$0.00		1		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	3		
✓			✓	\$180.00		3	✓	
✓			✓	\$0.00		1		
✓			✓	\$0.00	✓	2		
✓			✓	\$2,100.00	✓	2		✓
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	2		✓
✓			✓	\$0.00	✓	2		
✓			✓	\$0.00	✓	2		
✓	✓		✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	3		
✓			✓	\$0.00	✓	1		
✓			✓	\$0.00	✓	2		

A number of states have placed restrictions on who can obtain the voter registration file. Each state has been placed into one of the following categories.

- 1 Unrestricted:** The file is open to the public and anyone may obtain it. Sometimes an affiliation or signature is requested but is not absolutely necessary to obtain the file. Commercial use is nearly always explicitly prohibited.
- 2 Somewhat Restricted:** The file is restricted to those who are affiliated in some way with a political campaign or party, academic institution or some other organization. Description of affiliation is usually required. A file that requires an affidavit also fall into this category. Commercial use is nearly always explicitly prohibited.
- 3 Very Restricted:** The file is restricted only to political campaigns, candidates, parties or to those using the information for governmental purposes only. This category also includes states that require the requester to be a registered voter in that state. Commercial use is nearly always explicitly prohibited.

## Response Rates on the 2006 Election Administration Commission Survey

Paul Gronke and Bailey Schreiber, Early Voting Information Center, Reed College

The EAC, under Section 202 of the Help America Vote Act, acts as a clearinghouse for information on election administration in the United States. As part of that responsibility, the EAC is required to submit three reports to Congress, on the National Voter Registration Act (NVRA), the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), and the Election Day Survey (EDS).

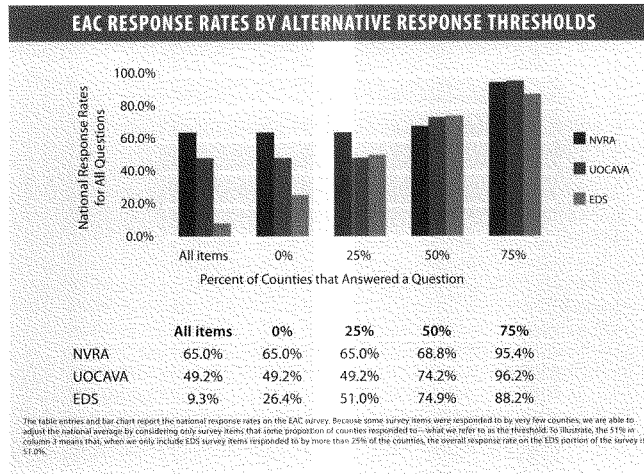
The EAC has chosen to collect this information by administering a survey to the states and local jurisdictions. The survey is a federally mandated data collection instrument that includes questions about state compliance with NVRA, UOCAVA and also includes an election day component. The reports on the three surveys, as well as the raw data, are available at the EAC website.<sup>11</sup>

The EAC survey holds the potential to be an invaluable data resource for the elections reform community. If the survey were disseminated on a timely basis, and if all states made an effort to respond as fully as possible, it would be possible to compare the number of registered voters, the number of voters removed from the rolls, compliance with NVRA, accessibility to the ballot by UOCAVA voters, levels of early and absentee voting and implementation of provisional voting laws. In short, some, though not all, of the needs outlined by the essayists in the Data for Democracy compendium would be met.

Sadly, as the tables on the next pages illustrate, the EAC survey is far from meeting this standard. Non-response rates on some sections of the survey are so high that using the survey in any comparative context is impossible. This is a situation that must be rectified in the future.

The response rates on the various sections of the EAC surveys vary dramatically due to some design flaws. The 2006 survey was set up so that counties were the unit of analysis. But in New England, as in Michigan, Wisconsin and Minnesota, elections are administered at the township level. The survey included items on NVRA compliance for all states even though North Dakota was exempt from the NVRA since it does not require votes to register. And the Election Day Survey asked detailed questions about election results for all federal offices — a section of the survey that virtually no states responded to.

To adjust for these sources of non-response, the figures and tables include what we call the “adjusted” response rate. To create these response rates, we examined the survey question by question. If a question was answered by less than half of the counties in the nation, we chose not to include this when we compared response rates state by state.



As shown in the bar chart, using a response threshold is essential in order to obtain a reasonable comparison. If we considered all items, the response rate on the EDS survey is below 10 percent. This indicates that there were many items on the EDS with no responses (these were the federal election results mentioned above). If you set the threshold just to greater than 0 percent, the average response rate on the EDS survey nearly triples.

The graphic makes clear why 50 percent is a reasonable response threshold. It means that we consider only items on which more than half of the counties in the country provided a response. It is also a threshold that results in roughly comparable response rates across the three portions of the survey. We also do not want to set

a threshold that is so high that it implies that all counties responded to all items. (For those interested, the unadjusted response rates are included in the appendix.)

Finally, and not surprisingly, the graphic shows that states respond at the highest rate to the NVRA portion of the survey. This is not surprising since the NVRA survey has been conducted for the longest period of time (from 1996 until 2004, it was conducted by the Federal Election Commission).

The response rates overall vary dramatically. While half the states responded to more than 75 percent of the items, the response rates among some other states was much lower. Five states responded to less than half the items (although four of these were states that conduct elections at the township





## REAL-WORLD DATA

level, and therefore had a geographic mismatch between a county-based survey and their own geographic basis of elections).

Rather than shaming those states that failed to respond to many items, it is encouraging to highlight those states that responded to nearly all the items in the survey. Alaska, Delaware, Georgia, Louisiana, Montana and Ohio responded to 98 percent or more of the survey items. These states are not from a particular region, nor do they all have a low number of counties or a small population. Three have small populations and two have large populations. Two are geographically large and one (Delaware) is quite small. Georgia and Ohio have a large number of

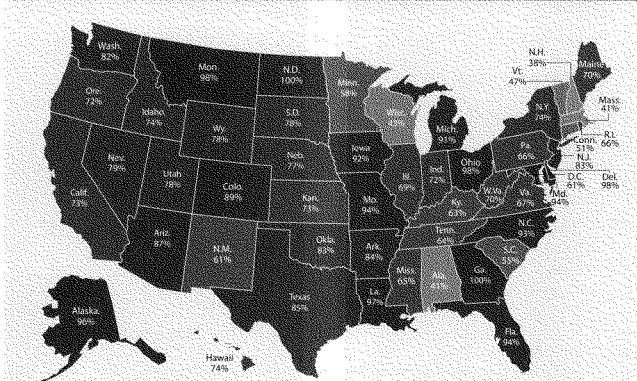
counties; Louisiana and Montana has an average number of counties (64 and 56 respectively), while Delaware has only 3. (Alaska reported its information statewide.)

Other states that responded to more than 90 percent of the items on the survey are Florida, Iowa, Maryland, Michigan, Missouri, and North Carolina, along with the protectorate of American Samoa.

While Georgia receives the gold medal — it responded to nearly every item we considered — this larger group of 12 states are the national leaders, at least according to the lens provided by the EAC survey.

REAL-WORLD DATA

ADJUSTED RESPONSE RATES ON EAC 2006 SURVEY



State	NVRA	UOCAVA	EDS	Total	State	NVRA	UOCAVA	EDS	Total
Alabama	34%	49%	41%	41%	Nevada	63%	90%	86%	79%
Alaska	88%	100%	100%	96%	New Hampshire	19%	37%	58%	38%
Arizona	93%	83%	85%	87%	New Jersey	68%	90%	91%	83%
Arkansas	94%	82%	76%	84%	New Mexico	63%	62%	58%	61%
California	74%	74%	73%	73%	New York	80%	59%	81%	74%
Colorado	95%	97%	77%	89%	North Carolina	85%	99%	96%	93%
Connecticut	59%	41%	50%	51%	North Dakota	19%	100%	100%	100%
Delaware	94%	100%	100%	98%	Ohio	98%	99%	99%	98%
Dist. of Col.	65%	64%	54%	61%	Oklahoma	96%	72%	78%	83%
Florida	91%	98%	94%	94%	Oregon	83%	64%	69%	72%
Georgia	100%	100%	99%	100%	Pennsylvania	100%	44%	51%	66%
Hawaii	78%	74%	69%	74%	Rhode Island	81%	60%	57%	66%
Idaho	35%	100%	92%	74%	South Carolina	42%	57%	66%	55%
Illinois	81%	61%	62%	69%	South Dakota	80%	77%	78%	78%
Indiana	70%	77%	69%	72%	Tennessee	83%	53%	54%	64%
Iowa	96%	91%	90%	92%	Texas	99%	77%	77%	85%
Kansas	66%	81%	73%	73%	Utah	54%	93%	90%	78%
Kentucky	39%	72%	79%	63%	Vermont	42%	49%	50%	47%
Louisiana	100%	100%	91%	97%	Virginia	35%	89%	81%	67%
Maine	65%	73%	73%	70%	Washington	72%	86%	89%	82%
Maryland	100%	91%	92%	94%	West Virginia	58%	76%	79%	70%
Massachusetts	64%	36%	21%	41%	Wisconsin	23%	55%	54%	43%
Michigan	89%	91%	92%	91%	Wyoming	52%	91%	93%	78%
Minnesota	46%	68%	61%	58%	American Samoa	85%	100%	100%	95%
Mississippi	53%	72%	71%	65%	Guam	19%	32%	15%	22%
Missouri	98%	91%	92%	94%	Puerto Rico	19%	32%	15%	22%
Montana	95%	100%	100%	98%	Virgin Islands	50%	91%	88%	76%
Nebraska	86%	70%	73%	77%					

The map reports the adjusted response rates for the complete EAC survey. The adjusted response rates remove survey items on which large proportions of the counties did not respond, as noted in the text. The separate columns in the table refer to separate portions of the EAC survey: the National Voter Registration Act (NVRA), the Informed and Overseas Citizens Absentee Voting Act (UOCAVA), and the Election Day Survey (EDS).

The state of North Dakota does not have voter registration and is therefore exempt from the National Voter Registration Act portion of the EAC Assessment. If the NVRA survey items are considered North Dakota would have a score of 79.8 percent. There are only seven states that allow voters to register on Election Day: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. All other states are exempt from questions regarding election-day registration. There were a number of cases that provided data at the state level in addition to countywide data. Survey items for which there was only a statewide response were given a response rate of 100 percent for that response. New England, Michigan, Minnesota and Wisconsin administer elections at the township level. In administration of the surveys, the EAC assumed the county as the election jurisdiction. Low response rates in these states may be due to remoteness of geographic components of the survey and actual administration.

## Data for Democracy Conference

Challenges and Opportunities for Elections Data Collection  
May 12-13, 2008

Pew Charitable Trusts  
1025 F Street, NW  
Washington DC

### Monday, May 12

12:00 p.m. **Informal Lunch**

1:00 p.m. **Introductions**

*Michael Caudell-Feagan, Make Voting Work*  
*Paul Granke, Reed College*

1:30 p.m. **Why Data Matters**

The opening session will discuss the importance of high-quality empirical data in managing elections and framing questions of public policy and opinion.  
*Doug Chapin, Electionline.org*

2:00 p.m. **How Data Is Used**

This session will discuss the importance and use of election data to inform the efforts of policymakers, academics, advocates and political campaigns.

*Moderator:*  
*Paul Granke, Reed College*

*Presenters:*  
*Michael Herron, Dartmouth*  
*Eric Fischer, Congressional Research Service*  
*Justin Levitt, Brennan Center for Justice*  
*Chris Mann, MSHC Partners, Inc.*

3:00 p.m. **How Data Is Collected**

This session will discuss sources of election data, collection methods, and the differences between collecting election data and the standard expectations of survey research.

*Moderator/Presenter:*  
*Toby Moore, Research Triangle Institute*

*Presenters:*  
*Charles Stewart, Massachusetts Institute of Technology*  
*Kelly Patterson, Brigham Young University*  
*Cathy McCully, U.S. Bureau of the Census*

## APPENDIX

- 4:00 p.m. **Data for Management**  
 This session will spotlight case studies of election officials' efforts to incorporate data collection and analysis into their operations.  
*Moderator:*  
*Alysoun McLaughlin, Make Voting Work*
- Presentations:*  
*Matt Damschroder, Franklin County, Ohio*  
*Bob Murphy, Maryland State Board of Elections*  
*Tammy Patrick, Maricopa County, Arizona*  
*Dean Logan, Los Angeles County, California*
- 6:30 p.m. **Dinner**  
 Wine Room, Chef Geoff's Downtown  
 1301 Pennsylvania Avenue, N.W. (on 13th Street between E and F)

**Tuesday, May 13**

- 8:45 a.m. **Continental Breakfast**
- 9:00 a.m. **Voter Registration \***  
 EAC Data Items 1-4b, Statutory Review 2, 6-10  
 This session deals with the basics of the statewide voter registration files. What is the essential information that should be provided by states in these files? How accessible should this information be? How are active and inactive voters handled state by state? The focus is not on the accuracy of data but on the necessary ingredients for meaningful data analysis.  
*Moderator/Presenter:*  
*Michael McDonald, George Mason University*  
*Respondent:*  
*Wendy Noren, Boone County, Missouri*
- 9:45 a.m. **National Voter Registration Act\***  
 EAC Data Items 5-9, Statutory Review 2, 11-15  
 A great deal of attention has been focused on how citizens are added to—and removed from—the voter rolls. How can we develop good data on use of the procedures specified in NVRA?  
*Moderator/Presenter:*  
*Michael Hanmer, University of Maryland*  
*Respondents:*  
*Michael Slater, Project Vote*  
*Keith Cunningham, Allen County, Ohio*

## APPENDIX

- 10:30 a.m. **Military and Overseas Voters\***  
 EAC Data Items 10-13, Statutory Review (none)  
 One of the more challenging data sections in the EAC survey for both 2004 and 2006 was UOCAVA. Many states say flat out that they have great difficulty tracking UOCAVA voters, and there are federal regulations that make the problem even worse.  
*Moderator/Presenter:*  
 Kim Brace, Election Data Services
- Respondents:*  
 Susan Dzieduszycka-Suinat, Overseas Vote Foundation  
 Pat Hollam, Okaloosa County, Florida
- 11:15 a.m. **Election Results\***  
 EAC Data Items 18a-19, 25a-25e, 29 Statutory Review 2, 16, 22  
 To many, the most fundamental data element of all—election results—is, ironically, one that plays a relatively small role in the EAC survey. Should the survey include a much more substantial section on federal election results? Should they ask about overvotes and undervotes? Do we want turnout and if so, from what source (pollbooks, highest office, etc.)?  
*Moderator/Presenter:*  
 Karin Mac Donald, University of California-Berkeley
- Respondents:*  
 Steve Weir, Contra Costa County, California  
 Joy Streater, Comal County, Texas  
 Clark Bensen, POLIDATA
- 12:00 p.m. **Lunch**
- 1:00 p.m. **Voting Technology \***  
 EAC Data Items 14-17, 25a-28, Statutory Review (none)  
 What do we know about voting technology and how can the questions on the EAC survey be improved to better our understanding?  
*Moderator/Presenter:*  
 Paul Herrnson, University of Maryland
- Respondents:*  
 Tammy Patrick, Maricopa County, Arizona  
 David Beirne, Election Technology Council  
 Pam Smith, Verified Voting

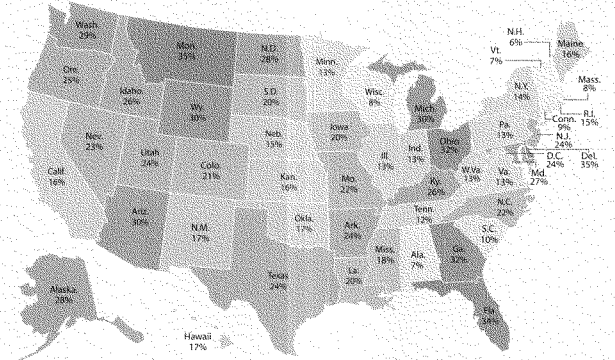


## APPENDIX

- 1:45 p.m. **Absentee and Early Voting\***  
 EAC Data Items 20-24, Statutory Review 2, 4, 16-21  
 States vary widely in how they collect and report data on votes cast by mail or prior to election day. Should the EAC collect more of this information? Is it enough just to know how many ballots came from precincts, absentee and "other"?
- Moderator/Presenter:*  
 John Fortier, American Enterprise Institute
- Respondents:*  
 Bill Huennekens, King County, Washington  
 Gary Smith, Forsyth County, Georgia
- 2:30 p.m. **Break**
- 2:45 p.m. **Provisional Ballots\***  
 EAC Data Items 20-24, Statutory Review 2, 4, 16-21  
 How are provisional ballots accepted and when are they rejected? How can states better track this information?
- Moderator/Presenter:*  
 Ned Foley, Ohio State University
- Respondents:*  
 David Kimball, University of Missouri-St. Louis  
 Dean Logan, Los Angeles County, California  
 Matt Damschroder, Franklin County, Ohio
- 3:30-4:30 **Wrap Up and Discussion**

\* For these sessions, conference participants are assigned to working groups. Each working group will draft a memo on the topic for circulation prior to the conference. Each working group has an assigned team leader who will be responsible for presenting the memo at this session, incorporating feedback from working group participants and conference attendees and preparing a paper on the topic for a Compendium in the weeks following the conference.

UNADJUSTED RESPONSE RATES ON THE 2006 EAC SURVEY



State	NVRA	UOCAVA	EDS	Total	State	NVRA	UOCAVA	EDS	Total
Alabama	29%	17%	3%	7%	Nevada	59%	74%	11%	23%
Alaska	90%	78%	14%	28%	New Hampshire	16%	12%	4%	6%
Arizona	91%	79%	16%	30%	New Jersey	70%	65%	13%	24%
Arkansas	92%	63%	12%	24%	New Mexico	58%	43%	8%	17%
California	70%	41%	8%	16%	New York	80%	23%	7%	14%
Colorado	94%	57%	9%	21%	North Carolina	75%	58%	11%	22%
Connecticut	52%	14%	5%	9%	North Dakota	16%	94%	18%	28%
Delaware	92%	100%	18%	35%	Ohio	95%	87%	17%	32%
Dist. of Col.	65%	71%	12%	24%	Oklahoma	90%	36%	8%	17%
Florida	92%	98%	18%	34%	Oregon	73%	62%	14%	25%
Georgia	103%	92%	16%	32%	Pennsylvania	96%	21%	5%	13%
Hawaii	78%	43%	8%	17%	Rhode Island	79%	33%	6%	15%
Idaho	34%	94%	13%	26%	South Carolina	38%	22%	5%	10%
Illinois	77%	27%	5%	13%	South Dakota	75%	58%	9%	20%
Indiana	62%	35%	6%	13%	Tennessee	73%	24%	4%	12%
Iowa	97%	40%	10%	20%	Texas	95%	62%	11%	24%
Kansas	56%	43%	8%	16%	Utah	50%	80%	13%	24%
Kentucky	42%	76%	16%	26%	Vermont	35%	17%	3%	7%
Louisiana	100%	48%	8%	20%	Virginia	29%	36%	8%	13%
Maine	59%	29%	10%	16%	Washington	72%	79%	17%	29%
Maryland	93%	62%	15%	27%	West Virginia	55%	32%	6%	13%
Massachusetts	59%	13%	2%	8%	Wisconsin	22%	25%	4%	8%
Michigan	84%	85%	16%	30%	Wyoming	50%	91%	17%	30%
Minnesota	48%	40%	5%	13%	American Samoa	84%	91%	17%	32%
Mississippi	49%	53%	10%	18%	Guam	16%	11%	1%	3%
Missouri	98%	64%	9%	22%	Puerto Rico	16%	11%	1%	3%
Montana	96%	98%	18%	35%	Virgin Islands	48%	40%	8%	15%
Nebraska	81%	31%	7%	15%					

The map reports the response rates for the total EAC survey. This table does not remove any items on which large proportions of the counties did not respond, as noted in the text. The separate columns in the table refer to separate portions of the EAC survey: the National Voter Registration Act (NVRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and the Election Day Survey (EDS). Additional information on the map and table are contained on page 57.



## ENDNOTES

- 1 Eric Fischer of the Congressional Research Service should be credited for the *don mix*.
- 2 Overton, Spencer, "Voter Identification," *Michigan Law Review*, Vol. 105: 631, February 2007.
- 3 "2008 Election Day Survey: background," United States Election Assistance Commission, [www.eac.gov](http://www.eac.gov), last visited July 23, 2008.
- 4 Markovits, Zachary and Douglas Spencer, "Lines at Polling Stations? Observations from the 2008 California Primary," *University of California-Berkeley Survey Research Center*, May 2008.
- 5 *Ibid*.
- 6 "Election Reform and Local Election Officials: Results of Two National Surveys," CRS Report for Congress, *Congressional Research Service*, Feb. 27, 2008.
- 7 *Ibid*.
- 8 *Ibid*.
- 9 Stewart, Charles, 2005, "Measuring the Improvement (or Lack of Improvement) in Voting since 2000 in the US," Paper presented at the Annual Meeting of the American Political Science Association, Washington, D.C.
- 10 A more extended discussion of many of these issues may be found at Stewart, Charles III, "Improving the Measurement of Election System Performance in the United States" in *Mobilizing Democracy: A Comparative Perspective on Institutional Barriers and Political Obstacles*, eds. Margaret Levi, James Johnson, Jack Knight, and Susan Stokes, Russell Sage, 2008.
- 11 Kimball William Brace, "Testimony delivered to the Committee on House Administration of the U.S. House of Representatives," Apr. 14, 2008. [http://cha.house.gov/Assets/files/152\\_testimony.pdf](http://cha.house.gov/Assets/files/152_testimony.pdf). Last accessed Aug. 12, 2008.
- 12 Mayer, Kenneth, 2007, "Comparative Election Administration: Can We Learn Anything from the Australian Electoral Commission?" Paper prepared for delivery at the 2007 Annual Meeting of the American Political Science Association, Chicago, IL.
- 13 Neuman, William L, 1991, *Social Research Methods: Qualitative and Quantitative Approaches*, Massachusetts: Allyn and Bacon.
- 14 *Ibid*.
- 15 Fischer, Eric A. and Kevin J. Coleman, February 7, 2008, "Election Reform and Local Election Officials: Results of Two National Surveys," CRS Report for Congress RL343643. Accessed Aug. 5, 2008 at <http://www.fas.org/spp/crs/misc/RL343643.pdf>.
- 16 Kimball, David C. and Martha Kropf, "The Street-Level Bureaucrats of Elections: Selection Methods for Local Election Officials," Paper prepared for presentation at the DeVos Moore Center Critical Issues Symposium, February 10-11, 2006, Florida State University. [http://www.fsu.edu/~policy/materials/kimball\\_and\\_kropf.pdf](http://www.fsu.edu/~policy/materials/kimball_and_kropf.pdf). Last accessed August 12, 2008.
- 17 "County Election Services: A National Survey" Prepared for the National Association of Counties by the Carl Vinson Institute of Government, University of Georgia, March 2001. More than 90 percent of counties reported holding four or fewer general elections between 1997 and 2000, with jurisdictions with a population under 10,000 reporting an average of 2.7 general elections and jurisdictions with a population over 1 million reporting an average of 12.2 general elections.
- 18 Many election officials come up through the ranks, for others, administering elections is a second career, not something that they initially entered as a profession. An increasing number of states do offer professional certification to both upper-level and mid-level election staff. Auburn University has launched the only MBA program in the country with a concentration in election administration.
- 19 This reflects a trend toward hiring full-time staff to oversee elections under the supervision of an elected official who previously bore that responsibility. It does not indicate that changes in state law or local code have stripped elected officials of the authority.
- 20 Fischer, Eric A. and Kevin J. Coleman, "Election Reform and Local Election Officials: Results of Two National Surveys," Updated February 27, 2008.
- 21 Lipsky, Michael, 1980, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, New York: Russell Sage Foundation.
- 22 A relatively small percentage of poll workers are drafted into the position. Many jurisdictions have the authority to do so under emergency situations. Douglas County, Nebraska is the only jurisdiction in the country that drafts voters to serve as poll workers in the same manner as jury duty.
- 23 *Op-Cit*, Lipsky.
- 24 A study underway by the National Association of Counties and the Carl Vinson Institute at the University of Georgia is undertaking a nationwide study of election cost accounting.
- 25 As of 2008, prospective voters everywhere except North Dakota must first register to vote. Voters in Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming may register and vote on Election Day while all others must register at a specified time prior to the election, no greater than thirty days as regulated by the Voting Rights Act of 1965. (There are further exceptional policies, such as Election Day registration in Connecticut and Rhode Island for persons wishing to cast a vote for presidential electors only and so-called "one stop" voting in North Carolina that permits early voters to register and vote at the same time.)



## ENDNOTES

- 26 Help America Vote Act, Sec. 303(a)(1)(A).
- 27 McDonald, Michael. "An Analysis of Possible Errors on the Florida Voter Registration File." Undated document, available at [http://elections.gmu.edu/McDonald\\_Florida\\_Voter\\_Registration\\_Memo.pdf](http://elections.gmu.edu/McDonald_Florida_Voter_Registration_Memo.pdf), accessed Sept. 12, 2008.
- 28 Portions of this essay draw on a memo for the Data for Democracy Conference co-authored with Keith Cunningham, director of elections, Allen County Ohio.
- 29 On resistance to the NVRA by the states see: Piven, Francis F. and Richard Cloward. 2000. *Why Americans Still Don't Vote: And Why Politicians Want It That Way*. Boston: Beacon Press. On lax implementation see: Hess, Douglas R. and Scott Novakowski (2008). "Unequal Access: Neglecting the National Voter Registration Act, 1993-2007." [http://projectvote.org/fileadmin/projectvote/NVRA\\_Project/Finquwa\\_Access\\_Final.pdf](http://projectvote.org/fileadmin/projectvote/NVRA_Project/Finquwa_Access_Final.pdf) (last visited July 30, 2008).
- 30 Department of the Public Advocate. 2008. "New Jersey to Press Forward with Motor Voter Implementation." Press release, State of New Jersey, March 24, 2008. [http://www.state.nj.us/publicadvocate/news/2008/approved/080324\\_nvra\\_mou.html](http://www.state.nj.us/publicadvocate/news/2008/approved/080324_nvra_mou.html) (last visited July 30, 2008).
- 31 Achen, Christopher H. 2008. "Registration and Voting under Rational Expectations: The Econometric Implications." Paper presented at the 25th Annual Meeting of the Society for Political Methodology, Ann Arbor, Mich., July 9, 2008.
- 32 States with no registration system (North Dakota) or election day registration at all polling places (Minnesota, Wisconsin and via a loophole in the NVRA, Idaho, New Hampshire, and Wyoming) were exempt from the NVRA.
- 33 National Commission on Federal Election Reform. *To Assure Pride and Confidence in the Electoral Process*. The Miller Center of Public Affairs, University of Virginia, The Century Foundation, August 2001.
- 34 Hess and Novakowski "Unequal Access."
- 35 See Hammer, Michael J. 2008. *Discount Voting: Understanding Why Election Reforms Don't Increase Turnout*. Book manuscript.
- 36 Hammer *Discount Voting*.
- 37 Caltech/MIT Voting Technology Project, "Residual Votes Attributable to Technology": An Assessment of the Reliability of Existing Voting Equipment." ([www.vote.caltech.edu](http://www.vote.caltech.edu)).
- 38 Paul S. Herriman, Richard G. Niemi, Michael J. Hammer, Benjamin B. Sedovson, Frederick G. Conrad, Michael W. Traugott. *Voting Technology: The Not-So-Simple Act of Casting a Ballot* (Washington, D.C.: Brookings Institution Press, 2008).
- 39 Testimony of Dean C. Logan, Acting Registrar-Recorder/County Clerk, Los Angeles County, Joint Information Hearing, Discussion of Problems Faced by Voters at the 2008 Presidential Primary Election, Senate Select Committee on Integrity of Elections, March 7, 2008.
- 40 News Release, Los Angeles County Registrar-Recorder/County Clerk Statement on Cross Over Voting, Feb. 5, 2008.
- 41 A political science professor at the University of South Florida said shortly after election night that "you can see first-hand the results of an extremely negative campaign. People said 'I can't vote for either one of them'." Sarasota Election Supervisor Kathy Dent said she thought the bitter campaign "turned people off." Wallace, Jeremy. "Slim 368-vote margin will trigger recount for the 13th District." *The Herald Tribune*, Nov. 8, 2006.
- 42 Barakakati, Nabajyoti. "Results of GAO's Testing of Voting Systems Used in Sarasota County in Florida's 13th Congressional District." Statement before the Task Force for the Contested Election in the 13th Congressional District of Florida, Committee on House Administration, House of Representatives, GAO-08-425T, United States Government Accountability Office, Feb. 8, 2008.
- 43 Kimball, David C. "Summary Tables on Voting Technology and Residual Vote Rates," University of Missouri-St. Louis. <http://www.ums.edu/~kimball/tables.pdf>. Last accessed Aug. 21, 2008.
- 44 *Ibid.*
- 45 "Provisional Voting" Election Reform Briefing. [Electionline.org](http://Electionline.org) and *The Constitution Project election reform initiative*, November 2001.
- 46 Sec. 302, Provisional Voting and Voting Information Requirements, The Help America Vote Act, PL. 107-252, 2002.
- 47 *Ibid.*
- 48 Interoperable files are files that use common data definitions and format, and thus can be much more easily accessed by end users. The National Academy of Sciences report, *State Voter Registration Databases: Immediate Actions and Future Improvements. Interim Report*, is available at [http://www.nap.edu/catalog.php?record\\_id=12173](http://www.nap.edu/catalog.php?record_id=12173)
- 49 Three reports were delivered to Congress. The Impact of the National Voter Registration Act on Federal Elections, 2005-2006 is available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/national-voter-registration-act-studies>. The 2005 Uniformed and Overseas Citizens Voting Act Survey is available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/national-voter-registration-act-studies>. The 2006 Election Administration and Voting Survey (EAVS) is available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-reports>. Data can also be downloaded from the website.



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ABOUT BLOG SEARCH REPORTS MAPS TABLES

Nationwide Data Table

All calls to the 866-OUR-VOTE hotline reported on the Our Vote Live system are organized here by state, county, and call type. Click on a state for a table of reports organized by counties within that state. Click by incident type to view the individual reports of that type.

Note that while Election Protection investigates many of the problems reported to the hotline, calls documented on this site have not been verified prior to posting.

Region	PP	RP	AP	QP	IP	LP	DP	SP	ID	WP	EP	OP	PI	RI	AI	CI	OI	PB
Total (uncategorized)	5739	7549	2012	1906	790	82	482	198	549	903	301	1916	34059	28874	4508	655	5723	805
Alaska	1	1	1							1								
Alabama	20	43	12	10	7					3	2	15	255	254	27	15	51	2
Arkansas	11	29	6	10	2					1		4	123	133	11	6	22	
Arizona	105	126	29	14	12		6	2	25	13	3	73	678	520	113	5	124	31
California	541	863	254	87	52	11	30	14	19	57	27	151	4894	4131	597	30	440	126
Colorado	103	142	97	10	6		7	6	17	12	3	70	774	423	175	7	131	23
Connecticut	13	33	3	8	7		4			5	1	4	216	196	28	4	34	1
District Of Columbia	16	51	21	2	2					3	2	3	140	149	40	6	42	5
Delaware	7	9			1	5					1	4	48	52	10	4	6	
Florida	327	435	202	89	40	2	31	9	36	42	15	127	2268	1808	405	74	462	32
Georgia	252	450	139	49	49	2	24	10	41	44	5	123	1110	1056	222	37	294	40
Iowa	2	12	6							1		4	18	34	4		8	1
Iowa	3	4	3	2								4	134	93	19	1	30	
Idaho	7	6	1			1	1	2		1		1	51	38	7	3	6	1
Illinois	149	156	26	41	20	1	11	4	18	22	4	43	943	697	65	16	128	14
Indiana	106	104	17	32	9		7	6	30	16	8	33	832	391	35	9	122	5
Kansas	8	21	5	2	1					1		1	65	72	10	2	16	1
Kentucky	37	18	6	9	8		5	2	7	7	1	16	272	176	13	7	37	1
Louisiana	76	152	16	17	10	1	8	2	6	12		24	980	540	49	16	60	7
Massachusetts	51	126	18	12	3	10	10	5	4	5	8	8	336	398	40	3	40	11
Maryland	78	199	28	31	13		15	6	9	16	7	28	586	730	124	25	142	20
Maine	2	1	2				2					1	13	20	5	1	4	
Michigan	213	144	60	74	31	1	22	8	18	23	5	52	2073	1357	226	30	268	12
Minnesota	33	40	10	12	10	3	8		10	7	3	16	560	370	63	22	125	
Missouri	182	173	42	47	31	1	33	7	28	26	7	46	916	754	115	16	185	8
Mississippi	15	46	13	13	11		2	3	2	6		10	159	142	23	8	21	
Montana	1	1		3	1					1		3	18	15	1		7	
North Carolina	113	148	45	19	19	1	23	5	11	19	4	53	789	594	76	29	138	14
North Dakota	1	2	1	1								1	7	6	2	1		
Nebraska	2	7										1	32	19	5	1	4	1
New Hampshire	7	7	1	6	3					9	1	5	16	28	3		6	1
New Jersey	175	335	86	56	15		7	4	4	19	4	34	1494	1768	137	15	119	27
New Mexico	27	38	44	7	3		6		4	7	1	22	230	173	72	13	53	10
Nevada	37	64	4	4	8			1	4	7	2	14	230	188	16	6	52	12
New York	705	1537	138	351	52	7	37	16	41	126	9	101	3556	4353	275	36	350	100
Ohio	329	257	115	104	27	2	13	13	44	64	23	114	1929	1132	210	27	227	89
Oklahoma	6	17	3	1					1	1		8	94	68	15	2	33	3
Oregon	1	4	12									9	41	59	16	1	27	1
Pennsylvania	409	411	117	177	97	7	47	21	36	70	59	151	1698	1385	238	15	329	30
Puerto Rico	1			1						1								2
Rhode Island	7	3	1	4			1				1	2	40	53	4	2	8	
South Carolina	91	107	26	25	11		11	2	14	12	4	24	329	267	63	11	104	6
South Dakota	3	1	1							1	1	1	10	6	1	2	1	1
Tennessee	31	95	16	9	10		3	1	4	10		17	238	306	25	20	49	2
Texas	140	278	67	38	29	5	5	19	11	24	4	64	1685	1275	137	29	232	17
Utah	5	11	2				2	1				2	63	45	11	1	13	1
Virginia	304	365	112	200	64	3	30	11	24	61	24	105	1149	984	250	53	297	25

Region	PP	RP	AP	QP	IP	LP	DP	SP	ID	WP	EP	OP	PI	RI	AI	CI	OI	PB
Vermont	1	5	1										0	11	1		2	
Washington	28	59	36	1	3		2	2	2	2		18	211	220	80	8	36	12
Wisconsin	35	31	0	6	8		4				3	16	607	351	66	9	78	1
West Virginia	10	6	1	6	3				1	1		3	29	22	2	1	11	
Wyoming	1	1			1								5	0	1		1	

The data on this page is current as of 8:39am ET.  
It will be refreshed within twenty minutes.



Ms. LOFGREN. I would like now to introduce our witnesses. We will make your full written statement part of this hearing record. And we ask that your testimony consume about 5 minutes so we will have an opportunity to ask questions at the conclusion. There is a little machine sitting there on the front. And there will be a green light. And when it turns yellow it means you have a minute left. And when it turns red, it means—this is always surprising to people, they have actually spoken for 5 minutes. And we won't cut you off mid-sentence, but we would ask you to try and wrap up at that point so that everybody can be heard.

I would like to introduce the Honorable Mary Herrera. Ms. Herrera currently serves as New Mexico's Secretary of State, where she has been the Chief Election Administrator since her election in 2006. Prior to that she served as Bernalillo County Clerk. She is active in many organizations, including serving as the president of the National Association of Latino Elected and Appointed Officials, as well as being a member of the EAC Standards Board.

We also have the Honorable Ron Thornburgh. He currently serves as Secretary of State of Kansas. He has held that position since 1994. He is the former president of the National Association of Secretaries of States and is an active member of the EAC Standards Board.

Ms. Freddie Oakley currently serves as the County Clerk Recorder for Yolo County in California. In 2005 she was Chair of the California Secretary of State's Task Force on Uniform Pollworker Standards.

And finally we have the Reverend Edward A. Hailes, Jr. Reverend Hailes currently serves as managing director and general counsel for Advancement Project, a policy and legal action group. Prior to his work with the Advancement Project Mr. Hailes was general counsel for the U.S. Commission on Civil Rights, and legal counsel for NAACP.

So welcome to all of you.

**STATEMENTS OF HON. MARY HERRERA, SECRETARY OF STATE, NEW MEXICO; HON. RON THORNBURGH, SECRETARY OF STATE, KANSAS; FREDDIE OAKLEY, YOLO COUNTY CLERK-RECORDER, CALIFORNIA; AND EDWARD A. HAILES, JR., MANAGING DIRECTOR AND GENERAL COUNSEL, ADVANCEMENT PROJECT**

Ms. LOFGREN. And we will begin with you Ms. Herrera.

**STATEMENT OF HON. MARY HERRERA**

Ms. HERRERA. Thank you, Madam Chairwoman Lofgren. It is a pleasure to be here this afternoon. I am honored to be here to speak to you on elections.

Prior to becoming county clerk, I worked elections for probably 25 years before that. I held positions as a voting machine technician, I was a pollworker, I worked on the absentee board, I have worked as a radio dispatcher, taking off for election day and fulfilling those duties. I have seen elections progress through all of these years of being involved in the election process.

I am very proud to announce that New Mexico did set standards for provisional ballots this last election and we did have a great

election. It was actually recorded as one of the best elections in a long time in history. It was the largest turnout ever. The standards did help within the 33 counties in the State of New Mexico. It was actually implemented after the Bush and Gore election in 2000. After enacting the provisional voting in the Help America Vote Act, Section 302, the Office of Secretary of State, we developed the uniform standards for many of the processes during that election. This included providing uniform standards for provisional voting.

Certain areas of the State were not uniformly canvassing the ballots issued for provisional voters, so we issued standards and rules for securing the secrecy of provisional paper ballots, especially during canvassing; reviewing, recounting, and protecting against fraud in the voting process.

Most of the clerks supported the uniform standards. The change gave them clear concise rules with respect to the processing and canvassing of provisional voting. The administrative rule specifies how the tally of the ballots should be accomplished and the system was definitely improved. Also—and I will be open for more questions. I also would like to request, I did bring a handout with all of the rules and the procedures and the laws of the State of New Mexico, and I ask that I can enter that.

Ms. LOFGREN. By unanimous consent, we will make that part of the record. Thank you for doing that.

[The information follows:]

**TITLE 1           GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 10       ELECTIONS AND ELECTED OFFICIALS**  
**PART 22           PROVISIONAL VOTING**

**1.10.22.1           ISSUING AGENCY:** Office of the Secretary of State, 325 Don Gaspar, Suite 300. Santa Fe, New Mexico, 87503.  
 [1.10.22.1 NMAC - Rp, 1.10.22.1 NMAC, 4-28-06]

**1.10.22.2           SCOPE:** This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).  
 [1.10.22.2 NMAC - Rp, 1.10.22.2 NMAC, 4-28-06]

**1.10.22.3           STATUTORY AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002; Chapter 270, Laws 2005. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process, create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting.  
 [1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4-28-06; A/E, 10-2-08]

**1.10.22.4           DURATION:** Permanent.  
 [1.10.22.4 NMAC - Rp, 1.10.22.4 NMAC, 4-28-06]

**1.10.22.5           EFFECTIVE DATE:** April 28, 2006 unless a later date is cited at the end of a section.  
 [1.10.22.5 NMAC - Rp, 1.10.22.5 NMAC, 4-28-06]

**1.10.22.6           OBJECTIVE:** The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process. Chapter 270, Laws 2005 amended the Election Code to require a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and to ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting.  
 [1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4-28-06; A/E, 10-2-08]

**1.10.22.7           DEFINITIONS:**

**A.           “Abbreviated address”** means a voter using initials to designate a city within New Mexico and includes, but is not limited to, “LC” for Las Cruces, “SF” for Santa Fe, or “ABQ” for Albuquerque.

**B.           “Abbreviated name”** means shortened given or surname including, but not limited to, ‘Pat’ for Patrick, Patricio, or Patricia, ‘Wm’ or ‘Bill’ for William, ‘Rick’ for Ricardo or Richard, ‘Mtz’ for Martinez.

**C.           “Absentee ballot”** means a method of voting by ballot, accomplished by a voter who is absent from the voter’s polling place on election day.

**D.           “Absentee ballot register”** means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant’s precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

**E.           “Absentee precinct board”** means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

**F.           “Absentee provisional ballot”** means the paper ballot card issued to an absent provisional voter.

- G.** “**Alternate location**” means a site outside the office of the county clerk, established by the county clerk, where a voter may cast a ballot seventeen (17) days prior to an election and includes mobile alternate voting locations.
- H.** “**Alternative voter**” means a voter, who, after the deadline for requesting an absentee ballot and due to unforeseen illness or disability, resulting in confinement to a hospital, sanatorium, nursing home or residence, is unable to vote at his precinct polling place.
- I.** “**Ballot**” means a paper ballot card that is used on an optical scan vote tabulating machine or hand tallied or the electronic image on a direct recording electronic voting system that presents a sequence of contests, ballot measures or both.
- J.** “**Challenger**” means a voter in that county to which he is appointed under the provisions of the Election Code.
- K.** “**Contest**” means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.
- L.** “**County canvassing board**” means the board of county commissioners in each county.
- M.** “**Designated polling place**” means the voting location assigned to a voter based on that voter’s residence within a precinct of the county.
- N.** “**Direct recording electronic (DRE) voting system**” means a voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records by in internal and external memory components. It produces a tabulation of the voting data stored in a removable memory component or in printed copy.
- O.** “**Early voter**” means a voter who votes in person before election day and not by mail.
- P.** “**Election**” means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.
- Q.** “**Electronic vote tabulating (EVT) marksense voting system**” or “**optical scan vote tabulating system**” means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.
- R.** “**Emergency paper ballot**” means the paper ballot card used in a polling place on election day when a voting system is disabled, cannot be repaired in a reasonable length of time and when no other voting system is available to the voter.
- S.** “**Federal ballot**” means a paper ballot card that contains only federal candidates or questions.
- T.** “**High speed central count marksense ballot tabulator**” means a self-contained optical scan ballot tabulator that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.
- U.** “**Marksense or optical scan ballot**” means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.
- V.** “**In-lieu of absentee ballot**” means a paper ballot card provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.
- W.** “**Naked ballot**” means an absentee ballot, provisional ballot, alternative ballot, replacement absentee ballot or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.
- X.** “**Observer**” means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.
- Y.** “**Overvoted ballot**” means a paper ballot card on which the voter has selected more than the number of alternatives allowed in a contest or on a question.
- Z.** “**Precinct board**” means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.
- AA.** “**Presidential ballot**” means a paper ballot card containing only names of candidates for United States president.
- BB.** “**Provisional absentee voter**” means a voter who votes on a provisional absentee ballot



after initially attempting to vote by absentee ballot but whose name does not appear on the roster or has failed to meet the voter identification requirements, pursuant to the provisions of the Election Code.

**CC.** “**Provisional ballot**” means a marksense or optical scan paper ballot card that is marked by a provisional voter.

**DD.** “**Provisional ballot tally sheet**” means a document prepared and used by the county clerk for the counting of votes cast by qualified provisional voters for candidates and questions.

**EE.** “**Provisional ballot transmission envelope**” means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

**FF.** “**Provisional voter**” means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

**GG.** “**Replacement absentee ballot**” means a paper ballot card issued by the county clerk prior to 5:00 p.m. on the Monday immediately preceding the date of the election to a voter who has applied for but not received an absentee ballot.

**HH.** “**Signature roster**” means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

**II.** “**Tally sheet**” means a document prepared by the county clerk and used for the counting of provisional ballots, hand tallied absentee ballots, in-lieu of absentee ballots and emergency paper ballots.

**JJ.** “**Verification process**” means the reviewing process used by a county clerk to determine the eligibility of a provisional or in-lieu of absentee voter.

**KK.** “**Voter**” means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

**LL.** “**Voting response area**” means the place on a paper ballot card where the voter is instructed to mark his preference for a candidate or question.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4-28-06; A/E, 10-2-08]

#### **1.10.22.8 PRECINCT BOARD PROCEDURES:**

**A.** A voter whose name does not appear on the roster or is required to present identification at the polling place and fails to do so shall be entitled to cast a vote on a provisional ballot. The precinct board shall instruct the voter that the required identification must be taken to the office of the county clerk before the county canvass begins for the vote to be qualified. The precinct judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. The precinct board shall ensure that each provisional voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

**B.** Each polling place shall post the phone numbers of the county clerk and the secretary of state and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct in that polling place. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter who is required to provide identification pursuant to the Election Code. The precinct board shall also ensure that the provisional voter, absentee provisional ballot or in-lieu of absentee voter shall fill out all required information on the provisional ballot affidavit or in-lieu of absentee ballot affidavit and place the ballot in the inner secrecy envelope and outer envelope prescribed by the secretary of state. The precinct board shall ensure that the name of a provisional voter, absentee provisional ballot or in-lieu of absentee ballot voter is entered in the roster on the line immediately following the last entered voter’s name, pursuant to the Election Code.

**C.** The precinct board shall ensure that each provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

**D.** The precinct board shall ensure that each provisional ballot, absentee provisional ballot or in-lieu of absentee ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the voter’s oath or affirmation.

**E.** The precinct board shall ensure emergency paper ballots shall be handled and tallied

pursuant to the provisions of the Election Code.

**F.** The precinct board shall ensure provisional voters are not subject to challenge at the time of voting under the procedures provided in the Election Code.

**G.** The precinct board shall ensure the voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

**H.** The precinct board shall ensure a provisional ballot, absentee provisional ballot, or in-lieu of absentee ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk's office. Provisional ballots shall be deposited in a special sealed provisional ballot transmission envelope or pouch designated by the county clerk for that purpose. The precinct board shall not open any absentee ballots delivered to the precinct but shall deliver the unopened official mailing envelopes to the absentee precinct boards.

**I.** Absentee precinct boards are governed by 1.10.12.1 NMAC. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and 1.10.22 NMAC. Identification documents submitted with provisional absentee ballots shall be attached to the voter's certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

[1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, 4-28-06]

**1.10.22.9 COUNTY CLERK PROCEDURES:**

**A.** The provisional ballot outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

**B.** The county clerk has the authority to determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter's address on the affidavit does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit.

**C.** The county clerk shall determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter has used an abbreviated name, address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit.

**D.** The county clerk shall determine the qualification of a provisional ballot but shall not disqualify any provisional ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the outer envelope of the paper ballot or affidavit.

**E.** A provisional ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**F.** A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or (f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**G.** A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process

and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's personal information: date of birth, party affiliation, and social security number.

**H.** The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked "counted provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1972.

**I.** The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct. Provisional ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address and correct precinct number of each provisional voter, in-lieu of absentee ballot voter or provisional absentee ballot voter. The report shall be transmitted to the secretary of state within 10 days of the election. Pursuant to the Help America Vote Act, information about access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order.

**J. Counting procedures for provisional ballots.** The county clerk shall count the qualified provisional ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional ballot. The team shall consist of one reader and one marker, not of the same political party whenever feasible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read the ballot; the marker shall then mark the tally sheet of the precinct where the vote was cast, and the reader shall observe whether the marker correctly marked the tally sheet.

**K. Votes to be counted.** When counting provisional ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no

case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

**L.** The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

**M.** The county clerk may designate emergency paper ballots for use as provisional ballots.

**N.** The county clerk shall notify by certified mail each voter whose provisional ballots was not counted of the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

**O.** The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

- (1) the county clerk shall select a hearing officer(s) from staff or a person from the community who is not affiliated with any candidate on the ballot and knowledgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;
- (2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;
- (3) the voter may appear with counsel;
- (4) the appeal hearing shall be an open meeting, but the voter's personal information:
  - (a) date of birth;
  - (b) party affiliation, and
  - (c) social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;
- (5) county clerk staff and the public may make brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;
- (6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter decision to the voter;
- (7) there is no statutory right of appeal;
- (8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;
- (9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional ballot as found above; and
- (10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06; A/E, 10-2-08; A/E, 11-3-08]

**1.10.22.10 SECRETARY OF STATE PROCEDURES:**

**A.** Provisional voters wishing to determine the disposition of their ballot may call the office of the secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional ballots. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

**B.** The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - Rp, 1.10.22.10 NMAC, 4-28-06]

**1.10.22.11 [RESERVED]**

[1.10.22.11 NMAC - N, 4-28-06; A/E, 10-2-08]

**1.10.22.12 [RESERVED]**

[1.10.22.12 NMAC - N, 4-28-06; A/E, 10-2-08]

**1.10.22.13** [RESERVED]  
[1.10.22.13 NMAC - N, 4-28-06; A/E, 10-2-08]

HISTORY OF 1.10.22 NMAC:

History of Repealed Material:

1.10.22 NMAC Provisional Voting Security (filed 8-1-03) - Repealed effective 4-28-06

INSTRUCTIONS 2008-11

DATE: August 22, 2008  
TO: County Clerks  
FROM: Mary Herrera  
Secretary of State  
RE: Provisional Voting

Pursuant to 1-12-8 NMSA 1978, Laws of the State of New Mexico

A "a person shall be permitted to vote on a provisional ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:

- (1) the person's residence is *within the boundaries* of the county in which the person offers to vote;
- (2) the person's name is not on the list of persons submitted absentee ballots; and
- (3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional ballot if the voter:

- (1) has not previously voted in a general election in New Mexico or has been purged from the voter list;
- (2) registered to vote by mail;
- (3) did not submit the physical form of the required voter identification with the certificate of registration form; and
- (4) does not present to the election judge a physical form of the required voter identification

C. A voter shall vote on a provisional in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

D. An election judge shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional ballot in secrecy and when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the precinct officer. The election judge shall ensure that the required identification is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

**THE VOTER SHALL NOT PLACE THE VOTED PROVISIONAL  
BALLOT IN THE VOTING MACHINE.**

INSTRUCTIONS 2008-13

DATE: August 22, 2008

TO: County Clerks

FROM: Mary Herrera  
Secretary of State

RE: TRAINING OF PRESIDING JUDGES

During the 2008 Special Session, the Legislators approved a special appropriation to train all Presiding Judges throughout the State for the 2008 General Election. The training will consist of a special training during the month of September with the assistance of the Secretary of State's Office.

Opening of the Polls, Closing of the Polls, Provisional Ballots, and Identification Requirements shall be the subjects of this special training. The Poll Worker Video shall be required to be shown by the County Clerk's during this special training.

The training session will be scheduled by the County Clerk's or their designee. Location and time will be scheduled by the County Clerk's and the Secretary of State will have a representative present at the special training session.

The County Clerk will charge the state for the notification of the training to all Presiding Judges and other expenses for this training. The Secretary of State will approve the cost prior to the training session.

This will assure that all Presiding Judges are trained uniformly throughout the State of New Mexico.

Ms. HERRERA. Thank you. Thank you very much.

Pollworker training. This year I was instrumental, with the help of the Governor of the State of New Mexico, to receive some extra funding. We helped pollworker training for all the pollworkers. The manuals were produced at the Secretary of State level and issued to all 33 county clerks. And we did go out and do an extra pollworker training with the funding that we received through the Governor's help.

What we did was, there wasn't enough funding to train all pollworkers, but we did train the presiding judges and we went into the issues that were causing some of the confusion and delays: opening and closing of the polls; what is a provisional ballot? That is where I believe it ran a lot more smoother, because the pollworkers were more aware of what a provisional ballot is; when do I issue a provisional ballot; why do I issue a provisional ballot.

There was a lot of confusion when provisional ballots first came into law, and that really helped this last election. The number actually went down on provisional ballots that were issued out at the early voting sites, absentee and election day. I really was glad that extra training was available.

I want to speak about funding at this point. I am going to make it very clear there are so many issues in areas that we can improve in the election process, but the funding isn't always there. I have to commend all of the county clerks in the State of New Mexico. They do a great, great job with a limited amount of funding. It is just not there. They work hard and they do a great job; but the funding, we have to keep that in mind.

There are a lot of demands. Basically every single county clerk and Secretary of State, we want to do a good job. We do not want to disenfranchise the voters. That is why we take these positions. We want to be the best for the citizens. But funding, I just needed to throw that in because that is always a factor.

When we attend the National Association of Secretaries of States, that seems to be everyone's issue throughout every State.

Military and overseas voting. During the 2008 election New Mexico partnered up with the Federal Voting Assistance Program. We set up a link on our Web site that gave voters information through FVAP. Partnering with them, we implemented the voter registration ballot delivery tool, providing military and overseas voters an easier way to register to vote, and request and receive absentee ballots without sacrificing the secrecy of the voter's identity.

The tool, Web-based application, it simplified the process for the uniformed service members and their families, as well as the United States residents residing overseas, and completed the voter registration and absentee ballot request form. We issued guides to citizens through completion according to New Mexico-specific requirements. We provided the opportunity to further assist the citizens by allowing local election officials to send a blank ballot for those citizens to transmit their completed form to a local election office via a secure server.

I really commend the Voting Assistance Program for having that tool available to all of the States, and I believe we had more voters vote through that system. It was just a real, real great success.



Back to provisional ballots, because that is the one I am very, very proud about. When I was county clerk for the largest county in the State of New Mexico, two-thirds of the votes of the State of New Mexico, that was the first year we had provisional ballots, and there were no rules. We didn't really understand them. It was quick. It was right after the HAVA requirements. And we were trying to process them.

In my county alone, we had close to 9,000 provisional ballots. Probably by the time we ended up qualifying them and counting them, there were probably about 4,600 that were valid ballots. That was great that they were available. But we did experience that. That is why it was important for our State to issue standards on counting and canvassing.

Also, I can recall as county clerk, they would argue because we had a very close high-profile race in the State of New Mexico. Every party, both parties, all parties, were fighting for one particular ballot. It was taking hours and hours because there was no Voter intent. This year also in the State of New Mexico, we have a ballot intent, examples that we issued out to the boards as they count these votes. That cut down all of the confusion and argument about what constitutes a vote.

That was what we passed, and they no longer could stand there and argue for hours and hours. We have ten days to canvas, so that was a very important factor for the State of New Mexico that we process and get these results, especially these high-profile races, the press and the public, and the public are angry with the election officials because they do not understand that we have all of these requirements and laws that we have to abide to. That really, really helped.

Ms. LOFGREN. Thank you so much.

Ms. HERRERA. Thank you.

[The information follows:]

**[COMMITTEE INSERT]**

Ms. LOFGREN. Mr. Thornburgh, we would love to hear from you.

**STATEMENT OF HON. RON THORNBURGH**

Mr. THORNBURGH. Thank you so much, Madam Chairwoman. My name is Ron Thornburgh, Secretary of State for the State of Kansas, and it is an honor to appear before the committee once again.

The last time I had the opportunity to appear before the committee was in 2001, 2002, as we were developing the Help America Vote Act. And as you recall during that time, many questions were raised in our country as to the technical prowess of our system and whether the system worked or not. And I appear before you today and say that I believe that HAVA and the work that was created in HAVA is some of the most significant election law in a number of generations in the United States because of the framework.

And I want to talk about that broader issue of the framework today, if I might, Madam Chairwoman. HAVA did a number of things.

Number one, it guaranteed every American the right to an independent and secret ballot for the first time in our history, and I think that is extraordinary.

Secondly, it infused technology into a system that was vastly too reliant upon Big Chief tablet and number 2 pencils, and we were able to infuse that technology. But most importantly, I think HAVA developed and maintained an appropriate role in Federal and State relationships. And that was really what drove so much of the response of what we were trying to do.

The point of emphasis during that discussion—and I hope will continue with the committee—remain today. And that is that equal protection and opportunity for every voter; that any uniform standard must be driven to the outcome and not to the process, so that we can maintain State and local innovation and ability; that the system must be designed not for election administrators, not for political parties, not even for candidates, the system must be designed to protect the voter and provide those opportunities for the voter. And lastly, we must do everything we can to maintain a clean and accurate voter registration list.

If we look back to HAVA and what I choose to use as a model, the most effective elements of HAVA respected the roles of the Federal, State and local partners.

Using my State of Kansas as an example, we used the HAVA resources to create the required statewide voter registration database, as I believe every other State has done as well. We have been able to take that voter registration database, and now, through memorandums of understanding with other States, we created partnerships with 11 other States, that we can now share databases with our other States to find places where perhaps a person moved from one State to another. And we can keep our lists cleaner. That was not something that was designed through the Federal legislation, but through innovation we have been able to do that.

We have been able to create online voter registration, again, not required by HAVA, but it is certainly an outcome that I think everyone would want to see.

E-motor voter. When a person registers to vote at the Division of Motor Vehicles, there is an electronic transaction that automatically updates their voter registration information as well as their driver's license information.

All of these elements came about because we had the flexibility and the freedom to try to move forward in an aggressive way. I believe that we have that opportunity today. In the one case—and certainly no disrespect to my friends at the EAC or at NIST—but in the one case where the Federal Government maintained all control was in voting machine certification. And it was removed from almost a voluntary process through the National Association of State Election Directors to our Federal partners. And in that case it took 7 years.

Now, certainly there were extraordinary difficulties to overcome, and I understand what a mess it was. But in the one case where we had Federal oversight, for lack of a better term, the system just simply did not work as well as when the States and localities were given the reins to try to move forward as aggressively as we could.

I would ask that as you consider legislation, that we allow all entities to play to their strengths. In my personal opinion, I think that our Federal partners certainly have an obligation toward a broad framework, incentives. And I wouldn't be from a State if I

didn't ask for funding while I was here as well. I fully understand my role in that. But that Federal funding has meant that we have had the opportunity to do things we simply did not have the chance to do before.

The work that we have accomplished in the Kansas Secretary of State's Office could not have been done without the Help America Vote Act. However, the work we have done in the State of Kansas also could not have been done with a Help America Vote Act that was driven through Federal standards rather than State opportunity.

I appreciate the chance to appear before you today and I look forward to answering your questions.

Ms. LOFGREN. Thank you very much.

[The statement of Mr. Thornburgh follows:]

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Secretary of State



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STATE OF KANSAS

Testimony to the Subcommittee on Elections  
Committee on House Administration

Examining Uniformity in Election Standards

Submitted July 15, 2009

Thank you Ms. Chairwoman and members of the subcommittee for the opportunity to appear today. My name is Ron Thornburgh, and I am the Secretary of State for the State of Kansas. As Chief State Election Official for my state, it is an honor to appear before you to discuss this important topic related to one of my most significant duties—that of conducting elections.

I had the honor of testifying before the full Committee on House Administration on April 20, 2001. At that time I had just become President-elect of the National Association of Secretaries of State, the presidential election of 2000 had only recently concluded, and the Congress was considering election reform, which ultimately was passed in the form of the Help America Vote Act of 2002. The Congress rightly consulted election officials in drafting HAVA, and in my view the result is better for it. As president of the National Association of Secretaries of State, I had the privilege of working closely with members of Congress and their staffs, through many trips to Washington, DC, to offer input on the final language of the law.

Looking back at the testimony I gave that day in 2001, I think it is important to note that the major points in my message are still true today. The key points were: (1) We must all work together to ensure equal protection and equal opportunity for every individual to participate in elections. (2) Any uniform standards must be voluntary, limited to the desired outcomes, and must not impose the same process on every jurisdiction. (3) The electoral system must be designed for the voter, not the candidates, the parties, or the government that administers it. (4) The foundation of an effective electoral system is a clean and accurate voter registration list.

Of the many laudable results of HAVA, the most effective have been achieved when the federal government's role was limited to establishing broad objectives and providing resources to attain them. In HAVA, Congress established the outcome for every state to have a centralized voter registration database and provided funding for them. But besides using the registration database to administer elections, a number of states, including Kansas, have used this new tool for innovative purposes. I offer two examples:

- We recently implemented an electronic motor-voter program and an online voter registration program in coordination with our state Division of Motor Vehicles. These programs would not have been possible without the centralized voter registration system acquired through HAVA and the federal funding. The programs provide greatly enhanced

service to our voters and election administrators and are responsive to the public's increasing demand for the ability to conduct their business with their government electronically. Previously, most of our problems with provisional ballots on election day were due to paper registrations not being transferred from Motor Vehicle offices timely and efficiently. Our new system greatly reduces this, and that is but one of many benefits.

- Another successful program that has resulted from our centralized databases is interstate crosschecking of voter registration records. We have signed multi-state memorandums of understanding and established procedures for comparing data to identify duplicate registrations resulting from cross-state moves by voters. Through these comparisons we might also find a few cases of double voting by some individuals, but the good news is that these cases are isolated and rare, and this adds to our confidence in the integrity of our electoral system.

Kansas is currently involved with eleven states in the database crosscheck efforts: Arizona, Arkansas, Colorado, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma and South Dakota. This is state-to-state cooperation at its best. We are using tools provided by the federal government to improve the accuracy of our voter registration databases and the overall efficiency of our electoral processes. The Congress provided the tools and the funding but allowed the states to figure out the best way to design their systems. Without the tools and funding, these programs could never have happened. But in contrast, with a restrictive and micromanaged HAVA, they also could not have happened.

In contrast to these successes, however, there was at least one aspect of HAVA that has not worked out as well thus far. HAVA assigned to two federal agencies, the Election Assistance Commission and the National Institute of Standards and Technology, the task of accrediting voting equipment testing laboratories and overseeing the process of certifying voting systems for use in our states and localities. That process has proved to be slow, cumbersome and expensive, and it has only recently produced its first results. HAVA was signed into law on October 29, 2002, but the voting system certification process did not produce its first certification until the spring of 2009. States have been unable to purchase new equipment, vendors have been unable to develop and market it, and as a result, the costs to local election administrators are rising. In this most notable instance, HAVA provided for complete federal control, and the result was failure.

As the Congress considers new legislation to reform elections, I hope we can keep in mind the system that works. We must let all the entities involved in the process play to their strengths. The federal government should provide the incentives, the broad framework and the funding. The states should provide the ingenuity to design the best system. The localities should provide the street-level expertise to administer the details, and the private sector should provide the innovations to keep us moving forward.

We in the states and localities understand the impulse in Congress to increase uniformity and standardization. It is appropriate for Congress to set the outcomes, but not to design the process. The outcome should be fair, safe and secure elections. The process should be designed by the states and localities to achieve the uniform outcomes. What works for Los Angeles, California will not work for Leoti, Kansas.

My message today is the same as it was in 2001: we do our best work when we have broad objectives and the resources to implement them. The greatest achievements from HAVA occurred because states were given the resources and handed the reins to move forward. A completely uniform, federal system will stifle innovation and bind us to the strictures of federal regulation.

Ms. LOFGREN. And now we will hear from Ms. Oakley.

**STATEMENT OF FREDDIE OAKLEY**

Ms. OAKLEY. Thank you, Madam Chair and members. I am Freddie Oakley, the elected clerk recorder for Yolo County, California. Yolo County is a medium-sized county. We are right across the river from the State capitol, and we are the home of University of California/Davis, which has been a tremendous resource for me as county clerk.

Thank you for the opportunity to testify today on behalf of the pollworker training standards. It is a subject on which I have some expertise, having chaired the Secretary of State's 2005 task force and having personally trained thousands of pollworkers during my career.

The first issue that I would like to address is the foundational one to all others concerning pollworkers, and that is who are they. Well, the answer is that they are a broad spectrum of Americans. And they run the gamut from highly compassionate and helpful to mean and bossy people.

Pollworker training is absolutely necessary, in my view, to establish boundaries and limits on their discretionary authority. In California we emphasize in our best practices that pollworkers must be oriented to this underlying and overarching philosophy.

Ms. LOFGREN. Ms. Oakley, can you see if your microphone is on?

Ms. OAKLEY. Silly me.

Ms. LOFGREN. Thank you so much.

Ms. OAKLEY. In California we emphasize in our best practices that pollworkers must be oriented to the underlying and overarching philosophy of election administration, which is first and foremost. We are here to help people vote and to protect their ballots.

Second, we will help every potential voter who enters our polling place regardless of physical and mental abilities, race, religion, language or shoe size. In short, we have to get pollworkers to believe that they are not cops, they are more like nurses. And their first thought should be, how can I help you? This is, incidentally, one reason that California has developed a system to verify voter identity in the office rather than at the polls. We want absolutely to have uniform application of voter ID laws. And we believe that if it is left to pollworkers, who are essentially volunteers who are trained for an hour or two and who work a couple of times a year, we will not get that uniform application.

The question arises: What should we be teaching pollworkers? Well, first we need to orient them to the rights of voters, the requirement to be helpful and the requirement to respect and assist voters with disabilities, different languages and different cultures.

We should also orient pollworkers to their election day duties and how to carry them out. And we must orient them to the requirements for polling place setup, poll opening as well as poll closing, ballot security, accounting tasks, and how to deliver securely the ballots. This is far too much for one class.

So what we really need to do is to strongly instruct pollworkers on the limits of their authority and the requirement to be helpful, and then to teach them about the many resources that we provide

for them on election day. We try to do all the work up front for them so that they have laminated cheat sheets, they have check-off lists, they have booklets to follow as they open and close the polls. And the effect of this is that we can concentrate in training on the more complex intellectual matters, and we can leave the nuts and bolts to our extremely well-designed resource materials.

In California we recommend, and in my county we require, at least 1 hour of hands-on practice on the voting system itself. Most voting systems now depend on complex and finely tuned computer systems and there is no adequate substitute for hands-on experience.

This hands-on training during which pollworkers practice setting up, using, and taking down the voting system, also provides a critical opportunity for my staff, or our staffs, to meet returning and, more importantly, new pollworkers. We get to assess their strengths and weaknesses and to reinforce our underlying and overarching philosophy of helpfulness. And during training, hands-on training, we are also able to remind pollworkers that they are not cops; that they should use provisional ballots, which are their personal get-out-of-jail-free cards—if they will use provisionals we will make the tough decisions for them—and to remind them to call troubleshooters when they need them.

The question arises: Should pollworker training be standardized? Well, I believe it should. In California our absolutely wonderful Secretary of State, Debra Bowen, is well on the way to instituting most of the uniform standards recommended by the 2005 task force. We would hope that she also institutes adequate funding for counties to comply with those requirements.

Our expectation is that the application of these uniform requirements and standards will help us approach real equal opportunity for voters, which they deserve and have a right to demand. My personal belief is that national standards would extend the principle of equality even more broadly and I believe that is a good thing. Thank you.

Ms. LOFGREN. Thank you very much.

[The statement of Ms. Oakley follows:]





Task Force on Uniform Poll Worker Training Standards

**Final Report**  
2005

**Chair, Freddie Oakley**  
Yolo County Clerk/Recorder

presented to the  
Secretary of State &  
California State Legislature

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## I. Executive Summary

Until the enactment of the federal Help America Vote Act of 2002 (HAVA) (HR 3295, P.L. 107-252), poll worker recruitment and training has been primarily a responsibility of the counties in California. Title 12 of the California Elections Code designates counties to appoint and instruct members of precinct boards "concerning their duties in connection with the conduct of the election."

The enactment of HAVA brought the state into the arena of poll worker training. Section 254(a) of HAVA requires that each state prepare a HAVA state plan detailing what it will do to implement the new federal mandates, including a description of how each state will use HAVA Title II funds to educate elections officials and poll workers.

Pursuant to this, the state adopted its plan, "*My Vote Counts: The California Plan for Voting in the 21st Century*" which explains how it intends to provide assistance to counties with regard to training poll workers. This plan states that the Secretary of State will:

- ensure that any training provided to poll workers covers at least the following topics:
  - The proper operation and maintenance of voting systems and technology;
  - The rights of voters to cast provisional ballots, the proper processing and counting of those ballots, and how provisional voters can determine whether their votes were counted and, if not, why not;
  - The non-discriminatory application of HAVA's identification requirements for certain voters who register by mail;
  - Identifying and assisting voters with disabilities, including psychiatric disabilities, in order that such voters can participate fully in the voting process independently and privately;
  - The rights of minority language voters in jurisdictions covered under Section 203 of the Voting Rights Act of 1965 to receive language assistance at the polling place" ("*My Vote Counts: The California Plan for Voting in the 21st Century*", page 20).

Concurrently, the Secretary of State sponsored Senate Bill 610 (Escutia), legislation to establish this Task Force and require adoption of uniform poll worker training standards, based on the Task Force's recommendations.

This Task Force met four times and developed recommendations in 11 categories: (1) Voting Rights; (2) Election Challenge Procedures; (3) The Operation of a Jurisdiction's Voting System; (4) Preventing, Detecting and Addressing Problems with Voting Systems; (5) Poll Hours; (6) Relevant Election Laws; (7) Cultural Competency; (8) Voters with Disabilities; (9) Procedures involved with First-Time Voters, Provisional Voting, Absentee Voting, etc.; (10) Authority of Poll Workers and Appropriate Limits of that Authority; and (11) Further Recommendations.

The Task Force made numerous recommendations within each of these areas, among the most important of which include:

- Poll worker training must include detailed information to ensure that the rights of every voter are protected.
- Poll workers must be educated both on the authority of their role as a poll worker, and the appropriate limits of that authority in order to ensure no voter's rights are infringed.
- Training must include instruction on the state election laws that poll workers must follow on Election Day including poll worker duties, issuing and receiving ballots, opening and closing procedures, how and when to issue provisional ballots, and what constitutes intimidation of voters and corruption of the election process.
- Poll workers must be instructed on the standard operating procedures for their jurisdiction's voting system including set-up, operation, and dismantling the system. They must also be informed how to troubleshoot common problems and how and when to request assistance for other problems.

- Each prospective poll worker must receive up to one hour of hands-on training with the voting system they will use on Election Day. If a system has more than one piece of equipment, poll workers must have hands-on training on each piece of equipment.
- Instruction must be provided to poll workers on how to be respectful and sensitive to the needs of voters with a disability, speak a language other than English, or are from a background different than the poll worker.
- The Secretary of State, in conjunction with a public university, should establish a statewide center to develop interactive training materials and programs for poll workers and elections officials, and to provide guidance to counties on improving how elections are conducted.

In addition to its recommendations, the Task Force also provided a series of best practices on recruiting poll workers and best practices on useful methods and materials for poll worker training.

The Task Force believes these recommendations and accompanying best practices provide useful guidance for counties in successfully training poll workers to facilitate elections across California.

## II. Introduction

The Secretary of State's Task Force on Uniform Poll Worker Training Standards was created pursuant to Senate Bill 610 (Escutia), Chapter 530, Statutes of 2003. This bill, which amended aspects of Title 12 of the California Elections Code, was sponsored by Secretary of State Kevin Shelley.

This law requires the Task Force to study the issues and offer recommendations for "uniform guidelines for the training" of poll workers. The primary focus of the Task Force was to create a set of uniform standards to ensure that California's poll workers are properly trained in administering voting, handling emergencies, and properly using their county's election equipment. The Task Force recommendations are also designed to provide instruction to poll workers in serving voters with a disability or who do not speak English as their primary language.

Until the enactment of the federal Help America Vote Act of 2002 (HAVA) (HR 3295, P.L. 107-252), poll worker recruitment and training has been primarily a responsibility of the counties in California. Title 12 of the California Elections Code designates counties to appoint and instruct members of precinct boards "concerning their duties in connection with the conduct of the election."

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"ensure that any training provided to poll workers covers at least the following topics:

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Concurrently, the Secretary of State sponsored Senate Bill 610, legislation to establish this Task Force and require adoption of uniform poll worker training standards, based on the Task Force's recommendations.

Like HAVA, SB 610 was introduced in response to concerns about poll worker training following the events in Florida surrounding the controversial 2000 election and the increasing complexity of polling place operations due to changing voting technology. According to the legislation, "While California has made significant progress in the last decade in reforming the statutes and procedures that govern the administration of elections, and has moved forward to provide voters with more modern voting equipment, the possibility for disruption of elections, by accident or design, requires the state to ...provide for procedures to promote the uniform and accurate administration of elections."

But even with the enactment of SB 610, it has become increasingly clear that poll worker training is inconsistent, and in some instances, inadequate, to ensure smooth elections. During the March 2, 2004 primary election in California, some counties encountered problems that, according to a report prepared by the Office of the Secretary of State following that election, resulted from a combination of the complex technology and uneven poll worker training.

Among its conclusions, the report recommended the adoption of "statewide poll worker training standards that require minimum time for each trainee on the systems they will operate on Election Day."

Counties in California choose which voting system to use from among systems certified by the Secretary of State. **Consequently, training on operating voting equipment differs based on the particular voting system used by each county.** However, practically everything else about the election process is the same statewide. So the training poll workers receive about those processes can and should be uniform.

In the November 2, 2004 General Election, California recruited, trained, and assigned 80-100,000 poll workers to administer voting in 23,931 precincts across the 58 California counties, 27 of which have multiple language requirements. This was an enormous undertaking, but especially so considering that all of these individuals served their communities with limited training and increasingly complex technology, legal requirements, and voter diversity. Therefore, there are many areas where uniform training would be useful.

Under the new law, the Task Force is required to recommend uniform standards that address, at a minimum, the following:

- 1) The rights of voters, including language access rights for linguistic minorities, the disabled, and other protected classes as defined in the federal Voting Rights Act.
- 2) Election challenge procedures such as challenging precinct administrator misconduct, fraud, bribery, or discriminatory voting procedures.
- 3) Operation of a jurisdiction's voting system, including modernized voting systems, touch-screen voting, and proper tabulation procedures.
- 4) Poll hours.
- 5) Relevant election laws and any other subjects that will assist an inspector in carrying out his or her duties.
- 6) Cultural competency, including having adequate knowledge of diverse cultures and languages that may be encountered by a poll worker during the course of an election, and the appropriate skills to work with the electorate.
- 7) Knowledge regarding issues confronting voters who have disabilities including, but not limited to, access barriers and need for reasonable accommodations.
- 8) Procedures involved with provisional, fail-safe provisional, absentee, and provisional absentee voting. (Cal. Elections Code §12309.5)

However, the Task Force has determined that there are other areas where minimum standards would also be warranted such as methods for preventing, detecting and addressing problems with voting systems, and a discussion on the authority of poll workers. This last item was included because some poll workers are not always trained to understand the scope and limits of their authority in the election process. Additionally, the Task Force members felt it was necessary to illustrate some of the recommendations with a variety of best practices, so that jurisdictions could learn from each other.

By statute, the Task Force must consist of at least twelve individuals including the chief elections officer of California's two largest counties, the two smallest counties, and two other county elections officers selected by the Secretary of State. The remaining members were required to be individuals with elections expertise and must include members of community-based organizations that are "familiar with different ethnic, cultural, and disabled populations."

The work of the Task Force will help California's 58 counties improve the training and understanding of Election Day procedures, voters' rights, and understanding the needs of citizens who might be different than them. This document contains the Task Force's recommendations for making poll worker training standards uniform across all counties in the State of California.

### III. Overview of the Task Force

The Secretary of State's Task Force on Uniform Poll Worker Training Standards was a diverse, 14-member body appointed by Secretary of State Kevin Shelley, pursuant to California Elections Code Section 12309.5.

The Task Force held four public meetings in Sacramento and Los Angeles between August 25 and October 13, 2004. The hearings were publicized in advance by postings on the Secretary of State's Web site and through various press releases. The meetings were audio-recorded and documented by minutes, which are also posted on the Secretary of State's Web site. The meetings were held in compliance with the federal Americans with Disabilities Act and the state's Bagley-Keene Open Meetings Act.

On November 19, 2004, the Preliminary Recommendations of the Secretary of State's Task Force on Uniform Poll Worker Training Standards were made available for public inspection at the Secretary of State's office in Sacramento and a notice was published to that effect on the Secretary of State's Web site. A news release was issued announcing that the Preliminary Recommendations were available for public inspection and comment until December 17, 2004. Copies were posted in English and Spanish on the Secretary of State's official Web site ([www.ss.ca.gov](http://www.ss.ca.gov)).

Copies of the Preliminary Recommendations were sent to interested persons and organizations. Comments regarding the Preliminary Recommendations were received by mail, hand delivery, fax, and e-mail. All comments were considered. Revisions of the Preliminary Recommendations were made in response to the comments. What follows are the final recommendations of the Task Force to the Secretary and the Legislature. Then, pursuant to the law, the Secretary must consider the recommendations in establishing statewide uniform training standards by June 30, 2005.

#### IV. Members of the Task Force

##### Secretary of State's Task Force on Uniform Poll Worker Training Standards

Freddie Oakley – Task Force Chair  
Yolo County Clerk-Recorder  
Woodland, CA

Ernest “Chuck” Ayala  
Federal Liaison, AARP  
San Francisco, CA

Kathay Feng  
APALC  
Los Angeles, CA

Maria de la Luz Garcia  
Director of Voter Engagement  
NALEO Educational Fund  
Los Angeles, CA

Bonnie Hamlin  
League of Women Voters  
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Luana Horstkotte  
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Protection and Advocacy, Inc.  
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Barbara Jones  
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Conny McCormack  
Los Angeles County Registrar-Recorder/County  
Clerk  
Norwalk, CA  
*Designee: Deborah Martin, Assistant  
Registrar-Recorder*

Elliott Petty  
National Project Director  
Neighbor to Neighbor Youth & Voter Empowerment  
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Los Angeles, CA

Steve Rodermund  
Orange County Registrar of Voters  
Santa Ana, CA  
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Chief Deputy Registrar of Voters*

Phil Ting  
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Dr. Geraldine R. Washington  
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Los Angeles, CA

Stephen Weir  
Contra Costa County Clerk  
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Staff to the Task Force:  
Marc Carrel, Assistant Secretary of State, Policy &  
Planning, California Secretary of State's Office  
Rachel Zenner, Voter Education Community  
Relations Representative, California Secretary of  
State's Office  
Tom Stanionis, Director of Technology, Yolo  
County Elections  
Casey Elliott, Legislative Assistant, California  
Secretary of State's Office  
John Mott-Smith, Chief of Elections, California  
Secretary of State's Office



## V. Survey of County Poll Worker Training Programs

Following the March 2004 Primary Election, in preparation for the work of this Task Force, the Secretary of State's office conducted a survey of California counties in an effort to learn more about current poll worker training programs. With the exception of Madera County, all of California's counties responded to the survey. Although Alpine County responded, it is so small that it conducts elections entirely by mail and, therefore, does not utilize poll workers.

California's counties vary widely in size – both of population and geographic area. For instance, California's two smallest counties, Alpine and Sierra, contain 1,209 and 3,502 residents respectively. This contrasts sharply with Los Angeles County, the largest voting jurisdiction in the nation, which has a population of 9.87 million people including approximately 3.6 million registered voters. San Bernardino County has the greatest land mass of any county in the continental U.S. at over 20,000 square miles. This is larger than nine U.S. states including Massachusetts and Maryland. On the other end of the spectrum, San Francisco sits on 91 square miles.

In the survey, the counties were asked six questions:

1. How many poll workers were trained for the March 2004 primary?
2. Of those poll workers, how many were returning poll workers?
3. How many student poll workers were trained?
4. How long was the training session?
5. How much time were poll workers trained on voting machines?
6. Did the counties use any non-traditional training methods?

The most significant finding of the survey was the great variability of poll worker training throughout the state, highlighting the need for a uniform system. (See Appendix 1)

### Returning Poll Workers

Given the enormous differentiation in size and population, it is not surprising that the number of poll workers trained in each county varies widely.

Of the poll workers who were trained for the March 2004 primary, a significant number had served previously. At least 70% of the poll workers had served previously in 42 of the responding counties. This statistic may be reflective of a poll worker force that tends to be older, and may signal the need to find new recruitment methods as poll workers retire due to age, infirmity or a lack of desire to learn how to use new voting systems.

This is happening as many counties seek to utilize county employees as poll workers. Recent legislation has encouraged the use of state employees and students as poll workers as well. A statutory change in January 2004 increased from two to five the number of student poll workers eligible to serve at any one precinct. Most counties are trying to bring on new poll workers, including students. In the March 2004 primary election, 40 counties trained students to serve as poll workers in their counties.

### Length of Training

Overall training time varied a great deal from county-to-county. Three counties offered training for one hour or less, while 15 counties provided training of 90 minutes to two hours in length. Another 15 counties trained poll workers for two hours, eight conducted training sessions lasting between two hours and fifteen minutes to three hours. Finally, nine counties offered training for three hours, and six counties provided training for more than three hours.

Instruction on how to operate the county's voting system also varied greatly. In 15 counties, poll workers were not trained at all to operate voting machines for the March primary. Poll workers received up to 15 minutes of instruction in six counties, between 15 to 30 minutes in four counties, and between 30 minutes to one hour of training in 7 counties. Thirteen counties provided instruction on their voting system for an hour or more, while ten other counties responded that their poll worker training time varied.

**Methods**

The traditional classroom lecture was the most common training method. However, 21 counties reported that they used some non-traditional training methods. The definition of a non-traditional training method varied a great deal, however. Some counties described Microsoft PowerPoint presentations as being non-traditional, while others stated that their use of videos or DVD's was non-traditional. Labs, hands-on instruction, quizzes and role-playing scenarios were other non-traditional methods listed in county responses. Some variation in teaching methods can be attributed to the demands of the different technologies used in California's elections.

*See Appendix 1, below, for a table of survey responses.*

## VI. Recommendations

### 1. The Rights of Voters

Poll workers may have little or no understanding of the rights of voters and what steps must be taken to protect those rights. Often voters who encounter a problem with voting are treated as having done something wrong. In order to protect the rights of voters, ensure the integrity of the election process, and make the voting process as smooth as possible, poll workers must be trained to understand and ensure the following voting rights.

Many of these rights are included in the state's Voter Bill of Rights which poll workers are required to post conspicuously inside and outside of each polling place on Election Day. How poll workers respond to questions, problems, or seemingly minor unforeseen situations, may have a significant impact on voters – particularly those voting for the first time, those with a disability or those whose primary language is not English. For a new voter, if their first opportunity to vote is uninviting, it may discourage that person from voting in the future. For those requiring assistance or additional attention, if that assistance is inadequate, or provided only grudgingly, the voter may feel dismissed, and their voting experience may be marred.

#### **RECOMMENDATIONS:**

To provide a positive voting experience for all, and to ensure that the rights of every voter are protected and ensured, we recommend that poll workers be familiar with the following rights of voters:

#### **General Rights**

##### **Right to Cast a Ballot**

- Every valid registered voter has a right to cast a ballot. A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
- Voters have the right to cast a secret ballot free from intimidation. Poll workers must be trained to watch for and address any intimidation – even subtle intimidation or electioneering. They must also be sure to enable voters with disabilities, or any voter requiring assistance, the same opportunity for privacy when marking their ballots as all other voters.
- Poll workers must be trained about the right of voters to cast a ballot if they are present and in line at the polling place prior to the close of the polls. (See Poll Hours for opening and closing procedures)

##### **Right to a Provisional Ballot**

- If a voter explicitly requests a provisional ballot, or they believe they should be listed on the voter roll, but are not, the voter has a right to cast a provisional ballot and to be told how they can find out whether their vote was ultimately counted, and if not, why not.
- Poll workers must be trained, per California election law, to give voters the benefit of the doubt when a voter claims they are properly registered and at the correct polling place. Valid registered voters who were denied their right to vote may challenge the election. So poll workers must offer voters who are not on the voter rolls a provisional ballot and let elections officials determine the voter's registration status after the polls close.
- Voters who are listed as absentee voters, but did not bring their absentee ballot with them to the polls, have a right to cast a provisional ballot.

**Right to Replace a Spoiled Ballot**

- Voters may not be aware that they have the right to receive a new ballot if, prior to casting their ballot, they made a mistake marking their votes. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on Election Day. But poll workers should also be made aware that the law provides that a voter can receive a replacement ballot no more than two times (for a total of three ballots).

**No Identification Unless Designated on the Roll**

- Voters have a right not to be asked for identification unless the voter roll explicitly states that ID is required (because the voter is a new voter who registered by mail). When asking for ID, the poll workers must know which forms of ID are acceptable – and that a photo ID is not required, but is simply one acceptable form of identification. Poll workers should also be instructed that a photo ID need not have the voter's address on it and need not be issued by a government agency.
- It must be clearly explained that if a voter designated as needing to provide identification either does not have any, or does not wish to provide any, the voter may still cast a provisional ballot without needing to show any identification.

**Instruction on the Voting Equipment**

- A voter has the right to receive instruction on how to cast his or her ballot using the voting equipment in the voter's jurisdiction. Poll workers should be available to help voters understand how to use the equipment. Thus, poll workers must understand the proper procedures and tools for demonstration, including the use of specially marked demonstration ballots.

**Election Day Posting Requirements**

- Poll workers must be informed what materials are to be posted at the polls on Election Day, and where each must be posted. This includes flags (and how to properly hang them), electioneering perimeter postings, Voter Bill of Rights posters (which the law requires to be "conspicuously posted both inside and outside every polling place"), and other related materials.

**Reporting Fraud or Illegal Activity**

- Voters and others have the right to report any illegal or fraudulent activity. If a poll worker is asked, they should refer the voter to the local elections official or to the Secretary of State's Office. Voters may also file a written complaint if they are dissatisfied with the way an election is being run. Complaint forms are available on the Secretary of State's Web site, on the MyVoteCounts.org site, and from the Secretary of State's Office. Under federal law, complaints alleging violations of the Help America Vote Act of 2002 must be notarized.

**Materials in the Voting Booth**

- Nothing in law prohibits a voter from bringing into the voting booth a sample ballot, the Voter Information Guide, a copy of the Voter's Bill or Rights, or other similar explanatory materials.

**Other Rights**

In addition to these general rights of voters, some additional rights are applicable to certain voters depending on their situation or circumstances. Poll workers should be accommodating and flexible to ensure that these rights are protected as well.

**Rights of Voters with Disabilities or Limited English Proficiency**

- Voters who are unable to vote without assistance have the right to receive assistance in casting their ballots. This means that a voter can bring one or two persons to assist them – or they may request assistance from a poll worker. Poll workers cannot ask why a third-party is assisting. Poll workers should be trained what to do (and what not to do) if they are asked to assist. For instance, poll workers assisting a voter with a disability should keep their opinions to themselves and not comment on the voter's selections. Doing this can create an environment of perceived or subtle intimidation, regardless of whether it was intended.

**Rights of Voters with Disabilities**

- Voters with disabilities have a right to an accessible polling place or alternate means of casting a ballot. For example, poll workers should be familiar with the procedures to facilitate curbside voting. Poll workers can also re-direct voters with disabilities to an alternative accessible polling place if they cannot accommodate the voter in their precinct.
- Voters with disabilities have the right to reasonable modifications or removal of barriers to the voting process and provision of auxiliary aids and services. In other words, poll workers should be trained to provide voters with disabilities, if possible, with the opportunity to vote privately and without assistance. If this is not possible, they should do their best to accommodate a voter when the poll is not accessible.

**BEST PRACTICE:** *Poll workers should be instructed that before the polls open, they should connect and test any attachments to voting machines that provide accessibility to the disabled. (Some poll workers may then need to disconnect the attachments since some certified voting systems do not display anything on the screen if an audio device is attached.) Connecting and testing attachments allows poll workers to become familiar with the devices, and enables them to re-attach them quickly in the event they are needed.*

- All eligible citizens have the right to register to vote unless judicially deemed incompetent or otherwise ineligible. It is not up to poll workers to determine a person's registration qualification or competence to vote. Sometimes poll workers, upon seeing a voter who is disabled, may question the person's competence to vote. If the individual is properly registered, then that voter must be treated the same as any other voter. No voter, including a voter with psychiatric disabilities, is required to show any identification (unless they are a first-time voter who registered by mail), or to prove their competence to receive or cast a ballot. Voters with disabilities also have a right to cast a provisional ballot if the poll worker is unable to verify the voter's eligibility and the voter affirms that he or she is properly registered.
- All voters with disabilities must be accorded the ability to cast their secret ballot in private. They should not be asked to fill out their ballot at the table where poll workers are checking in voters, especially if they need assistance to fill out their ballot.

**Rights of Voters with Limited English Proficiency**

- Voters who are not proficient English speakers or who are voting in a jurisdiction where their primary language is a designated Voting Rights Act language, are entitled to a ballot and other materials in that language. Poll workers must not make comments regarding voters using non-English materials.

**BEST PRACTICE:** *During training, it is often useful to have both a voter with a disability, and a voter with limited proficiency in English, relate to the class (either in person or via video) a prior bad experience trying to cast a vote. Hearing from someone directly can have a tremendous impact.*

- Voters who are unable to vote without assistance have the right to receive assistance in casting their ballots. This means that voters who are not proficient in English may bring in someone to assist them in voting. They may also request assistance from a poll worker. Bilingual poll workers are not the only individuals who can assist voters with limited English skills, and all poll workers should be trained how to communicate with voters who do not speak English. Poll workers cannot ask why a third-party is assisting.

**BEST PRACTICE:** *Poll workers, bilingual or not, should be equipped with and trained to prominently display badges, nametags, stickers or ribbons identifying which languages they speak.*

- Poll workers should also be instructed to respect people from backgrounds different from their own or who do not speak English fluently. They should understand that all voters must be treated the same. *See Section 7 - Cultural Competency.*

**BEST PRACTICE:** *Training poll workers to ask voters politely how to spell their names can often eliminate miscommunication.*

- Voters understand poll workers are busy, but they do not understand when they are treated rudely, particularly if the rudeness is aimed at them due to a disability or their limited English skills. For instance, poll workers cannot move all people who do not speak English to the back of the line and help other voters first.

**BEST PRACTICE:** *Poll workers should understand that no matter what language a voter speaks, there are often simple ways to communicate effectively with the voter (e.g. hand signals, pantomimes, drawing pictures, etc.) if there is no one who speaks the voter's language.*

**BEST PRACTICE:** *Role-playing is an effective technique to use in explaining to poll workers that they do not have to use English to explain to a voter how to vote. It is also an effective technique to make poll workers more comfortable dealing with voters with special needs.*

#### **Rights of Parents with Children**

- Voters have a right to take their child(ren) under age 18 with them into the voting booth, if the child is under the care of the parent. (EC §14222)

#### **Rights of Absentee Voters**

- Every voter has a right to vote absentee if they applied for an absentee ballot by the statutory deadline. (EC §3003)
- To be counted, an absentee ballot must be received by the county elections office or deposited at any polling place in the county by the close of polls on Election Day. The ballot must be deposited by the voter or a designated third party (EC §3017). Mailed-in ballots received after that time may not be counted. (EC §3020)
- If a voter is listed as an absentee voter, but wishes to vote at the polling place and did not bring their absentee ballot with them, they have a right to vote using a provisional ballot.

#### **Rights of Poll Watchers and the Media**

- Only poll workers and voters engaged in voting may be within the voting booth area during the time the polls are open. (EC §14221). Others may be in the polling place observing the process as long as they do not interfere. Poll workers should be instructed about how to treat poll watchers and how to expect poll watchers to treat them – both what poll watchers are allowed to do, and what they are not allowed to do.
- Poll workers must be made aware that voters and others who may be observing have the right to ask questions and to observe the elections process. They have the right to ask poll workers questions regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the poll workers can stop responding.
- There are often people who visit polling places on Election Day to check the voter street index. These are commonly people working for campaigns checking to see if the voters they have identified as supporting their candidate have voted yet. Poll workers should have some direction in dealing with those individuals who periodically return to the polling place to check updates to the index.
- Media and pollsters have different rules than poll watchers. The media and pollsters may be within 25 feet of a polling place, and may speak to voters leaving the site as long as they do not interrupt voting. However voters may not be photographed, videotaped or filmed entering or exiting a polling place, and may not be filmed inside without the voter's permission. (EC §18541)

**Rights of New Citizens and New Residents**

- Any person who has been sworn in as a new citizen of the U.S. after the close of the regular registration period (15 days before an election) may still register to vote and cast a ballot at the county elections office up to, and including, the seventh day before an election.
- Any person who is a new resident of the state may still register to vote and cast a ballot at the county elections office up to, and including, the seventh day before an election. (EC §3400)

**Rights of Voters Who are Required to Provide Identification**

- Under federal law, new voters in a jurisdiction who registered by mail may be required to show identification to vote, unless they qualify for an exception under the law. The roster of voters should clearly identify who should be asked for identification.
- Poll workers should understand this law, what forms of identification are accepted, and that if a new voter does not have identification with them, they have the right to vote using a provisional ballot without having to show identification.
- Poll workers must also be able to explain to voters why they, and not other voters, are being asked to show identification.

## 2. Election Challenge Procedures

A poll worker may challenge a person wishing to vote on several grounds. Poll workers must be instructed about the procedures for challenging a voter's eligibility and the permissible reasons.

Several types of behavior can be challenged. These include voter fraud (e.g. voting under a fictitious name or voting multiple times) and voter misconduct (e.g., intimidating or coercing other voters, tampering with a voting system or disrupting the operation of a polling place).

It should also be noted that it is a felony to knowingly challenge a person's right to vote without probable cause or on fraudulent or spurious grounds, or to engage in indiscriminate and groundless challenging of voters for the sole purpose of preventing voters from voting. It is also impermissible to delay the voting process or misinform a registered voter that they are not properly registered.

### **RECOMMENDATIONS:**

Poll workers must be informed how to properly handle challenges that come before them. They should also be informed that voters may contest an election based on misconduct by a poll worker. Such misconduct includes discriminating against voters based on race, ethnicity, or party affiliation; denying valid voters the right to cast a ballot; intentionally misinforming voters of their status; and coercing or intimidating voters.

Poll workers should immediately report all challengeable behavior to their county elections office, contact law enforcement if there is any disruption of polling place operations, and try to separate the disruptive behavior from the operation of the polling place. If the disruption continues, poll workers should contact their county elections office or local law enforcement and allow them to handle the situation.

***BEST PRACTICE:*** *If a disruption occurs, avoid direct confrontation. It is also best to move the parties involved outside and to a safe distance from the polling site so that the polling place can continue to process voters.*

***BEST PRACTICE:*** *Training for poll workers should include role-playing to provide poll workers with the chance to experience situations where they will have to confront challengeable behavior under different scenarios. This can also be done using a film or video to expose poll workers to various situations and have them see the appropriate responses.*



### 3. Operation of a Jurisdiction's Voting System

In California, the state certifies voting systems for use. Each county may choose a system from among those certified systems. There are three types of systems currently in use in California—direct recording electronic (DRE) systems (commonly referred to as touch screens), optical scan systems, and un-scored punch cards. Datavote is the only certified system of punch card system, but there are numerous certified DRE and optical scan systems certified for use in California.

While it is impossible to create uniform standards for train poll workers in operating voting systems since so many different systems are used in California, it is critical that poll workers be adequately trained and educated about operating the voting system equipment that will be in their polling place on Election Day.

Despite the differences across voting systems, there are certain basics in which all poll workers should be trained that are not dependent on the specific system used.

#### **RECOMMENDATIONS:**

To conduct each election properly and efficiently, poll workers must be instructed in the basic operation of their county's voting system. This training includes the following:

#### **Standard Operating Procedures and Troubleshooting**

As part of the certification process, manufacturers of each voting system are required to create standard operating procedures for the system's use. These are the instructions county elections officials and poll workers must follow when using the system.

Poll workers must be educated to know how to assemble, operate and dismantle a voting system and each component of that system.

#### **Hands-On Training**

Too often, poll workers have problems with complex voting systems, not because of the machine, but because they lack hands-on experience using the equipment.

Hands-on experience is critical to ensure minimal problems on Election Day. For counties using DRE and polling place optical scan systems, each poll worker should be trained to perform a hands-on poll opening initialization of system, as well as a complete closing procedure, including ballot tabulation. Poll workers should become familiar with common errors and receive hands-on training in how to correct those errors. Each poll worker should also understand the voter's perspective by walking through the process that a voter would encounter at the polling place.

This Task Force strongly recommends that each prospective poll worker receive up to one hour of hands-on training (or even more if necessary) with the voting system they will use on Election Day. If a system has more than one piece of equipment, poll workers must have hands-on training on each piece of equipment. Some systems clearly do not require significant training time (e.g., Datavote punch card machines), and many returning poll workers may be proficient in the operation of the system already, but others, such as poll workers overseeing polling places using DRE systems for the first time can be extremely intimidated with the prospect of helping others use a machine they know little about.

***BEST PRACTICE:*** *There should be adequate machines in the training facility to ensure at least a 1:5 ratio of machines to poll worker students, enabling each student to receive adequate time learning to use the voting system.*

For counties with a central count paper ballot system, poll workers should be familiarized with poll opening procedures, and they should be given the chance to walk through all procedures in a role-playing setting, including opening the polls, the normal voting process, common errors, and closing the polls.

***BEST PRACTICE:*** *Poll workers often want to spend more time practicing how to use a voting system. Counties may wish to have additional optional workshops for poll workers, or have frequent “office hours” at several locations in the weeks before an election, so poll workers who feel tentative or uncomfortable with the system can come in and gain more experience assembling, dismantling, and operating the voting system.*

#### **Written Guides**

All systems should have single-page procedure hand-outs for poll workers to reference during the day. There should be additional documentation available for troubleshooting as part of the overall polling place documentation.

#### **Handling Problems**

Poll workers should be instructed how to troubleshoot common problems that might occur on Election Day. These should also be covered in training and in the materials provided to poll workers.

Poll workers cannot be expected to be troubleshooters for the more technical or unusual problems. As such, training sessions should reinforce clear protocols for poll workers to follow in requesting help from the jurisdiction's elections office. It should be made clear to poll workers that they should inform the jurisdiction's elections office of any unusual problems, particularly with electronic voting systems, as soon as they occur. On occasion, trying to resolve a problem or malfunction without guidance or expertise can create more serious problems or consequences.

#### 4. Preventing, Detecting and Addressing Problems with Voting Systems

Elections cannot be carried out without poll workers and voting systems. The integrity of each California election depends on the reliability of the poll workers and the security of the millions of ballots and tens of thousands of voting machines used to record and tabulate votes. Therefore, one of the most important things to instruct poll workers on, is how to ensure the security of voting systems.

##### **RECOMMENDATIONS:**

To ensure the security of each voting system, the Task Force recommends that training of poll workers include instruction on the following:

##### **Security**

If poll workers pick up ballots, voting equipment, or other sensitive materials prior to Election Day, training must include a rundown on how to keep those materials secure, and how to record an accurate chain of custody.

##### **Set-Up**

Training should include clear descriptions of security mechanisms used to ensure that materials and equipment at the polling place are in the same condition they were in when they left the elections office. Training should also include hands-on initializing of a voting system, stressing the importance of using all required security measures for a given system.

##### **Detecting Tampering**

Poll workers must have the opportunity to handle a voting system and gain instruction about the ways somebody could attempt to tamper with or disable it. They should be educated in what possible ways may be used to tamper with a system, how to recognize that tampering, and how to address the situation if they discover a machine has been, or is being, tampered with. Poll workers should also be instructed to inspect voting machines and booths periodically through the day.

***BEST PRACTICE:*** Training should include first-hand observations of mock attempts to tamper with a system, either via video or through role-playing.

##### **Social Engineering**

Poll workers should be instructed not to allow anyone to “troubleshoot” voting machinery without their identity being confirmed by calling the elections office. They should also be instructed to not to allow anyone to linger near the poll workers or the polling booths or otherwise hinder the continuous observation of the polling booths.

##### **Shut down**

Training should include hands-on instruction demonstrating the shutdown of a system, including how poll workers should secure and account for all ballots, paper record copies and/or electronically recorded votes. The chain of custody rules should be reinforced at this time.

##### **Safe Transport of Systems and Ballots**

Again, if poll workers receive voting equipment, ballots or materials in advance of the election, they should be instructed in basic security. Instruction should also include the rules for returning voted ballots and other voting equipment and materials. Instruction should include the requirements that at least two poll workers travel with voted ballots, and that a clearly documented chain of custody be maintained for all ballots and electronic media. Poll workers should be reminded, however, that health and personal safety must be their first concern, and they should not put themselves in danger in order to promptly return materials.

**Breakdowns**

Training must provide instruction with clear procedures for addressing common voting equipment breakdowns that a poll worker could easily remedy (e.g., dead battery, jammed paper, unplugged machine, etc.).

***BEST PRACTICE:*** *Training should include a hands-on walk-through of all common issues. If poll workers might need to fix a problem on Election Day, they should practice fixing that problem in training.*

For all other breakdowns that are not easily remedied and for which they have not had training, poll workers should be instructed to immediately call for help. If they haven't been trained to fix it, they must call in someone who has. A log must be maintained at each polling place to record all incidents and how they were resolved.

**Other Anomalies**

Training should repeatedly reinforce the predictability of properly running machines. If there is anything unusual happening, workers should log the problem and call the county elections office. Poll workers must be trained to understand that their primary job is to witness the accuracy of the process; if they question something, they should record it.

***BEST PRACTICE:*** *If possible, training should include some role-playing or demonstration of unusual situations and how poll workers should observe and record the unusual events.*

## 5. Poll Hours

Poll workers must be instructed about the procedures for the opening and closing of the polls on Election Day.

### **RECOMMENDATIONS:**

The Task Force recommends that poll workers receive instruction in the following details regarding the opening and closing times of the polls:

#### **Opening the Polls**

On the day of any election, the polls must open at exactly 7 a.m. and remain open until closing time at 8 p.m. the same day, when the polls close. (These times may differ for unconsolidated municipal elections). When the polls are opened, poll workers should announce loudly, "The polls are open," before allowing any ballots to be cast. Voting shall begin as soon as the polls are opened and continue during the time the polls remain open.

#### **Closing the Polls**

When the polls are closed, poll workers should announce loudly, "The polls are closed." No voters who arrive after the polls close may cast votes.

Any voter who is in line at 8 p.m. when the polls close is allowed to vote. If there is a line when the polls close, a poll worker should stand at the back of the line to let others know the polls have closed. Any voter who arrives after the polls have closed may not vote even if voting is still ongoing when they arrive.

#### **Extended Poll Hours (by Court Order)**

Poll workers must be informed that there could be a court order to extend the voting hours, and how they will be informed. Poll workers may be notified of extended hours by phone, text message, or a visit from a roving inspector.

If a court order extends the time that the polls are open, poll workers must understand that the law requires all voters to cast provisional ballots during the extended time period. The provisional ballots cast during the extended time period must be kept separate from other provisional ballots cast throughout the day.

***BEST PRACTICE:*** Poll workers should be instructed to arrive at polling places from one half hour to one hour before the polls open, to give them adequate time to set up and ensure that polls are ready for operation promptly at 7 a.m. Allowing poll workers to practice setting up equipment can show them how long they will need for set-up so they can plan accordingly.

***BEST PRACTICE:*** Signs should be posted outside of polling places that provide information about what voters should do if their polling place is not open on time.

## 6. Relevant Election Laws and Procedures

There are many election laws with which poll workers must be familiar in order to properly and effectively carry out their responsibilities on Election Day. It is an enormous burden to train volunteers in the intricacies of numerous state laws, but it is critical to the legal conduct of the election.

The primary state election laws that poll workers will need to learn are those in Divisions 14, 18 and 19 of the California Elections Code. These sections explain the procedures that poll workers must follow on Election Day, including their duties, issuing ballots and closing procedures.

### RECOMMENDATIONS:

We recommend that poll worker education and the accompanying materials provide poll workers familiarity with the following state laws:

#### **Election Day Duties**

EC §14211	Set up polling place room so that neither the ballot container, voting booths nor compartments are hidden from the view of those present.
EC §14220	Majority of precinct board must be present at all times.
EC §14200	Posting of Instruction Cards: <ol style="list-style-type: none"> <li>a. Sample ballot</li> <li>b. The date of election and hours during which polling place will be open</li> <li>c. Instructions on how to vote and how to cast a provisional vote</li> <li>d. Instructions for mail-in registrants and first-time voters</li> <li>e. Voter's Bill of Rights</li> <li>f. General information on federal and state laws</li> </ol>
EC §14202	Posting of the Index: <ul style="list-style-type: none"> <li>• Post in separate, convenient places, at or near polling place and in easy access to voters, at least two copies of street index.</li> </ul>
EC §14210	Distributing duties among members of precinct board.
EC §14213	Proclaim polls are now open.
EC §14215	Exhibit Ballot Containers <ul style="list-style-type: none"> <li>• In presence of any voters at the polling place, precinct board shall open and exhibit and close the ballot container. Container shall not be removed from polling place or presence of bystanders until all the ballots are counted, nor may the container be opened until after the close of the polls.</li> </ul>
EC §14216	Combined Roster Index <ol style="list-style-type: none"> <li>a. Poll worker locates name of voter in Combined Roster Index</li> <li>b. Poll worker has voter sign Roster with name and address</li> </ol>
EC §14217	Inability to find voter name on index <ul style="list-style-type: none"> <li>• Inspector reiterates procedures on provisional ballot voting (see EC §14310-14312)</li> </ul>
EC §14240	Challenges

***BEST PRACTICE:*** Poll workers should be instructed to contact their county election office if they think they have a reason to challenge a voter's eligibility.

Among the most important thing counties instruct poll workers to do to prevent the possibility of voter fraud or mischief is to mark the roster before Election Day to reflect which voters have applied for an absentee ballot (and, where applicable, also designating those who have already voted in-person during any early voting period). Precinct voter rosters are usually printed and distributed prior to the end of the absentee application period (and any early voting period). Therefore, only the names of those absentee applicants and early voters who applied prior to its printing deadline would be so designated on the precinct roster. Lists of those who applied for an absentee ballot (or early voted in person) after the rosters are often printed and mailed to poll workers with priority instructions to mark those additional names on their lists. With the numbers of absentee voters increasing each election, this can be a very large number.

Training on the use and the procedures of voting machines is also critical. Instruction should be provided on the following state laws, if applicable to the system in use in the county:

**Procedures for Voting Machines**

EC §19360	Checking machine
EC §19361	Handling keys
EC §19362	Everything in plain view of precinct board
EC §19363	No loitering in voting booths
EC §19370	Locking the machine in full view of poll watchers.
EC §19371	Sealing the machine

Instruction must include guidance on the procedures for issuing and receiving ballots, and when and how to issue and handle provisional ballots. Instruction must also address how to properly process and count provisional ballots:

**Issuing Ballots**

EC §14272	Instruction on operating voting device
EC §14273	Providing marking devices to voters
EC §14274	Using marking device.
EC §14275	Folding and returning ballot
EC §14277	Removing ballot stub and depositing ballot
EC §14282	Providing assistance to voters in need
EC §14283	List of assisted voters
EC §14288	Replacing spoiled ballots
EC §14290	Canceling spoiled ballots
EC §14296	Canceling unused ballots
EC §14294	Updating posted copy of Street Index every hour up until 6:00 pm

**Provisional Voting**

EC §14310	Issuing and handling provisional ballots
EC §14311	Voters who moved since last election
EC §14312	Construing these sections liberally in favor of provisional voter

**Closing Procedures**

EC §14400	All board members shall be present at the closing of the polls
EC §14401	Proclaim polls closed <ol style="list-style-type: none"> <li>a. Place one poll worker at the end of the voter line at 8:00 pm</li> <li>b. Any voter arriving after 8:00 pm cannot vote</li> </ol>
EC §14403	Deface or seal unused ballots
EC §14405	Reconciliation of Ballots <ol style="list-style-type: none"> <li>a. Complete Ballot Statement</li> <li>b. Account for all ballots—voted, unvoted and spoiled ballots</li> <li>c. Reconciliation</li> </ol>
EC §14420	Processing of voted ballots
EC §14421	Placement of Ballots in container

***BEST PRACTICE:*** Training on ballot reconciliation, whether from a DRE printout or by counting paper ballots, is critical. Reconciling the numbers with the roster signatures is an important post-election procedure that seems to confuse a lot of poll workers. Walking through it during the training can help poll workers understand the importance of making sure they get the roster signatures right in the first place.

**Transferring Ballots and Materials**

EC §14431	All ballots to be sealed
EC §14432	Materials to be sealed
EC §14430	Prepare supplies for delivery
EC §14434	Delivery of supplies

Poll workers must also be aware of state election laws whose violation is a crime. These primarily relate to interfering with voters or their votes.

**Intimidation of Voters**

EC §18540	No voter intimidation
EC §18541	No electioneering <ul style="list-style-type: none"> <li>• No soliciting votes or placing campaign signs within 100 feet of polls</li> <li>• No photographing voters entering or exiting a polling place</li> </ul>
EC §18543	False voter challenge
EC §18544	No firearms in a polling place

**Corruption of Voting**

EC §18562	Secrecy of ballots
EC §18563	Secrecy of votes
EC §18564	No tampering with voting machines
EC §18567	Altering vote tallies
EC §18568	No changing or destroying ballots or poll lists
EC §18570	Delaying delivery of results

**BEST PRACTICE:** Training materials should be designed in chronological order (i.e., the order in which poll workers will face the issue or task during Election Day) so that poll workers can easily find the answers to their questions.

**BEST PRACTICE:** Language used in training materials should avoid technical, legal and system jargon. Simple words and phrases should be used, or if not, should be explained or defined several times, including a glossary of terms at the end of the materials.



## 7. Cultural Competency

Given the great diversity of the population in California, poll workers need to be taught to treat all voters with respect and to respond to each individual's needs to ensure that voters of all backgrounds are comfortably able to participate in the voting process. That is, all poll workers must be trained on cultural competency – the ability to recognize and to respond to cultural concerns of all societal groups, including their histories, traditions beliefs and value systems. This is not to say that poll workers need be instructed in the history of each societal group, but they must be cognizant of the differences and how their actions may be taken differently than they intend.

Poll workers must be taught that all U.S. citizens have the right to vote, regardless of what language they speak. Many U.S. citizens speak languages other than English, and in many California counties, ballots are available in a variety of languages. When multilingual ballots are available, voters who do not speak or read English are to be given a ballot in their language of choice. In addition, any voter, including non-English speaking and voters with limited literacy skills, is allowed to bring an individual to assist them at the polls.

### **RECOMMENDATIONS:**

To ensure that each poll worker is skilled in cultural competency, the Task Force recommends that training of poll workers include instruction on the following:

#### **Respect for Differences**

Poll workers should be trained to understand the changing demographics in their county and the importance of cultural sensitivity. They must be instructed to treat all voters the same way regardless of how they look or what language they speak. In order to achieve this, they must be educated to be considerate and patient, show everyone respect, anticipate voters' needs, and offer assistance when possible.

But poll workers should understand that while being patient and considerate is important, they must not put unnecessary pressure on themselves to know and to do everything "right." They must be patient in understanding the needs of a specific voter and not be embarrassed if they find that they are saying or doing the wrong thing.

#### **Offering Assistance**

It can be difficult to be sensitive to a voter's needs. Individuals may be much more independent than they appear to be. However, poll workers should not be afraid to ask a voter if they need assistance. If the person looks as if they need assistance, the poll worker should ask if there is something that they can do to provide assistance. If the voter has someone assisting them, the poll worker should communicate directly with the voter, and not the interpreter, companion or assistant.

#### **Voter Privacy**

Above all, poll workers must respect the voter's privacy. They should not ask inappropriate questions, and they must not watch them vote or tell them how to vote. Training must emphasize the importance of voter confidentiality and lay out clear procedures for handling each ballot, no matter which language it contains.

#### **Wait – Recognize – Listen**

Poll workers should be instructed to use three tools on Election Day:

- o Wait - Slow down the reaction to launch into a quick response. Wait first to process the question, then formulate a more reasoned response.
- o Recognize – Poll workers should focus on how to recognize other people's feelings.
- o Listen – They should also attempt to listen before they speak, so they understand exactly what the voter is feeling and trying to say. Finally, they must put their assumptions on hold so they do not stereotype.

**How and When Poll Workers Should Ask for Help**

Since a voter's experience today will impact his or her willingness to vote in the future, everyone should have a positive experience. Poll workers who are really having trouble communicating with a voter should be instructed to ask a bilingual poll worker for help or contact a hotline at the county elections office for assistance.

***BEST PRACTICE:*** Counties should provide one hotline dedicated to poll workers and one hotline designed for voters to receive assistance in various languages.

Educating poll workers to determine when and how to ask for help from a co-worker, supervisor or county election official is very useful.

**Content of Cultural Competency Training**

When training poll workers on cultural competency, the training must address:

- o Citizens who speak a language other than English
- o Citizens from a racial or ethnic minority
- o Citizens who have disabilities
- o Citizens with low literacy skills
- o Citizens who are elderly

***BEST PRACTICE:*** Use role-playing in training to reinforce cultural sensitivity.

**Display Materials**

So voters can immediately see that multilingual material is available at their polling place, poll workers should be trained to set up multilingual materials in plain view.

**Removing Insensitive Poll Workers**

Finally, if a poll worker is identified as being culturally insensitive, either by actions or remarks, that poll worker should be asked to transfer to another polling place or to leave entirely.

***BEST PRACTICE:*** Counties should broaden their poll worker recruitment to recruit workers who are diverse in age, ethnicity and language ability.

***BEST PRACTICE:*** Provide a customer feedback form for voters to comment on the experience at the polling place. Allow voters to turn it in at the polling place or mail it back to the county elections office.

## 8. Issues Confronting Voters with Disabilities

In addition to understanding how to respectfully treat people from different cultures, poll workers in California must also be trained to work with voters with disabilities. Poll workers must understand that all eligible citizens have the right to register to vote unless judicially deemed incompetent or otherwise ineligible. It is not up to a poll worker to determine a person's registration qualification. If the individual is properly registered, they must treat the voter with a disability as they would any other voter. Voters with disabilities must be accorded the ability to cast their ballot in private.

### **RECOMMENDATIONS:**

To ensure that each poll worker understands how to properly work with voters with disabilities, the Task Force recommends that training of poll workers include instruction on the following:

#### **Access**

Poll workers must be instructed how to ensure that physical access to the polling site is available for voters with a disability. They should be trained to temporarily modify the polling place arrangement (of tables, chairs, voting booths, etc.) to make it accessible.

#### **Provisional Ballots**

Poll workers should be instructed that their polling site may be accessible while other adjoining sites are not. As a result, other sites may direct voters with disabilities to their site due to its accessibility. Poll workers, therefore, must be prepared to provide voters with disabilities from other precincts the opportunity to cast provisional ballots.

#### **Curbside Voting**

If the polling place is not, and cannot be made, accessible, poll workers should understand that the voter has the option to go to an alternative accessible polling place to vote, or to request to vote via curbside voting. Poll workers must be familiar with the procedures for conducting curbside voting.

***BEST PRACTICE:** Providing poll workers a demonstration or opportunity to actually sit in a wheelchair, enter a mock polling place blindfolded, or try to communicate with someone when they are only mouthing words, can give poll workers a much better understanding of the obstacle that voters with disabilities can face at a polling place if poll workers are not counseled in how to be sensitive and aware.*

#### **Polling Place Set-up**

Poll workers must be familiar with the proper arrangement of furniture and equipment in polling sites to ensure that materials are accessible to all voters and to ensure that voters with disabilities are able to use equipment. This includes setting up materials to be at eye-level for voters in wheelchairs.

**Voting System Access**

Not all voting systems are accessible, but each polling place, as of January 1, 2006, is required to have at least one accessible voting machine. Poll workers must ensure that voting systems are set up in an accessible manner, and that if a system has auxiliary aids that provide or improve access, they must be familiar with, not only their proper set-up and use, but even that they exist at all (e.g. magnifying glasses, audio headsets, etc.) Training should also include instruction on when and how to ensure that a voter is aware of the aids, without seeming disrespectful.

Poll workers should also be familiar with appropriate etiquette for working with voters with disabilities:

- Do not assume that voters with disabilities need assistance; always ask before providing help.
- Do not take the door out of a person's hand because they may be using it to provide leverage.
- Address a person in a wheelchair at his or her eye-level by bending or sitting down.
- When directing a person with a visual impairment to move about a room or building, describe the path to help the person get to their intended destination.
- Speak in a regular tone of voice to people with hearing or visual disabilities. Do not shout.
- If a voter has a sign language interpreter, speak directly to the voter, not the interpreter.
- If a voter with a hearing impairment does not have an interpreter, you may be able to use notes or speech-read.
- Use simple language and maintain eye contact.
- If a voter has a speech impairment and you do not understand his or her response, ask the person to repeat it, to spell it, or, provide a pencil to paper and ask the voter to write it down.
- If a voter has a cognitive impairment, be patient and allow him or her to find a word. Make sure you have the person's attention before speaking.
- If a voter uses a service animal, the animal is allowed in the voting booth with them. Do not interact with a service animal without the owner's permission.

For more information on working with voters with disabilities, and some best practices, see "Rights of Voters with Disabilities or Limited English Proficiency," beginning on page 14.

### 9. Procedures Involved with Certain First-time Voters, Provisional Voting, Absentee Voting, etc.

Poll workers will face a variety of situations on Election Day. Therefore, they need to be familiar with the procedures involved in handling them. The most frequent situations involve provisional voting, proof of identification for first time voters, absentee voting, electioneering, and working at a dual polling site.

***BEST PRACTICE:*** *Poll workers should be trained to process and assist all voters with a customer service mentality in order to make their experience as positive as possible. Congratulating a first-time voter for voting also sends a positive message.*

#### **RECOMMENDATIONS:**

To address these common situations, the Task Force recommends that poll workers be educated on the following items:

##### **Certain First-Time Voters**

Poll workers should be reminded that the impression a voter gets the first time they vote may affect how they view the election process in the future. So poll workers should be friendly and inviting, welcoming new voters. Poll workers must know the requirements and conditions under which they need to see a voter's identification. Workers must be aware that only those voters listed in the voter roster as being required to provide identification can be asked to show identification.

Poll workers must also be made aware that if a voter who is designated as needing to show identification cannot or does not provide identification, the voter still may cast a provisional ballot without presenting any identification.

Poll workers must also be taught which forms of identification are acceptable, and the proper procedure for accepting and recording identification from voters.

##### **Provisional Voting and Fail-safe Provisional Voting**

Poll workers must be trained about the right of voters to request and cast a provisional ballot in case the voter's registration or voting status is in question.

A voter needs to vote a provisional ballot if:

1. The voter is not voting in his or her assigned precinct and the voter does not want to leave and go to his or her assigned precinct to vote.
2. A poll worker cannot locate the voter's name on the roster of voters.
3. The voter is listed as an absentee voter and did not bring his or her absentee ballot to surrender at the polling place.
4. In a primary election, the roster of voters shows that the voter is registered to vote in a different party than the party for which the voter claims he or she is registered.
5. The voter is voting for the first time after registering by mail, but did not bring or does not want to show the required identification.

If voters are in the wrong polling place, poll workers should inform them that they can either go to their assigned polling location to vote or they can stay and cast a provisional ballot. The poll workers should also explain the benefits and disadvantages of each option. If this type of situation occurs later in the day, and it may be difficult for the voter to travel to their assigned polling place before the polls close, the poll worker should recommend the voter stay and cast a provisional ballot instead of risking the possibility of arriving too late.

***BEST PRACTICE:*** *Place a sign or placard near the roster informing voters, and reminding poll workers, that voter's have the right to request a provisional ballot if their name is not on the roster and poll workers must provide a provisional ballot to people who request one.*

Poll workers should be informed how to handle provisional ballots, require voters to sign the envelope, and segregate provisional ballots so they can be counted separately later.

***BEST PRACTICE:*** *Poll workers should be instructed to minimize voter confusion by checking to confirm they are providing the correct sample ballots to voters, particularly those voters casting provisional ballots.*

Poll workers should also understand the fail-safe provisional process, and the right of fail-safe voters to cast a provisional ballot: A fail-safe voter is one who has moved from one address to another within the same county but who has not re-registered to vote at his or her new address. These voters may cast a provisional ballot at the polling place assigned to their current address. (EC §14311)

Poll workers should be informed how to request and obtain completed voter registration forms from provisional voters, and the process and timing by which provisional voters can contact the county's free access system to determine if the voter's provisional ballot was counted.

#### **Absentee Voting**

Voters often receive an absentee ballot in the mail, but either forget to drop it in the mail before Election Day or decide that they want to deliver the absentee ballot in person or by an authorized third party. Sometimes voters change their mind and want to vote at the polls. Poll workers should be informed that on Election Day they may accept any absentee ballot issued by their county from the voter to whom it was issued or an authorized third party. They must also be informed how to handle blank absentee ballots brought in by those wishing to vote on voting equipment at the polling place (if the absentee ballot different from ballots cast on the voting system at the polling place). Finally, poll workers should be trained on how to record and handle voted and surrendered absentee ballots, where to place them, and how they should be handled during transport after the polls close.

Poll workers should also be advised that sometimes an absentee voter registered in one county will seek to hand in their absentee ballot at a polling place in another county. The voter should be advised that the ballot can only be accepted before the polls close in the county that issued the ballot.

#### **Provisional Absentee Voting**

Poll workers should be informed about the process of providing a provisional ballot to absentee voters who did not bring their absentee ballot with them to the polling place. Poll workers should also be told how and when to request identification of absentee voters who drop off their absentee ballots but are listed on the rolls as voters who need to show identification before being allowed to vote.

#### **Dual Polling Sites**

Dual polling sites, where voters from multiple precincts share one polling place location, can be confusing for both poll workers and voters. Poll workers need to understand the dynamics of a dual polling site so that they can minimize confusion and maximize efficiency for voters in such a site. Poll workers must pay close attention in order to avoid giving voters the wrong ballot.

#### **Electioneering**

Poll workers must learn exactly what constitutes electioneering. They need to understand how to calculate 100 feet from a polling place, what activities are prohibited within that perimeter, and how to address the situation if they either observe or receive a report that electioneering is occurring in or near their polling place. Poll workers also need to be aware what types of materials are not allowed in the polling place, and how to remedy the situation if there is the potential for passive electioneering (e.g., a voter enters a polling place wearing a t-shirt or conspicuous button promoting a candidate). Instruction on the difference between electioneering and exit-polling (which is allowed beyond 25 feet of the polls) and how to handle pollsters who violate that perimeter should also be provided. (EC §18370)

***BEST PRACTICE:*** *Counties should review the performance of each poll worker's performance with a post-election survey of their fellow poll workers. Poll workers should be evaluated on key areas so that they can improve based on feedback on their performance, and so counties can remove poor workers and reallocate the best workers to serve in the busiest precincts or to become troubleshooters.*

#### 10. Authority of Poll Workers and Appropriate Limits of that Authority

Poll workers must observe complex rules regarding their authority and responsibilities. They are burdened with managing a complex operation on an infrequent basis and must provide customer service to equally inexperienced voters.

The multitude of rules and details of election laws and procedures can have the effect of either intimidating or empowering poll workers. Either of these reactions can be problematic. Poll workers with insufficient courage may allow themselves to be bullied in ways that jeopardize the integrity of an election; for instance they may issue an official ballot to a voter who demands one instead of the provisional ballot that they should properly receive. Alternatively, a poll worker may become empowered to exercise inappropriate authority; for example, the worker might refuse to issue a provisional ballot when it is appropriate, thereby discouraging, intimidating, and ultimately disenfranchising the voter.

Given the variations in human character, these problems cannot be eliminated. However, election officials can try to control this behavior through poll worker training and education that emphasizes the *mission* of the poll worker, which is to assist every qualified voter to cast a ballot and to ensure that each ballot is safely secured until it can be counted. After training, poll workers can be coached and reminded on Election Day by "roving" inspectors who visit polling places throughout the day and emphasize these job basics.

#### **RECOMMENDATIONS:**

To ensure poll workers are taught that they have the necessary tools to handle problems and to respond to problem customers (i.e., voters), the Task Force recommends that training **regarding the limits on the authority of poll workers** include the following:

- Poll workers should be confident that they have easily accessible written resources that will help them review procedures and make speedy decisions.
- Poll workers should be trained to contact the elections office and be given the proper tools to gain priority access to county officials. They should be made aware that all poll workers should feel comfortable calling for assistance if they feel they need help. If a poll worker has a question, they should not let another poll worker from dissuading them from calling, particularly if there is a threat of disenfranchising a voter.

***BEST PRACTICE:*** Some counties designate a specific private phone line for poll workers to call if they need language or any other type of assistance.

- Poll workers should know how to instruct voters to contact the elections office themselves if they need further assistance.

***BEST PRACTICE:*** Poll workers should have printed cards with phone numbers and other contact information to give to voters.

- Poll workers should understand that roving inspectors will visit them frequently during the day to troubleshoot and respond to questions or problems. Poll workers should feel comfortable calling on their roving inspectors at any time.

***BEST PRACTICE:*** Roving inspectors should have an evaluation tool, like a checklist, to ensure that every polling place is following the rules regarding voting, including providing assistance to voters with disabilities or language challenges and using provisional ballots.

- Poll workers should receive clear instruction regarding how to handle electioneering, exit pollsters and poll watchers, and the most common situations where poll workers could face a confrontation.

**BEST PRACTICE:** *Poll workers should have a written, laminated instruction sheet to give to poll watchers and they should be instructed to have a place designated for poll watchers to stand or sit.*

- Poll workers should be instructed to call the police and the elections office if they feel uncomfortable or intimidated, if voters feel uncomfortable or intimidated by the behavior of any individuals, or if a disturbance of any kind occurs.
- Poll workers should be given clear, unambiguous instruction regarding the limits of their authority. They should understand that they do not have the discretionary authority to determine who may vote, but are required to consult with a supervisor or issue a provisional ballot when a question arises.
- Poll workers should understand that they will either be asked to leave or not be asked back if they take any actions that threaten the voting process or infringe on the rights of voters.



## 11. Further Recommendations

The members of the Secretary of State's Task Force on Uniform Poll Worker Training Standards worked for several months to develop these recommendations. The Task Force itself was created pursuant to a state statute adopted after the enactment of the federal Help America Vote Act of 2002 (HAVA). That law requires states to modernize voting systems, and provide education to voters, poll workers and election officials. So the directive of this Task Force, "to study and recommend uniform guidelines for the training" of poll workers is not only consistent with, but furthers the state's compliance with HAVA.

However, in the view of the members of this Task Force, adopting uniform standards is not sufficient. Once the Secretary adopts uniform poll worker training standards based on the recommendations presented here, what next? Should each county take these standards and seek to spend their own funds to create 58 different training courses? Since the California Elections Code directs counties to provide for the training of poll workers, this is what would likely occur.

This Task Force recommends the establishment of a centralized institution to take the uniform training standards and develop a single training program that can be offered to all counties, modified for each jurisdiction based on their unique requirements of languages, voting systems, geography, and voting population demographics.

California's HAVA State Plan, *"My Vote Counts: The California Plan for Voting in the 21st Century,"* states that the Secretary of State should "consider establishing, in conjunction with local elections officials, an Election Academy or similar institution to provide training, education and certification to elections officials and poll workers" to assist the state in meeting the requirements of Title III of HAVA.

The State Plan also suggests that the Secretary "consider establishing, in conjunction with local elections officials, an on-line, interactive training seminar to train, educate and certify elections officials and poll workers while ensuring that such a seminar is accessible to the widest possible audience, including bilingual poll workers and poll workers with disabilities." It also states that the Secretary should "consider producing and distributing, in conjunction with local elections officials and community-based, employee-based, campus-based, and similar organizations, in appropriate languages, printed materials, Web sites, Web site templates, and video on DVD or other appropriate media, providing training to elections officials and poll workers...."

This Task Force supports the establishment of such an Election Academy or Training Center, affiliated with a public university, and developed with participation from state and local elections officials. The establishment of such a training academy would enable the development of standardized training materials, minimizing costs and maximizing quality. Creating interactive training materials, such as a web-based system with various modules, would allow poll workers to receive training on their own time, and allow them to revisit the training several times before Election Day. This academy should also conduct and sponsor research to examine the election process and seek ways to improve how elections are conducted.

We are aware that the Secretary of State's Office has made initial contacts with at least one university and is seeking approval for funding. We heartily endorse this effort, which could also provide support to counties to evaluate poll worker education to achieve improvements in a system that has never been adequately reviewed.

## VII. Best Practices

### 1. Poll Worker Training Methods and Materials

The goal of training is to ensure that poll workers are prepared to perform their duties correctly. Training sessions help them retain as much information as possible on Election Day. Studies have shown that poll workers, like all adult learners, learn best by short, interactive training sessions.

#### **Length and Timing of Training**

Training sessions about Election Day processes and procedures should last no more than 60 – 90 minutes. If more time is needed, the training should be broken into discrete sections with 10-15 minute breaks in between. In addition to training poll workers on content, there should also be a training session specific to the voting equipment that will be used on Election Day. Training should occur as close to Election Day as possible. Ideally, training should not happen more than six weeks before the election.

#### **Conducting Training**

The most effective training for adult learners maximizes interaction between the trainers and the trainees. Interactive training includes role playing, setting up mock polling places, the identification of objects, team exercises and questions posed to members in the audience. Lecture formats and multiple-choice tests are the least effective methods for training adults.

It is a good idea for trainers to give an introduction to begin the training session by telling the poll workers what they will be learning. The goal and purpose of each lesson should be clearly stated before it is taught. Adult learners tend to retain information when they understand why it is being taught to them.

In addition, soliciting comments from the audience during exercises can help reinforce the material being taught. Trainers should use positive feedback when responding to questions from the audience. Rather than saying that an answer is wrong, it is best to try to find a portion of the answer that is accurate and form the right answer from there.

It may be worth considering forming a partnership with local continuing education professionals who are familiar with adult learning techniques to train the trainers.

#### **Use Materials That Will Be Used on Election Day**

Election Day materials should be used during training sessions. Poll workers should be asked to find a certain section in the materials or conduct an exercise based on the materials. This will help reinforce the content of the materials. Training and Election Day materials are most effective when they are accessible to the people using them. Materials should be easy to read, as short as possible, and in chronological order, including graphics and having the most important information in the most visible places.

#### **Additional Workshops or Clinics**

Counties may also wish to consider providing poll worker training workshops or clinics in the days leading up to Election Day. The clinic can be housed at the county elections office and include the availability of operating voting machinery. Clinics allow poll workers to test their ability to use the machinery and test their knowledge of common issues they could face on Election Day.

#### **Measuring Success**

Finally, it is important to measure the success of training programs to determine their effectiveness. After each training session, poll workers should be asked to fill out an assessment form to gauge their opinions of the training. Additionally, the trainers should complete an assessment form, which can be used as a self-evaluation tool. Counties can track weaknesses in training by having poll workers complete a post-election response form evaluating their complete experience as a poll worker and comparing the problems that occurred on Election Day with the initial assessment forms completed by poll workers and trainers.

## 2. Poll Worker Recruitment

In every election, California elections officials, like their counterparts across the nation, face the challenge of finding enough poll workers to conduct the election. California law limits the number of voters who may be assigned to a polling place and prescribes the minimum number of poll workers who must staff each polling place. A large number of poll workers are needed on Election Day to ensure the success of the election.

### Common Recruiting Strategies

Common strategies for poll worker recruitment include:

- Newspaper ads and public service announcements
- Ads in public places, such as on buses
- Ads on election office Web sites
- Letters and visits to service clubs and other groups
- Personal recruiting visits to high schools
- Poll worker applications included in sample ballots and other mailings.

### Recruiting Experienced Workers

Before each election, a concerted effort must be made to recruit new poll workers. The single greatest pool of eligible poll workers is the database each county maintains of those who have worked for them before. Most election officials agree that it is worth the effort, whenever possible, to remind those individuals of approaching elections well in advance of the election with newsletters and "save the date" reminders. It is also important to express deep gratitude for the service poll workers perform by providing the resources they need and by taking care to respect and thank them.

A prompt response to persons interested in being a poll worker can make the difference between a surplus and shortfall of workers on Election Day. Poll worker outreach coordinators should set appropriate deadlines for promptly responding to poll worker inquiries.

The effectiveness of other methods of poll worker recruitment is not known. For this reason, recommendations concerning best practices are speculative. Nonetheless, several counties in California have had success with the recruitment methods described below.

### Recruiting Students

Most experienced election officials agree that the time and expense of recruiting high school students to be poll workers is well worth the effort. These students have a good response rate for the effort required to recruit them, and they possess attributes that make them especially valuable at the polls. Chief among these is their value as bilingual poll workers. Bilingual students are comfortable in the translator role, and they are a great resource for this service.

Colleges are also a good source of recruits. College students are easy to train, are attracted by the money they can earn on Election Day, and can easily understand how to operate technologically complex voting machines. Some professors have also been willing to offer class credit for students who serve as poll workers. It may be worthwhile for county officials to work with community college, college and university administrations to encourage poll worker recruitment on campus and institutionalize class credit for service. Reaching out directly to local college fraternities and sororities, who are usually required by their bylaws to perform community service activities, may also be inclined to sign up their members as poll workers in order to both serve the community and raise funds by pooling the stipends each member receives for working at the polls.

Another, often-overlooked, source of poll workers is a county's retired grand jury members. Some counties utilize county workers, and this can be a good source of people who have the time to train, a commitment to serving the public, and an investment in the success of the election in their county. After the experience, county workers often spread the word to their co-workers, thereby becoming a source for recruiting additional experienced and committed poll workers.

**Split Shifts**

Another idea that has been successfully used in some counties is the concept of splitting shifts between poll workers with one member of the pair working the first half of the day and the other working the second half. Split shifts may be somewhat complex because counties may have difficulties splitting stipend checks. Counties have overcome this difficulty by inviting poll workers who know each other to sign up for split shifts, paying one of the workers in full, and leaving it to the workers themselves to split the payment.

**Generating Publicity**

Pitching stories to local media about the need for poll workers has also aided recruitment. One county has tried to get local TV reporter/anchor to spend time as a poll worker and do reports on the process and the experience. But sending out press releases highlighting how the process works, how much a worker can earn, and the positive experience of past workers can be useful. Some counties do public service announcements with local celebrities for broadcast on local television and radio, and publication in local newspapers. Another idea is to pitch a story to local journalists about the colorful characters who serve as poll workers; people who will be entertaining to watch but can also be cheerleaders for serving as a poll worker.

**Direct Mail Solicitation**

Some counties have successfully used direct mail to recruit poll workers by sending a solicitation mailing to voters who have voted in two recent elections and are at least 50 years old.

**Contests and Awards**

Another idea is to hold a contest with awards to those who recommend others to serve as poll workers. The person who gets the most people to actually serve could be awarded a prize.

### 3. Best Practices Compilation

The following is a collection of the "Best Practices" tips scattered throughout the Recommendations sections. The tips are organized below in the same order, by category:

#### 1. The Rights of Voters

**BEST PRACTICE:** Poll workers should be instructed that before the polls open, they should connect and test any attachments to voting machines that provide accessibility to the disabled. (Some poll workers may then need to disconnect the attachments since some certified voting systems do not display anything on the screen if an audio device is attached.) Connecting and testing attachments allows poll workers to become familiar with the devices, and enables them to re-attach them quickly in the event they are needed.

**BEST PRACTICE:** During training, it is often useful to have both a voter with a disability, and a voter with limited proficiency in English, relate to the class (either in person or via video) a prior bad experience trying to cast a vote. Hearing from someone directly can have a tremendous impact.

**BEST PRACTICE:** Poll workers, bilingual or not, should be equipped with and trained to prominently display badges, nametags, stickers or ribbons identifying which languages they speak.

**BEST PRACTICE:** Training poll workers to ask voters politely how to spell their names can often eliminate miscommunication.

**BEST PRACTICE:** Poll workers should understand that no matter what language a voter speaks, there are often simple ways to communicate effectively with the voter (e.g. hand signals, pantomimes, drawing pictures, etc.) if there is no one who speaks the voter's language.

**BEST PRACTICE:** Role-playing is an effective technique to use in explaining to poll workers that they do not have to use English to explain to a voter how to vote. It is also an effective technique to make poll workers more comfortable dealing with voters with special needs.

#### 2. Election Challenge Procedures

**BEST PRACTICE:** If a disruption occurs, avoid direct confrontation. It is also best to move the parties involved outside and to a safe distance from the polling site so that the polling place can continue to process voters.

**BEST PRACTICE:** Training for poll workers should include role-playing to provide poll workers with the chance to experience situations where they will have to confront challengeable behavior under different scenarios. This can also be done using a film or video to expose poll workers to various situations and have them see the appropriate responses.

#### 3. Operation of a Jurisdiction's Voting System

**BEST PRACTICE:** There should be adequate machines in the training facility to ensure at least a 1:5 ratio of machines to poll worker students, enabling each student to receive adequate time learning to use the voting system.

**BEST PRACTICE:** Poll workers often want to spend more time practicing how to use a voting system. Counties may wish to have additional optional workshops for poll workers, or have frequent "office hours" at several locations in the weeks before an election, so poll workers who feel tentative or uncomfortable with the system can come in and gain more experience assembling, dismantling, and operating the voting system.

#### 4. Preventing, Detecting and Addressing Problems with Voting Systems

**BEST PRACTICE:** Training should include first hand observations of mock attempts to tamper with a system, either via video or through role-playing.

**BEST PRACTICE:** Training should include a hands-on walk through of all of common issues. If poll workers might need to fix a problem on Election Day, then they should practice fixing that problem in training.

**BEST PRACTICE:** If possible, training should include some role-playing or demonstration of unusual situations and how poll workers should observe and record the unusual events.

#### 5. Poll Hours

**BEST PRACTICE:** Poll workers should be instructed to arrive at polling places from one half hour to one hour before the polls open, to give them adequate time to set up and ensure that polls are ready for operation promptly at 7 a.m. Allowing poll workers to practice setting up equipment can show them how long they will need for set-up so they can plan accordingly.

**BEST PRACTICE:** Signs should be posted outside of polling places that provide information about what voters should do if their polling place is not open on time.

#### 6. Relevant Election Laws and Procedures

**BEST PRACTICE:** Poll workers should be instructed to contact their county election office if they think they have a reason to challenge a voter's eligibility.

**BEST PRACTICE:** Training on ballot reconciliation, whether from a DRE printout or by counting paper ballots, is critical. Reconciling the numbers with the roster signatures is an important post-election procedure that seems to confuse a lot of poll workers. Walking through it during the training can help poll workers understand the importance of making sure they get the roster signatures right in the first place.

**BEST PRACTICE:** Training materials should be designed in chronological order (i.e., the order in which poll workers will face the issue or task during Election Day) so that poll workers can easily find the answers to their questions.

**BEST PRACTICE:** Language used in training materials should avoid technical, legal and system jargon. Simple words and phrases should be used, or if not, should be explained or defined several times, including a glossary of terms at the end of the materials.

#### 7. Cultural Competency

**BEST PRACTICE:** Counties should provide one hotline dedicated to poll workers and one hotline designed for voters to receive assistance in various languages.

**BEST PRACTICE:** Use role-playing in training to reinforce cultural sensitivity.

**BEST PRACTICE:** Counties should broaden their poll worker recruitment to recruit workers who are diverse in age, ethnicity and language ability.

**BEST PRACTICE:** Provide a customer feedback form for voters to comment on the experience at the polling place. Allow voters to turn it in at the polling place or mail it back to the county elections office.

#### 8. Voters with Disabilities

**BEST PRACTICE:** Providing poll workers a demonstration or opportunity to actually sit in a wheelchair, enter a mock polling place blindfolded, or try to communicate with someone when they are only mouthing words, can give poll workers a much better understanding of the obstacle that voters with disabilities can face at a polling place if poll workers are not counseled in how to be sensitive and aware.

#### 9. Procedures Involved with First-time voters, Provisional Voting, Absentee Voting, etc.

**BEST PRACTICE:** Poll workers should be trained to process and assist all voters with a customer service mentality in order to make their experience as positive as possible. Congratulating a first-time voter for voting also sends a positive message.

**BEST PRACTICE:** Place a sign or placard near the roster informing voters, and reminding poll workers, that voter's have the right to request a provisional ballot if their name is not on the roster and poll workers must provide a provisional ballot to people who request one.

**BEST PRACTICE:** Counties should review the performance of each poll worker's performance with a post-election survey of their fellow poll workers. Poll workers should be evaluated on key areas so that they can improve based on feedback on their performance, and so counties can remove poor workers and reallocate the best workers to serve in the busiest precincts or to become troubleshooters.

**BEST PRACTICE:** Poll workers should be instructed to minimize voter confusion by checking to confirm they are providing the correct sample ballots to voters, particularly those voters casting provisional ballots.

**BEST PRACTICE:** Counties should review the performance of each poll worker's performance with a post-election survey of their fellow poll workers. Poll workers should be evaluated on key areas so that they can improve based on feedback on their performance, and so counties can remove poor workers and reallocate the best workers to serve in the busiest precincts or to become troubleshooters.

#### 10. Authority of Poll Workers and Appropriate Limits of that Authority

**BEST PRACTICE:** Some counties designate a specific private phone line for poll workers to call if they need language or any other type of assistance.

**BEST PRACTICE:** Poll workers should have printed cards with phone numbers and other contact information to give to voters.

**BEST PRACTICE:** Roving inspectors should have an evaluation tool, like a checklist, to ensure that every polling place is following the rules regarding voting, including providing assistance to voters with disabilities or language challenges and using provisional ballots.

**BEST PRACTICE:** Poll workers should have a written, laminated instruction sheet to give to poll watchers and they should be instructed to have a place designated for poll watchers to stand or sit.

APPENDIX 1: Survey of Training for March 2004 Election

COUNTY	Voting System used in March 2004 Elections	1. How many poll workers did you train for 3/04 Primary?	2a. What percent were returning poll workers?	2b. What percent had never been a poll worker?	3. How many were student poll workers on 3/2?	4. How long were your county's training sessions (in hours)?	5. How long did each poll worker train on your voting system?	6. Do you use nontraditional training methods?
ALAMEDA	DRE	1361	70%	30%	604	2.5	30-60 minutes	video tape *Note: County is an all vote by mail, there are no poll workers
ALPINE	Punchcard	0	0%	0%	0	0.5	n/a	no
AMADOR	Optical Scan	100	94%	5%	0	2	varies	no Web site-online training & CD-Training Program
BUTTE	Optical Scan	717	70%	30%	72	2-2.5	30 minutes	no
CALAVERAS	Punchcard	133	86%	14%	0	1.5	none	no
COLUSA	Optical Scan	70	80%	20%	4	2	none	no PowerPoint presentation
CONTRA COSTA	Optical Scan	2081	80%	-	35	1.75	5-10 minutes	no
DEL NORTE	Punchcard	70-76	50%	50%	0	2	none	no
EL DORADO	Punchcard	542	70%	30%	100	2	n/a	Power point
FRESNO	Optical Scan	1348	59%	-	392	2	20 minutes	no Video tape from I.A.Co.
GLENN	Punchcard	55	87%	37%	0	1	none	No, overhead projector
HUMBOLDT	Optical Scan	228	76%	24%	2	3	60-90 minutes	no
IMPERIAL	Punchcard	290	majority	unknown	0	2	45 minutes	no
INYO	Punchcard	80-100	90%	5-10%	0	1.5-2	15-20 minutes	no Internet, DVD & VHS training
KERN	DRE	1764	98%	-	105	2-4	20 minutes	no
KINGS	Optical Scan	208	78%	22%	24	1.5-2	varies	no
LAKE	Optical Scan	142	86%	14%	0	2	n/a	no
LASSEN	Optical Scan	58	89%	11%	6	1.5	30 minutes	No
LOS ANGELES	Optical Scan (DRE for early voting)	19576	86%	14%	2072	1.5 - optical scan; 6 - DRE early voting	30 minutes - 2 hours	video, PowerPoint, hands-on exercises
MADERA	Optical Scan	-	-	-	0	2	n/a	no
MARIN	Optical Scan	750	70%	30%	16	1	varies	no
MARIPOSA	Optical Scan	60	99%	1%	0	2.5	varies	no
MENDOCINO	Optical Scan	252	90%	10%	15-20	2.5	90 minutes	no
MERCED	DRE	-	80%	20%	0	2	varies	LCD
MODOC	Optical Scan	44	71%	29%	15	3	10 minutes	no
MONO	Optical Scan	30	90%	10%	2	1	10 minutes	no
MONTEREY	Optical Scan	526	unknown	unknown	5-10	varies	varies	no
NAPA	DRE	420	90%	10%	0	3	3 hours	Hands-on PowerPoint presentation
NEVADA	Optical Scan	169	70%	30%	27	1.5	-	Methods lab and lab instruction relating to polling place practices
ORANGE	DRE	2000	80%	20%	27	1.5-2	1 hour	Power point & hands-on training
PLACER	Optical Scan	1000	75%	25%	7	3	1 1/2 hours	n/a
PLUMAS	DRE	92	92%	8%	0	3	1 hour	n/a
RIVERSIDE	DRE	2289	unknown	unknown	142	1.25	45 minutes	VHS, DVD, PowerPoint & Manual
SACRAMENTO	Optical Scan	3003	70%	30%	100-150	2	n/a	no
SAN BENITO	Punchcard	125	75%	25%	0	1.5	-	no
SAN BERNARDINO	DRE	2050	78%	24%	397	2	1 hour	Power point
SAN DIEGO	DRE	6830	unknown	unknown	490	2	2 hours	no



COUNTY	Voting System used in March 2004 Elections	How many poll workers did you train for 3/04 Primary?	2a. What percent were returning poll workers?	2b. What percent had never been a poll worker?	3. How many were student poll workers on 3/2?	4. How long were your county's training sessions (in hours)?	5. How long did each poll worker train on your voting system?	6. Do you use nontraditional training methods?
SAN FRANCISCO	Optical Scan	3200	70%	30%	800	2	40 minutes	no
SAN JOAQUIN	DRE	2000	75%		120	4	4 hours	Hands-on
SAN LUIS OBISPO	Optical Scan		40%		72	2 (+ 4 hour workshop)	5 minutes	no
SAN MATEO	Optical Scan	2024	79%	21%	1	2-25	varies	No
SANTA BARRARA	Optical Scan	853	82%	18%	2	2-3	none	video tape Election Officer Lab open for 1 on 1 training 2 weeks prior to election
SANTA CLARA	DRE	3900	33%	67%	279	3	2 hours	
SANTA CRUZ	Optical Scan	800	75%	25%	41	1.5	-	
SHASTA	DRE	460	80%	20%	13	3	varies	no
SIERRA	Punchcard	21	86%	14%	0	2	2 hours	No
SISKIYOU	Optical Scan	175	unknown	unknown	18	1.5-2	30-45 minutes	n/a
SOLANO	DRE	700	85-90%	10-15%	10-15	3	2 hours	no
SONOMA	Optical Scan	600	70%	30%	124	2	n/a	no
STANISLAUS	Optical Scan	368	82%	18%	77	1.5-2	none	no
SUTTER	Optical Scan	245	90%	10%	0	5	n/a	no
TEHAMA	DRE	251	unknown	unknown	4	6	2 hours	no
TRINITY	Optical Scan	46	90%	10%	9	75-1 1.83 (1 hr 50 mins)	varies	Individual training done at each precinct
TULARE	Optical Scan	343	75%	-	111		10-15 minutes	No
TUOLUMNE	Optical Scan	184	80%	20%	0	2	n/a	Slide show and manuals PowerPoint, role playing scenarios, quizzes
VENTURA	Punchcard	972	unknown	unknown	70	2	varies	DVD's for additional training
YOLO	Punchcard	381	60%	40%	12	1-2	5 minutes	
YUBA	Punchcard	148	33%		5	1	n/a	no
TOTAL / AVERAGES		66,084	73%	22%	6,297	2.154 (2 hrs 9 mins) - 2.288 (2 hrs 18 mins)	52-57 minutes	--

**APPENDIX 2: Outline of Recommendations**

The following is an outline of the Task Force's recommendations:

**I. The Rights of Voters****A. General Rights**

- (1) Right to Cast a Ballot
  - (a) Valid Registered Voters
  - (b) Secret Ballot free from intimidation
  - (c) Voters Present and In Line when Polls Close may cast a Ballot
- (2) Right to a Provisional Ballot
  - (a) Basics of Provisional Voting
  - (b) Benefit of doubt given to voters
  - (c) Absentee Voters
- (3) Right to Replace a Spoiled Ballot
- (4) No Identification Unless Designated on the Roll
  - (a) When to ask for ID
  - (b) Acceptable forms of ID
  - (c) Voting Provisional without ID
- (5) Instruction on the Voting Equipment
- (6) Election Day Posting Requirements
  - (a) Voter Bill or Rights
  - (b) Other Postings
- (7) Reporting Fraud or Illegal Activity
- (8) Materials in the Voting Booth

**B. Other Rights**

- (1) Rights of Voters with Disabilities or Limited English Proficiency
  - (a) Right to receive assistance
  - (b) Rights of Voters with Disabilities
    - (i) What to do and what not to do if asked to assist
    - (ii) Right to an accessible polling place or alternate means of casting ballot.
    - (iii) Right to reasonable modifications.
    - (iv) Not up to poll workers to determine a person's registration qualifications.
    - (v) Ability to cast secret ballot in private.
  - (c) Rights of Voters with Limited English Proficiency
    - (i) Voting materials in their language.
    - (ii) Right to receive assistance in their language.
    - (iii) Bilingual poll workers
    - (iv) Respect for people speaking other languages
    - (v) No disrespect to voters
- (d) Rights of Parents with Children
- (e) Rights of Absentee Voters
  - (i) Casting absentee ballot at polling place
  - (ii) Right to provisional ballot
- (f) Rights of Poll Watchers and the Media
  - (i) How to treat poll watchers
  - (ii) Right to observe and ask questions.
  - (iii) Rules for media and pollsters
- (g) Rights of New Citizens and New Residents
- (h) Rights of Voters who are Required to Provide Identification
  - (i) Who can be asked for identification
  - (ii) Acceptable forms of identification

**II. Election Challenge Procedures**

- A. How to handle a challenge
- B. Contesting an election due to poll worker misconduct
- C. Reporting challengeable behavior

**III. Operation of a Jurisdiction's Voting System**

- A. Standard Operating Procedures and Troubleshooting
  - 1. Assembling the voting system and its component parts
  - 2. Operating the voting system and its component parts
  - 3. Dismantling a voting system and its component parts
- B. Hands-On Training
  - 1. Hands-on poll opening initialization of system
  - 2. A complete closing procedure including tabulation.
  - 3. Common errors and how to fix them
  - 4. Walking through a normal voting process
  - 5. At least one hour of hands-on training with voting system
- C. Written Guides
  - 1. Single page procedures
  - 2. Troubleshooting information
- D. Handling Problems
  - 1. Troubleshooting common problems
  - 2. Handling less common situations

**IV. Preventing, Detecting and Addressing Problems with Voting Systems**

- A. Security of Voting System and Materials
- B. Set-Up
  - 1. Security mechanisms
  - 2. Hands-on initializing
- C. Detecting Tampering
  - 1. How tampering could occur
  - 2. How to recognize tampering
  - 3. How to address tampering if discovered
  - 4. Inspecting booths throughout Election Day
- D. Social Engineering
  - 1. No troubleshooting by unidentified volunteers
  - 2. Continuous observation of polls
- E. Shut down
  - 1. Hands-on instruction of shut down
  - 2. Securing and accounting procedures
  - 3. Chain of custody
- F. Safe Transport of Systems and Ballots
  - 1. Basic security for transporting voting materials
  - 2. Rules for returning materials
  - 3. Two poll workers traveling together
  - 4. Documented chain of custody
  - 5. Health and safety the first concern
- G. Breakdowns
- H. Other Anomalies

**V. Poll Hours**

- A. Opening the Polls
- B. Closing the Polls
- C. Extended Poll Hours (by Court Order)
  1. How they will be informed
  2. Procedures if poll hours extended

**VI. Relevant Election Laws and Procedures**

- A. Election Day Duties
- B. Procedures for Voting Machines
- C. Issuing Ballots
- D. Provisional Voting
- E. Closing Procedures
- F. Transferring Ballots and Materials
- G. Intimidation of Voters
- H. Corruption of Voting

**VII. Cultural Competency**

- A. Respect for Differences
  1. Changing demographics
  2. Consideration, patience and respect
- B. Offering Assistance
- C. Voter Privacy
- D. Three Tools: Wait – Recognize – Listen
- E. How and When Poll Workers Should Ask for Help
- F. Content of Cultural Competency Training
- G. Display Materials
- F. Removing Insensitive Poll Workers

**VIII. Issues Confronting Voters with Disabilities**

- A. Access
  1. Ensuring physical access to polling place
  2. Temporarily modifying the polling place
- B. Provisional Ballots
- C. Curbside Voting
- D. Polling Place Set-up
- E. Voting System Access
  1. Setting up systems in accessible manner
  2. Familiarity with auxiliary aids
  3. Ensuring voters are aware of auxiliary aids
  4. Appropriate etiquette for working with voters with disabilities

**IX. Procedures Involved with Certain First-time Voters, Provisional Voting, Absentee Voting, etc.**

- A. Certain First-Time Voters
  - 1. Impressions of first-time voters
  - 2. Identification requirements
- B. Provisional Voting and Fail-safe Provisional Voting
  - 1. Right to request and cast a provisional ballot
  - 2. When a voter needs to cast a provisional ballot
  - 3. When voters are in the wrong precinct
  - 4. Process for handling provisional ballots
  - 5. Fail-safe provisional process
  - 6. Providing information on the free access system for provisional voters
- C. Absentee Voting
  - 1. Accepting absentee ballots at the polls
  - 2. How to handle blank absentee ballots
  - 3. Procedures for handling absentee ballots
- D. Provisional Absentee Voting
- E. Dual Polling Sites
  - 1. What is a dual polling site?
  - 2. Ways to minimize confusion
- F. Electioneering
  - 1. What constitutes electioneering?
  - 2. How to calculate 100 feet
  - 3. Prohibited activities
  - 4. How to address electioneering
  - 5. Materials not allowed in polling place
  - 6. How to remedy passive electioneering

**X. Authority of Poll Workers and Appropriate Limits of that Authority**

- A. Authority of Poll workers
- B. Limits on their Authority
- C. What to Do if Problem Exceeds their Authority
- D. How to Handle Electioneering, Exit Pollsters and Poll Watchers
- E. Intimidation or Disturbances
- F. Consequences if they Breach Limits on their Authority

**XI. Further Recommendations**

- A. Establishing Election Academy
- B. Interactive Training
- C. Standardized Training Materials

Ms. LOFGREN. And finally we turn to you, Reverend Hailes. We would love to hear from you.

**STATEMENT OF EDWARD A. HAILES, JR.**

Mr. HAILES. Thank you very much, Chairwoman, and members of this committee. Certainly it is my honor to present this testimony on behalf of Advancement Project.

Ms. LOFGREN. Could you please turn your mike on? There is a little button there.

Mr. HAILES. All right. Is that better? Fantastic.

Again, on behalf of Advancement Project, we thank you for this opportunity to present a focus on specific issues within the context of election administration. There are many areas of election administration where we believe uniform standards would be helpful.

Today, my testimony will focus on emergency ballots and provisional ballots. For nearly 10 years, Advancement Project has worked on the ground with a number of voters and groups that support voters. We have examined disparities and irregularities in the administration of election procedures in the course of helping voters when they need help the most. We are plainly concerned with the lack of uniformity across the Nation. We are more familiar with particular States, but we do know that geography makes a difference in whether voters will have their rights protected or violated. In the absence of an unequivocal, explicit, affirmative right to vote in the United States Constitution, voters are subject to the 13,000 separate voting systems across the Nation that interpret and apply laws differently. Without uniform standards we find that some voters are treated differently, and unfairly particularly voters of color in historically disenfranchised communities.

Again, because I want to focus on emergency ballots and provisional ballots, I will just take for one example the State of Pennsylvania and its administration of emergency ballots in the 2008 elections. I am joined today by my colleague Kathy Boockvar who is a senior attorney with Advancement Project in Pennsylvania, and her dutiful work, along with a number of coalition partners, really put a spotlight on a system that did not provide emergency ballots in cases where a number of voting machines had broken down during the primary. The groups came together, did an analysis, pointed out the real problem of waiting for 100 percent of all voting machines to be broken down—before emergency ballots were provided, and made specific recommendations to the Department of State. Those recommendations including directions and proposed uniform rules included making certain that emergency paper ballots must be offered immediately to voters as soon as at least half of the voting machines in a precinct were not functioning, they pointed out that emergency paper ballots must be clearly distinguished from provisional and other ballots; i.e., that emergency paper ballots must be treated as regular, not provisional ballots. They should be paper ballots, and no qualified regular voter who votes by emergency ballot should be subject to any requirement associated with provisional ballots, which I will talk about in just a minute. And then, consistent with Ms. Oakley's point about pollworker training, all pollworkers must be properly trained about these distinctions and requirements.

Secretary of State Cortes took steps in the right direction in response to these urgent requests following the primaries, but he did not go far enough. A lawsuit was filed. And on October 29th, less than a week before the general election, the court granted plaintiff's motion for preliminary injunction on the ground that the delay associated with waiting to vote in a precinct where 50 percent or more of the voting machines were inoperable could unduly burden voting rights, in violation of the Federal equal protection clause.

And subsequent to the election, the court issued a permanent injunction requiring that emergency ballots be distributed as soon as half of the voting machines in a precinct fail. That is as a result of litigation; that is as a result of aggressive advocacy. This emergency ballot rule does not exist in every State.

Similarly, in Virginia, there was a strong need for emergency ballots. An analysis was conducted by Advancement Project, working with other groups, that point out that there was a simple misallocation of polling-place resources—from pollworkers to machines—by precinct, which resulted in what we call a time tax where certain voters in specific precincts were required to—stand in longer polling place lines than others. So that time tax can only be eliminated with uniform standards related to polling-place resources.

Provisional ballots. We need to amend HAVA. HAVA must be amended to ensure that people voting in the so-called wrong precinct are actually allowed to have their ballots counted for all of the officials for which they are eligible to vote. Thank you very much.

Ms. LOFGREN. Thank you very much.  
[The statement of Mr. Hailes follows:]



**Testimony of Edward A. Hailes, Jr.,  
Managing Director and General Counsel,  
Advancement Project**

**Hearing on Examining Uniformity in Election Standards  
Before the Subcommittee on Elections of the  
Committee on House Administration  
Washington, DC  
Wednesday, July 15, 2009**

Chairwoman Lofgren and Members of the House Subcommittee on Elections, my name is Edward A. Hailes, Jr. I submit this testimony today in my capacity as the Managing Director and General Counsel of Advancement Project. Advancement Project is a policy, communication, and legal action civil rights organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of Advancement Project's Power and Democracy program, which supports community-based efforts to increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income communities of color. Thank you for your invitation to testify on the urgent need for uniform election standards in the administration of emergency ballots and provisional ballots. I hope this testimony is helpful to the Subcommittee in its work to eliminate "structural disenfranchisement" or systemic disparities in election administration in the best interests of voters.

Since the 2000 presidential election, Advancement Project and its local community partners have been monitoring the administration of registration and voting in several states, investigating inefficient and inequitable election practices, and advocating with state and local election officials where there have been legal lapses. During that time, Advancement Project has successfully advocated for the removal of numerous barriers to voting.

My testimony today will focus on the need for uniform and effective standards governing the administration of emergency paper ballots and the issuance and counting of provisional ballots. I will first discuss specific examples of the consequences of a lack of uniformity and clarity in the administration of emergency paper ballots. In particular, I will describe the disparate administration of emergency paper ballots in Pennsylvania in the 2008 primary election and the standards established in response thereto. I will then discuss Advancement Project's advocacy related to emergency paper ballots in Virginia in 2008. Finally, I will briefly discuss the lack of uniformity in the administration of provisional ballots related to the issuance of provisional ballots to voters who have moved and the counting of provisional ballots cast in the wrong precinct.



**I. DISPARATE ADMINISTRATION OF EMERGENCY PAPER BALLOTS MAY UNDULY BURDEN OR DISENFRANCHISE VOTERS**

Some states have not administered emergency paper ballots in a uniform manner, which has resulted in the devaluing of some votes as compared to others.

**A. Pennsylvania's Administration of Emergency Ballots in the 2008 Elections**

During its monitoring of the 2008 primary election, Advancement Project found that many Pennsylvania election officials and poll workers were unprepared for what procedures should be undertaken when voting machines broke down or malfunctioned on Election Day; whether and how emergency ballots should be distributed to voters; and how such ballots should be stored and counted.

Different procedures applied across the state and even within counties. While some voters were provided with emergency paper ballots when they faced machine breakdowns, others were told to go home and return later. Even where paper ballots were eventually offered, the procedures and forms of these ballots varied from county to county and from precinct to precinct. For example, in some precincts, voters waited for hours with all or most of the machines inoperable before poll workers offered them an alternative means of voting; consequently, hundreds of voters left the polling places without voting. In other precincts, election officials told voters to go home and try to vote later, and did not offer any alternatives. Some precincts provided waiting voters with provisional ballots, which appear to have been improperly subject to provisional ballot requirements not intended to apply to qualified registered voters. Of even greater concern, Advancement Project's analysis of this data revealed that many of these reported problems occurred in precincts and census tracts with higher than average populations of people of color and people living in poverty.

To ensure that such disenfranchisement did not recur in the general election, Advancement Project and its local partners urged the Pennsylvania Department of State to issue clear and uniform rules and directions on the use of paper ballots to establish that:

- Emergency paper ballots must be offered immediately to voters as soon as at least half of the voting machines in a precinct are not functioning;
- Emergency paper ballots must be clearly distinguished from provisional and other ballots;
- Emergency paper ballots must be treated as regular (not provisional) paper ballots, and no qualified regular voter who votes by emergency ballot should be subject to any requirement associated with provisional ballots; and
- Counties must properly train all of their poll workers in these procedures.

On September 3, 2008, the Secretary of the Commonwealth issued a directive to county election officials setting forth rules for when and how to distribute emergency ballots.<sup>1</sup> Just prior to issuing this directive, the Secretary also issued a memorandum suggesting that each polling place should have on site, at a minimum, emergency ballots in the amount of 20 percent of its registered voters.<sup>2</sup>

The Secretary's directive of September 3 required the distribution of emergency ballots only when *all* voting machines in a precinct had become unavailable. While this fell far short of the 50 percent rule that Advancement Project and its coalition partners had sought, many of other objectives were met. In particular, the directive required that ballots be distributed "immediately" if all voting machines were unavailable, rather than permitting county officials to delay distribution of emergency ballots, pending repair of one or more machines. Additionally, the directive mandated that the ballots were to be distinguished from provisional and other ballots and counted as regular ballots, rather than being subjected to the requirements of provisional or other ballots.

Nevertheless, shortly before the 2008 general election, several allies filed a lawsuit in federal court asking that the Secretary of the Commonwealth be ordered to revise his directive to apply as soon as *half* of the voting machines in a precinct fail. The lawsuit relied on evidence collected and analyzed in large part by Advancement Project and its partners. On October 29, less than a week before the general election, the court granted plaintiffs' motion for preliminary injunction on the ground that the delay associated with waiting to vote in a precinct where 50% or more of the voting machines were inoperable could unduly burden voting rights in violation of the federal Equal Protection clause. *NAACP v. Cortes*, 591 F. Supp. 2d 757, 766 (E.D. Pa. 2008). Subsequent to the election, the court issued a permanent injunction requiring that emergency ballots be distributed as soon as half of the voting machines in a precinct fail.

#### **B. The Need for Emergency Ballots in Virginia Due to Inadequate or Improperly Allocated Polling Place Resources in the 2008 General Election**

In 2008, Virginia's surge in voter registration, its antiquated guidelines for voting equipment allocation,<sup>3</sup> and its history of misallocation prompted Advancement Project to undertake an investigation of Virginia's allocations of polling place resources. Advancement Project obtained public records and other information on the precinct-level allocation of voting machines and poll workers in Alexandria, Fairfax County, Newport News, Norfolk, Richmond, and Virginia Beach. The initial analysis revealed that many precincts would be overwhelmed on Election Day – and that there were significant under-allocations in many precincts with a majority of voters of color.<sup>4</sup>

<sup>1</sup> Pennsylvania Dep't of State, *Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by County Boards of Elections*, at 3 (Sept. 3, 2008).

<sup>2</sup> Pennsylvania Dep't of State, *Emergency Paper Ballots* (Aug. 2008).

<sup>3</sup> Virginia law sets a floor for the allocation of voting equipment that is clearly insufficient – one machine for every 750 registered voters at each precinct and one voting booth for each 425 voters in a precinct using optical scan. Va. Code Ann. § 24.2-627. Ohio, by comparison, mandates one machine for every 175 registered voters.

<sup>4</sup> Advancement Project, *End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election* (Oct. 2008) at 13, available at [http://www.advancementproject.org/ourwork/power-and-democracy/voter-protection/view.php?content\\_vp\\_id=71](http://www.advancementproject.org/ourwork/power-and-democracy/voter-protection/view.php?content_vp_id=71) ["End of the Line"].

In Richmond, for instance, the analysis showed that the number of voters per machine would range from 216 to 380 and that in precincts with a high minority population (more than 75 percent) there were 20 percent more voters per machine than in low minority precincts.<sup>5</sup> In Virginia Beach, there would likely be 11 percent more voters per machine in higher minority precincts.<sup>6</sup>

As the impact of these data became clear, Advancement Project and its allies began pressing state and local officials to meet about the findings and possible solutions. Despite Advancement Project's evidence and proposed solutions, including requests for re-allocation of voting equipment and the use of paper ballots, state and local election officials refused to meet and insisted that they were prepared for the turnout.

On October 27, following an intensive review of the available data and the publication of a report,<sup>7</sup> Advancement Project filed a lawsuit, on behalf of the Virginia State Conference of the NAACP, against Governor Tim Kaine and top state and local election officials for the unconstitutional allocation of polling place resources. The lawsuit focused on the misallocation of voting resources in Norfolk, Richmond, and Virginia Beach and sought preliminary relief: (1) allocating an adequate number of machines at each precinct so that voters did not have to wait an excessive amount of time to vote; (2) reallocating existing machines and poll workers to ensure equitable distribution across precincts within each jurisdiction; (3) requiring that precincts offer paper ballots to voters if they had been waiting in line for longer than 45 minutes; and (4) extending voting hours to 9 p.m. on Election Day.

Plaintiffs presented evidence of substantial variations in the numbers of voters per machine and voters per poll worker across these jurisdictions. Additionally, plaintiffs' expert found that the average ratio of voters per machine in Norfolk and Virginia Beach had changed little since 2004 when many voters in those jurisdictions experienced extremely long waits to cast a ballot.<sup>8</sup> Critically, too, the expert found a striking disparity in machine allocations in Richmond and Virginia Beach that would result in more "lost voters" in districts with a high proportion of African Americans.<sup>9</sup> Such disparities in effect imposed a "higher cost of voting," or "time tax," on voters in those precincts.<sup>10</sup>

On the eve of the election, November 3, the court denied plaintiffs' requests but recognized the threat posed by long lines. The judge ordered the State Board of Election to publicize "curbside voting," which allows voters with disabilities and elderly voters to cast their ballot without waiting in line, and to make clear that if voters are in line by 7 p.m., they may vote.

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<sup>5</sup> *Id.* at 13-14.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> See Amended Expert Declaration of Walter Richard Mebane, submitted in support of Plaintiffs' Motion for Preliminary Injunction in *NAACP-VA v. Kaine*, No. 3:08 CV 692 -RLW (E.D. Va. Oct. 31, 2008).

<sup>9</sup> *Id.* at ¶19.

<sup>10</sup> *Id.*

Come Election Day, many Virginia voters faced long waits to cast their ballots while others voted without delay. In some precincts, there simply were not enough machines to allow voters to cast their ballots in a timely fashion. In others, electronic poll books failed and the precincts either did not have backup paper poll books or the poll workers did not switch to them.<sup>11</sup> In some Richmond precincts, voters waited as long as three hours, and there were no paper ballots on hand.<sup>12</sup> In many precincts with optical scan, rain-dampened ballots jammed machines and left voters waiting while poll workers determined how to respond. Across the city of Chesapeake, voters waited for hours; in one precinct voters waited seven hours to vote.

**C. Recommendations for Uniform Standards Related to Emergency Paper Ballots**

Reports from at least one election protection hotline reveal that voting machine breakdowns and long lines were widespread. The Election Protection hotline report indicates that machine breakdowns were the reason for a significant percentage of the calls to the hotlines on Election Day—17% in Virginia, 13% in Pennsylvania, Georgia, and New York, and 12% in Ohio.<sup>13</sup> Some Virginia voters waited seven hours as a result of machine breakdowns and lack of emergency paper ballots or procedures; other voters were told to put their voted ballots in unsecured and unmarked bags or boxes.<sup>14</sup> Additionally, voters across the country experienced unduly long lines for many other reasons, including insufficient supplies of voting machines, poor polling place setup, and inadequate numbers of poll workers.

Accordingly, Advancement Project recommends that Congress enact legislation to establish the following uniform procedures related to the administration of emergency ballot provisions:

- Emergency paper ballots must be offered to voters immediately as soon as:
  - at least half of the voting machines in a precinct are not functioning; or
  - the wait time to vote in a precinct exceeds forty-five minutes;
- Emergency paper ballots must be clearly distinguished from provisional and other ballots, and once voted should be deposited in a secure receptacle;
- Emergency paper ballots must be treated and counted as regular (not provisional) ballots, and no qualified regular voter who votes by emergency ballot should be subject to any requirement associated with provisional ballots;
- Counties must properly train all of their poll workers in these procedures; and
- Each polling place should have on site, at a minimum, emergency ballots in the amount of 20 percent of its registered voters.

<sup>11</sup> See, e.g., Poll Book Problems Blamed for Slow Voting at 12 Chesapeake Precincts, PilotOnline.com, Nov. 4, 2008 (<http://hamptonroads.com>).

<sup>12</sup> Just Democracy blog (citing Huffington Post).

<sup>13</sup> *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow* (Mar. 2009).

<sup>14</sup> *Id.* at 13, 16, 19.

## II. OVERUSE AND MISUSE OF PROVISIONAL BALLOTS MAY DISENFRANCHISE VOTERS

Section 302(a) of the Help America Vote Act (“HAVA”) was enacted to ensure that all voters in federal elections have access to provisional voting in cases where they do not appear on the precinct list or an election official raises some other challenge to their eligibility. 42 U.S.C. § 15482(a). But states’ implementation of provisional voting has made this federal protection a mixed blessing at best. Indeed, poor interpretation or implementation of Section 302(a)’s requirements at the state level sometimes causes the very type of disqualification and disenfranchisement that the statute was created to fix.

Some states’ laws result in the needless overdistribution of provisional ballots. For example, Ohio law requires voters who move prior to Election Day and have not changed their address to cast a provisional ballot<sup>15</sup>—even if the voter provides the required identification, submits a change-of-address on Election Day or during early voting, and votes in the correct precinct. This rule disproportionately impacts low-income voters and voters of color, who move more frequently than high-income, white voters. By contrast, under Florida law, voters who move are permitted to cast a regular ballot in the precinct where they reside, provided they sign an affidavit and the poll worker confirms the voter’s registration and eligibility.<sup>16</sup>

A whole set of problems flow from state laws that require the disqualification of provisional ballots cast in the “wrong precinct” — i.e., at a voting location other than the one assigned to the voter’s precinct of residence.<sup>17</sup> Advancement Project contends that such “wrong precinct” rules misconstrue and violate HAVA’s provisional ballot guarantee. Even assuming that such rules are facially legal, as some courts have held,<sup>18</sup> they are being applied in ways that violate voters’ rights under HAVA and the due process clause of the Fourteenth Amendment. The problems center on the process encountered by voters on Election Day, which is fraught with errors and lapses on the part of poll workers. Too often, if a voter’s name is not on a precinct roster, poll workers simply issue the voter a provisional ballot — without bothering to check whether the voter is in the correct location. This problem is compounded in multi-precinct polling places. Advancement Project found that in many instances, voters whose provisional ballots were rejected as cast in the wrong precinct were actually at the right polling place, but at the wrong precinct table. If poll workers had instructed these voters to walk across the room, their votes would have counted.

Urban communities, where younger voters, voters of color, and lower-income voters tend to be concentrated, are more vulnerable to disenfranchisement by the “wrong precinct” rule. Residents of those communities are more likely to rent and to change residences frequently, resulting in more frequent changes in precinct assignments. In addition, urban areas tend to have more multi-precinct polling places and numerous polls located within a neighborhood. When

<sup>15</sup> O.R.C. Ann. § 3503.16.

<sup>16</sup> Fla. Stat. § 101.045.

<sup>17</sup> By contrast, some states, including Georgia and Pennsylvania, require the partial counting of provisional ballots cast in the wrong precinct; votes for contests in which the voter is eligible to vote must be counted regardless of the precinct in which the provisional ballot is cast.

<sup>18</sup> See, e.g., *Sandusky County Dem. Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) (reversing the district court’s holding that HAVA requires provisional ballots cast out of precinct to be counted).

poll workers issue provisional ballots that can never be counted, they transform a tool intended to protect voters from disenfranchising administrative errors into a tool of disenfranchisement.

Advancement Project investigated provisional ballot use and misuse in the 2006 general election in Ohio and Florida and issued a report that documents a constellation of problems. For example, poll workers directed voters to the wrong voting location, or failed to direct them to the voting location assigned to their precincts, causing their provisional ballots to be rejected under state law. In addition, provisional ballots were rejected under state law because of administrative errors, such as incomplete envelopes and missing signatures. *See* Advancement Project, *Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement?* (Sept. 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf>.

Although data on states' use of provisional ballots in the 2008 presidential election cycle is not yet fully available, significant problems likely recurred. In Ohio, for example, voters cast 206,155 provisional ballots in 2008—a record number—of which 39,845 (or, over 19%) were rejected; of those 39,845 rejected provisional ballots, 14,335 were cast by registered voters whose ballots were rejected because they were cast in the wrong precinct or county. In Florida, nearly 1,300 registered voters cast provisional ballots that were rejected for the same reason. Advancement Project's review of provisional ballot envelopes from ballots cast in Duval County, Florida indicates that misdirection from poll workers caused some voters to cast a provisional ballot in the wrong precinct.

#### **Recommendations for Reforms Related to Provisional Ballots**

Advancement Project recommends that Congress amend the Help America Vote Act, in advance of the 2010 general election, to curtail the unnecessary distribution of provisional ballots and the improper rejection of provisional ballots cast outside of the voter's precinct.

- HAVA should be amended to clarify that provisional ballots cast by voters who appear to vote in the "wrong precinct" must be counted for all federal election contests in which the voters are eligible to vote.
- HAVA should be amended to prohibit states from requiring registered voters who have moved intrastate to vote by provisional ballot; instead, such voters who update their address up to or on Election Day, vote in the correct precinct, and present current and valid identification, in accordance with state law, should be permitted to cast a regular ballot.
- To promote transparency of provisional balloting and foster robust public oversight of the administration of provisional ballots, HAVA should be amended to permit the public inspection and copying of all provisional ballot envelopes with the signature of the voter, date of birth, and (if applicable) full Social Security number or driver's license redacted.

\* \* \*

Thank you for your kind consideration of my testimony, and for ensuring that all voters have the opportunity to vote and have their vote counted, and receive equal protection under the law. Advancement Project is pleased, at any time, to provide technical advice, assistance, testimony, and consultation to this Subcommittee as it moves toward the legislative reforms that will ensure that all eligible voters have clear paths to the polls.

Ms. LOFGREN. And thanks to all of our witnesses for useful testimony.

Now is the time when we will have a chance to ask some of our questions, and I would like to give the first opportunity to question to our Ranking Member, Mr. McCarthy.

Mr. MCCARTHY. Thank you very much, Madam Chair. And thank you to all the witnesses today. I appreciate the testimony.

If I can just quickly follow up on your last testimony. So I am looking at nationwide data table—and you alluded to that on calls to election protection hotline 2008. And I went down to Pennsylvania, and they keep the data of why people call. The number one reason people call is because they want to know where their polling place is, 1,600.

The next one is about registration, 1,300. The next one is polling place again. It is a polling place problem and registration problem. By high numbers. I only see here—those are 400 and 411—177 called about equipment problems. But you were relating to a lawsuit that you sued, and there were a lot of equipment problems, but I don't see the correlation to the data of the phone calls that were made.

Mr. HAILES. By the calls—you are making a determination by the number of calls?

Mr. MCCARTHY. If I had a problem and I was calling and I didn't have equipment, I would call about the equipment.

Mr. HAILES. Some people call the election offices. Some election officials did the right thing and were on the spot with certified technicians to correct those problems. So, in fact, the lawsuit did work. You had fewer calls because some election officials acted and voters did not have to make calls to the hotline.

Mr. MCCARTHY. What made you do the lawsuit in the first place?

Mr. HAILES. The lawsuit was filed because there was no final judgment by the Secretary in place that machines broken—50 percent of them—would result in emergency ballots being provided. Without the lawsuit, the State would have required all of the machines in all of the precincts to be broken before emergency ballots would be provided.

Mr. MCCARTHY. Did you bring a lawsuit to give greater information to people to know where their polling places were or how to do registration?

Mr. HAILES. We did not bring any lawsuit in Pennsylvania. We worked with the Secretary to make it happen. Other groups within our coalition did bring the lawsuit. We, as many other groups that we work with, use litigation as a last resort. I have been very pleased with the amount of cooperation we get from election officials once they get the data, get the information, and see that in order to protect the rights of voters they have to take very assertive steps.

Mr. MCCARTHY. Watching the data shows there are certain priorities of things. Educating the voters seems like it would be a top item.

But if I could go to Secretary Ron Thornburgh, you said you worked with HAVA. Could you give me a little update of when you worked through that balance between Federal and State, because that was a major change in pattern, particularly in the area of pro-



visional ballots; how did you guys go about doing that debating? What were some of the tough difficult times of getting to where you got to?

Mr. THORNBURGH. Well, if I might, I would say first we have to understand the emotions of the time. We had just come off a 2000 Presidential election in which there was, if I may be so bold as to say, there was an incredible movement within Washington, D.C. to federalize elections. Obviously it wasn't working. We need to federalize it. I think, rather clearly, was opposed to that. And the point that I consistently tried to make is that although the process was flawed, the system worked and we ultimately got to where we needed to go. Some will still disagree with that yet today.

But as we finally got to the biggest issue, and that is the one you have outlined there: What is the appropriate role for the Federal Government and what is the appropriate role for the States and what is the appropriate role for local entities as well as for a number of private entities that are out there pushing this along as well?

I think what we ultimately found is that the States given—and I have said this in my testimony—when they are given the reins and the opportunity to do something, we are not restricted through Federal regulation, then we can go above and beyond.

And if I may use a brief example. On voting machines and emergency paper ballots, for instance, within the State of Kansas, I can tell you we don't mark emergency ballots by how many machines go down. We mark it by voters are having to wait in line; get them a ballot. And if that voter chooses to wait in line, then they certainly may do so.

And so a Federal law that would require a basis upon how many machines break down would completely disrupt and, I think, serve Kansas voters worse than what we are able to do now. And so I think we have to be careful on that.

Mr. MCCARTHY. Madam Chairman, one quick follow-up that I want to get to. My understanding is you just started an on-line registration.

Mr. THORNBURGH. That is right.

Mr. MCCARTHY. Quickly, because we have some votes coming up, what are the safeguards you built in if somebody registers on line?

Mr. THORNBURGH. The single most important safeguard is that an on-line voter registration, in my opinion, only works when it is tied in with the Division of Motor Vehicles. So in order for a person to register to vote on line in the State of Kansas, they must be registered—or have a driver's license. Because at that point, we have already captured a signature and we have gone through the other elements of security that go along with that as well, and now they can tie in and receive the voter registration opportunity.

And then we have the follow-up when we mail that individual their voter registration information to verify they actually live where they say they live.

Mr. MCCARTHY. You have a signature to check.

Mr. THORNBURGH. That is correct.

Mr. MCCARTHY. Thank you, Madam Chair. I would just like to submit for the record the nationwide data table for the Advancement Project project voter.

Ms. LOFGREN. Without objection, that table will be made part of the record.

[The information follows:]

**[COMMITTEE INSERT]**

Ms. LOFGREN. And I would now turn to my colleague from California, Mrs. Davis, for any questions she may have.

Mrs. DAVIS of California. Thank you, Madam Chair. Thank you all for being here.

One of the things that I have learned in coming to this committee is really how varied it is out there. And I think in some cases we would say that is a really good thing, because it gives the flexibility. But on the other hand, I think it creates a lot of confusion as well.

I know that when during the election time here in D.C. It feels people just make mistakes because they are listening to the radio, they are hearing several different ways in which they can access polling hours and absentee ballots, et cetera. And that really does seem to confuse everybody.

We also know from the military and overseas voting that people have to grapple with 50 different sets of absentee ballot requirements, and that becomes a problem.

So I think that having some things uniform is important. The Constitution only lays out the fact that people have to vote on Tuesday. That is the only thing that is truly uniform across the country.

And I wonder, then, could you share a few areas in which you think actually some of the standardization, the uniformity, should be in place that would be helpful, cause less confusion for voters, and, in the end, really benefit the voter rather than necessarily the counties in terms of ease of election material? Is there anything else that you feel that you can share with us that you really do believe should be more uniform?

Ms. HERRERA. Madam Chair, Ranking Member McCarthy and members of the committee. As my colleague right here is mentioning, they have on-line voter registration. In New Mexico it wouldn't work because we are not at that level yet. However, sitting on the EAC Advisory Board, I do use a lot of their issued voluntary standards. I believe if we get some of those voluntary standards out to some of these States, or they start utilizing them or practicing some of the practices that they are issued out, I believe we probably would come a little bit closer than everyone running their own in the States.

But it won't always—everything won't work for every State, because I have my laws, he has his laws that he has to abide to. So it would kind of interfere with our State statute.

I will just give you an example. I am for standardizing—before I go on, we should standardize and run our State's uniformity. I think that is important. It shouldn't be any different within the States. However, we have to make sure that we do not disenfranchise any voters. Like New Mexico, we have a lot of native lands, and we have got to make sure that they are not disenfranchised.

Mrs. DAVIS of California. I think also, if I may just inject, we are also talking not just statewide elections, but we are also talking Federal elections.

Ms. HERRERA. Correct.

Mrs. DAVIS of California. Where people should have an equal opportunity and equal chance to cast their ballot, which, in some cases, I think that is really not true.

Ms. HERRERA. In New Mexico I do everything in my power to make sure that no one is disenfranchised. I do depend a lot on EAC standards and work with the lawmakers in the State of New Mexico.

Ms. OAKLEY. Mrs. Davis, I would like to point out that what you have brought up is essentially a little cascade that occurs in elections. The Feds kick it down to the States; you know, okay, we have the NVRA, but now we have the States. They get to decide what they are going to do.

In California at least, the State kicks it down to the counties. Now the counties are going to decide how things are done. And then finally, in essence, the counties kick it down to the pollworkers, and now you have got four 75-year-old ladies deciding how things should be done.

And I truly believe that unless you have an overarching standard, you don't have overarching equality. And to me that is very worrisome.

Mrs. DAVIS of California. Did you want to comment. Mr. Thornburgh.

Mr. THORNBURGH. I tried very hard to not, but I have to. I want to go back to part of what I said.

Mrs. DAVIS of California. Well, my time is going to be up. So, Madam Chair.

Ms. LOFGREN. By unanimous consent, the gentlelady is granted an additional minute so Mr. Thornburgh can answer.

Mr. THORNBURGH. I will be very brief. I think where there is a need for standards, we need to look to outcomes rather than process. Because what works for Los Angeles, California, is not going to work for Leoti, Kansas. And we have to understand and appreciate those differences in this country of ours. And certainly we want to push outcomes that provide for equal opportunity and equal access for every voter.

And I absolutely believe that we are working towards that. And if we can keep outcomes in mind rather than process, then I think we are on the right track.

Mrs. DAVIS of California. Can I just ask as a no-excuse absentee voter State, do you think it is appropriate that people do not have to get a notary signature, for example, in order to vote absentee?

Mr. THORNBURGH. In Kansas?

Mrs. DAVIS of California. Yes.

Mr. THORNBURGH. Yes, I do think that is appropriate. I think that a notarization is an unnecessary burden in that particular process. I don't know that it is appropriate for me to tell my friends in other States what I think is appropriate for them, but in Kansas that works well for us.

Mrs. DAVIS of California. Thank you very much.

Ms. LOFGREN. The gentlelady yields back. Mr. Harper.

Mr. HARPER. Thank you, Madam Chair. You know, having in another life as a highly unpaid political volunteer for 30 years—and I was county party chair in my home county and had to run primaries for 7 years, and of course the clerks' offices do an incredible job in Mississippi—I am just trying to figure out how Federal control over that process is going to help those pollworkers do better than the system that is in place. The problem that we had sometimes was, no matter how much training you had of pollworkers that, sometimes they still didn't quite get it on election day.

And so I want to say that the system that we have used worked extremely well, which was we had a very involved circuit clerk's office. We had people available to answer questions. If they ran short of ballots, we got them to them when we were doing paper ballots back years ago.

And then, invariably, we had problems with the electronic machines. That has happened this past time. And no matter how you plan ahead, you have those issues.

But I would just say that we want uniform standards within that individual State, but I don't want to have Washington, D.C. Be the one to tell you how it should be done in New Mexico or Kansas or California, Mississippi. If those States—and we have an incredible group of secretaries of state that do an exceptional job across our country to make sure that those things happen.

I assume if you looked for the imposition and management of Federal standards that were mandatory on you, would you envision the EAC being the organization to oversee that—or the Department of Justice? Anybody have an answer to that?

Mr. HAILES. Let me start by saying—and thank you for the question, Mr. Harper—that both the EAC and the Department of Justice could play a role in overseeing the administration of standards once they are in place.

The advantage of having uniform standards is to help avoid the type of 11th-hour litigation that causes many pollworkers and election officials to complain about. Pollworkers find themselves on election day with different interpretations of their responsibilities. There is no clear, uniform answer for them to determine what happens to a voter who moves within the last 20 days from one county to another; whether they have to cast a regular ballot or a provisional ballot. And so they are looking for clear direction, and that can be done through uniform standards.

Mr. HARPER. Reverend Hailes, can't the secretary of State for that State along with the clerk's office for that county handle and answer those questions? And of course in our State we provide that training for those pollworkers in those primaries, and of course in the general election the circuit clerk's office handles those in my State. Don't you think that local control and local training is better than having someone come in from Washington, D.C. Let's say to do that. And I would be interested in knowing Secretary Herrera what your response is on that.

Ms. HERRERA. I agree that the Secretary of State and the county clerks within the State should run their elections as needed. I agree that at the Federal level there can be some standardization. For instance, of course, like the time; you know, election day 7:00

a.m. to 7:00 p.m. Just items like that, that won't interfere with the election process.

What works in New Mexico won't work in other states. Also, anyone can vote absentee; they don't have to have a reason. I know some States do. Maybe that could be one of the standards and allow folks to vote absentee, I don't know.

I know that the ID requirement is always coming up in all the States, just make sure it is standard. Something like that can be a standardized item, rather than getting into the nitty-gritty of running elections, because we have already voting sites. I have 15 in the larger counties—18, 2, and none in some of our smaller counties.

Mr. HARPER. Secretary Herrera, my time is almost up, but I know there was an issue with ACORN in your State.

Ms. HERRERA. Right.

Mr. HARPER. Have you been involved in any of the investigation of the voter fraud allegations there, either working with the FBI investigators—or have you been involved in any hearings on those allegations?

Ms. HERRERA. I was county clerk when we turned some of the voter registration forms over to the U.S. Attorney General for review. And so, yes, I have been involved.

Mr. HARPER. Thank you.

Ms. LOFGREN. The gentleman yields back. Mr. Davis.

Mr. DAVIS of Alabama. Thank you, Madam Chairwoman. Let me hone in on a provisional ballot question because it strikes me as the most interesting question that we are dealing with. Who on the panel believes that there should be a uniform nationwide standard for how provisional ballots are handled, at least in Federal races?

Mr. HAILES. I would say I do, if it is the right uniform standard.

Mr. DAVIS of Alabama. Well, it is the one you write. I get that. Who on the panel believes it is a general proposition? Ms. Herrera.

Ms. HERRERA. I think qualifying provisional ballots and who is entitled to provisional ballots can be a standard at a Federal level, because we are all stating we don't want anyone to be disenfranchised. Right now we have requirements that we must issue provisional ballots if we received any of the HAVA funding. So why not make standards as far as who is entitled and why, and why they exist? I believe that would help nationwide.

Mr. DAVIS of Alabama. Let me follow up on that. The whole policy purpose behind provisional ballots, as I understand it, is to allow eligible voters to have an opportunity to maintain their eligibility or to assert their eligibility if it is somehow questioned on election day.

Now, the way eligibility is defined in Federal races is you have to be an American citizen who is 18 years of age or over. And, of course, given States have restrictions, for example, on convicted felons. I think that is the most popular and the only kind of exclusion that I really know of—if you are a convicted felon and have committed a certain class of crime, you are disenfranchised.

So if an American citizen is over the age of 18 and does not have a felony status, shouldn't that individual be presumed to be eligible to vote in any Federal election?

Ms. OAKLEY. I would say yes, absolutely.

Mr. DAVIS of Alabama. I think we all agree with that, so that leads to my question.

Mr. THORNBURGH. I apologize for interrupting. I am not sure we all agree with it, because I am not sure I followed the——

Mr. DAVIS of Alabama. Well, you may see where my question is going.

Mr. THORNBURGH. Did we say we assume every person who shows up is qualified to vote?

Mr. DAVIS of Alabama. No.

Mr. THORNBURGH. I misunderstood. I apologize.

Mr. DAVIS of Alabama. An American who is a citizen who is over the age of 18 and has no felony disqualification, I think all of us would agree States ought to have the right—or most of us would agree States ought to have the right to wade into that area. You may disagree as a matter of public policy, but most of us would agree that States have the right to wade into that area.

So stipulate that for one second. Someone who is not disqualified because of a prior conviction, who is an American citizen who is over the age of 18 and who lives in that State, I would assume we would agree that a person who fits those characteristics ought to be able to cast a vote in a Federal race in that State, correct?

So, therefore, if we allow multiple States to have different standards when it comes to provisional ballots, don't we undermine that agreement?

For example, I am looking at the data the committee provided: 17 States will count provisional ballots if you voted in the wrong precinct; 27 States won't.

Now, whether I live in Mountain Brook, Alabama or Homewood, Alabama doesn't touch one of those core qualifications that I mentioned: my age, my status as an American, and my non-felony condition.

So it would seem to me Congress does have the right to say that there is kind of a national eligibility standard that exists, and that given communities can't chip away at that. Because if there are 27 States that would not allow a vote in the wrong precinct by someone who fits those standards to count, arguably those 27 States are undermining a principle of enfranchisement.

You are nodding your head affirmatively, Ms. Oakley. I assume you agree.

Mr. Thornburgh, you are seeming to disagree. Tell me why you disagree.

Mr. THORNBURGH. Well, I wanted to clarify one point, because I think one of the elements of the opportunity to vote is also registration. And registration is an element that is important.

Mr. DAVIS of Alabama. If someone is registered and they are voting in the wrong precinct, why shouldn't they be allowed to still vote?

Mr. THORNBURGH. For the races in which they are eligible to vote——

Mr. DAVIS of Alabama. For Federal races, for President of the United States.

Mr. THORNBURGH. In my State of Kansas, if a person shows up in the wrong polling place, they are given a provisional ballot, and

we count the votes for the offices in which they were eligible to vote, from Federal through State.

Mr. DAVIS of Alabama. But some States don't do that. Don't you think it is problematic that some States can deny the franchise to someone who is otherwise legally entitled to vote in a Federal race? Because that is what happens.

If I can have an additional 30 seconds, Madam Chairwoman, isn't that what happens? If some States can deny the provisional ballot based on precinct, haven't they undermined a core Federal ability to participate in an election?

Mr. THORNBURGH. I would respectfully disagree, in that part of the process is that a person in order to be able to cast their ballot—I hate to fall back on the rules of the game, but the rules are you kind of have to follow the rules of the election. You need to vote on a ballot. You need to vote on the voting machine. You need to follow that process. And that process has been established to—either having a ballot sent to you, in the case of advance voting or whatever the case may be, or going to the appropriate polling place to have that cast.

So I don't know that the State removed that individual's right to cast their vote, but the individual didn't follow the rules established by the State.

Mr. HAILES. But if I may, Mr. Thornburgh said it is not about process, it is about outcomes. The outcome in that circumstance would be disenfranchisement.

Mr. DAVIS of Alabama. My time has expired.

Ms. LOFGREN. And my time has begun. First let me thank all of the witnesses for your very interesting testimony. I think what we want to do is to help enfranchise people. I think you all want to do that. And the question is, what is the appropriate role for the Federal Government to help promote that?

Just listening, I was fascinated by your description, Ms. Herrera, of outlining what is voter intent in advance of the election. What a smart thing to do, so you are not with the candidates, fighting over what does it mean when you do the happy faces around the candidate's name, that is going to decide the outcome of the election. You decide how to read that type of nonsense in advance so that everybody knows.

I don't know whether best practices that States engage in will simply be adopted by States if the EAC provides that information. I think, probably, yes.

But there are certain elements—I think that certainly we rely on the States and counties to run the elections, but the Federal Government has the opportunity or responsibility for Federal elections. And we want to make sure that if there are Americans who are being disenfranchised, that that doesn't happen.

I guess the question I have is: If you had voluntary standards, let's say, for example, use Mr. Davis' example of provisional ballots, and it is very clear from the ballot that a majority of the provisional ballots cast are not counted in the United States. That doesn't mean that is true in all of your jurisdictions. But if you add it up in the United States, that is the fact. So it is really not necessarily serving the intent that people had in mind to the extent that people were, in fact, Americans over 18 and eligible to vote.

If we had those standards and made them voluntary, but mandatory, to the extent that States accepted HAVA money, would that be effective in your judgment?

Mr. Thornburgh, would that be offensive if it was made—if you take the money, you have to take the rules?

Mr. THORNBURGH. Well, I think to a large extent, those rules are in effect; if you take the money, you need to follow these rules.

If I may talk about the provisional for just a moment, you said there were a vast majority of provisionals that were not counted. I would assume—and I don't know these facts so I should be careful what I say—but I would assume that a large number of those were individuals who were not registered to vote, who showed up on election day. I don't know that for a fact.

But I can tell you in the State of Kansas, the single thing that we have done, of the provisional ballots prior to the previous election, of the provisional ballots on election day, there were individuals who registered to vote through the Division of Motor Vehicles. The paper process was not forwarded to the county election officer. That person applied to register to vote but was never, in fact, registered. So that was a mistake on the process part.

We then created the electronic transmission of that same information, and we addressed, I think, about 80 percent of the problems on election day through that single change that we made for that.

So we were both getting to the same point. Let's reduce the number of provisional ballots and make sure everyone's vote counts who has an opportunity to do so; but we may disagree on what that is supposed to look like or what the road map looks like.

Ms. LOFGREN. I understand your point. I think the point on outcomes has merit as well, because the idea—and I like your “time tax” phrase because that is exactly what it is. If one citizen has to wait for 15 hours to vote and another citizen has to wait for 5 minutes, that is not equal protection. That is not fair.

But the answer may not be how many polling places; it is what do you have to do when the wait is over 15 minutes? And that would be the outcome that you are suggesting; am I correct, Mr. Thornburgh?

Mr. THORNBURGH. Yes, Madam Chairwoman.

Ms. LOFGREN. I guess the other thing I wanted to mention, we had a hearing last Congress about title VII of the National Voting Rights Act, which is widely ignored, unfortunately, around the United States. And I think your motor vehicle advance sounds like a very thoughtful and useful procedure.

Have you also instituted those procedures in social service agencies and the like, as title VII suggests should occur?

Mr. THORNBURGH. Madam Chairwoman, we have not implemented those in the other social service agencies because the vast majority of registrations—and I want to say it is about 65 percent of all new registrations in the State of Kansas—now come through DMV. So we were trying to wrestle the biggest one first.

We do have the opportunity through title VII to do that through the other agencies, but we have not made that electronically.



Ms. LOFGREN. My time has expired and I don't want as Chair to take advantage of that, but I do hope that you will take a look at that.

One of the things that we were—I was frustrated about—was that the Department of Justice really didn't do anything about title VII last year. And I think with the new Department, that is going to change. So I think it is a good time for all secretaries of state to review their title VII compliance.

With that, I am going to thank once again all the members of the committee and the witnesses. I would note that the hearing record will be open for 5 days for additional questions that members may have and the written record will be maintained.

[The information follows:]

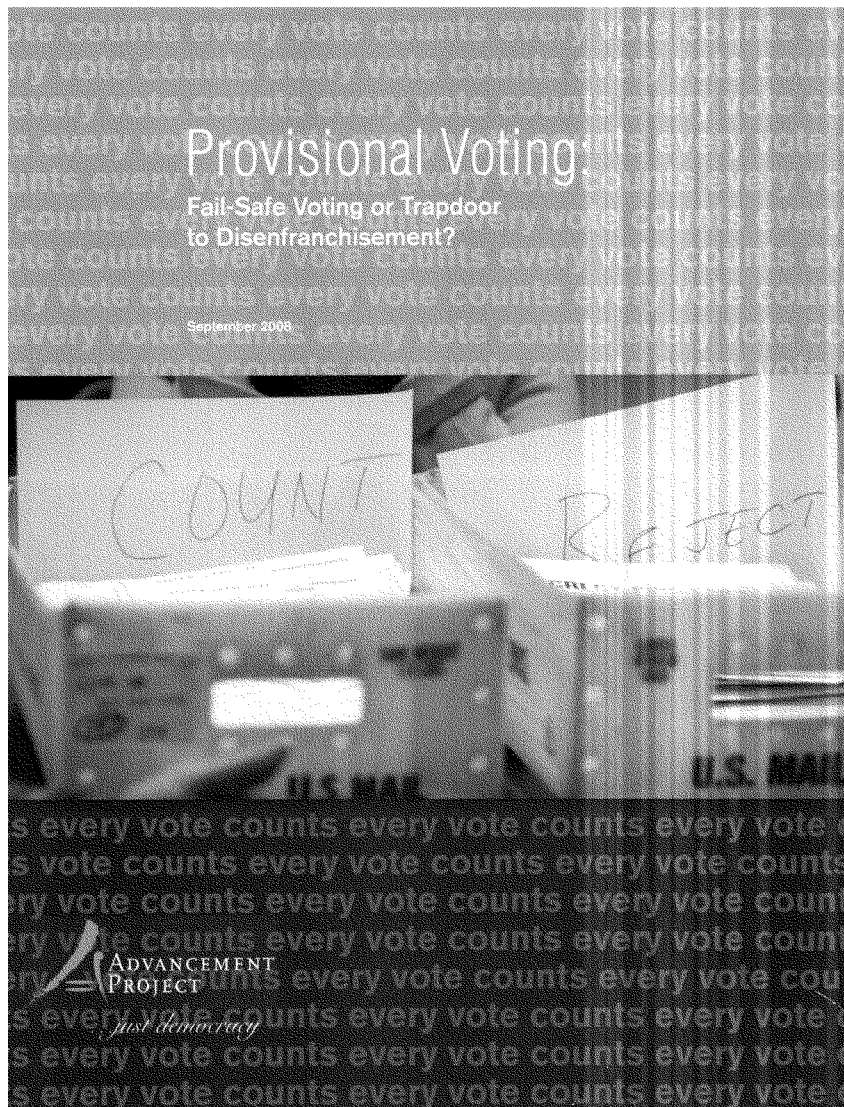
**[COMMITTEE INSERT]**

Ms. LOFGREN. I am advised that Reverend Hailes wanted to submit something, so let me invite you to bring that up at this time.

Mr. HAILES. Thank you so much, Madam Chairwoman. This is an Advancement Project 2008 report on provisional voting entitled "Fail-Safe Voting or Trap Door to Disenfranchisement?"

Ms. LOFGREN. Without objection, that will be made a part of the record.

[The information follows:]



This report explores the issue of whether the administration of elections—specifically in the area of provisional voting—has improved since the 2000 presidential election, when scores of eligible voters were turned away from the polls because their names did not appear on voter registration rolls, resulting in the disenfranchisement of a significant number of American voters. Advancement Project's investigation, research, and analysis of provisional voting in select counties in Ohio and Florida during the 2006 general elections reveal a wide array of serious problems that, if widespread and not corrected, could affect voters' rights in the upcoming elections and the election results themselves.

## Executive Summary

Data from the 2000 elections shows that between four and six million presidential votes were lost because of numerous flaws in the administration of elections.<sup>1</sup> Eligible voters were turned away at the polls based on misinformation and errors, and valid ballots were rejected. Some experts believe that this may have caused as many as 3 million votes to be lost simply because of registration issues, including problems associated with provisional ballots.<sup>2</sup>

In response, in 2002, Congress passed and the President signed into law the Help America Vote Act ("HAVA"). HAVA was intended to protect voting rights by permitting voters to cast ballots even if their names did not appear on the voter registration rolls or if their eligibility was challenged. Specifically, under HAVA, any voter who claims to be registered, but whose eligibility cannot be established at the polling site, is entitled to vote through a provisional ballot. Proponents of provisional voting believed that this law would ensure that "no voter will be disenfranchised."<sup>3</sup> But it is clear that HAVA is not working as Congress intended or as the proponents had hoped.

In the 2006 general election, the second general election since the passage of HAVA, the nationwide rejection rate was over 20%. The majority of those rejected ballots may have been cast by registered voters, and the rejection rate varied widely from state to state. Specifically, in 2006, almost 800,000 votes were cast provisionally, approximately 171,000 (about 21%) of which were rejected. While almost 44% of the ballots rejected were cast by individuals not registered to vote, a large percentage of the rejections were due to preventable errors, such as "wrong" precincts, incomplete ballot forms, and missing signatures.

Moreover, the rejection rates varied greatly across the country. While some states reported low rejection rates (none in the District of Columbia, Maine, and Vermont, and less than 2% in Oregon), several had rejection rates of over 50% (Alabama, Arkansas, Delaware, Hawaii,

Illinois, Indiana, Kentucky, Michigan, Missouri, Oklahoma, South Dakota, and Virginia), with some over 80% (Delaware at 84%, Michigan at 80.9%, and Kentucky at 92%). Indeed, two states reported rejecting more provisional ballots than were actually cast! New Mexico had a rejection rate of 107.2%, and Texas had a rejection rate at 101%. This data—which establishes the use of provisional voting and the high rates of rejection—illustrate the issues raised by the provisional voting system, nationwide, in the 2006 election.

Advancement Project went behind these numbers and analyzed the problems of provisional voting in the states of Ohio and Florida in the 2006 election. This research revealed some disturbing data:

- Eligible, registered voters were erroneously issued provisional ballots, only to have those provisional ballots rejected.
- Voters were directed by poll workers to the wrong precincts, where they were forced to vote by provisional ballots that were eventually rejected.
- Provisional ballots were rejected because of administrative errors, such as incomplete envelopes and missing signatures.

The issues that existed across the country in 2006 and the specific problems that confronted voters in Ohio and Florida in 2006 make clear that HAVA was not the panacea for the ills confronting the voting process; but, more importantly, they provide a useful road map for improvement.

To protect voters' rights in the November 2008 election—which will likely include a record number of voters<sup>4</sup> and many very close races—against the problems that existed in the past with provisional voting, Advancement Project recommends the following changes and improvements:

- Eliminate barriers to voter registration so as to reduce the use of provisional voting.

<sup>1</sup> See *Voting – What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001, at 8.

<sup>2</sup> See *id.*

<sup>3</sup> *Conference Report on H.R. 3295, Help America Vote Act of 2002 Before House*, 107th Cong. 133 (2002), 148 Cong. Rec. H7837 (daily ed. Oct. 10, 2002) (statement of Rep. Ney).

<sup>4</sup> There is no clear explanation as to why "total rejected" exceeds "total cast" for any of these states, although record-keeping and/or survey reporting may account for the discrepancy.

See *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 45.

<sup>5</sup> Report after report shows that voter registration and voter turnout may be at record levels by the time of the November 2008 election. In 2008, almost 60 million Americans nationwide—more than one in four of all eligible voters—participated in a primary or caucus, shattering the previous record of 35 million in 1988 and well above the 33 million voters who participate in the 2000 primaries. See *America Goes to the Polls: A Report on Voter Turnout in the 2008 Presidential Primary*, Nonprofit Voter Engagement Network, July 2008, at 1.

<sup>1</sup> Voter registration has continued to increase at a brisk pace since March 2008, and many experts predict that first-time voters will participate at unprecedented levels in the November 2008 election. *Heavy November turnout could pose problems*, UPI, Jul. 21, 2008, available at [http://www.upi.com/Top\\_News/2008/07/21/Heavy\\_November\\_turnout\\_could\\_pose\\_problems/UPN-66041216617564/](http://www.upi.com/Top_News/2008/07/21/Heavy_November_turnout_could_pose_problems/UPN-66041216617564/).

- Eliminate the "wrong" precinct rule.
- Improve poll worker training by, among other things, making clear that provisional ballots should be issued as a last resort and only in limited circumstances, providing instruction on assessing precincts, and requiring examination of provisional ballots for completeness.
- Improve the administration of provisional voting on Election Day.
- Increase the scrutiny and transparency of the provisional voting process.

While these measures will not prevent all errors that might disenfranchise voters in the November 2008 election, they will reduce them dramatically to help assure that the ballot cast by every American who votes will be counted, protecting that voter's right to participate in this country's democratic process, and ensuring fair and accurate election results.

## About the Study

In this report, Advancement Project presents its findings and analysis of how provisional ballots were administered and counted in the states of Ohio and Florida in the 2006 general election and recommends steps to minimize the unnecessary use and rejection of provisional ballots. Advancement Project selected these two states because of the problems that voters encountered there in recent presidential elections and the prominent roles that the states played in those elections. Advancement Project selected 15 counties from those states to research for this project based on, among other factors, population size and make-up and documented evidence of voting problems in the past.

Advancement Project then requested, and to varying degrees received, specific data on the provisional ballots cast in particular jurisdictions, including the names of voters who cast provisional ballots, the reasons such ballots were cast, whether they were counted, and, if not counted, the reasons for their rejection.<sup>6</sup> Advancement Project also requested copies of the provisional ballot envelopes in these jurisdictions, which provided additional details from poll workers and voters as to the circumstances under which individual provisional ballots were cast.<sup>7</sup>

<sup>6</sup> Advancement Project obtained these public records directly from election authorities in the specified jurisdictions.

<sup>7</sup> Because elections are still administered primarily at the local level, the data obtained from each jurisdiction varies as a result of different record keeping, its specific disclosure rules and policies, and/or different interpretations of those rules and policies by the relevant custodians of records.

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## Summary of Findings

This investigation, research, and analysis revealed numerous barriers to voter participation stemming from flaws in the voter registration process, failures in the administration of provisional voting, and restrictions on the counting of provisional ballots.

### I. FLAWS IN THE VOTER REGISTRATION PROCESS AND VOTER REGISTRATION RECORDS RESULTED IN THE OVERUSE OF PROVISIONAL VOTING AND THE REJECTION OF BALLOTS CAST BY ELIGIBLE VOTERS.

The sheer number of provisional ballots cast in the counties selected warrants a thorough review of barriers to voter registration and the processing of voter registration applications. Moreover, many unregistered individuals appeared at the polls on Election Day seemingly unaware that they were not registered, suggesting potential problems with the sufficiency of the notice to voters about their registration status. Additionally, a number of voters noted on their provisional ballot envelopes that they had registered to vote at state motor vehicle offices but were not, according to election officials, “registered voters,” demonstrating a possible failure in the registration process that merits further investigation.

### II. MISINTERPRETATION AND MISAPPLICATION OF THE “WRONG” PRECINCT RULE RESULTED IN THE DISENFRANCHISEMENT OF VOTERS.

Although Advancement Project and other voting rights experts agree that HAVA allows the counting of provisional ballots cast in the “wrong” precincts, at least with respect to races that are not precinct-specific, some states have interpreted HAVA differently, leading to the arguably unlawful rejection of provisional ballots and inconsistent rules across the country. As the U.S. Election Assistance Commission found, in 2006, 15 states counted provisional ballots cast outside an individual’s home precinct, while 30 states rejected

them out of hand. See generally *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 18. This misinterpretation of the law has led to the disenfranchisement of voters for races that are not precinct-specific (e.g., the presidency and Senate seats).

### III. THE PROVISIONAL VOTING PROCESS IS FRAUGHT WITH CONFUSION, ERRORS, AND MISINFORMATION.

The principal problem regarding provisional voting centers is the actual process encountered by voters on Election Day, which is fraught with errors and lapses on the part of poll workers. Across jurisdictions, poll workers were confused or uncertain as to the appropriate circumstances under which to administer provisional ballots. They simply did not know the rules. For example, at one precinct in Ohio, poll workers distributed provisional ballots in an attempt to reduce the long lines of voters. In Franklin County, Ohio, poll workers distributed provisional ballots at a staggering rate: In 35 precincts, one out of every five ballots cast was a provisional ballot, and in 11 precincts, one out of every two ballots cast was a provisional ballot. In Florida, poll workers may have issued provisional ballots solely because a voter indicated that s/he had requested an absentee ballot, without first confirming whether an absentee ballot request had been received.

Poll workers in both Ohio and Florida also failed to ascertain whether voters were in their correct polling places and, if they were not, did not or could not direct them to their correct polling places.

The investigation also revealed that when voters were permitted to vote provisionally, most poll workers did not assist voters in ensuring that their ballots were complete and properly submitted. For example, in Ohio, poll workers repeatedly failed to provide adequate instructions to voters on how to complete their provisional



ballots, and, in both states, many poll workers did not check ballot envelopes for completeness before they were submitted.<sup>8</sup> As a result, many ballots of eligible voters were rejected simply because their envelopes were incomplete.

IV. THE PROVISIONAL VOTING PROCESS IS NOT SCRUTINIZED OR TRANSPARENT, RESULTING IN CONTINUED PROBLEMS.

This project also revealed that the provisional process is not as scrutinized or transparent as it needs to be to ensure its effectiveness. For the 2006 survey conducted by the U.S. Election Assistance Commission, at least four states failed to provide the data requested by this governmental entity. Advancement Project encountered similar resistance or poor record keeping from several counties for this project. Indeed, county election officials in several Ohio counties refused to produce provisional ballot envelopes or the information contained therein on the ground that HAVA prohibited such disclosure. Advancement Project also faced challenges in interpreting and analyzing counties' documents that listed the reported reasons for rejection of provisional ballots.

This lack of scrutiny and transparency thwarts efforts to assess or improve the process, prevents or limits challenges to the process, and undermines the public's confidence and trust in the process.

<sup>8</sup> In Florida and Ohio, a voter who casts a provisional ballot must complete an affirmation on the provisional ballot envelope. See FLA. STAT. § 101.046 (2007); OHIO REV. CODE ANN. § 3505.183 (LexisNexis 2007). In Maryland, the voter must sign an oath on the provisional ballot application. See MD. CODE ANN., [Elec. Law] § 11-303(a)(2)(ii) (LexisNexis 2007).

## General Recommendations

This investigation reveals that instead of functioning as a fail-safe means of voting, provisional voting often creates a serious risk of disenfranchisement. As the country approaches the second presidential election with a federally mandated provisional balloting system in place,<sup>9</sup> government officials and election administrators should make certain changes and improvements to ensure that provisional ballots are used and are recognized in a manner that achieves their original intent. To that end, in addition to the specific recommendations offered below to the states of Ohio and Florida, Advancement Project suggests the following measures to reverse the disturbing provisional voting problems encountered in prior elections.<sup>10</sup>

### I. REDUCE THE USE OF PROVISIONAL VOTING, IN THE FIRST INSTANCE, BY ELIMINATING BARRIERS TO VOTER REGISTRATION.

While provisional voting does allow a person who claims to be registered to vote on Election Day, the use of provisional voting and the rates and reasons for rejection evidence problems and issues with voter knowledge about both the registration process and the election process. Because this country's democratic process depends on voter participation, each state should conduct a voter education campaign at the start of each election year, which should include the following:

- Educate voters on how and when to register, how and when to vote, and when to vote provisionally.
- Encourage voters to call their local elections office or have the ability to check an official Web site a week before Election Day to confirm the location of their precinct and polling location.
- Instruct voters to cast a provisional ballot only as a last resort. If a poll worker issues a provisional ballot to a voter, the voter should confirm that s/he is in the correct precinct.

In addition, each state should ensure that its registration outlets, including, specifically, its departments of motor vehicles, are trained and equipped to register voters. Finally, election officials should be more flexible in establishing the registration status of voters who present to vote on Election Day and in allowing would-be voters to register up to Election Day. For example, if a person claims to have filed with the state motor vehicle office, the motor vehicle office and election official should bear the burden of showing that the person failed to register to vote.

In short, improving the registration process will contribute greatly to achieving full participation and election results that reflect the desire and will of voting Americans.

### II. ELIMINATE THE "WRONG" PRECINCT RULE.

One of the most significant drawbacks to provisional ballots is that many states do not count provisional ballots cast in the wrong polling place. In 2006, only 15 states counted provisional ballots cast outside the individual's home precinct; 30 states rejected them out-of-hand. The seven states with Election Day registration are not required to offer provisional ballots, but three of these (Maine, Wisconsin, and Wyoming) offered some type of provisional balloting, as did North Dakota, which does not have voter registration.

Advancement Project and many other voting rights advocates interpret HAVA to prohibit the rejection of a provisional ballot because the voter cast the ballot in the "wrong" precinct. Further, Advancement Project contends that in states where the voter eligibility requirements do not include voting in the precinct in which one resides, election officials should accept and count, from each ballot cast, the votes for all non-precinct-specific offices (i.e., votes for president, governor, senator). Therefore, Advancement

<sup>9</sup> HAVA required states to comply with its statewide database requirements by January 1, 2004, or to certify by that date that they would not meet the deadline for good cause, in which case the deadline for compliance was extended to January 1, 2006. 42 U.S.C. § 15483(d).

<sup>10</sup> For more information about provisional ballot usage in the 2004 elections, see WENDY R. WEISER & BRENNAN CENTER FOR JUSTICE AT N.Y.U. SCHOOL OF LAW, *ARE HAVA'S PROVISIONAL BALLOTS WORKING?* (2006), [http://www.american.edu/ia/cdem/usphava\\_papers/Weiser.pdf](http://www.american.edu/ia/cdem/usphava_papers/Weiser.pdf).

Project recommends that states that now reject provisional ballots cast in the "wrong" precinct should amend the election code to:

- Require that provisional ballots cast by voters at any precinct in the registrar's jurisdiction (i.e., county, city, town) be counted for all elections in which the voter is eligible to vote, and/or
- Define the term "jurisdiction" to include the largest geographic region covered by each election authority (typically county) and require the counting of provisional ballots cast for non-precinct specific offices.

III. IMPROVE POLL WORKER TRAINING.

While the shortage of poll workers has received extensive public attention, the training and support for poll workers are rarely scrutinized. Yet, as elections have become technologically and procedurally more complex, the training and support offered to poll workers have not kept pace. New federal and state laws have created a slew of new procedures for voting. For example, first-time voters who register by mail must show proper identification, and people who claim to be registered but do not appear on the voter rolls must be issued a provisional ballot. These new procedures, coupled with the advent in many areas of new electronic voting machines, leave little room for error.

Given the importance of a poll worker's work, which involves determining whether a person can vote and how and, in many instances, whether the ballot cast will count, it is critical that poll workers be properly trained and that poll worker training emphasize:

- The limited circumstances under which it is appropriate and lawful to use provisional ballots;
- The procedures for identifying a voter's correct precinct and directing the voter to that precinct prior to issuing the voter a provisional ballot;

- The procedures for examining each provisional ballot envelope or application, in the presence of the voter before s/he leaves the polling place, to determine whether the voter has fully completed all required portions of the envelope or application; and
- The rules pertaining to voters who have requested an absentee ballot, have moved, or have changed their name to ensure that poll workers do not improperly issue provisional ballots to these voters or neglect to instruct them on all necessary steps that they should take to guarantee that their provisional ballot will be counted.

In addition, Advancement Project recommends that poll workers assist any voter whose eligibility is in question to complete a voter registration application at the polling place to guarantee that s/he will become registered to vote in future elections.

IV. IMPROVE THE ADMINISTRATION OF PROVISIONAL VOTING ON ELECTION DAY.

In addition to the recommended improvements to poll worker training described above, Advancement Project recommends that election officials adopt the following procedures to reduce poll worker confusion and error on Election Day:

- **Print and Distribute Multi-Precinct Poll Books:** In multi-precinct polling places, where electronic poll books are unavailable, election officials should print and distribute poll books that list all registered voters assigned to the polling place and indicate each voter's correct precinct within the polling place.
- **Establish a Provisional Ballot Station:** Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure voters are in the correct

precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify voters' correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, a street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of elections. No provisional ballots should be issued by poll workers at any other station.

V. INCREASE THE SCRUTINY AND TRANSPARENCY OF THE PROVISIONAL VOTING PROCESS.

In order to ascertain whether the provisional voting process is working and to be able to identify any gaps in the process, Advancement Project urges local officials to scrutinize the process before and after every election:

- Following each election, local election officials should analyze provisional ballot usage in their jurisdiction by tracking all provisional votes cast and counted, by precinct, including the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, their notices to provisional voters, and their community education efforts.
- Each secretary of state should collect this data from local election officials to assess variances in the casting, counting, and administration of provisional ballots. The secretary should publicize this information on his/her Web site and further analyze the need for statewide regulations or directives.

In addition, secretaries of state must enhance their accountability, and the accountability of local election officials, to the public and the transparency and credibility of the process by, among other things, issuing the following directives:

- A directive that orders local election officials to provide public access to the name, address, and birth date of each voter who casts a provisional ballot, and the basis for issuing each ballot, within the canvassing period after the election; and
- A directive to local election officials that requires the use of specific and narrow categories to describe reasons for the issuance and/or rejection of provisional ballots. The "not registered" rejection category, in particular, should be more specific and indicate (i) whether the voter at issue has ever been registered anywhere in the state, (ii) whether any previous registration had been cancelled, and (iii) the date and reason for any previous cancellation.

\* \* \*

As noted above, Advancement Project offers these general recommendations for consideration by all states as they prepare for the November 2008 election. The specific findings and recommendations for the two states studied for this project (Ohio and Florida) are set forth below.

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## Ohio

In the November 2006 general election, Ohio voters cast 4,186,206 ballots, 127,758 of which were provisional.<sup>11</sup> Approximately 104,696 of these provisional ballots were counted, and 23,062 (about 18%) were rejected.<sup>12</sup> Over half of the provisional ballots cast (65,239), and 65% of the rejected ballots (15,000<sup>13</sup>), were cast in Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit counties, counties with substantial populations of voters of color. The use of provisional ballots in Ohio, as measured by the percentage of ballots cast, appears to be increasing. In 2004, provisional ballots made up 2.7% of the total ballots cast during the general election. In the 2006 general election, it was up almost a full percentage point, to 3.6%.<sup>14</sup> This trend may portend an increase in the use of provisional ballots in the 2008 general election unless state and local election officials institute measures to combat the overuse of provisional ballots.

Advancement Project analyzed thousands of provisional ballot envelopes from the 2006 general election in Ohio's largest county, Cuyahoga. Advancement Project also reviewed hundreds of written comments from poll workers in Franklin, Hamilton, Lucas, and Summit counties in the 2006 general election. This analysis reveals a staggering overuse of provisional ballots. For example, out of 35 Franklin County precincts, one out of every five ballots cast was a provisional ballot, and in 11 precincts, one out of every two ballots cast was a provisional ballot.

The analysis also shows that Ohio's "wrong" precinct rule, coupled with apparently ineffective directions by poll workers to voters, resulted in the disenfranchisement of thousands of eligible voters. As discussed below, the envelopes show that the ballots of hundreds of voters were rejected because the voters were in the "wrong" precinct but the correct polling place, or because they cast their provisional ballots at a polling location that was less than 2 miles from their correct polling place. If poll workers had properly

instructed these voters to move over one table, to the other side of the room, or to travel a short distance to another precinct, their provisional ballots would have been counted. These findings suggest that Ohio's statutory requirement that poll workers direct voters to the correct precinct is not being enforced, leading to distortion and overuse of Ohio's wrong precinct rule.

This research also reveals that poll workers were uncertain about when to issue a provisional ballot. Many did not determine whether voters were in the correct polling place and did not advise voters on where or how they could cast a regular ballot. In addition, poll workers often did not provide sufficient instruction to voters about how to ensure that their provisional ballot would be counted. In at least one instance, poll workers used provisional ballots in an unauthorized way, issuing them to shorten long lines at the polls. The problems were worsened by the fact that poll workers were forced to work with inaccurate poll registers. For example, in Cuyahoga County, several hundred registered voters reportedly were improperly dropped from the statewide voter registration database.

As Ohio prepares for a huge surge in voter turnout in the 2008 general election, it is crucial that its state and county election officials take immediate steps to minimize unnecessary distribution and rejection of provisional ballots.

### I. PROVISIONAL VOTING UNDER OHIO LAW

Ohio law requires the use of a provisional ballot when (1) a voter declares s/he is registered, but his/her name does not appear on the voter roll; (2) an election official "asserts that the individual is not eligible to vote,"<sup>15</sup> (3) a voter does not have or does not provide proper identification; (4) a voter voted by absentee ballot; (5) a voter's registration notification was returned as undeliverable; (6) a voter changed his/her address; (7) a voter changed his/ her

<sup>11</sup> See <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2006ElectionsResults/06-1107/turnout.aspx> (citing the *Official Results of Voter Turnout in the November 7, 2006, General Election*); U.S. Election Administration Commission, *The 2006 Election Administration and Voting Survey* 18 (Dec. 2007).

<sup>12</sup> *Id.*

<sup>13</sup> There are variances in the numbers of rejected provisional ballots reported by the Ohio Secretary of State in its 2007 report to the Election Administration Commission and those that Summit and Montgomery counties reported to the Secretary of State. This report relies upon the counties' numbers.

<sup>14</sup> Provisional ballots made up 2.7% of the total votes cast in the November 2004 general election. <http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=134> (2008). In 2004, approximately 158,642 provisional ballots were cast and approximately 123,548 (77.9%) were counted.

<sup>15</sup> 42 U.S.C. § 15482 (a)(2)(D). See also OHIO REV. CODE ANN. § 3505.18 (*LocalNext* 2007).

name; (8) a voter was challenged without resolution; or (9) a challenged voter's registration status hearing was postponed.<sup>16</sup>

In addition, under Ohio law, each county board of elections determines whether to count or reject a provisional ballot cast in its county.<sup>17</sup> To determine the validity of a provisional ballot, the board examines its records to determine whether the individual who cast the provisional ballot is registered and eligible to vote in the election.<sup>18</sup> The board also examines the information provided by the voter on his/her provisional ballot affirmation statement.<sup>19</sup>

II. ADVANCEMENT PROJECT'S PUBLIC RECORDS REQUESTS IN OHIO

Advancement Project submitted public records requests to Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit counties for the following information: (1) the names of voters who cast provisional ballots in the 2006 general election; (2) for each voter, whether his/her ballot was counted; and (3) if the ballot was rejected, the basis for rejecting the provisional ballot.

In response, Cuyahoga County provided all of the requested information, and Montgomery County provided the name and address of each voter who cast a provisional ballot, the reason(s) for issuance of the provisional ballot, and, if the ballot was rejected, the basis for the rejection. Summit County provided the name, but not the address, of each voter who cast a provisional ballot and the reasons for rejection of each provisional ballot rejected. Three counties, Franklin, Hamilton, and Lucas, refused to provide this information, interpreting HAVA to preclude public access to the names of provisional voters, the outcome of provisional ballots cast, and the basis for rejection.<sup>20</sup>

III. OHIO'S PROVISIONAL BALLOTS IN THE 2006 GENERAL ELECTION

Table 1.1 lists the most prevalent reasons for the rejection of provisional ballots in Ohio's 2006 general election.

**TABLE 1.1 OHIO'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Provisional Ballots
Wrong Precinct	10,610	46%
Not Registered	7,384	32%
No ID Provided	2,726	11.8%
Other Reasons	1,249	5.4%
Ineligible to Vote	459 <sup>21</sup>	2%
No Signature	290	1.25%
Missing Ballot	181	.8%
Already Voted	163	.7%
<b>Total Rejected</b>	<b>23,062</b>	<b>100%</b>

16 OHIO REV. CODE ANN. § 3505.181 (LexisNexis 2007).  
 17 § 3505.183(D) (requiring "individual's name and signature," but not date of birth, to be included in the written affirmation in order to validate ballot).  
 18 *Id.* at (B)(1).  
 19 *Id.*  
 20 42 U.S.C. § 15482 (2002). Contrary to this interpretation, HAVA's legislative history makes clear that the intent of HAVA's "free access" provision is to maintain privacy of voters' identification numbers, not the names and addresses of voters who cast provisional ballots. Interpreting HAVA to permit election officials to withhold the names, addresses, and/or phone numbers of voters who cast provisional ballots frustrates an important objective of HAVA, which is to ensure that provisional ballots are properly handled. Such an interpretation also denies voters and voter protection advocates the ability to investigate the administration of provisional ballots, including whether election officials wrongfully issued or rejected certain provisional ballots.  
 21 This category of rejected provisional ballots, labeled "Ineligible to Vote," accounted for 459 provisional ballots rejected. Some of these ineligible voters may have been previously incarcerated for felony convictions and subsequently released. Ohio law requires the cancellation of felons' registrations, and such voters must re-register upon their release. OHIO REV. CODE ANN. § 3503.18 (LexisNexis 2007). Absent public education for these voters, many ex-offenders may have been unaware that they were required to re-register. As a result, these individuals would likely be deemed ineligible to vote, and their provisional ballots rejected.

Under Ohio law, provisional ballots must be cast in the precinct in which the voter resides.<sup>22</sup> A provisional ballot cast in the "wrong" precinct will be rejected.<sup>23</sup> In the 2006 general election, Ohio rejected approximately 10,610 provisional ballots because they were cast in the "wrong" precinct.<sup>24</sup> Advancement Project and many other voting rights advocates interpret HAVA to prohibit the rejection of a provisional ballot solely on the ground that the voter cast the ballot in the "wrong" precinct. Unfortunately, litigation brought in 2004 challenging Ohio's wrong precinct law under HAVA was ultimately unsuccessful.<sup>25</sup> If Ohio had adopted Advancement Project's position on provisional ballots cast in the "wrong" precinct, more than 10,000 additional votes would have been counted in the 2006 general election for these non-precinct-specific offices.

#### IV. COUNTY-BY-COUNTY DATA AND ANALYSIS

##### A. CUYAHOGA COUNTY

Cuyahoga County is Ohio's largest county and includes the state's most populous city, Cleveland. Cuyahoga County has a large African American population, representing 28.9% of the county's residents.<sup>26</sup>

Advancement Project obtained and analyzed 7,100 electronic copies of envelopes from the 11,749 provisional ballots cast in the 2006 general election that were counted and envelopes from 965 of the 4,168 provisional ballots cast in that election that were rejected.<sup>27</sup> Each envelope listed the voter's name, address, and the reason(s) the voter was required to cast a provisional ballot. If the ballot was rejected, a Provisional Ballot Rejection Form was attached to the provisional ballot envelope that indicated the reason for rejection.

Advancement Project also obtained and reviewed (1) Cuyahoga County's Provisional Ballot summary report, which included numbers of provisional ballots cast and each voter's name, address, party affiliation, precinct, and the disposition of each provisional ballot cast; and (2) the electronic Master Survey List provided by the Ohio Secretary of State's office to the U.S. Election Assistance Commission ("EAC") in 2007, which included statistics on the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties.

In the 2006 general election, Cuyahoga County voters cast 15,917 provisional ballots, the second largest number of provisional ballots cast among the state's 88 counties. Ohio's law requiring voters who have moved within a county to vote by provisional ballot may partially explain the county's high usage of provisional ballots. A total of 108 of the 11,749 envelopes of provisional ballots that were counted by Cuyahoga County indicate that at least 2,062 (approximately 30%) were cast because the voter had changed his/her address.<sup>28</sup>

##### 1. The Issuance of Provisional Ballots

For this study, Advancement Project reviewed 7,100 of the 11,749 envelopes of provisional ballots counted by Cuyahoga County. This review revealed that 2,180 (30%) of these provisional ballots were issued because the voter had moved. A total of 791 (11%) of the accepted provisional ballots were distributed because the voter's name did not appear on the precinct list at the voter's precinct. But election officials subsequently concluded that these voters were registered and had cast their ballots in the correct precincts and, accordingly, counted their provisional ballots. This data suggests that the precinct voter lists may be inaccurate. Finally, at least 160

<sup>22</sup> See § 3503.01 (listing qualifications required to register to vote; a voter may vote in all elections in the precinct where the voter resides); see also § 3505.181 (providing eligibility for casting provisional ballots, including when a voter's name does not appear on the precinct list or the election official asserts the voter is not eligible to vote); see also § 3505.183 (voter must be a registered voter in the jurisdiction in which s/he casts a provisional ballot).

<sup>23</sup> *Id.*

<sup>24</sup> 42 U.S.C. § 15482 (2002). HAVA requires merely that votes cast in the correct "jurisdiction" be counted. Ohio law narrowly interprets correct "jurisdiction" to mean precinct. This narrow interpretation was codified in 2005 under House Bill 3. Am. Sub. H.B.3 (2005).

<sup>25</sup> *Sandusky County Dem. Party v. Blackwell*, 387 F.3d 565, 578 (6th Cir. 2004) (reversing District Court's holding that HAVA requires provisional ballots cast out of precinct to be counted). The case challenged, in part, an Ohio directive that prohibited the counting of provisional ballots cast outside of the voter's precinct. In *Sandusky*, the court enjoined the Secretary from enforcing the directive, but on appeal, the Sixth Circuit reversed that ruling. *Sandusky*, 387 F.3d at 578.

<sup>26</sup> [www.factfinder.census.gov](http://www.factfinder.census.gov). Source: 2005 American Community Survey Data Highlights.

<sup>27</sup> In response to Advancement Project's public records request, Cuyahoga County reported that it had misplaced provisional ballot envelopes for 3,100 of its 4,168 provisional ballots.

<sup>28</sup> Under Ohio law, a voter who has moved to a new precinct and has not submitted a change of address form to the election board before Election Day must complete a change of address form at his/her new precinct and vote by provisional ballot. OHIO REV. CODE ANN. § 3503.16 (LastAmended 2007). The voter must also provide identification "in the form of a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document," and complete an affirmation. *Id.* at § 3503.14. Voters without the proper identification are permitted to sign a 10-T form attesting that they do not have proper identification. *Id.* at § 3503.16 (B)(1)(2)(b-d). The voter may provide additional supporting documentation for review during the 10-day period following the election, during which time the board of elections attempts to verify the information. If the information can be verified, barring any other deficiency with the ballot, the board will count the provisional ballot if the voter cast the ballot in the correct precinct. See § 3505.181(B)(8)(a)-(i)(b) (procedures for voters who cast provisional ballots to cure their ballots during the 10-day period after the election).



of the provisional ballot envelopes were not marked with any reason as to why poll workers had issued the ballot. Without this information, it is impossible for voter advocates to evaluate whether issuance of those provisional ballots was lawful.

**2. Provisional Ballots Rejected**

Of the 11,749 provisional ballots submitted, almost half (4,168) were rejected. As reflected in Table 1.2, the top two reasons for the rejection of provisional ballots were that the voter cast the ballot in “wrong” precinct (2,541) or was not registered (1,282).

*a. “Wrong” Precinct Errors*

Provisional ballots cast by voters in the “wrong” precinct account for 2,541 (61%) of the rejected provisional ballots in Cuyahoga County. Cuyahoga County provided Advancement Project with copies of the envelopes for 985 of the 4,168 provisional ballots rejected. Advancement Project’s review of those envelopes reveals that of the 204 provisional ballots rejected for “wrong” precinct, 70 were cast by voters who were actually in the correct polling place but the “wrong” precinct, and 62 were cast by voters who were less than 2 miles from their correct precinct. In many instances, if poll workers had

properly instructed these voters to move over one table or to the other side of the room, or to travel a short distance to another precinct, the voters’ provisional ballots would have been counted. For example:

- A voter in Cleveland voted at precinct 5M, but the voter’s correct precinct was 5L, which was less than 2 minutes (.84 miles) away.
- A voter in Beechwood voted at precinct 00L, but her correct precinct was 00M, which was in the same building, Hampton Recreation Center.
- A voter in Lakewood voted at precinct 4E, but his correct precinct was 3L, which was less than 2 minutes (.55 miles) away.
- A voter in Strongsville voted in precinct 2N, but the voter’s correct precinct was 2M, which was in the same building, Olive Bedford Allen Elementary School.

*b. Software Glitches in the Voter Registration Database*

According to the county’s data, 1,282 (31%) of all rejected ballots were rejected because the voter was deemed “not registered.” Of the 985 envelopes produced, approximately 600 (more than 60%) were rejected because the voter was “not registered.”<sup>29</sup> Of those 600 envelopes, 185 envelopes indicated that the voter was issued a

**TABLE 1.2 CUYAHOGA COUNTY’S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTIONS)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of Ohio’s Rejected Provisional Ballots
Wrong Precinct	2,541	61%	11.1%
Not Registered	1,282	30.7%	5.5%
Missing ID	189	4.3%	.82%
Missing Information	103	2.5%	.45%
No Signature	44	1%	.19%
Voted Other Means	9	.21%	.04%
<b>Total Rejected</b>	<b>4,168</b>	<b>100%</b>	<b>18.1%</b>

<sup>29</sup> Because 61% of the ballots corresponding with the envelopes Advancement Project received were rejected because the voter was “not registered” while only 31% of Cuyahoga’s rejected provisional ballots overall were in that category—it appears that the envelopes Advancement Project received do not represent a random sample of the rejected provisional ballots.

provisional ballot because of a change of address, while the remaining 415 were issued because the voter's name should appear on the official precinct list but does not."

Unfortunately, the envelopes shed no additional light on why so many voters who believed they were registered did not appear on the voter rolls. After one voter in Lyndhurst, Ohio, learned that his name did not appear on the precinct list, the voter wrote on his provisional, "I want this explained!" This voter went to the polls expecting to vote, only to learn that his name did not appear on the rolls.<sup>30</sup>

After the May 2006 primary election, the Cuyahoga County Board of Elections formed an independent panel to conduct a comprehensive review of the county's election systems and to make recommendations for improvements.<sup>31</sup> In July 2006, this three-person panel, the Cuyahoga County Election Review Panel ("CERP"), produced a report that identified problems in the 2006 election. The report identifies software problems with the county voter registration database. The Review Panel concluded: "The DIMSnet voter registration system has dropped or displaced several hundred registered voters."<sup>32</sup> Consequently, any of these individuals who tried to vote in 2006 did not appear on the precinct rolls and would have been issued provisional ballots that were not counted because election officials could not confirm their registration.<sup>33</sup> There is no indication that this database problem has been corrected.

#### c. *Incomplete Provisional Ballot Envelopes*

A third reason for rejection of provisional ballots in Cuyahoga County was incomplete information on the provisional ballot envelope. In the sampling of provisional ballot envelopes reviewed, at least ten provisional ballots were rejected due to missing birth dates and/or signatures. Review by a poll worker to ensure that the

envelopes were complete would have avoided the rejection of these ballots.<sup>34</sup>

#### B. FRANKLIN COUNTY

Franklin is Ohio's second largest county and includes the state's capitol and the state's second largest city, Columbus. Franklin County has a large African American population, representing 19.8% of the county's population.<sup>35</sup>

Advancement Project obtained and analyzed an Excel spreadsheet from the Franklin County Board of Elections for the 2006 general election that includes the number of provisional ballots cast in each precinct in the county and the percentage of provisional ballots cast in each precinct as a percentage of all ballots cast. Additionally, Advancement Project obtained and analyzed approximately 542 pages of poll worker comments from Franklin County. Further, in conjunction with the data provided by the Board of Elections, Advancement Project reviewed the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties. Finally, Advancement Project reviewed a report of calls from voters to an election protection hotline called the Electronic Incident Reporting Service ("EIRS").

##### 1. The Issuance of Provision Ballots

Voters in Franklin County cast more provisional ballots in the 2006 general election than any county in Ohio: Of the 385,863 votes cast, 20,322 (over 5%) were provisional ballots. In other words, nearly one of every nineteen votes cast in the county was a provisional ballot.

<sup>30</sup> Professor Candice Hoke, Director of the Center for Election Integrity at Cleveland State University, reports that a Cuyahoga County election official who handles voter registrations stated that "a major, if not exclusive reason for the lost voter records lies in the 'merge records' function of the DIMS registration software." Candice Hoke, *Erroneous Voter Registration Deletions* (Jan. 2007); Candice Hoke, *Monitor Report: Possible Legal Noncompliance in the November 2006 Election*, 2 (Jan. 8, 2007) (a lost voter registration record "not only means that the voter is not permitted to vote but also that the recorded voting history is deleted and unrecoverable").

<sup>31</sup> See [www.cuyahogavoting.org](http://www.cuyahogavoting.org) for background on the panel.

<sup>32</sup> Cuyahoga County Election Review Panel, *Final Report*, July 30, 2006, [http://www.cuyahogavoting.org/CERP\\_Final\\_Report\\_20060720.pdf](http://www.cuyahogavoting.org/CERP_Final_Report_20060720.pdf).

<sup>33</sup> *Id.* at 30-34.

<sup>34</sup> Under Ohio law, election officials must reject a provisional ballot if its envelope is incomplete. See OHIO REV. CODE ANN. § 3605.183 (LexisNexis 2007) (sets forth information required to be completed on an affirmation statement on a provisional ballot if the ballot is to be considered valid and counted, including the voter's name and signature, an affirmation that that voter is registered to vote in the jurisdiction where the provisional ballot is cast and is an eligible voter, and any additional information provided by the voter to the board of elections during the 10 days after the election in which the ballot was cast).

<sup>35</sup> [www.factfinder.census.gov](http://www.factfinder.census.gov). Source: 2005 American Community Survey Data Highlights.

The county's spreadsheet, entitled "2006 General Election Provisional Ballot Applications by Precinct,"<sup>36</sup> shows that in thirty-five precincts in Franklin County, 20% of the total ballots cast were provisional ballots. In eleven other precincts, provisional ballots were 50% of the total ballots cast.

## 2. Provisional Ballots Rejected

As reflected in Table 1.3, the most common reasons provisional ballots were rejected in Franklin County were that voters cast ballots in the "wrong" precincts (1,801) or that voters were purportedly not registered (684).

### a. "Wrong" Precinct Errors

Poll worker comments reveal that poll workers may have contributed to voters' casting provisional ballots in the "wrong" precincts. In at least three separate instances, poll workers sent a voter to several different precincts before the voter insisted on casting a provisional ballot. For example, poll workers directed two Columbus voters, whose addresses were located in Ward 34, Precinct C, to Ward 68, Precinct C (68-C), after other poll workers had directed them to three different precincts. In the report, a poll worker wrote: "They

[the voters] said, 'they weren't going any further.'" The poll worker contacted the Board of Elections and was told "to vote them provisionally in 68-C." The poll worker noted the voter was "adamant about getting her vote counted." This ballot must have been rejected since it was cast in the "wrong" precinct; however, without access to the names of provisional voters and their provisional ballot envelopes, Advancement Project was unable to ascertain the disposition of ballots.

The plight of Tracy Banner, a Franklin County voter who had moved shortly before Election Day, further illustrates how poll worker error contributed to the casting of provisional ballots in the "wrong" precinct.<sup>37</sup> On Election Day, Ms. Banner appeared at her polling place at the Innis Elementary School in Columbus, Ohio. After Ms. Banner waited in line for over one hour, a poll worker told her that she would be required to cast a provisional ballot. When Ms. Banner asked for an explanation, the poll worker attempted to call the Franklin County Board of Elections for 45 minutes. Finally, the poll worker told Ms. Banner that since she had moved, she should vote at her new polling place. In response, Ms. Banner explained that she had completed a "change of address" at a public library in September 2006, but had not received any notification of a new polling place, so she had returned to her former polling place.

**TABLE 1.3 FRANKLIN COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of Ohio's Rejected Provisional Ballots
Not Registered	684	26%	3%
Voted Other Means	63	2.4%	.27%
Wrong Precinct	1,801	69%	8%
Missing Information	55	2%	.24%
No Signature	9	.34%	.04%
<b>Total Rejected</b>	<b>2,612</b>	<b>100%</b>	<b>11%</b>

<sup>36</sup> This document is located at <http://www.co.franklin.oh.us/boe> (2007).

<sup>37</sup> Advancement Project learned about Ms. Banner's experience during a conversation with Ms. Banner after the election.

At the poll worker's direction, Ms. Banner drove to her new polling place in Blacklick, Ohio. There, she provided as identification her Ohio driver's license with her former address.<sup>38</sup> Ms. Banner was not offered a change of address form by the poll workers.<sup>39</sup> Instead, poll workers instructed Ms. Banner to cast a provisional ballot. Ms. Banner provided her new and former address on the provisional ballot envelope. After Election Day, Ms. Banner called the Board of Elections to determine whether her provisional ballot had been counted. She learned that it had not.<sup>40</sup>

*b. Incomplete/Inaccurate Voter Rolls*

Franklin County voters cast 684 provisional ballots that were rejected because the voter was "not registered," which accounts for 26% of the provisional ballots that the county rejected in the 2006 general election. In light of the limited data Franklin County produced, it is difficult to ascertain whether these voters were in fact unregistered. Limited anecdotal evidence suggests that some voters who had participated in elections for many years were dropped off the voter rolls without explanation. In at least one instance, an experienced poll worker recognized voters in her precinct who had voted for many years but did not appear on the voter rolls and were forced to cast provisional ballots that were not counted.<sup>41</sup>

*c. Incomplete Provisional Ballot Envelopes*

Franklin County poll worker comments suggest that poll workers did not take adequate steps to ensure that voters clearly printed and signed their names on their provisional ballot envelopes. Poll workers cited at least 45 instances of voters having failed to complete a provisional ballot envelope or to complete it legibly.<sup>42</sup> As a result, poll workers were often unable to discern the name of the voter who

cast the provisional ballot from the voter's signature, likely resulting in the rejection of those ballots.

*d. Other Flaws in Election Administration*

Data revealed other flaws in the administration of the 2006 election in these counties that may have resulted in the rejection of otherwise valid provisional ballots.

Precinct registers may have been inaccurate. In at least one instance, a long-time voter whose precinct had been moved was issued a provisional ballot because his name did not appear on the new precinct's register. Ed Willis, a retired principal of Columbus' East High School, had voted with his wife in the same precinct in Franklin County for over 20 years. Prior to the 2006 general election, the Willis' precinct was moved. On Election Day, Mr. Willis's name did not appear on the voter rolls at his new polling place. As a result, poll workers concluded that he was "not registered" and required him to vote by provisional ballot. Mr. Willis's provisional ballot was counted, thereby demonstrating that he voted in the correct precinct and that his name was erroneously omitted from the precinct register.

In addition, poll worker comments<sup>43</sup> concerning provisional ballots cast in Franklin County show that many poll workers did not provide voters with instructions on how to cure problems with their provisional ballots to guarantee that their ballots would count<sup>44</sup> or how to determine whether their ballots were counted.<sup>45</sup> After Franklin County refused to provide Advancement Project with the names and addresses of voters who cast provisional ballots in the 2006 general election, Advancement Project attempted to identify such voters on its own. These names were compiled by obtaining a list of voters who cast ballots in precincts

38 OHIO REV. CODE ANN. § 3503.18(B)(1) (LexisNexis 2007). An Ohio driver's license with a former address is considered a current and valid form of photo identification for voting purposes.

39 See *id.*, indicating a voter may file a change of address form on the day of the election, at the precinct in which the voter resides.

40 In the summer of 2007, Ms. Banner contacted the Franklin County Board of Elections to ask whether her provisional ballot cast in 2006 had been counted; she was informed that it was not counted. Ms. Banner subsequently received correspondence from the Board that confirmed her change of address and identified her new polling location. In the 2007 election, Ms. Banner appeared at her new polling location, as instructed, but was again required without explanation to cast a provisional ballot. This provisional ballot was reportedly counted.

41 2008 Electronic Incident Reporting Service (unpublished report of phone calls on Election Day to an election protection hotline).

42 For example, in Dublin, Ohio, Ward 64 - Precinct B, a poll worker noted that a voter "did not print his name on the [provisional] ballot - cannot read his written signature."

43 Poll workers in Franklin County record problems on the "Record Precinct Problems & Corrections Ballot" forms.

44 § 3503.181. During the 10-day period after an election, provisional voters who did not provide identification, did not provide the last four digits of their social security numbers, did not complete the affirmation statement, or were not challenged at the polls are required to provide additional information to the board of elections to enable the board to determine the voter's eligibility to vote.

45 In a precinct in Columbus, Ward 11, poll workers noted that they were confused about the "yellow copy" and did not give the copy to five provisional voters. The "yellow copy" provides information to voters on how to cure their provisional ballot to ensure that it will be counted. It also helps voters determine whether the ballot was counted or rejected, and if rejected, the reason for the rejection. See Record Precinct Problems & Corrections Ballot, Columbus, Ward 11; see also Record Precinct Problems & Corrections Ballot, Columbus, Precinct 13B (poll worker noted she had inadvertently placed the "yellow copy" in the folder rather than giving it to the voter); Record Precinct Problems & Corrections Ballot, Columbus, Ward 17, Precinct E (poll workers retained the "yellow copy" rather than giving it to voters).

wherein provisional ballots comprised 50% or more of all ballots cast. From that list of voters, Advancement Project reviewed the county voter rolls, which include a voter's voting history, to identify voters who cast provisional ballots. After identifying these voters, Advancement Project sent letters to over 380 voters and, to date, has received 38 responses. Of these 38 responses, 23 voters reported they had not received information on how to "cure" their provisional ballot to guarantee that it would be counted or how to determine whether their provisional ballot was counted. For example, Franklin County voters Ariel King and Meesha Sparrow both reported that when they appeared at the polls on Election Day, their names did not appear on the voter rolls. Poll workers required them to vote by provisional ballots, but failed to provide them with information about how to cure their ballots or determine whether their ballots were counted.

### C. LUCAS COUNTY

Lucas County is the least populous of the four Ohio counties in this report. Its largest city is Toledo. The county's African American community is the largest minority group and represents 17.7% of the county's population.<sup>46</sup>

In response to Advancement Project's public records request, the Lucas County Board of Elections produced two pages of poll worker logs of Election Day complaints and a total of five pages of poll worker comments from four precincts in Toledo and one precinct in Ottawa Hills. Advancement Project reviewed and analyzed those documents, as well as the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the numbers of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties. Lucas County did not produce a spreadsheet of provisional ballots cast by precinct or copies of provisional ballot envelopes.

<sup>46</sup> *Id.*

<sup>47</sup> See OHIO REV. CODE ANN. § 3505.181 (LexisNexis 2007) (identifying circumstances under which a voter must cast a provisional ballot, i.e., name does not appear on the voter rolls, does not have or fails to provide proper identification, voted by absentee ballot, registration notification returned undeliverable, change of address, change of name, challenged voter, or challenged voter whose hearing has been postponed).

### 1. The Issuance of Provisional Ballots

Lucas County poll worker comments reveal that poll workers inappropriately issued provisional ballots to several voters in response to generic Election Day problems. In at least one instance, election officials directed poll workers to issue provisional ballots to help alleviate long lines at the polls. At Toledo Precinct 6P, Friendship Baptist Church, there were long lines of voters from approximately 2:30 p.m. until the polls closed at 7:30 p.m. Poll workers received authorization from an unknown official to issue provisional ballots to reduce the long lines and subsequently issued provisional ballots to several voters. Nothing in the Ohio election code permits issuance of provisional ballots under such circumstances.<sup>47</sup>

### 2. Provisional Ballots Rejected

Lucas County voters cast 4,910 provisional ballots, of which 3,531 were counted. As reflected in Table 1.4, the two primary reasons for rejecting provisional ballots in Lucas County were that voters cast the ballot in the "wrong" precinct (489) or were not registered (475).

### D. SUMMIT COUNTY

Summit County's largest city is Akron. Summit County's African American community is the county's largest minority population, representing 13.9% of the county's population. Although Summit County voters cast the fewest provisional ballots (4,891) of the four Ohio counties in this report, it had the highest rejection rate, 1,523 (31%) provisional ballots.

The Summit County Board of Elections provided Advancement Project with a report and addendum that included the name of each voter who cast a provisional ballot, the precinct in which the ballot was cast, and the disposition of the ballot. The report did not include

the addresses of voters who cast a provisional ballot. Additionally, Advancement Project received and reviewed 315 Booth Worker Memo Sheets from the Summit County Board. Booth Worker Memo Sheets are forms that poll workers use to report their complaints or concerns on Election Day. Finally, Advancement Project reviewed the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties.

As Table 1.5 reflects, and consistent with the other three counties identified in this report, the top two reasons for rejecting provisional ballots in Summit County were that the voter cast the ballot in the

"wrong" precinct (601) or was "not registered" (278). Additionally, Summit County rejected 128 provisional ballots on the ground that the voter was "ineligible to vote." Summit County was the only county of the four Ohio counties profiled in this report that employed this basis for rejection of a provisional ballot.

The Summit County Booth Worker Memo shows that in 29 precincts, most of which are in Akron, poll workers failed to administer provisional ballots properly.<sup>48</sup> For example, one poll worker reportedly directed voters to the wrong precinct: A poll worker wrote that in Akron Precinct 3B, "three voters were told to vote provisional in 5A but should have voted in precinct 3B.

**TABLE 1.4 LUCAS COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of Ohio's Rejected Provisional Ballots
Wrong Precinct	489	35%	2.1%
Not Registered	475	34%	2%
Missing ID	330	24%	1.4%
Missing Information	58	4%	.25%
Voted Other Means	21	1.5%	.1%
No Signature	6	.43%	.02%
<b>Total Rejected</b>	<b>1,379</b>	<b>100%</b>	<b>6%</b>

**TABLE 1.5 SUMMIT COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of Ohio's Rejected Provisional Ballots
Wrong Precinct	601	39%	2.6%
Not Registered	278	18%	.01%
Missing ID	349	23%	.5%
Voted Other Means	151	10%	.65%
Ineligible to Vote	128	8%	.55%
No Signature	16	1%	.06%
<b>Total Rejected</b>	<b>1,523</b>	<b>100%</b>	<b>5.37%</b>

<sup>48</sup>A poll worker in Akron Precinct 5B reported, "too many provisional ballots, too many voids, too many voters and ballots all messed up."

The provisional envelopes were placed in 5A.” Assuming that the poll worker was correct that these voters should have cast their ballots in Precinct 3B, rather than 5A, their ballots would have been rejected for having been cast in the “wrong” precinct.

In other instances, workers neglected to provide voters who cast provisional ballots with information on how to cure the problems with their provisional ballots in order to guarantee that their ballots would count, or how to determine whether their ballots were counted. For example, one poll worker reportedly failed to provide a voter who was given a provisional ballot because of a lack of identification a notice explaining that the voter should return to the Board of Elections with identification within 10 days to ensure that her provisional ballot would be counted.

Finally, at least one comment suggests that poll workers mismanaged provisional ballots. In Cuyahoga Falls, Precinct 3G, a poll worker reported that a provisional ballot might have been lost because the precinct was very busy and the voter may not have placed the provisional ballot in the ballot box.

#### V. RECOMMENDATIONS FOR OHIO

Based on the data on and analysis of the use of provisional ballots in Ohio in the 2006 general election, Advancement Project recommends that Ohio elected officials, county election officials, poll workers, voter protection advocates, and voters take the following steps to minimize the unnecessary use and rejection of provisional ballots.

##### A. ELIMINATE THE “WRONG” PRECINCT RULE.

- The state legislature should amend the election code to require that provisional ballots cast by voters at any precinct in the county be counted for all elections in which the voter is eligible to vote.

- The Ohio Secretary of State should issue a statewide directive clarifying that current Ohio law creates an affirmative duty binding election officials to direct voters to the correct precinct and ordering county boards of election to count provisional ballots that are cast in the “wrong” precinct unless the voter was directed by election workers to the correct precinct and refused to go.

##### B. IMPROVE THE FORMAT OF THE PROVISIONAL BALLOT ENVELOPE AND REQUIRE POLL WORKERS TO REVIEW PROVISIONAL BALLOT ENVELOPES FOR COMPLETENESS BEFORE THE VOTER LEAVES THE POLLING LOCATION.

- The Secretary of State should redesign the provisional ballot envelope to place a burden on poll workers to direct voters to the correct precinct, in compliance with state law.<sup>49</sup> In particular, both the voter and the poll worker should be required to initial the ballot to indicate that a poll worker informed the voter of his/her correct precinct. Absent both sets of initials, county election officials should count the ballot.
- Poll workers should check each provisional ballot envelope, especially for signature and date of birth, to ensure that it is complete, prior to the voter’s leaving the polls.
- The Secretary of State should issue a directive to all county boards of election that they should not reject a provisional ballot solely because the voter has not included his/her birth date on the provisional ballot envelope. Ohio law does not require the rejection of a provisional ballot for lack of the voter’s birth date on the ballot envelope.<sup>50</sup>

<sup>49</sup> § 3506.181(C)(1).  
<sup>50</sup> § 3506.183.

**C. EMPHASIZE THAT PROVISIONAL BALLOTS SHOULD BE USED AS A LAST RESORT.**

- Election officials should train poll workers on the limited circumstances under which it is appropriate and lawful under state law to distribute provisional ballots.
- Election officials should train poll workers on their duty to direct voters to the correct precinct.
- Election officials should take steps to ensure that voters who cast provisional ballots receive information from poll workers on how to cure deficiencies with their provisional ballot during the 10-day period after the election to guarantee that their ballot will count. They should also be informed about how to contact local boards of elections to determine whether their ballot was counted or rejected, and, if rejected, the reason(s) for the rejection.

**D. ESTABLISH A PROVISIONAL VOTING STATION IN EACH POLLING PLACE.**

- Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure voters are in the correct precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify voters' correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, a street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of

elections. No provisional ballots should be issued by poll workers at any other station.

**E. DISTRIBUTE AN ADEQUATE SUPPLY OF "CHANGE OF ADDRESS" AND "CHANGE OF NAME" FORMS AND VOTER REGISTRATION APPLICATIONS TO POLLING LOCATIONS.**

- Election officials should ensure that all polling places have adequate quantities of "change of address" and "change of name" forms available on Election Day. Election officials should train poll workers to offer the forms to voters whose names do not appear on the precinct list and who indicate that they have moved or changed their name.
- Poll workers should be trained to instruct any voter whose eligibility is in question to complete a voter registration application at the polling place to guarantee that s/he will become registered to vote for future elections.

**F. PRINT AND DISTRIBUTE MULTI-PRECINCT POLL BOOKS.**

- In multi-precinct polling places, where electronic poll books are unavailable, election officials should print and distribute poll books to each polling place that list all registered voters assigned to that polling place and indicate each voter's correct precinct.

**G. IMPROVE VOTER EDUCATION CONCERNING PROVISIONAL BALLOTS.**

- **Urge Voters to Confirm Their Precinct and Polling Location Before Election Day:** Voters should be encouraged to call their county elections office or check the county board of elections' or



Secretary of State's Web site a week before Election Day to confirm the location of their precinct.

- **Educate Voters that Provisional Ballots Should Be Used Only As a Last Resort:** Voters should be instructed to cast a provisional ballot only as a last resort and, where such voting is necessary, to confirm that s/he is in the correct precinct.
- **Educate Voters about Their Right to Request a Change of Address/Change of Name Form:** Voters should be informed about their right to request a "change of address" or "change of name" form at their precinct on Election Day. Voters who have moved to an address that is served by a new precinct without having updated their registration must vote in their new precinct, submit a change of address form, and cast a provisional ballot.
- **Instruct Voters to Provide Missing Information within 10 Days:** Voters who cast a provisional ballot should be given written and oral notice at the polls advising them to provide any missing information necessary to cure their ballot to their board of elections within the 10-day period after the election in order to guarantee that the ballot will be counted. On and immediately after Election Day, election officials should issue public service announcements with these instructions.
- **Notify by Mail Voters Whose Provisional Ballot Was Rejected:** Election officials should mail all voters whose provisional ballots are rejected a letter stating the reason for rejection and steps the voter should take to ensure that s/he will be permitted to vote by regular ballot in subsequent elections.
- **Inform Individuals with Felony Convictions that they Must Re-Register to Vote upon Release from Incarceration:** Election officials and the Department of Probation and Parole should inform individuals with felony convictions that they must re-register to vote upon release from incarceration. The Department of Probation and Parole should provide voter registration applications to these individuals upon their release.

#### H. INCREASE THE TRANSPARENCY OF THE ADMINISTRATION OF PROVISIONAL BALLOTS.

- The Secretary of State should issue a statewide directive ordering county boards of election to provide public access to the name, address, and birth date of each voter who casts a provisional ballot, and the basis for issuing those ballots, within the 10-day period after the election, to promote transparency and advocacy on behalf of voters who cast provisional ballots.
- Election officials should require poll workers to complete comment sheets or otherwise communicate their comments about problems and concerns on Election Day in written form. Election officials should use these comments to revise policies and poll worker training and should produce them in response to public records requests.

#### I. CONDUCT RIGOROUS ANALYSIS OF THE PROVISIONAL BALLOT USAGE.

- Following each election, local election officials should analyze provisional ballot usage in their jurisdiction by tracking all provisional votes cast and counted, by precinct, with the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, their notices to provisional voters, and their community education efforts.
- The Secretary of State should collect this data from local election officials to assess variances in the administration and counting of provisional ballots. The Secretary of State should publicize this information on his/her website and further analyze the need for statewide regulations or directives.

## Florida

In Florida's 2006 general election, 14,550 provisional ballots were cast, 3,857 (almost 27%) of which were rejected.<sup>51</sup> Advancement Project reviewed the rejection numbers for each county, as set forth below in Table 2.1.<sup>52</sup>

Advancement Project also reviewed and analyzed copies of thousands of envelopes of provisional ballots cast in that election in several of Florida's largest counties. The envelopes include a list of possible reasons for issuing the provisional ballot, the voter's affirmation, and the information that the supervisor is to verify. The analysis reveals both an overuse of provisional ballots and the imposition of rigid rules unconnected to a voter's eligibility. This data highlights not only the obstacles to becoming registered to vote in Florida,<sup>53</sup> but also the fact that those who manage to become registered may be disenfranchised by complex rules related to provisional ballots that often seem to confuse poll workers.<sup>54</sup>

Under Florida law, a provisional ballot cast in the "wrong" precinct must be rejected. The ballot envelopes that Advancement Project examined show that this law is misguided and fundamentally unfair, disenfranchising voters through no fault of their own. As discussed below, election officials or poll workers often did not provide voters

with accurate information, or any information whatsoever, about the location of the voter's precinct. Poll workers appeared ill equipped-lacking in training, resources, and an understanding of the rules related to voters who move-to provide voters with accurate information about their correct precincts.

Another major reason for the rejection of provisional ballots was that the voters were purportedly "unregistered." Though the records on the whole do not shed light on whether these voters had unsuccessfully attempted to register, or had been purged from the rolls, the records show that some voters were prevented from registering due to Florida's onerous "no match, no vote" statute. Additionally, a number of voters noted on their provisional ballot envelopes that they had registered to vote at a state motor vehicles office but were not, according to election officials, "registered voters," demonstrating a possible failure in the registration process that merits further investigation.

Finally, the envelopes suggest overuse of provisional ballots. In particular, poll workers may have issued provisional ballots based on an indication that the voter had requested an absentee ballot without attempting to determine whether the voter had voted by absentee ballot.

**TABLE 2.1 FLORIDA'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Location	Total Provisional Ballots Cast	Provisional Ballots Counted	Percent Counted	Provisional Ballots Rejected	Percent Rejected
Statewide	14,550	10,693	73.5%	3,857	26.5%
Broward	1,533	958	62%	575	38%
Duval	1,176	861	73%	316	27%
Hillsborough	1,671	1,337	80%	334	20%
Miami Dade	329	170	51.7%	159	48.3%
Orange	623	361	58%	262	42%
Palm Beach	1,805	1,425	79%	380	21%

<sup>51</sup> *The 2006 Election Administration and Voting Survey*, U.S. Election Administration Commission, Dec. 2007, at 43.

<sup>52</sup> Table 2.1 reflects the number of voters who cast provisional ballots in the 2006 general election, and the number of counted and rejected provisional ballots statewide and in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Palm Beach counties, as reported by the Secretary of State and those counties. When a county produced more than one set of records and those records contained inconsistent data, Advancement Project relied upon the more detailed records.

<sup>53</sup> A federal district court recently rejected Advancement Project's challenge to a Florida statute that prohibits the processing of connections to voter registration applications submitted within the specified deadline after the registrar closed the books. See *Diaz v. Cobb*, 475 F. Supp. 2d 1270 (S.D. Fla. 2007). Advancement Project, the Brennan Center for Justice at NYU School of Law, and Project Vote are currently challenging a Florida statute that requires the last four digits of a social security number or a driver's license number, or that the nonexistence of these numbers, be verified by the state as a precondition to registration. *Fla. State Conference, NAACP v. Browning*, No. 07-402 (N.D. Fla. 2007).

<sup>54</sup> For example, a voter's provisional ballot cast in a precinct in which s/he does not reside will not be counted. FLA. STAT. § 101.048(2) (2007). A voter who moves after s/he has registered may cast a regular ballot in the precinct in which s/he resides provided the voter completes an affirmation and the poll worker verifies his/her registration and eligibility. § 101.045. A voter who requests an absentee ballot but then wishes to vote in person may cast a regular ballot if s/he either returns the ballot or if the poll worker confirms that the absentee ballot has not been received by the supervisor. A provisional ballot should only be issued if the poll worker cannot determine whether the supervisor has received the voter's absentee ballot or if the poll worker confirms that the supervisor has received it but the voter maintains that s/he did not return the absentee ballot. § 101.89(1)-(3).

As Florida prepares for a surge in voter registrations and voter turnout this year, state and county election officials should take immediate steps to ensure that all eligible applicants who submit complete registration applications are promptly added to the rolls. As to applicants whose applications are incomplete, officials should timely notify the applicants of the deficiency, as required under state and federal law. In preparation for Election Day, officials should provide comprehensive training to poll workers on the appropriate circumstances under which to distribute provisional ballots to voters, the procedures for determining a voter's correct precinct, and the procedures to be followed for voters who have requested an absentee ballot or have moved.

#### I. PROVISIONAL VOTING UNDER FLORIDA LAW

Under Florida law, a voter who asserts that s/he is registered and eligible to vote but whose eligibility cannot be determined, or a voter who an election official asserts is not eligible to vote, may cast a provisional ballot.<sup>55</sup>

The county canvassing board<sup>56</sup> determines whether a provisional ballot should be counted or rejected. The board counts a provisional ballot if it determines that the voter was entitled to vote at the precinct in which s/he cast a provisional ballot and did not already cast a ballot in the election.<sup>57</sup> In making this determination, the canvassing board reviews the information provided in the provisional ballot voter's certificate and affirmation,<sup>58</sup> written evidence provided by the voter, other evidence that the supervisor of elections presents, and, in the case of a challenge, evidence presented by the challenger.<sup>59</sup> If the canvassing board determines that the voter was registered and eligible to vote in that precinct, the board compares the signature on the certificate and affirmation with the signature on the voter's registration, and, if it matches, counts the ballot.<sup>60</sup>

Florida law requires that a voter must cast a ballot in the precinct in which s/he resides and is registered. It also permits a voter who moves from the precinct in which s/he is registered to cast a regular ballot in the precinct of his/her new residence, provided that s/he completes an affirmation and his/her registration and eligibility are verified.<sup>61</sup>

## II. COUNTY-BY-COUNTY ANALYSIS

### A. DUVAL COUNTY

The Supervisor of Elections for Duval County reported that 1,776 provisional ballots were cast in the 2006 general election. Advancement Project obtained copies of the ballot envelopes, which include the voter's name and address, the reason the voter was required to cast a provisional ballot, whether the ballot was accepted or rejected, any investigative findings, and the voter's certificate and affirmation, which includes a space for voter comments. In addition to the envelopes, for each prior voter, Advancement Project obtained a "voter registration receipt," which includes the voter's name, voter status, and voter registration date, and, for many voters, their most recent voter registration application. Advancement Project reviewed data from the Election Incident Reporting System ("EIRS"), a compilation of information gathered from calls made to an Election Day hotline. Advancement Project also obtained a spreadsheet created by Duval County that sets forth the reasons for issuance and rejection of provisional ballots in the 2006 general election, and a copy of the Duval County poll worker manual (June 2006).

#### 1. The Issuance of Provisional Ballots

Table 2.2 reflects the number of voters who cast provisional ballots in the 2006 general election that were counted and the reasons for issuance of the provisional ballot in the first instance.

<sup>55</sup> § 101.048. Additionally, if a court or other order extends the polling place hours, and a person votes in an election after the regular poll-closing time, the voter must cast a provisional ballot. § 101.048.

<sup>56</sup> Under most circumstances, the county canvassing board consists of the county supervisor of elections, a county judge, and the chair of the board of county commissioners. § 102.141.

<sup>57</sup> § 101.048(2)(a).

<sup>58</sup> On the certificate and affirmation, the voter must swear or affirm his/her name, date of birth, political party, that s/he has not already voted and is registered and eligible to vote in the county. The voter must also swear or affirm an understanding that s/he can be convicted of a felony and imprisoned up to 5 years if s/he commits a fraud in connection with voting. See § 101.048(2)(a).

<sup>59</sup> § 101.048(2)(a)-(b). The county canvassing board reviews a provisional ballot to determine by a preponderance of evidence if the voter is "entitled to vote in the precinct where the person cast a vote in the election and the person had not already cast a ballot in the election." *Id.* If the board determines that the voter is registered and eligible to vote in that precinct, the board then compares the signature on the provisional ballot envelope with the signature on the registration records and, if they match, counts the ballot. *Id.*

<sup>60</sup> § 101.048(2)(a).

<sup>61</sup> § 101.045.

**TABLE 2.2 DUVAL COUNTY'S USE OF PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Issuance	Number of Ballots Accepted	Percentage of Accepted Ballots	Percentage of All Provisional Ballots Cast
Out of County / Not in Register	310	36.00%	26.33%
Requested Absentee Ballot	416	48.32%	35.34%
No Photo/Signature ID	70	8.13%	5.94%
Other/No Reason	30	3.48%	2.54%
Refutes Ineligibility	20	2.32%	1.69%
Duplicate/File Corrected	14	1.62%	1.18%
Out of County and No ID	1	.12%	.08%
<b>Total Accepted</b>	<b>861</b>	<b>100%</b>	<b>73%</b>

According to Duval County's records, provisional ballots were issued most frequently because the voter did not appear in the precinct register, the voter had requested an absentee ballot, or the voter had not produced photo identification with a signature at the polls.

*a. Errors Regarding Voters Who Had Requested Absentee Ballots*

Data suggests that poll workers may have improperly issued provisional ballots to voters who had requested absentee ballots but appeared at the polls on Election Day. If a voter who has received an absentee ballot later decides to vote in person, Florida law requires the voter to return the absentee ballot to the supervisor of elections, the election board in the voter's precinct, or an early voting site.<sup>62</sup> If the precinct register indicates that the voter had requested an absentee ballot, and the voter appears at the polls without his/her absentee ballot, a poll worker should issue the voter a regular ballot if the poll worker confirms that the supervisor of elections has not received the absentee ballot.<sup>63</sup>

Poll workers issued a provisional ballot to 416 voters because of an indication in the register that the voter did not surrender an absentee ballot and because the poll worker was not able to ascertain whether the supervisor's office had received the ballot. It seems unlikely that

poll workers would not be able to confirm whether the supervisor's office received the voter's absentee ballot for such a large number of voters. The large number of these voters seems to suggest a number of possible problems:

- Poll workers were not adequately trained,
- Poll workers were acting contrary to their training to contact the supervisor's office,
- Poll workers had difficulty reaching the supervisor's office on Election Day, and/or
- The supervisor's staff was unable to provide poll workers with accurate information about the voter's absentee ballot.

Additionally, one voter who specifically noted in her affirmation that she was returning her (unused) absentee ballot was nevertheless erroneously issued a provisional ballot.<sup>64</sup>

*b. Errors in Precinct Registers and Records*

The provisional ballot envelopes also reveal errors in state or county registration records<sup>65</sup> and errors related to the issuance of absentee ballots:

<sup>62</sup> § 101.69.

<sup>63</sup> *Id.* If the voter's absentee ballot is subsequently received, it remains in its envelope and is marked "rejected as illegal"

<sup>64</sup> Although the voter's provisional ballot was counted, poll workers should not have required her to cast a provisional ballot. When a voter returns an absentee ballot, it should be marked as cancelled, and the voter should vote by regular ballot. § 101.69.

<sup>65</sup> The EIRS data includes reports from several voters that they did not appear on the voter rolls in their correct precincts.

- A voter was issued a provisional ballot because county records mistakenly indicated that she had already voted. She insisted that she had not voted and her provisional ballot was subsequently counted, which suggests that the information on the poll register was incorrect or misread by the poll worker.
- A voter noted that his wife's gender was incorrect in the register.
- A voter's affirmation notes that a father and son's records had been combined.
- One investigative finding noted that a ballot should be counted because the voter had been inaccurately identified as being deceased.
- Several voters noted that they had requested an absentee ballot but had not received it, while others indicated that their records erroneously indicated that they had requested an absentee ballot.

2. Provisional Ballots Rejected

As reflected in Table 2.3, Duval County counted 860 (about 73%) of the provisional ballots cast and rejected 316 (about 27%) of those ballots.

The county reported that the top two reasons for its rejection of provisional ballots were that the voter's eligibility could not be established or the voter cast the ballot in the "wrong" precinct.

a. Problems with Voter Registration

A major reason cited for the rejection of provisional ballots in Duval County was that voters were not registered to vote. The ballot envelopes reveal that in some instances officials may have wrongfully failed to process those voters' registration applications. For example, some voters were not registered to vote because state election officials were unable to "match" the information on their application with a record in the state driver's license or Social Security Administration's database.<sup>66</sup> But lack of a "match" could be the result of a typographical error by a clerk, the applicant's having a hyphenated name or nontraditional spelling of a common name, or other factors wholly unrelated to the applicant's eligibility. Florida's "matching" requirement, in effect, disproportionately prevented African American and Latino applicants from becoming registered to vote.<sup>67</sup>

**TABLE 2.3 DUVAL COUNTY'S REJECTED PROVISIONAL BALLOTS (2008 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of All Provisional Ballots Cast
Eligibility Unable to Be Established	198	62.7%	16.8%
Wrong Precinct	100	31.6%	8.5%
Signature of Voter Did Not Match	6	1.9%	.51%
Other/Voter Not in Register	6	1.9%	.51%
Already Voted Early/Absentee	3	.95%	.26%
Absentee Ballot Not Brought to Polls	2	.63%	.17%
Other/Refutes Ineligibility	1	.32%	.09%
<b>Total Rejected</b>	<b>316</b>	<b>100%</b>	<b>27%</b>

<sup>66</sup> See § 97.053(6).  
<sup>67</sup> In 2007, Advancement Project, the Brennan Center for Justice at NYU School of Law, and Project Vote successfully challenged Florida's refusal to register voters for lack of a "match" but an appellate court reversed that ruling. See *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008). On remand, the trial court recently re-jected plaintiffs' renewed request for a preliminary injunction of the statute. *Fla. State Conference, NAACP v. Browning*, No. 07-402 (N.D. Fla. June 24, 2008).

Other envelopes suggest flaws with the administration of the National Voter Registration Act's ("NVRA") requirement that state motor vehicles offices distribute voter registration applications to persons who use their services.<sup>68</sup> For example, 11 individuals wrote on their provisional ballot affirmation that they had registered to vote while obtaining a driver's license at the Florida Department of Highway Safety and Motor Vehicles ("DHSMV").

Finally, at least one envelope reveals that errors in the administration of the state's voter registration deadline may have disenfranchised voters. One voter whose provisional ballot was rejected because she "registered after book closing" appears to have registered before the October 10, 2006, book closing. Her registration application was signed October 3, 2006, and stamped October 4, 2006. Moreover, a "voter registration receipt" indicated that this voter was deemed registered as of October 4, 2006.

#### *b. Errors Regarding Precincts*

Other provisional ballot envelopes show that voters who cast provisional ballots in the "wrong" precincts were actually directed there by poll workers. Subsequently, the votes were not counted because they were cast in the "wrong" precinct.

- On one envelope, a voter wrote that he had been "sent all around" to different precincts.
- On an affirmation, a voter stated that he had attempted to vote at four different precincts.
- On her envelope, a voter recorded that a poll worker had instructed her to go to a different precinct at 6:45 p.m. When the voter arrived at the second precinct, she was told that she needed to cast her ballot at the first precinct, but she did not have time to return to the first precinct before the polls closed. As a result, she was required to cast a provisional ballot in the wrong precinct.

As a result of poll workers' misdirection of voters to incorrect precincts, the provisional ballots cast by these voters were rejected.

In other instances, poll workers appear to have misunderstood that Florida law allows a registered voter who moves to a new precinct to cast a regular ballot in that precinct, provided the voter completes an affirmation.<sup>69</sup>

- Numerous voters who had moved cast ballots in the precinct that served their previous residence, instead of the precinct that served their current address.
- One note indicates that a precinct worker told a voter to vote at the location listed on his "[voter information] card," and not in the precinct in which he currently resided, contrary to Florida law. As a result, the voter's provisional ballot was rejected.

The ballot envelopes of five other voters, whose provisional ballots were rejected for having been cast in the wrong precinct, noted that they had not received a voter information card. Such a card would have informed each of these voters of his/her correct precinct location.<sup>70</sup>

#### **B. PALM BEACH COUNTY**

In the 2006 general election, 1,805 provisional ballots were cast in Palm Beach County. Advancement Project obtained copies of the envelopes of those ballots, which include the voter's name and address, the reason the voter was required to cast a provisional ballot, whether the ballot was accepted or rejected, and, if rejected, the reason for rejection. Advancement Project also obtained a spreadsheet created by Palm Beach County that sets forth the reasons for issuance and rejection of provisional ballots in that election and Election Day phone logs from the supervisor's office that included the name of the caller, the precinct at issue, a brief description of the

<sup>68</sup> See National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg - 3; § 97057 (2002).

<sup>69</sup> The affirmation includes the voter's new address, old address, and registration status; that the voter has not yet voted in the election; and that the voter is entitled to vote.

FLA. STAT. § 101.4512(a) (2007). A poll worker should only issue a provisional ballot if the poll worker cannot determine a voter's eligibility. *Id.*

<sup>70</sup> These findings are consistent with data from an Election Day hotline compiled on the "Election Incident Reporting System." Calls from Duval County to the hotline included a report from a voter that a poll worker had sent from one precinct to another, only to be told by another poll worker to return to the first precinct. Another voter told the hotline that a poll worker erroneously required the voter, who had moved within the same precinct, to vote by provisional ballot.

problem, and the action taken. Additionally, Advancement Project reviewed Election Day phone logs from the supervisor's office and EIRS data.

**1. The Issuance of Provisional Ballots**

As Table 2.4 shows, as to the provisional ballots it counted, the county most frequently issued provisional ballots because the voter had requested an absentee ballot or the voter's name did not appear on the precinct register.

*a. Errors Regarding Voters Who Had Requested Absentee Ballots*

Palm Beach County's records indicate that 545 people, nearly one-third of all voters who cast provisional ballots, were issued provisional ballots because the register indicated that each of these voters had requested an absentee ballot. Several of the voter affirmations reveal

that voters were unaware that if they requested an absentee ballot for a given election, they would in most cases receive absentee ballots for future elections as well.<sup>71</sup> For example, some voters wrote on their envelopes that they requested an absentee ballot for the primary election only, suggesting that they did not want or intend to vote by absentee ballot in the general election.

While these provisional ballots were counted, under Florida law, these voters should have been permitted to vote by regular ballot if the poll worker confirmed that the supervisor had not received an absentee ballot from the voter.<sup>72</sup> The large number of provisional ballots issued because of an indication that a voter requested an absentee ballot suggests that poll workers may not have been trained to contact the supervisor's office under these circumstances or were unable to reach the supervisor's office,<sup>73</sup> or that the supervisor's office was unable to respond accurately to the poll worker's inquiry.<sup>74</sup>

**TABLE 2.4 PALM BEACH COUNTY'S USE OF PROVISIONAL BALLOTS (2008 GENERAL ELECTION)**

Reason Voter for Issuance	Number of Ballots	Percentage of Accepted Ballots	Percentage of All Provisional Ballots Cast
Absentee Ballot Issued	545	38.2%	30.2%
Not on Precinct Register	342	24%	18.8%
No ID	314	22%	17.4%
No Reason Indicated	105	7.4%	5.8%
Voter Moved	65	4.6%	3.6%
Inactive Status	19	1.3%	1.1%
Unable to Determine Eligibility	12	.84%	.66%
Other	10	.70%	.17%
No Signature/Signature Differs	6	.42%	.33%
Name Change	4	.28%	.22%
Suspended Voter Status	3	.21%	1.7%
<b>Total Accepted</b>	<b>1,425</b>	<b>100%</b>	<b>79%</b>

<sup>71</sup> § 101.62(1).

<sup>72</sup> § 101.66.

<sup>73</sup> Comments in Election Day phone logs received from the supervisor's office, many of which appear to be from poll workers, confirm that it was difficult to contact the supervisor's office by phone.

<sup>74</sup> The EIRS data also indicates that poll workers did not correctly administer Florida's absentee ballot rules. One voter called to report that although she had not requested an absentee ballot, a poll worker told her that she had requested an absentee ballot and instructed her to retrieve it and return to the polls with it. But under Florida law, even if the voter had requested an absentee ballot, the poll worker should not have sent the voter away from the polls because she did not have an absentee ballot in her possession. See FLA. STAT. § 101.66 (2007).

*b. Errors Regarding Voters Who Had Moved*

Palm Beach County's provisional ballot envelopes show that dozens of voters were issued provisional ballots for reasons such as "moved," "new address," and "change of address - voted provisional in new and correct precinct." By the county's own admission, poll workers required 65 voters to vote by provisional ballot because they had moved. The county ultimately counted these 65 ballots, thereby confirming that the voters were registered and eligible and had cast their ballots in the proper precinct. But poll workers should never have required those voters to vote by provisional ballot. Under Florida law, voters who move are permitted to cast a regular ballot in the precinct where they reside, provided they sign an affidavit and the poll worker confirms the voter's registration and eligibility.<sup>75</sup> Instead, poll workers required these voters to vote by provisional ballot, the counting of which is not guaranteed.

In addition, Palm Beach County reported that it issued provisional ballots to an additional 342 voters because their names did not appear on the poll register, yet the canvassing board subsequently counted those ballots. This suggests that poll registers may have been inaccurate or not updated with change-of-address information. Some of these ballots may have been cast by voters who did not appear on the register because they had moved after they registered to vote but nevertheless voted in the correct precinct serving their new address. Under Florida law, if these voters affirmed their new address and poll workers confirmed their registration, they should have been permitted to vote by regular ballot.

*c. Errors Regarding Voters Who Had Changed Their Name*

Voters who change their name after they registered to vote are entitled to cast a regular ballot on Election Day if they complete an affidavit.<sup>76</sup> Poll workers should issue a provisional ballot to those

voters only if their eligibility, registration, or precinct is in question.<sup>77</sup> According to Palm Beach County records, four voters were issued provisional ballots, which were counted, because they had changed their names.

*d. Possible Errors in Precinct Registers and Communication Problems*

Palm Beach County's records show that 342 voters, whose provisional ballots were counted, had to cast provisional ballots because they did not appear on the precinct register. The sheer volume of voters in this category could indicate that the precinct registers and registration rolls are inaccurate or out-of-date.

In addition, comments on provisional ballot processing forms, presumably made by poll workers, indicate that it was difficult to reach the Palm Beach supervisor's office on Election Day.<sup>78</sup> Impediments to communication could interfere with, among other things, a poll worker's ability to verify a voter's eligibility, which could result in the improper distribution of provisional ballots to qualified voters.

**2. Provisional Ballots Rejected**

As Table 2.5 reflects, of the 1,805 provisional ballots cast in Palm Beach County, 1,425 (about 79%) were counted and 380 (about 21%) were rejected.

<sup>75</sup> § 101.045 (2007).

<sup>76</sup> § 101.045.

<sup>77</sup> *Id.*

<sup>78</sup> Comments in Election Day phone logs received from the supervisor's office, many of which appear from poll workers, confirm the difficulty that poll workers had in contacting the supervisor's office by telephone on Election Day.



**TABLE 2.5 PALM BEACH COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots	Percentage of Rejected Ballots	Percentage of All Provisional Ballots Cast
Not Registered	125	32.9%	6.9%
Wrong Precinct	92	24.2%	5.1%
Deleted Voter Status	46	12.1%	2.5%
Registered after Books Closed	40	10.5%	2.2%
Signature Missing	25	6.6%	1.4%
No Voter Information Provided on Ballot	24	6.3%	1.3%
Other	12	3.21%	.69%
Incomplete Voter Status	9	2.4%	.5%
Voided Provisional	4	1.1%	.2%
Early Voted	3	.79%	.17%
<b>Total Rejected</b>	<b>380</b>	<b>100%</b>	<b>21%</b>

As noted above, the top two reasons for Palm Beach County's rejection of provisional ballots were that the voter appeared not to be registered or that the voter cast his/her ballot in the "wrong" precinct.

*a. Registration Problems*

The most common reason for rejection of a provisional ballot was that the voter did not appear to be a registered voter. While the envelopes do not explain why so many voters were unregistered, they do suggest—as in Duval and Orange counties—that DHSMV may not be fulfilling its legal requirements under the NVRA to provide Floridians who use its services with an opportunity to register to vote. Several voters in Palm Beach indicated on their provisional ballot envelopes that they had registered to vote while obtaining a driver's license at the DHSMV.

*b. Precinct Errors*

Ninety-two provisional ballots were rejected because the voter cast the ballot in the "wrong" precinct. The envelopes of those provisional ballots show that, in many instances, voters cast provisional ballots in the "wrong" precinct at the direction of a poll worker.

- Forty-three voters who were registered to vote, but did not appear on the precinct register, cast provisional ballots that were rejected because they were cast in the "wrong" precinct. If not for poll worker error, none of these voters would have been disenfranchised. Poll workers should have directed each of those voters to his/her correct precinct. Of the provisional ballots cast by these 43 voters, the envelopes on 18 ballots indicated that the voter had changed addresses. Under Florida law, poll workers should have directed those voters to the polling place serving their

new address so they could cast a regular ballot and an affirmation with their new address.<sup>79</sup> The fact that poll workers did not prevent these voters from casting a provisional ballot in the “wrong” precinct suggests that poll workers did not have adequate information to direct voters to their correct precinct, were not properly trained, and/or disregarded the training.

- One voter whose provisional ballot was rejected because he voted in the “wrong” precinct stated on his envelope that poll workers from a different precinct had directed him to that precinct, which according to the investigative findings was not his correct precinct.
- Another voter, who was registered, was issued a provisional ballot because he was “not in the system,” according to a poll worker, which suggests that the poll worker could not, or did not, attempt to access information from the statewide voter registration database. As a result, the voter cast a provisional ballot in the “wrong” precinct, and it was rejected.

*c. Incomplete Envelope Certificates and Affirmations*

Twenty-five provisional ballots in Palm Beach County were rejected because the voter did not sign the certificate and affirmation on the provisional ballot envelope. Florida law requires the canvassing board to compare a voter’s signature on his/her certificate and affirmation with the signature on the voter’s registration prior to counting a provisional ballot.<sup>80</sup> Thus, a provisional ballot cast by a registered, eligible voter must be rejected if the voter did not sign the provisional ballot affirmation, an omission that poll workers could readily help to avoid.

In one disturbing example, a voter who was issued a provisional ballot refuted the claim that he was ineligible. Investigative findings indicate that the voter was indeed registered, and election officials had confused the voter with someone else who had a similar name and had cast a ballot earlier in the day. Even though this registered and eligible voter should never have been forced to vote by provisional ballot, his provisional ballot was not counted because he did not sign the ballot’s certificate and affirmation.

**C. ORANGE COUNTY**

The Supervisor of Elections for Orange County reported that 623 provisional ballots were cast in the 2006 general elections. Advancement Project obtained copies of the provisional ballot envelopes, which include the voter’s name and address, the reason for the issuance of the provisional ballot, whether the ballot was accepted or rejected, and the reasons for rejection. Advancement Project also obtained a spreadsheet produced by Orange County containing this information and reviewed EIRS data from Orange County.

**1. The Issuance of Provisional Ballots**

As Table 2.6 indicates, for almost 60% of the provisional ballots that were actually counted, the county was unable to provide Advancement Project with the reason or reasons for issuance of the provisional ballot instead of a regular ballot in the first instance.

<sup>79</sup> § 101.045. Provided that the voter completed an affirmation and the poll worker verified the voter’s registration and eligibility, the voter should have been permitted to cast a regular ballot in the precinct of her legal residence. *Id.*  
<sup>80</sup> § 101.048(2)(b)(1).

**TABLE 2.6 ORANGE COUNTY'S USE OF PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Issuance	Number of Ballots Accepted	Percentage of Accepted Ballots	Percentage of All Provisional Ballots Cast
No Reason Listed on Public Records Chart	212	58.7%	34%
Moved	85	18%	10.4%
Absentee Issues	46	12.7%	7.4%
No ID	26	7.2%	4.2%
Other	12	3.3%	1.2%
<b>Total Accepted</b>	<b>361</b>	<b>100%</b>	<b>58%</b>

Of the remaining provisional ballots that were counted (almost 40%), the county reported that most had been issued because the voter had moved into the county,<sup>81</sup> had requested an absentee ballot, or did not produce ID at the polls.

## 2. Provisional Ballots Rejected

As Table 2.7 indicates, of the 623 provisional ballots cast in the county, 262 (about 42%) of which were rejected because, among other reasons, (1) the voter was not registered, (2) the voter's information could not be matched with a record in the state's motor vehicles database or the Social Security Administration database, or (3) the voter cast the ballot in the "wrong" precinct.

### a. Problems with Registration

The most common reason for rejecting a provisional ballot was that the voter was not registered to vote. While the provisional ballot envelopes do not provide much guidance or explanation of the voters' registration status, the envelopes from Orange County, as in Duval and Palm Beach counties, indicate possible failures by the DHSMV to fulfill its duties under state and federal law to assist voters in registering to vote.<sup>82</sup> In Orange County, at least four voters or poll

workers recorded on a provisional ballot envelope that the voter believed s/he had registered while obtaining his/her driver's license.

The second most common reason for rejecting a provisional ballot was that the voter's registration application had been denied because information on the application could not be matched with a record in the DHSMV or Social Security database. As discussed above, following the 2006 general election, Advancement Project and other voting rights advocates challenged Florida's refusal to register voters for lack of a "match."<sup>83</sup>

### b. Precinct Errors

The third most common reason for rejecting a provisional ballot was that the voter cast the ballot in the "wrong" precinct. As in Duval County, voter comments indicate that poll workers may not have provided voters with adequate or accurate information about their correct polling locations. For example, one voter whose provisional ballot was rejected noted on his envelope that when he appeared at one polling place, a poll worker directed him to a different polling place without having searched for his registration. The second polling place, after searching for his records, referred him to a third location, which was his correct precinct; however, because he arrived

<sup>81</sup> Registered voters who moved into the county should have been allowed to vote by regular ballot if they completed an affidavit with their new address and the poll worker verified that they were registered, eligible, and entitled to vote in that precinct. FLA. STAT. § 101.045 (2007).  
<sup>82</sup> See National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg; FLA. STAT. § 97.057 (2002).  
<sup>83</sup> See *supra* note 87 and accompanying text.

**TABLE 2.7 ORANGE COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

Reason for Rejection	Number of Ballots Rejected	Percentage of Rejected Ballots	Percentage of All Provisional Ballots Cast
Not Registered	50	18.1%	8%
Didn't Match State Database	48	18.3%	7.7%
Wrong Precinct	46	17.6%	7.4%
Registered after Book Closing	34	13%	5.5%
Moved Out of State/County	24	9.2%	3.9%
Incomplete	19	7.3%	3%
Ineligible	16	6.1%	2.6%
Removed from Voting Rolls	12	4.6%	1.9%
Registration Cancel	11	4.2%	1.8%
Other	3	1.14%	.46%
<b>Total Rejected</b>	<b>262</b>	<b>100</b>	<b>42%</b>

at the third precinct after 7:00 p.m., his provisional ballot was not counted. Had the poll worker at the first location provided him with accurate information about his correct precinct, he would not have been disenfranchised.

*c. Unexplained Rejections*

The investigative findings of the supervisor of elections, set forth on the envelopes of four provisional ballots, concluded that those voters were registered or should have been permitted to cast a regular ballot, but those ballots were nevertheless rejected. It is unclear from these comments why there was a change in course. The provisional ballot envelopes do not indicate the facts that support the canvassing board's decisions to reject these ballots. Without such information, it is impossible to determine whether the board acted properly.

III. RECOMMENDATIONS FOR FLORIDA

Advancement Project recommends that Florida elected officials, county election officials, poll workers, voter protection advocates, and voters take the following steps to minimize the unnecessary use and rejection of provisional ballots.

A. ELIMINATE UNNECESSARY BARRIERS TO REGISTRATION.

- The Florida legislature should amend its election code to eliminate the requirement to "match" a voter applicant's information with data in the Florida DHSMV or Social Security database as a precondition to voter registration.
- The Florida legislature should amend its election code to allow applicants who submitted incomplete or incorrect registration applications to correct their applications, within a reasonable

amount of time from filing, so their names can be added to the voter rolls before an upcoming election.

- The Secretary of State should provide online, public access to the statewide voter registration database. The Secretary should also provide online access to information related to incomplete and/or incorrect applications. The Secretary should post the names and addresses of applicants and any deficiencies associated with any of the pending applications. Providing online access to the database would enable an applicant to determine whether s/he is registered, and, if not, to take the necessary steps to correct his/her application.
- County election officials should adopt Duval County's procedure that instructs any voter whose eligibility is in question to complete a voter registration application at the polling place.

#### B. ELIMINATE "WRONG" PRECINCT RULE.

- The Florida legislature should amend the election code to require that provisional ballots cast by voters at any precinct in the county be counted for all elections in which the voter is eligible to vote.

#### C. IMPROVE POLL WORKER TRAINING.

- Poll workers must be trained to understand that provisional ballots should be used as a last resort, and training must include detailed explanations as to the circumstances under which a voter should vote provisionally.
- Poll workers must be trained on the proper rules and procedures pertaining to voters who requested an absentee ballot or had a change of address or name.

#### D. ENHANCE ASSISTANCE AND INFORMATION AT POLLING SITES.

- [County election officials should staff each precinct with an additional poll worker devoted solely to assisting voters in identifying their correct polling place. This poll worker should have access to the statewide database and the ability to identify the proper precinct for any given address. This poll worker should also have access to up-to-date precinct and address information. This extra worker should be stationed in front of and apart from the "check-in" location so voters who are unsure of their precincts can obtain assistance prior to waiting in line to vote.
- Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure that voters are in the correct precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify a voter's correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of elections. No provisional ballots should be issued by poll workers at any other stations.
- All poll workers should have quick and easy access to the statewide voter registration database to guarantee that they will be able to verify the registration status of a voter who has moved.

- If a voter is uncertain of his/her precinct, poll workers should ask for the voter's current address to identify the voter's proper precinct and then direct the voter there. Poll workers should instruct any voter whose eligibility is in question to complete a voter registration application at the polling site to guarantee that s/he will become registered to vote in future elections.
- County election officials should have current maps so they can provide accurate and current precinct information to poll workers and voters.
- The supervisors of elections should ensure that a poll worker can easily contact the supervisor's office on Election Day, if the poll worker has questions. Supervisors should also create an easily accessible and searchable list of voters who have cast an absentee ballot.

**E. IMPROVE PROVISIONAL BALLOT ENVELOPES AND REQUIRE POLL WORKERS TO CHECK THESE BALLOTS FOR COMPLETENESS.**

- The Secretary of State should reformat the signature block on provisional ballot envelopes to make it larger and more prominent.
- The envelope should include a reminder to voters in large, bold letters that failure to sign the envelope will result in a rejected ballot.
- Poll workers should be required to examine each provisional ballot envelope for completeness and determine whether the voter has signed the envelope before the voter leaves the polling place.

**F. INCREASE TRANSPARENCY OF THE ADMINISTRATION OF PROVISIONAL BALLOTS.**

- Poll workers should provide each voter who cast a provisional ballot with written notification at the polls describing why s/he was issued a provisional ballot and explaining what steps the voter can take to ensure that his/her ballot will be counted. Also, voters should be told what they must do to vote by regular ballot in the next election.

**G. IMPROVE VOTER EDUCATION.**

- Improve education and information for voters on how and when to register, how to locate precincts, and how and when to vote provisionally.
- Improve education and information for voters on how to change addresses and names and the rules and procedures for voting absentee, including the fact that requesting an absentee ballot in one election will result in receiving absentee ballots in future elections.
- Conduct specific outreach and education for person with felony conviction on the rules and procedures for re-registering and voting.

**H. CONDUCT RIGOROUS ANALYSIS OF THE USE OF PROVISIONAL BALLOTS AND THE COMPLIANCE WITH OTHER LAWS AFFECTING THE ADMINISTRATION OF ELECTIONS.**

- Following each election, county supervisors of elections should analyze provisional ballot usage in their county by tracking all provisional votes cast and counted, by precinct, with the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, notices to provisional voters, and community education efforts, where necessary.
- The Secretary of State should collect this data from Florida counties to assess differences in the casting, counting, and administration of provisional ballots. The Secretary should publicize this information on a state website and analyze the need for additional regulations or directives where necessary.
- The Secretary of State should audit the Florida DHSMV to determine whether it is, and has been, fully compliant with the NVRA.

## Conclusion

Advancement Project's analysis of public records related to provisional ballots cast in the 2006 general election in Ohio and Florida evidences significant overuse and misuse of provisional ballots. The types of problems and failures identified in this report appear to have existed, to some degree, nationwide in the 2006 election and are likely to exist in elections in the future—disenfranchising even more voters than in past elections—unless changes and improvements are made to limit the unnecessary use and rejection of provisional ballots. If steps are not taken in this regard, voters across the country may be wrongfully disenfranchised in November, and the country may be left with election results that are inaccurate or tainted.

**every  
vote  
counts**





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Ms. LOFGREN. If there is nothing further, then we will be adjourned; and just in time, because we have been called for votes across the street on the House floor. Thank you very much.

This meeting is adjourned.

[Whereupon, at 3:13 p.m., the subcommittee was adjourned.]



July 20, 2009

The Honorable Zoe Lofgren, Chairwoman  
 Subcommittee on Elections  
 Committee on House Administration  
 1309 Longworth Building  
 Washington, DC 20515-6157

Re: *Examining Uniformity in Election Standards* Hearing - supplemental testimony

Dear Chairwoman Lofgren and Members of the Subcommittee on Elections:

Thank you for inviting Advancement Project to testify before the Subcommittee in its *Examining Uniformity in Election Standards* hearing held on Wednesday, July 15, 2009. We respectfully submit this supplemental testimony to answer several of the questions posed by Congressman McCarthy.

During the hearing, Congressman McCarthy relied on the "Nationwide Data Table" issued by one of the Election Day hotlines, *Our Vote*, to imply that the problems with voting equipment were not significant enough to warrant litigation or serious attention. We respectfully disagree. First, it is important to note that these tables are simply a snapshot of incidents; they do not capture the full picture of what occurred during the 2008 election administration cycle, as we describe in more detail below. Second, when reviewing these tables, it is essential to keep in mind that behind every number is a voter, standing in line, waiting to exercise his or her right to vote.

Nonetheless, the tables certainly help highlight the fact that polling place problems of all types (including equipment problems, which are sometimes coded as polling place problems on the *Our Vote* site), and registration problems, account for the great majority of difficult-to-resolve problems on Election Day, and require remedies. Advancement Project's experience working on election administration on a year-round basis allowed us to anticipate and work toward resolving many of these problems in advance of Election Day, but many obstacles still remain. Our emergency paper ballot advocacy in Pennsylvania is one example illustrating that many of these problems can be ameliorated through mandated uniformity and training.

Prior to September 2008, in Pennsylvania and in many other states, there were *no* mandatory standards for whether poll workers or election officials should provide backup paper ballots to voters, should one, several, or all the machines in a polling place fail to work. Pennsylvania's applicable statute provides only that an election official *may* provide paper ballots to the voters; it does not *require* that officials do so under any circumstances, even if no machines are working. *See* 25 P.S. § 3031.20. If election officials do opt to provide backup paper ballots, the statute does not

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prescribe what standards to apply to their administration and counting. Many other states have similar or related statutes that permit, but do not require, the use of backup paper ballots or other emergency procedures, and some states have no provision for backup paper ballots at all. *See, e.g.*, Virginia (Va. Code Ann. § 24.2-642), South Carolina (S.C. Code Ann. § 7-13-1470), Georgia (Ga. Code Ann. § 21-2-334 and § 21-2-379), Indiana (Ind. Code § 3-11-3-3), and Delaware (Del. Code Ann. tit. 15, § 5010).

During the 2008 Pennsylvania primary, both of the main hotlines monitoring the election—*MYVOTE1* and *Our Vote*—reported that machine breakdowns were one of the most significant and frequent problems being called in by voters.<sup>1</sup> The *Our Vote* coalition reported in their 1:30 p.m. press release that approximately 30% of their calls related to equipment malfunctions, and that “[t]his problem had been reported throughout Philadelphia and the state of Pennsylvania and has the potential to disenfranchise thousands of voters by the time the polls close.”<sup>2</sup> That day, Advancement Project, Voter Action, and other allies attempted to remedy this by seeking an injunction in the Philadelphia Court of Common Pleas, but our request was denied.<sup>3</sup>

Pennsylvania’s lack of direction on machine breakdowns and emergency ballots led to hundreds, if not thousands, of voters to experience unequal and unduly burdensome circumstances during the primary, as described in Mr. Hailes’s written testimony to the Subcommittee:

Different procedures applied across the state and even within counties. While some voters were provided with emergency paper ballots when they faced machine breakdowns, others were told to go home and return later. Even where paper ballots were eventually offered, the procedures and forms of these ballots varied from county to county and from precinct to precinct. For example, in some precincts, voters waited for hours with all or most of the machines inoperable before poll workers offered them an alternative means of voting; consequently, hundreds of voters left the polling places without voting.

These circumstances led to an outpouring of advocacy directed at state and local election officials in Pennsylvania, and this advocacy was, by and large, successful, with clear positive outcomes in 2008 and beyond. Advancement Project’s advocacy caused the Secretary of State to issue his September directive mandating uniformity, which in turn led most county election officials to add further training on voting machine breakdowns, and add emergency ballot administration instructions to their poll worker training and manuals. Furthermore, when the federal court issued a decision in *NAACP v. Cortes*,<sup>4</sup> expanding the circumstances upon which backup paper ballots must be offered, most counties issued additional clarification to their poll workers.

As a result, on November 4, Pennsylvania county and local election workers were more prepared for Election Day machine breakdowns than ever before, and many fewer voters reported problems on this issue than had during the primary.

<sup>1</sup> MYVOTE1 hotline data (April 22, 2008) (InfoVoter Technologies); OURVOTE hotline data (April 22, 2008).

<sup>2</sup> “Election Protection In Full Swing In Pennsylvania,” April 22, 2008 press release issued by the Committee of Seventy and Lawyers’ Committee for Civil Rights Election Protection Coalition.

<sup>3</sup> *Coleman v. Tartaglione*, 2008 CV 2594 (Phila. Ct. Comm. Pleas April 22, 2008).

<sup>4</sup> 591 F. Supp. 2d 757 (E.D. Pa. 2008).

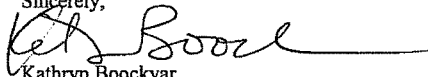
Voters in other states were not as lucky, however, nor were voters waiting in line for hours for reasons other than machine breakdowns. For example, as stated in our prior testimony, some Virginia voters waited seven hours as a result of machine breakdowns and lack of emergency paper ballots or procedures.<sup>5</sup> Additionally, voters across the country experienced unduly long lines for many other reasons, including insufficient supplies of voting machines, poor polling place facilities or setup, underestimating of voter turnout, and inadequate numbers of poll workers.<sup>6</sup>

Accordingly, Advancement Project reiterates its recommendation that this Congress enact federal legislation which would require that emergency paper ballots be offered to voters immediately upon *either* of the following circumstances: a) at least half of the voting machines in a precinct are not functioning; or b) the wait time to vote in a precinct, for any reason, exceeds forty-five minutes.<sup>7</sup> Advancement Project also urges Congress to include in such legislation the other standards for emergency ballot administration and counting enumerated in our prior written testimony. These standards would ensure the highest uniformity and the greatest protection of our vote.

The codification of these standards and uniformity is essential, because without them, we are not only allowing voters' right to vote to be unduly burdened, but also are permitting some citizens' votes to be valued above others, in violation of our Constitutional rights. *NAACP v. Cortes*, 591 F. Supp. 2d 757 (E.D. Pa. 2008) ("The delay resulting from a situation where 50% or more of the voting machines are inoperable . . . will be [an injury] of the gravest magnitude and will give rise to a violation of at least the Equal Protection Clause of the Fourteenth Amendment."); *Black v. McGuffage*, 209 F.Supp.2d 889, 899 (N.D. Ill. 2002) (citing *Bush v. Gore*, 531 U.S. 98, 104-105 (2000) (A violation occurs when "people in different counties have significantly different probabilities of having their votes counted, solely because of the nature of the system used in their jurisdiction."); *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.")).

Thank you for your kind consideration of our testimony. If you have any questions or would like any further information, please contact me at [kboockvar@advancementproject.org](mailto:kboockvar@advancementproject.org), (215) 345-1267, or 73 Old Dublin Pike, Suite 10 #134, Doylestown, PA 18901.

Sincerely,



Kathryn Boockvar  
Senior Attorney - Pennsylvania

<sup>5</sup> *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow* (Mar. 2009), at 13, 16, 19.

<sup>6</sup> *Id.*, *passim*.

<sup>7</sup> Kansas Secretary of State Ron Thornburgh testified at the hearing that this latter provision—requiring emergency ballots to be offered to voters when the wait time is longer than 45 minutes—is the standard in Kansas.

ROBERT A. BRADY, PENNSYLVANIA  
CHAIRMAN

## Congress of the United States

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DANIEL E. LUNGREN, CALIFORNIA  
RANKING MINORITY MEMBER

August 4, 2009

Mr. Ron Thornburgh  
Kansas Secretary of State  
1st Floor, Memorial Hall  
120 SW 10th Avenue  
Topeka, KS 66612

Dear Mr. Thornburgh:

Thank you for testifying during the July 15, 2009 Committee on House Administration, Subcommittee on Elections, hearing on "Examining Uniformity in Elections Standards." The Subcommittee requests your response to additional questions that will be made part of the hearing record. Please provide your responses to the Committee by September 1, 2009.

*Regarding Pollworker Recruitment and Training:*

1. What is your opinion on using federal, state, or municipal employees as pollworkers? Are there any legal or practical obstacles to such a plan?
2. How do you recruit and train pollworkers to deal with more sensitive issues, like voters who need special assistance voting or a ballot in another language? Are your pollworkers paid? How are you recruiting younger pollworkers?
3. Are pollworkers using more technology than before to undertake their duties? If so, how have these technological tools impacted service to voters?
4. Federal law requires the availability of translated ballots and other voting materials in qualifying jurisdictions. However, there are numerous occasions documented where pollworkers failed to provide these materials to voters and dozens of locations did not have translated materials at all. What sort of training have you implemented? Should we consider training to ensure pollworkers abide by these requirements?
5. What are your thoughts on the bill I introduced in the 110<sup>th</sup> Congress, H.R. 6339, which addressed recruiting and training pollworkers?
6. Do you offer your pollworkers clear and specific guidelines on when to offer a voter a provisional ballot? Do your pollworkers have access to those guidelines on Election Day? Do they have access to a help line if they have questions? If so, do pollworkers use a land line, cell phone, perhaps the internet or texting?

7. Do your pollworkers have access to information that would allow them to redirect voters to their correct polling place if they mistakenly appear at the wrong precinct to vote? Have you used the Google/NASS website to correctly identify a voter's polling place?

*Regarding Provisional Balloting:*

1. What is the optimal voter-friendly standard for counting provisional ballots?
2. To what extent could proper pollworker education alleviate the problem of the excess usage of provisional ballots?
3. Would uniform standards for provisional ballots help facilitate post-election canvassing and counting of ballots?

*Regarding Emergency Paper Ballots:*

1. Voters should not be disenfranchised simply because electronic voting systems malfunctioned. Reports across the country showed that voters were being turned away from polls and told to come back later because of voting system failures. As a result, some advocates suggest that voters be given paper emergency paper ballots immediately upon machine failure to prevent disenfranchisement and require these ballots to be counted as regular ballots. Others believe election officials should not restrict backup ballots for use only when voting machines break down but that voters should be able to use paper ballots, if requested. Do you offer emergency/back-up paper ballots in your jurisdiction? If so, how are these ballots treated and when are they counted?
2. What are your thoughts on the bill 1 introduced in the 110<sup>th</sup> Congress, H.R. 5803, to give grants to jurisdictions that voluntarily provide backup paper ballots at the polls?

*Regarding Voting System Allocation Standards:*

1. How often does a voting system allocation formula need to be assessed? Would the formula need to change from primaries to the general election or from federal election years to state-only election years?

*Regarding Military and Overseas Voting:*

1. A number of your colleagues and the Uniform Law Commission are looking at ways to standardize the voting process for military and overseas voters. What process does your jurisdiction follow to ensure overseas military, public servants, students, and other eligible citizens living abroad are given every opportunity to vote?
2. Overseas and military voters, as well as state and local election officials, have expressed concern about the confusion of having 50 different systems to register and vote in federal elections. Some suggest it would be an improvement to have one system for federal elections. What are your thoughts on the issue?

*Regarding Voter Registration Standards:*

1. What uniform standards should be applied to mismatched names on voter registration lists to ensure that voters are not unfairly or inaccurately purged?
2. Could uniform standards for voter registration lists help facilitate the creation of a nationwide database of voters? Would a nationwide database be workable or have value?
3. What more could federal government agencies do to assist States with proper list maintenance? Should it be the responsibility of the federal government to compile a list of registered voters nationwide?
4. While responding to Rep. Artur Davis's questioning, you said that "one of the elements of the opportunity to vote is also registration, and registration is an element that is important." You then went on to say "part of the process is that a person, in order to be able to cast their ballot – I hate to fall back on the rules of the game, but the rules are [that] you kind of have to follow the rules of the election....So I don't know that the State removed that individual's right to cast their vote, but the individual didn't follow the rules established by the State." Now, the 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>, and 26<sup>th</sup> amendments to the Constitution – to say nothing of the National Voting Rights Act (42 U.S.C. 1973ff) – are very clear in stating that no State may deprive a citizen who is so entitled of "the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof." Nowhere, however, is there any mention of registration. While registration surely facilitates the process of vote counting and tabulation, and may certify to the State election officials a citizen's right to vote for the representative of a given district, can it truly be said that registration is part of the "rules of the game" or that the failure to document his/her residence in advance should deny any woman or man the right to vote for President or Senator? Is this not an example of the very reasons why provisional ballots exist? How can we justify denying a citizen of their Constitutional right to vote for Federal representatives for the sake of any state's bureaucratic practices?
5. During the hearing I referenced the provisions in Section VII of the National Voting Rights Act under which States are expected to provide voter registration services at social services agencies. While this Section is generally followed at Departments of Motor Vehicles, other agencies are often left out. However, it was surprising to hear you state that Kansas had not extended that service beyond the DMV because "65% of all new registrations in the State of Kansas now come through the DMV." If the DMV is the only State agency offering registration services, is it any wonder that the predominance of registrations should come from there? Isn't this, instead, a sign of how important it is to offer this service at these other agencies? Does not the failure to do so deprive those who do not procure driver's licenses – and who, as a result, are the least mobile and possessed of the fewest transportation options – of a fair opportunity to register? Isn't this the very reason that Section VII requires that each state include this service at all public assistance offices?

*Regarding Registering to Vote and Checking Status on the Internet:*

1. One of the biggest problems voters face on Election Day is not finding their names on the registration roll when they show up at the polls. States like New Mexico, Washington, and



Arizona allow voters to check their registration status, correct polling place location, and sometimes even register to vote, all from the internet. What are your thoughts about giving voters the opportunity to register to vote and thereafter check their registration status online?

2. What are your thoughts on the bill I introduced this spring, HR 1719, the Voter Registration Modernization Act, which allows all eligible citizens to register to vote or to update their registrations over the internet by 2014?

*Regarding No Excuse Absentee Voting:*

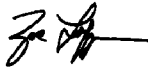
1. New Mexico, Kansas, and California all allow voters to vote absentee without going through the process of justifying or explaining why. Has voter turnout increased since your state implemented no-excuse absentee balloting? In particular, have you seen increased participation amongst particular population groups such as minority, low-income, younger, elderly, and homemakers?

*National Uniform Standards:*

1. If Congress were to adopt national uniform standards on any of the issues discussed at the hearing, what federal agency should be responsible for implementing those standards?

Thank you and I look forward to your responses.

Sincerely,



Zoe Lofgren  
Chair, Subcommittee on Elections

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RON THORNBURGH  
Secretary of State



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STATE OF KANSAS

August 18, 2009

Ms. Zoe Lofgren, Chair  
Subcommittee on Elections  
Committee on House Administration  
Congress of the United States  
House of Representatives  
1309 Longworth House Office Building  
Washington, D.C. 20515-6157

Dear Ms. Lofgren:

Thank you for the opportunity to testify before the Committee on House Administration, Subcommittee on Elections, on Examining Uniformity in Election Standards. I have received your letter requesting additional information as part of the hearing record. Attached is my response to your request.

Please let me know if I can be of further assistance on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Thornburgh", written over a large, stylized oval flourish.

RON THORNBURGH  
Secretary of State

## Responses to Questions

### *Regarding poll worker recruitment and training:*

1. This is a great idea. We need to be creative in our poll worker recruitment programs because the shortage of reliable and committed poll workers is persistent across the nation. Using government employees at any level is a good idea. Speaking for Kansas, I do not think there are legal obstacles to such a plan. The practical obstacle would be to obtain agreement from the governmental entities who are asked to provide the workers. This has been done at the local level in some counties in Kansas and it has worked well. The best approach is to ask the office managers to assign certain employees to work the polling places for the day at their regular pay rate without having to use vacation time.

2. One of the best features of the Help America Vote Act is the emphasis it has added to providing accommodations for voters who need assistance. My office has provided in-person training as well as videos and printed materials, and some of our counties have added training themselves.

We have six counties required under Section 203 of the Voting Rights Act to provide bilingual ballots in Spanish. We have worked with them to design viable plans to serve their constituencies and have found that the best resources for language assistance are found locally, partly due to the differences in dialects.

The decision whether to pay poll workers in Kansas is made at the county level. To my knowledge, all counties pay their poll workers. The pay rate varies from approximately \$5.50 per hour to more than \$100 per day.

In 2000, I proposed, and the Kansas Legislature passed, legislation to allow county election officers to appoint persons under 18 years old as poll workers. These teenage poll workers must have the constitutional qualifications of electors other than age, and not more than one may serve on a given election board. This program has been very effective in the localities where it has been used. It helps ease the shortage of poll workers, it provides civic education for our youths, and it helps our election boards cope with the increasing use of technology in the polling places because we find that young poll workers come to the process with a certain amount of affinity for technology .

3. Yes, there is more technology than ever before in the polling place. HAVA requires at least one electronic voting machine in each polling place, including paper-ballot counties that previously had no voting machines. Some counties have begun to use electronic poll books and hand-held devices with voter registration databases on them. Many polling places rely on cellular phones to communicate with the central election office.

The electronic tools provide the capability of improved service and enhanced options for voters. However, some voters with disabilities do not use the electronic voting machines, preferring instead to vote with assistance as they did before HAVA.

Electronic poll books have the potential of reducing the number of provisional ballots, but our experience in Kansas thus far is too limited to come to any conclusions.

4. The six counties in Kansas that are required to provide Spanish ballots and voting materials pursuant to Section 203 of the Voting Rights Act are acutely aware of their responsibilities. They

have met personally with Department of Justice representatives to discuss their plans for compliance, and Justice has visited some jurisdictions on election day. These counties revamped their regular poll worker training programs to meet the bilingual requirements. My office meets with all six counties, either in person or by conference call, before each election to review their plans to ensure that they are in compliance. We have not received complaints from voters in these counties claiming they were not properly provided bilingual materials. I believe our current program is adequately serving its intended clientele. We constantly work to improve poll worker training in this and other areas. Poll worker training is an extremely important part of the election administration process, and poll workers should be required to abide by all the requirements that apply to their jurisdictions, but the training process should be left to the states and localities.

5. H.R. 6339 has some merits. I would support allowing federal employees additional leave to serve as poll workers as long as there were no program expenses passed on to state or local governments. It should be noted that in most areas of my state there are very few localities with significant numbers of federal employees, so the impact would be minimal and localized. EAC grants to enhance poll worker recruitment and training are a good idea if it is recognized that such expenses would be ongoing. Grants could be used to set up programs, but the programs need to be used continuously, so there would be some ongoing costs.

6. When the National Voter Registration Act of 1993 was implemented in the mid-1990s, in Kansas we chose to simplify the election administration process for our poll workers by using a broad definition of the term provisional ballot. We adopted a policy of using the term to cover all challenged ballots as well as the provisional ballots as defined in the NVRA (changes of address and name). Thus, our instructions to the poll workers are clear: any time there is a question about a person's eligibility to vote, issue a provisional ballot using the same procedure every time. No voter is turned away without the opportunity to vote a provisional ballot. All poll workers receive instructions and reference guides from their county election officers. To my knowledge, the supervising judge at each polling place has the ability to communicate with the county election office. Often the county election office provides cell phones; some poll workers use personal cell phones. Many county election offices provide runners to maintain personal contact with poll workers. Occasionally my office will receive calls from poll workers on our toll-free hot line, but most communication is between poll workers and their county election offices. I am not aware of any Internet- or text-based communications between poll workers and county election offices, but it is possible that they occur in some counties.

7. Yes. In some counties this information is better than in others. Poll workers are trained to send prospective provisional ballots to the correct polling place or to the central county election office to receive the correct ballot. Many are provided maps; some counties use electronic poll books. My office participated in the development of the Google web site. It is used on some occasions, but more often we use our own VoterView site, which is a feature of our statewide voter registration database.

*Regarding provisional balloting:*

1. The standard we use in Kansas is to count every race on every ballot that can legally be counted. We have a partial provisional ballot law in Kansas, meaning if a person votes a provisional ballot in the wrong precinct, the counting board will count all the races, starting at the top of the ballot, that are common to both precincts (the incorrect and the correct precinct).

2. Proper poll worker education is important, but voters also need to take responsibility by checking on their registration status and the location of their polling place by calling the county election office or the state office or using tools such as VoterView (see #7 above). I believe the increased use of electronic poll books also can reduce the number of provisional ballots.

3. I do not think uniform *federal* standards will improve the ballot counting process. I believe the states should maintain their autonomy to conduct elections. Statewide standards for counting ballots should be enforced, but any standards also must recognize the local officials' authority. In counting provisional ballots or deciding the outcome of any questionable situation, it is often local knowledge that provides the best answer regarding the validity of a ballot or a vote.

*Regarding emergency paper ballots:*

1. In Kansas we have a policy that there should be paper ballots in every polling place for four reasons:

- (a) In case of a machine malfunction
- (b) In case of long lines, to keep the process moving
- (c) For voters who do not want to use electronic voting machines
- (d) For provisional voting. With our partial provisional ballot law, it is difficult or impossible to use electronic voting machines for provisional voting.

These ballots are counted the same as any other ballots.

2. Regarding H.R. 5803, I support the policy of having backup paper ballots for emergencies, and we have implemented that policy in Kansas. I do not think we need a federal program to promote paper ballots and do not support one. One important consideration is that because elections are held year after year, it would be difficult, in my estimation, to maintain federal funding streams in the future.

*Regarding Voting System Allocation Standards:*

1. Not often. In Kansas we do not have, and we do not need, a statutory formula for allocating voting equipment. Our laws leave it to the county election officers to allocate ballots and machines, and the system has worked well for many years. The county election officer knows best what is needed in each polling place in the county, and election officers are well aware of the problems that are caused when there are shortages.

*Regarding Military and Overseas Voting:*

1. Kansas law provides for the maximum 45 days for UOCAVA ballot transmission, as recommended by the Federal Voting Assistance Program. Further, our law allows UOCAVA voters to apply for, receive and return their ballots by fax. Also, in recent years we have adopted a broad interpretation of the fax law to allow electronic transmission, so now we allow UOCAVA voters to apply for, receive and return their ballots by email upon request.

2. As stated earlier, I favor a state-based election administration system. But in the case of UOCAVA voters it makes more sense than in other areas to have basic nationwide rules for all such voters to follow and possibly a single access point for UOCAVA voters to receive information and instructions.

*Regarding Voter Registration Standards:*

1. If two duplicate records exactly match on first name, last name, and date of birth, it is most likely a match and the record with the earlier registration date could be deleted. If the records also match on the last four digits of the registrants' Social Security numbers, it adds certainty. Even then, local election officers often compare information with officers in other jurisdictions to obtain signatures to ensure that the two records represent the same individual.

2. Uniform standards would be the first step toward a national database of voters, but I do not favor the development of a national database. I support interoperability of state databases but not a national database. Interoperability will accomplish the objectives of a national database without causing a loss of state autonomy.

3. Federal agencies or other national entities could provide the expertise and the means to foster interoperability to enhance list maintenance. As an option to federal agencies, the Pew Charitable Trusts' Center on the States is moving in this direction. I do not think the federal government should create a national database.

4. I think voter registration is more than just "state bureaucratic practices." Registration is the only way election officials have to determine if a person possesses the constitutional qualifications to vote and that he/she votes only once. Traditionally, the federal government has deferred to states to establish and administer voting procedures, and within that framework, most state constitutions, including the Kansas Constitution, authorize state legislatures to establish registration requirements, which all but one have done. The establishment of individuals' constitutional qualifications through the registration process helps guarantee their eligibility to vote for their federal officers and to ensure they do not do so more than once, thereby diluting others' votes.

5. I did not intend for my testimony to be interpreted to mean that only DMV offices are complying with the NVRA in Kansas. It is true that more registrations and changes of address come through DMV than from the other offices, but we do have the other offices required under NVRA in the voter registration process. The public assistance offices are covered through the

Kansas Department of Social and Rehabilitation Services and the Kansas Department of Health and Environment. Various offices serving individuals with disabilities are offering voter registration, as well as military recruitment offices. Further, Kansas law designates city clerks' offices in cities of the first and second class as the "other designated agencies" required by NVRA.

Still, most registrations come from DMV offices because the vast majority of citizens have contact with their DMV offices every few years.

*Regarding Registering to Vote and Checking Status on the Internet:*

1. This is a very important service that state and local election offices can provide. As mentioned earlier, the Kansas statewide voter registration database has a VoterView feature that allows voters to check their registration status, their polling place locations, the status of their advance (absentee) ballots, and obtain a sample ballot. I believe a majority of states are offering similar online services now. This is a tremendous voter service made possible through the HAVA-required statewide databases.

Also, Kansas recently became the third state, after Arizona and Washington, to offer online voter registration. With this system, any person with a current and valid Kansas driver's license may register to vote or change their address online. This was implemented earlier this year, and it followed last year's implementation of an electronic motor-voter system, which removed the paper from the DMV driver's license/voter registration process.

These programs are important because, in addition to many other benefits, they are responsive to the public's demand to conduct its business with the government electronically. This demand is growing as more young people enter the system. Also, they greatly reduce paper processing errors.

2. H.R. 1719 has good features. In Kansas we have already implemented most of the main points in this legislation with our online voter registration and VoterView programs. If federal legislation would pass in this area, I am concerned that it would contain specifications that were not anticipated when we built our online systems, requiring us to rebuild our system just to comply with federal specifications. We should be required to rebuild our system to federal specifications only if there are positive benefits to be gained.

One feature of H.R. 1719 says that states would be required to recognize a person's attempt to register to vote if he/she had provided all necessary information to demonstrate eligibility. I would need to know more about the details and the intent of this proposal before adding my support. I believe the voter registration process is important, and it must be done in a way that clearly proves a registrant's qualifications, including signed statements.

*Regarding No Excuse Absentee Voting:*

1. Since Kansas' advance (no-excuse absentee) voting law was passed in 1995, there have been the usual fluctuations in turnout. Our statistics do not indicate a measurable increase in turnout that can be attributable to the existence of advance voting. While some areas of the nation have experienced decreasing turnout during that period, however, in Kansas we have remained steady, and I attribute that fact partly to advance voting.

But in the end, advance voting is more of a convenience for voters than a way to significantly increase turnout or add many new voters. It makes voting easier and more convenient for many voters, and it does serve some voters by allowing them to vote when they might have experienced difficulties if they had waited until election day.

We are unable to demonstrate increased turnout among minorities, low income persons, or homemakers because we do not track those characteristics when people register to vote. We did see an increase in voting by young people in 2008.

Still, when all the structural encouragements and voter outreach programs are finished, nothing improves turnout like a good, competitive race between two or more popular candidates.

*National Uniform Standards:*

1. I am not an advocate for federal standards, but if they are to be established and a federal agency given authority to implement them, it makes sense to concentrate all such activities in one agency, and the Election Assistance Commission exists for this purpose. However, the EAC is not currently equipped, staffed or qualified to provide such oversight. Enforcement should be left with the Department of Justice.



ROBERT A. BRADY, PENNSYLVANIA  
CHAIRMAN

**Congress of the United States**  
**House of Representatives**  
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DANIEL E. LUNGREN, CALIFORNIA  
RANKING MINORITY MEMBER

August 4, 2009

Ms. Mary Herrera  
New Mexico Secretary of State  
New Mexico State Capitol  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87503

Dear Ms. Herrera:

Thank you for testifying during the July 15, 2009 Committee on House Administration, Subcommittee on Elections, hearing on "Examining Uniformity in Elections Standards." The Subcommittee requests your response to additional questions that will be made part of the hearing record. Please provide your responses to the Committee by September 1, 2009.

*Regarding Pollworker Recruitment and Training:*

1. What is your opinion on using federal, state, or municipal employees as pollworkers? Are there any legal or practical obstacles to such a plan?
2. How do you recruit and train pollworkers to deal with more sensitive issues, like voters who need special assistance voting or a ballot in another language? Are your pollworkers paid? How are you recruiting younger pollworkers?
3. Are pollworkers using more technology than before to undertake their duties? If so, how have these technological tools impacted service to voters?
4. Federal law requires the availability of translated ballots and other voting materials in qualifying jurisdictions. However, there are numerous occasions documented where pollworkers failed to provide these materials to voters and dozens of locations did not have translated materials at all. What sort of training have you implemented? Should we consider training to ensure pollworkers abide by these requirements?
5. What are your thoughts on the bill I introduced in the 110<sup>th</sup> Congress, H.R. 6339, which addressed recruiting and training pollworkers?
6. Do you offer your pollworkers clear and specific guidelines on when to offer a voter a provisional ballot? Do your pollworkers have access to those guidelines on Election Day? Do they have access to a help line if they have questions? If so, do pollworkers use a land line, cell phone, perhaps the internet or texting?

7. Do your pollworkers have access to information that would allow them to redirect voters to their correct polling place if they mistakenly appear at the wrong precinct to vote? Have you used the Google/NASS website to correctly identify a voter's polling place?

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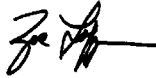
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1. New Mexico, Kansas, and California all allow voters to vote absentee without going through the process of justifying or explaining why. Has voter turnout increased since your state implemented no-excuse absentee balloting? In particular, have you seen increased participation amongst particular population groups such as minority, low-income, younger, elderly, and homemakers?

Thank you and I look forward to your responses.

Sincerely,



Zoe Lofgren  
Chair, Subcommittee on Elections

ROBERT A. BRADY, PENNSYLVANIA

CHAIRMAN

Congress of the United States

House of Representatives

DANIEL E. LUNGREN, CALIFORNIA

RANKING MINORITY MEMBER

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August 4, 2009

Ms. Mary Herrera

New Mexico Secretary of State

New Mexico State Capitol

325 Don Gaspar, Suite 300

Santa Fe, NM 87503

Dear Ms. Herrera:

Thank you for testifying during the July 15, 2009 Committee on House Administration, Subcommittee on Elections, hearing on "Examining Uniformity in Elections Standards." The Subcommittee requests your response to additional questions that will be made part of the hearing record. Please provide your responses to the Committee by September 1, 2009.

Regarding Pollworker Recruitment and Training:

1.  
What is your opinion on using federal, state, or municipal employees as pollworkers? Are there any legal or practical obstacles to such a plan? This is an excellent idea to have Federal, State and municipal employees to serve as pollworkers. Pursuant to 1-2-7 NMSA 1978, Laws of the State of New Mexico  
No person shall be qualified for appointment or service on a precinct board:

- (1) who is a candidate for any federal, state, district or county office;
- (2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at

the election; or

(3) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman.

2.

How do you recruit and train pollworkers to deal with more sensitive issues, like voters who need special assistance voting or a ballot in another language? The county clerks in those respective areas have indicated that they have at least 3 individuals that can translate the document. In our Native American communities the poll workers must be able to translate the ballot to the voter that has the language issues. In some of our Latino communities some clerks have stated that they have at least two poll officials that are able to translate the ballot into Spanish.

Note: The ballot is translated in the respective Native American language and broadcast on radio stations throughout New Mexico, which serve that Indigenous population. Also, all election materials in the state must be in English and Spanish.

Are your pollworkers paid? 1-2-16 NMSA Laws of the State of New Mexico states “ Members of a precinct board shall be compensated for their services at the rate of not less than the federal minimum hourly wage rate nor more than one hundred fifty dollars (\$150) for an election day”.

B. Compensation shall be paid within thirty days following the date of election.

How are you recruiting younger pollworkers? Some counties have done their recruiting at the local Universities or Community Colleges. They have targeted Political Science classes. Also, when County Clerks are registering high school students to vote they are asked if they would like to be poll workers.

3. Are pollworkers using more technology than before to undertake their duties? If so, how have these technological tools impacted service to voters? Clerks have indicated that advanced technological tools are being used in some areas of the state. Some clerks have indicated that it has improved the service to the voters. Other clerks in the more rural areas of the state have stated they do not have internet access in remote polling locations.

4. Federal law requires the availability of translated ballots and other voting materials in qualifying jurisdictions. However, there are numerous occasions documented where pollworkers failed to provide these materials to voters and dozens of locations did not have translated materials at all. What sort of training have you implemented? Should we consider training to ensure pollworkers abide by these requirements? The Secretary of State's office and specifically the Native American Election Information program has the entire ballot translated into the particular language. Thereafter, it is broadcast on different radio stations in New Mexico that serve the Indigenous population of the area. Also, as stated above the all Election materials shall be in English and Spanish.

5. What are your thoughts on the bill I introduced in the 110th Congress, H.R. 6339, which addressed recruiting and training pollworkers? H.R. 6339 would bring a larger pool of professional poll workers. These federal employees would perhaps be able to use some newer technological tools that are being used at the polls.

6. Do you offer your pollworkers clear and specific guidelines on when to offer a voter a provisional ballot? Do your pollworkers have access to those guidelines on Election Day? Do they have access to a help line if they have questions? If so, do pollworkers use a land line, cell phone, perhaps the internet or texting? The Office of the Secretary of State offers the poll workers a C.D. with all instructions for conducting an election. The previous election cycle our office supervised every school of instruction for the poll officials. All poll workers are also given an "Instruction Manual for Precinct Officials". Poll workers also have access to a State or County help line. The majority of these poll officials use land lines or cell phones.



7. Do your pollworkers have access to information that would allow them to redirect voters to their correct polling place if they mistakenly appear at the wrong precinct to vote? Have you used the Google/NASS website to correctly identify a voter's polling place? Our poll workers are instructed to call the County Clerk's office and ask where the voter's correct polling place is located. If the voter insists on voting at the location they are at the voter is offered a "Provisional Ballot". Yes, we have used the NASS website. The NASS website redirects voters to "Voter View" on the New Mexico Secretary of State homepage. This allows voters to look up their polling locations.

Regarding Provisional Balloting:

1.

What is the optimal voter-friendly standard for counting provisional ballots? A provisional ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**F.** A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or (f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**G.** A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional

ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's personal information: date of birth, party affiliation, and social security number.

**H.** The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked "counted provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1972.

2.  
To what extent could proper pollworker education alleviate the problem of the excess usage of provisional ballots? Proper poll worker education could prevent the misuse or abuse of the excess of provisional ballots being used at the polls.

3.  
Would uniform standards for provisional ballots help facilitate post-election canvassing and counting of ballots? Uniform standards for provisional ballots would help facilitate canvassing and counting of ballots. Uniform rules were sent to every county clerk and these were shared with every poll official in the State of New Mexico. This appeared to alleviate the misuse of provisional ballots.

Regarding Emergency Paper Ballots:

1.

Voters should not be disenfranchised simply because electronic voting systems malfunctioned. Reports across the country showed that voters were being turned away from polls and told to come back later because of voting system failures. As a result, some advocates suggest that voters be given paper emergency paper ballots immediately upon machine failure to prevent disenfranchisement and require these ballots to be counted as regular ballots. Others believe election officials should not restrict backup ballots for use only when voting machines break down but that voters should be able to use paper ballots, if requested. Do you offer emergency/back-up paper ballots in your jurisdiction? If so, how are these ballots treated and when are they counted? Voters are not turned away at the polls if there is a machine malfunction. The State of New Mexico has offered emergency paper ballots since the '80's. Whether the jurisdiction was using a lever, direct recording electronic voting system or touch screen system; the voter was still allowed to use an "emergency paper ballot" if the system went down.

2.

What are your thoughts on the bill I introduced in the 110th Congress, H.R. 5803, to give grants to jurisdictions that voluntarily provide backup paper ballots at the polls? This would definitely benefit the State of New Mexico. As stated above the State of New Mexico has been using emergency paper ballots for a number of years.

Regarding Voting System Allocation Standards:

1.

How often does a voting system allocation formula need to be assessed? Would the formula need to change from primaries to the general election or from federal election years to state-only election years? Article 1-9-5 NMSA 1978, Laws of the State New Mexico requires that "the county clerk of each county shall provide one voting system in each precinct for use in the general and primary election when the total number of registered voters in that precinct amounted to few than six hundred voters at the close of

registration. Further, 1-9-7 NMSA 1978, Laws of the State of New Mexico states “ninety days prior to each primary and general election, the board of county commissioners of each shall make application to the state board of finance for those additional voting systems required by the election code”.

Regarding Military and Overseas Voting:

1.

A number of your colleagues and the Uniform Law Commission are looking at ways to standardize the voting process for military and overseas voters. What process does your jurisdiction follow to ensure overseas military, public servants, students, and other eligible citizens living abroad are given every opportunity to vote? The State of New Mexico allows those voters to vote using the FPCA (Federal Post Card Application), to fax or email their documents. UOCAVA voters are allowed to also send back their ballot via fax or email. However, they would need to fill out a disclaimer “waiving their right to secrecy of the ballot”.

2.

Overseas and military voters, as well as state and local election officials, have expressed concern about the confusion of having 50 different systems to register and vote in federal elections. Some suggest it would be an improvement to have one system for federal elections. What are your thoughts on the issue? The main concern is one single company having a “monopoly” of the voter registration election management system and voting system. The perception by “conspiracy theorists” is that voter data could be manipulated. Is there a company large enough in the nation to be able to provide support to all jurisdictions in the nation? Will all technical support be provided as required during election cycles? Will they be able to provide the support services for maintenance, for upgrades, for training and for assisting our jurisdictions on election night and after election night through the processing of complete official returns? Federal legislation should not curtail state innovation and authority solely for the sake of creating uniform methods among the states. Legislation should grant states maximum flexibility in determining how to properly and effectively carry out the law and satisfy federally dictated outcomes.

Regarding Voter Registration Standards:

1.

What uniform standards should be applied to mismatched names on voter registration lists to ensure that voters are not unfairly or inaccurately purged? Legislation should not curtail state innovation and authority solely for the sake of creating uniform standards among states.

2.

Could uniform standards for voter registration lists help facilitate the creation of a nationwide database of voters? Would a nationwide database be workable or have value? I am not sure a nationwide database of voters is feasible.

3.

What more could federal government agencies do to assist States with proper list maintenance? Should it be the responsibility of the federal government to compile a list of registered voters nationwide? The State of New Mexico has a Statewide voter file. However, one of the issues in our state is that the Social Security Administration does not allow us to cross reference those voters Social Security numbers.

4.

While responding to Rep. Arthur Davis's questioning, you said that "one of the elements of the opportunity to vote is also registration, and registration is an element that is important." You then went on to say "part of the process is that a person, in order to be able to cast their ballot – I hate to fall back on the rules of the game, but the rules are [that] you kind of have to follow the rules of the election....So I don't know that the State removed that individual's right to cast their vote, but the individual didn't follow the rules established by the State." Now, the 14th, 15th, 19th, 24th, and 26th amendments to the Constitution – to say nothing of the National Voting Rights Act (42 U.S.C. 1973ff) – are very clear in stating that no State may deprive a citizen who is so entitled of "the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof."

Nowhere, however, is there any mention of registration. While registration surely facilitates the process of vote counting and tabulation, and may certify to the State election officials a citizen's right to vote for the representative of a given district, can it truly be said that registration is part of the "rules of the game" or that the failure to document his/her residence in advance should deny any woman or man the right to vote for President or Senator? Is this not an example of the very reasons why provisional

ballots exist? How can we justify denying a citizen of their Constitutional right to vote for Federal representatives for the sake of any state's bureaucratic practices? Provisional ballots were designed for the purposes of allowing everyone the opportunity to vote a ballot. How can the local precinct board properly count the ballot of an individual that voted on a provisional ballot? An example of this would be a qualified elector from the Northern (Congressional District 3) part of the state showing up at local polling location in the Southern (Congressional District 2) part of our state; this would be Congressional District 2. Which ballot would the provisional voter be given? Would the voter be given a ballot for Congressional District 3 or Congressional District 2? Would this voter be qualified to vote for every Congressional District in the state? Every County Clerk in the state places the voter in the correct Federal, State, legislative and county jurisdictions. Article 1-1-4 NMSA 1978, Laws of the State of New Mexico states "as used in the Election Code, "qualified elector" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States". Article VII Sec. 1 of the New Mexico constitution states the following "Every citizen of the United States, who is over the age of twenty-one years, and has lived in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors....."

5.

During the hearing I referenced the provisions in Section VII of the National Voting Rights Act under which States are expected to provide voter registration services at social services agencies. While this Section is generally followed at Departments of Motor Vehicles, other agencies are often left out. It was surprising, however, to hear Mr. Thornburgh give as the reason Kansas had not extended that service beyond the DMV was because "65% of all new registrations in the State of Kansas now come through the DMV." If the DMV is the only State agency offering registration services, is it any wonder that the predominance of registrations should come from there? Isn't this, instead, a sign of how important it is to offer this service at these other agencies? Does not the failure to do so deprive those who do not procure driver's licenses – and who, as a result, are the least mobile and possessed of the fewest transportation options – of a fair opportunity to register? Isn't this the very reason that Section VII requires that each state include this service at all public assistance offices? In the State of New Mexico the voters are afforded the opportunity to vote at a University, any Health Service agency, i.e. Welfare Office, Women, Infants and Children, or Libraries. New voters come from all these different government agencies.

Regarding Registering to Vote and Checking Status on the Internet:

1.  
One of the biggest problems voters face on Election Day is not finding their names on the registration roll when they show up at the polls. States like New Mexico, Washington, and Arizona allow voters to check their registration status, correct polling place location, and sometimes even register to vote, all from the internet. What are your thoughts about giving voters the opportunity to register to vote and thereafter check their registration status online? Voters in the State of New Mexico can currently check whether they are registered to vote. The voter may click on "Voter View" and check their voter registration status in this manner. The State of New Mexico does not accept the digitized signature of the voter.

2.  
What are your thoughts on the bill I introduced this spring, HR 1719, the Voter Registration Modernization Act, which allows all eligible citizens to register to vote or to update their registrations over the internet by 2014? The State of New Mexico does not currently accept a digitized signature for a voter registration form. State legislation would not be changed to allow for the digitized signature.

Regarding No Excuse Absentee Voting:

1.  
New Mexico, Kansas, and California all allow voters to vote absentee without going through the process of justifying or explaining why. Has voter turnout increased since your state implemented no-excuse absentee balloting? In particular, have you seen increased participation amongst particular population groups such as minority, low-income, younger, elderly, and homemakers? Absentee voting has improved since the no-excuse absentee balloting was enacted into law. This is included in all sectors of the electorate. We are now seeing over 50% of our voters take advantage of early and absentee voting.

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Thank you and I look forward to your responses.

Sincerely,

Zoe Lofgren

Chair, Subcommittee on Elections



ROBERT A. BRADY, PENNSYLVANIA  
CHAIRMAN

## Congress of the United States

### House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

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DANIEL E. LUNGREN, CALIFORNIA  
RANKING MINORITY MEMBER

August 4, 2009

Mr. Edward Hailes, Jr.  
Managing Director and General Counsel  
Advancement Project  
1220 L Street, NW, Suite 850  
Washington, DC 20005

Dear Mr. Hailes:

Thank you for testifying during the July 15, 2009 Committee on House Administration, Subcommittee on Elections, hearing on "Examining Uniformity in Elections Standards." The Subcommittee requests your response to additional questions that will be made part of the hearing record. Please provide your responses to the Committee by September 1, 2009.

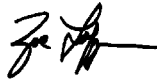
1. A number of organizations, including the Advancement Project, have been monitoring elections for nearly a decade. Some of the same problems, specifically around the handling of provisional ballots, have recurred during each election without a cure. In fact, the Advancement Project emphasized the need for in-depth training on provisional balloting requirements, including a host of additional issues. How do you suggest we ensure our pollworkers are adequately trained?
2. From your perspective, what do you believe are the benefits and challenges to streamlining emergency paper ballot requirements and provisional balloting procedures? How do we overcome these challenges?
3. While responding to Rep. Artur Davis's questioning, Mr. Thornburgh said that "one of the elements of the opportunity to vote is also registration, and registration is an element that is important." Mr. Thornburgh went on to say "part of the process is that a person, in order to be able to cast their ballot – I hate to fall back on the rules of the game, but the rules are [that] you kind of have to follow the rules of the election....So I don't know that the State removed that individual's right to cast their vote, but the individual didn't follow the rules established by the State." Now, the 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>, and 26<sup>th</sup> amendments to the Constitution – to say nothing of the National Voting Rights Act (42 U.S.C. 1973ff) – are very clear in stating that no State may deprive a citizen who is so entitled of "the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof." Nowhere, however, is there any mention of registration. While registration surely facilitates the process of vote counting and tabulation, and may certify to the State election officials a citizen's right to vote for the representative of a given district, can it truly be said that registration is part of the "rules of the game" or that the failure to document his/her residence in advance should deny any woman or man the right to vote for President or Senator? Is this not an example of the very reasons why provisional ballots

exist? How can we justify denying a citizen of their Constitutional right to vote for Federal representatives for the sake of any state's bureaucratic practices?

4. During the hearing I referenced the provisions in Section VII of the National Voting Rights Act under which States are expected to provide voter registration services at social services agencies. While this Section is generally followed at Departments of Motor Vehicles, other agencies are often left out. It was surprising, however, to hear Mr. Thornburgh give as the reason Kansas had not extended that service beyond the DMV was because "65% of all new registrations in the State of Kansas now come through the DMV." If the DMV is the only State agency offering registration services, is it any wonder that the predominance of registrations should come from there? Isn't this, instead, a sign of how important it is to offer this service at these other agencies? Does not the failure to do so deprive those who do not procure driver's licenses – and who, as a result, are the least mobile and possessed of the fewest transportation options – of a fair opportunity to register? Isn't this the very reason that Section VII requires that each state include this service at all public assistance offices?

Thank you and I look forward to your responses.

Sincerely,



Zoe Lofgren  
Chair, Subcommittee on Elections



September 1, 2009

**VIA HAND DELIVERY**

The Honorable Zoe Lofgren, Chairwoman  
Subcommittee on Elections  
Committee on House Administration  
1309 Longworth Building  
Washington, DC 20515-6157

Re: Responses to Additional Questions from the Subcommittee on Elections related to its July 15, 2009 hearing on *Examining Uniformity in Election Standards*

Dear Chairwoman Lofgren and Members of the Subcommittee on Elections:

Thank you for your letter dated August 4, 2009, requesting additional information to supplement the testimony received by the Subcommittee during its July 15, 2009 *Examining Uniformity in Election Standards* hearing. I asked my colleague, Kathryn Boockvar, our Senior Local Attorney in Pennsylvania, to assist me in responding to your request. We respectfully submit this supplemental testimony to answer your questions.

1. *Effective Poll Worker Training*: As you mention in your letter, Advancement Project has been emphasizing the need for in-depth poll worker training for many years. The proper administration of elections is critical for citizens to be able to fully and fairly exercise their right to vote, and proper administration of elections cannot occur without adequate training of the workers who staff the polls and election offices on Election Day.

Unfortunately, however, Advancement Project's research has shown that too often, States delegate training to local boards of election and/or county or municipal officials, with little, if any, guidelines and/or oversight. And too often, this lack of uniformity and oversight has led to a constellation of ineffective and illegal polling place procedures that, taken together, causes long lines and disenfranchises voters. As your letter notes, poll workers' handling of provisional ballots has proven particularly problematic and, during the past several federal elections, has resulted in disenfranchising voters.

To reduce these obstacles to voting, Advancement Project recommends as a preliminary matter that Congress simplify and make uniform the rules related to the administration of provisional ballots to reduce the misuse and rejection of such ballots. I refer the Subcommittee

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to my written testimony at pages six through eight for a discussion of Advancement Project's recommendations to simplify the administration of provisional ballots.

In addition, Advancement Project recommends that Congress set national standards for poll worker training and support that would make training mandatory for all poll workers; require that training include hands-on training and role playing; require that poll workers receive compensation for their attendance of training; and require assessment of poll workers at the completion of their training.

Advancement Project refers the Subcommittee to its Poll Worker Training Issue Brief, which offers tangible examples to states to help them ensure that all poll workers receive sufficient training. I submit this Brief with this letter and respectfully request that you enter it as an exhibit to my testimony. Additionally, I briefly summarize our recommendations below:

The most effective poll worker training programs include the following elements:

- a) Training should be mandatory and uniform baseline requirements established;
- b) Poll workers should be compensated for attending training sessions;
- c) Poll workers should be evaluated after training and meet certain standards as a condition of serving as poll workers;
- d) Election staff should draft sections of poll worker training manuals related to the use of voting machines and other equipment and the procedures for opening and closing polling places; voting rights lawyers should be enlisted to assist election staff in drafting poll worker training manuals as they pertain to state and federal election laws and voting rights;
- e) Training should include detailed explanations on all key areas of election administration, including provisional and emergency ballot administration, identification, voting assistance, voting machines and equipment as applicable, and polling place setup;
- f) Uniform training manuals should be distributed to all poll workers, and be succinct, easy to read, well-organized with a clear table of contents, section headings, and index, and include copies of forms, trouble shooting help, and hypothetical examples;
- g) Poll workers should receive a one-page "cheat sheet" that provides information about the most common voter issues arising on Election Day, such as Advancement Project's poll worker palm card and Missouri's poll worker palm card.<sup>1</sup>

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<sup>1</sup> For an example of Advancement Project's poll worker palm card, please see Exhibit A to Advancement Project's Poll Worker Training Issue Brief, submitted herewith. I also submit the Missouri Secretary of State's poll worker palm card, which is modeled after Advancement Project's palm card, with this letter and request that you please enter it as an exhibit to my testimony.

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Such effective and uniform training would help to prevent the great majority of problems experienced in past elections, and go a long way in ensuring that eligible voters cast ballots that are counted on Election Day.

2. *Benefits and Challenges of Streamlining Emergency Paper Ballot and Provisional Ballot Procedures:* Streamlining emergency and provisional ballot procedures, in the manner proposed in my written testimony to the Subcommittee, will benefit both voters and poll workers. Currently, every state has its own significantly different rules for these and other procedures, and consequently, tremendous discrepancies are seen, for example, in the numbers of provisional ballots cast and rejected.<sup>2</sup> For example, Ohio's provisional ballot rules are some of the most complex in the nation and result in what appears to be among the greatest incidence of misuse and overuse of provisional ballots. Current Ohio law lists thirteen reasons for requiring Ohio voters to cast provisional ballots. Ohio Rev. Code § 3505.181. In the 2008 general election, approximately 206,859 provisional ballots were cast in Ohio and 38,890 rejected. In contrast, in Pennsylvania, fewer than 33,000 provisional ballots were cast in the 2008 general election, of which approximately 14,526 were rejected.<sup>3</sup>

The more uniform and streamlined a procedure, the more likely voters will be treated the same under the same circumstances, thus protecting their federal and state rights. Furthermore, establishing streamlined and uniform standards will be more easily communicated to poll workers, which will make the procedures easier for the poll workers to learn, remember, and apply. Additionally, streamlined procedures will make it easier to duplicate a process and materials from one jurisdiction to the next. This, in turn, will ultimately save jurisdictions time and resources, because each jurisdiction will not be recreating different variations of the same training materials.

The challenges of streamlining procedures may include re-training, initial costs, and potential resistance from some election officials who view the transition costs as exceeding the benefits associated with the new procedures. Though there may be start-up costs to train poll workers in new procedures, over time, streamlining would save resources. Using, and, when necessary, revising one uniform manual would cost less than each jurisdiction's creating, revising, and distributing its own manual. Training programs, too, would be easier to duplicate from jurisdiction to jurisdiction. To combat the tendency of some election officials to defend the status quo, it must be made clear that the current patchwork system of different treatment in different places is violating voters' rights and cannot be permitted to continue.

<sup>2</sup> See, e.g., The PEW Center on the States, *Provisional Ballots: An Imperfect Solution* (July 2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/PCS\\_Image\\_Library/Topics/ProvBallot\\_brief\\_0709.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PCS_Image_Library/Topics/ProvBallot_brief_0709.pdf).

<sup>3</sup> COMMONWEALTH OF PA DEP'T OF STATE, PROVISIONAL BALLOT CERTIFIED RESULTS, 2008 PRESIDENTIAL GENERAL ELECTION (July 15, 2009).

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3. *Are Registration Rules Violating our Right to Vote?*: Under current law, while states may impose reasonable registration “rules of the game” designed to ensure the eligibility of prospective voters, those rules must not prevent eligible voter applicants from being added to the rolls or unduly burden voter applicants. *See, e.g., Evans v. Cornman*, 398 U.S. 419, 422 (1970) (before the right to vote “can be restricted, the purpose of the restriction and the asserted overriding interests served by it must meet close constitutional scrutiny”); *Dunn v. Blumstein*, 405 U.S. 330, 335, 360 (1972) (striking down unreasonable durational residence requirements as a condition of voting, as an unfair burden and restriction on constitutionally protected activity); *Washington Ass’n of Churches v. Reed* 492 F. Supp. 2d 1264, 1268 (W.D. Wash. 2006) (Help America Vote Act was enacted “to ensure that eligible voters would not be left off the voting rosters or turned away from the polls” and to “be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and have that vote counted”) (citing 42 U.S.C. § 15381(a)(1) and (3)); *see also* 42 U.S.C. § 1973gg-6(a)(1) (requiring states to register eligible applicants who timely submitted a valid voter registration form). As Advancement Project has argued, in part because there is no explicit, affirmative right to vote contained in the United States Constitution, American citizens are:

at the mercy of state constitutions, state legislatures, local bureaucrats, and the judiciary. Because the states have been able to determine who is qualified to vote and whether and when elections will be held, there exists a patchwork of arbitrary rules tending to contract, rather than expand, the franchise. The result, as documented by scholars, is that more than nine million Americans are known to be disenfranchised by legal restrictions on who is qualified to vote. Millions more are excluded by election officials, whose sloppiness, administrative errors, or outright hostility operate to deny the franchise to eligible citizens.

Advancement Project, *In Pursuit of an Affirmative Right to Vote* 1 (2008). I submit this report and request that it be entered as an exhibit to my testimony.

Mr. Thornburgh’s testimony in response to Rep. Artur Davis’s questions reveals the significant impact of allowing different jurisdictions and different election officials to select different rules of the game. At least eight states offer Election Day registration, and far more permit registration corrections on Election Day. Unless uniform, reasonable, and fair registration rules such as these are codified and followed in *all* states, some citizens’ votes will continue to be valued above others.

While the Help America Vote Act requires the issuance of provisional ballots to voters whose registration is uncertain, 42 U.S.C. § 15482, states that require registration reject provisional ballots cast by unregistered voters. *See, e.g.,* 25 PA. STAT. ANN. § 3050 (a.4)(6) (“If it is determined that the individual voting the provisional ballot was not registered, the provisional ballot shall not be counted”); FLA. STAT. § 101.048(2)(b)2 (same). Indeed, one of the most common reasons for rejecting provisional ballots is that the voter is “not registered.” For example, in Pennsylvania’s 2008 general election, 76% of rejected provisional ballots were rejected because the voter was

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purportedly not registered.<sup>4</sup> Another 16% were rejected because the voter was purportedly registered in another county.<sup>5</sup> Were Pennsylvania a state that permitted Election Day registration (and corrections), another 13,227 Pennsylvanians would have been able to vote and have their votes counted.

Advancement Project urges Congress, at a minimum, to amend HAVA to allow voters who can establish their identity and current residence in the jurisdiction, either through showing a current and valid photo identification and/or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter, to complete a 'voter affirmation affidavit.' If the voter affirms by affidavit his or her identity and current residence and that he or she submitted a registration application prior to the registration deadline, or moved within the state from a previous registration address, the voter should be issued a ballot that will be counted on Election Day like a regular ballot. Officials should then use the information contained within the voter affirmation affidavit to update their voter database after Election Day. This procedure of a 'voter affirmation affidavit' is currently used in Michigan and Vermont.<sup>6</sup>

Second, the NVRA and HAVA should be clarified to increase access to the voter rolls by prohibiting the imposition of unnecessary and burdensome restrictions on voter registration that are unrelated to eligibility or duplicative of other evidence supplied by a voter applicant to establish his or her eligibility.<sup>7</sup>

Finally, the NVRA should be clarified to prohibit requiring documentary proof of citizenship as a precondition to voter registration in any federal election. The NVRA mandates that a completed voter registration form, which includes a federally mandated affirmation of U.S. citizenship under penalty of perjury, must be accepted and processed for purposes of registering a voter. *See* 42 U.S.C. §§ 1973gg-6(a) & 1973gg-7(b)(2). Some states, however, such as Arizona and most recently Georgia, have enacted legislation to require voter applicants to supply documentary proof of citizenship. Because of the excessive burden that documentary proof of citizenship requirements place on voter applicants, Congress should clarify the NVRA to prohibit states from requiring such duplicative documentation as a condition of registration.

<sup>4</sup> COMMONWEALTH OF PA DEP'T OF STATE, PROVISIONAL BALLOT CERTIFIED COUNTS BY REJECT REASON, 2008 PRESIDENTIAL GENERAL ELECTION (July 15, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> The Vermont procedure allows voters to file such affidavits either if they affirm that they moved within the state from a previous registration address or if they affirm that they attempted to register but do not appear on the voter rolls.

<sup>7</sup> For example, under HAVA, states must attempt to match a voter applicant's driver's license number or Social Security number, and other personal information, against the state motor vehicle or the Social Security Administration database. 42 U.S.C. § 15483(a)(5). Although most states do not deny a voter registration application based on a matching failure, some states, including Florida, deny a voter registration application for this reason. Fla Stat. § 97.053(6). In Florida, where state law requires matching as a condition of voter registration, matching errors disproportionately block Latino and African-American voter applicants from the rolls. *See Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1176 n.4 (11th Cir. 2008) (Barkett, J., dissenting).

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4. *Section VII of the National Voting Rights Act:* We absolutely agree with you that the high percentage of voter registrations in Kansas submitted with the state's DMV in no way excuses the dearth of voter registrations submitted with public assistance, disability, and other social services agencies in the state. In fact, the contrast between these numbers highlights the work states need to do and the tremendous benefit these overlooked communities stand to gain.

As you suggest in your letter, section VII of the NVRA was enacted for the purpose of increasing the registration of "the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principal place to register under this Act [motor vehicle agencies]." H.R. REP. NO. 103-66, at 19 (1993) (Conf. Rep.), *as reprinted in* 1993 U.S.C.C.A.N. 140, 144. To achieve this purpose, the NVRA provides that each state must establish procedures to register to vote at "all offices in the State that provide public assistance" and "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." 42 U.S.C. § 1973gg-5(a)(2)(A)-(B).

Despite these clear obligations, in many states across the country, the data indicate that these social services agencies do not appear to be providing sufficient voter registration services to clients of these agencies.<sup>8</sup> The number of voter registration applications received from public assistance agencies has declined dramatically since the NVRA was enacted, despite the fact that, as of 2006, approximately forty percent (40%) of low-income citizens were still unregistered.<sup>9</sup> Surveys of agency clients in many states have confirmed that many agencies are simply not adequately performing their NVRA-required registration activities.<sup>10</sup> Furthermore, the number of states that have failed to report complete, or any, agency registration data to the Election Assistance Commission, as required by law, has significantly increased during the last decade, making it much harder to track compliance.<sup>11</sup> As a result, thousands of eligible low-income, people of color, people with disabilities, and elderly citizens may remain unregistered, thus suppressing the benefits intended by the law: to encourage the voices of these citizens to be heard, by voting and civic participation.

The tremendous opportunity for improvement has been shown in states that have voluntarily, or in response to a lawsuit, reformed their procedures to put them in compliance with the law. For example, in Missouri, an NVRA lawsuit was recently settled, after a preliminary injunction was entered last year.<sup>12</sup> The most recent data indicate that after procedures were changed

<sup>8</sup> See, e.g., Douglas R. Hess & Scott Novakowski, Project Vote and Demos, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007* (Feb. 2008), available at <http://www.demos.org/pubs/UnequalAccessReport-web.pdf>; Editorial, *Reviving the Motor Voter Law*, N.Y. TIMES, Apr. 11, 2009, at A16, available at [http://www.nytimes.com/2009/04/11/opinion/11sat4.html?\\_r=3&ref=opinion](http://www.nytimes.com/2009/04/11/opinion/11sat4.html?_r=3&ref=opinion).

<sup>9</sup> *Unequal Access*, *supra* n. 5, at 1, 3, 7, 17.

<sup>10</sup> *Id.* at 1, 5-7.

<sup>11</sup> *Id.* at 1, 18.

<sup>12</sup> See stipulation reached in *ACORN v. Levy*, No. 08-4084-CV-C-NKL (W.D. Mo. June 25, 2009), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/ACORN-Stipulation-6-25-09.pdf>; see also *ACORN v. Scott*, No. 08-4084-NKL (W.D. Mo. July 15, 2008) (preliminary injunction granted in part), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Scott-Order-7-15-08.pdf>.

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in response to the granting of the preliminary injunction, Missouri public assistance agencies went from collecting fewer than 8,000 applications a year to collecting over 100,000 applications in just eight months. Taking these measures, and enforcing such measures, is essential to avoid violating citizens' legal rights and to ensure that all qualified persons will be able to exercise their fundamental right to participate in our democracy.

In conclusion, all these issues, as well as the other subjects of our testimony, show the tremendous benefits for all voters, of mandating uniformity in election administration. These benefits extend even further for historically disenfranchised communities and young voters, who are often the hardest hit by the lack of uniformity, for example, in polling place resources, poll worker training, and many other aspects of election administration. Mandating uniformity will help overcome these disparities and increase our citizens' participation in this most fundamental right.

Thank you for your kind consideration of our testimony. If you have any questions or would like any further information, please feel free to contact me.

Sincerely,



Edward A. Hailes, Jr.  
Managing Director and General Counsel

