AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

OVERSIGHT HEARING ON ELECTION DAY REGISTRATION AND PROVISIONAL VOTING

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

HELD IN WASHINGTON, DC, NOVEMBER 9, 2007

Printed for the use of the Committee on House Administration

Available on the Internet:
http://www.gpoaccess.gov/congress/house/administration/index.html

U.S. GOVERNMENT PRINTING OFFICE

40–987 WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON HOUSE ADMINISTRATION

ROBERT A. BRADY, Pennsylvania, *Chairman*

ZOE LOFGREN, California, *Vice-Chairman*
MICHAEL E. CAPUANO, Massachusetts
Charles A. Gonzalez, Texas
SUSAN A. DAVIS, California
ARTUR DAVIS, Alabama

VERNON J. EHLERS, Michigan, *Ranking Minority Member*
DANIEL E. LUNGREN, California
KEVIN McCARTHY, California

S. ELIZABETH BIRNBAUM, *Staff Director*
WILLIAM PLASTER, *Minority Staff Director*

SUBCOMMITTEE ON ELECTIONS

ZOE LOFGREN, California, *Chairwoman*

CHARLES A. GONZALEZ, Texas
SUSAN A. DAVIS, California
ARTUR DAVIS, Alabama

KEVIN McCARTHY, California
VERNON J. EHLERS, Michigan

OVERSIGHT HEARING ON ELECTION DAY REGISTRATION AND PROVISIONAL VOTING

FRIDAY, NOVEMBER 9, 2007

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

The subcommittee met, pursuant to call, at 10 a.m., in room 1310, Longworth House Office Building, Hon. Zoe Lofgren (chairwoman of the subcommittee) Presiding.

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

Also Present: Representative Ellison.

Staff Present: Liz Birnbaum, Staff Director; Thomas 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, Staff Assistant, Elections; Matthew DeFreitas, Staff Assistant; Fred Hay, Minority General Counsel; Gineen Beach, Minority Election Counsel; Roman Buhler, Minority Election Counsel; and Bryan T. Dorsey, Minority Professional Staff.

Ms. LOFGREN. As it is 10:00, we would like to begin the hearing, if we could. So, good morning, and welcome to the Subcommittee on Elections and this hearing on Election Day Registration and Provisional Voting.

Section 302 of the Help America Vote Act, known as HAVA, outlined the provisional balloting process, but left room for the States to determine the procedure. This includes who qualifies as a registered voter eligible to cast a provisional ballot that will be counted, and in what jurisdiction the ballot must be cast in order to be counted.

Generally, if a registered voter appears at a polling place to vote in an election for Federal office, but either the voter's name does not appear on the official list of eligible voters or an election official asserts that the individual is not eligible to vote, that voter must be permitted to cast a provisional ballot.

After the 2004 election, there were several lawsuits on whether a vote cast in the wrong precinct but the correct county should be counted. The Sixth Circuit in Sandusky County Democratic Party v. Blackwell held that ballots cast in a precinct where the voter does not reside and which would be invalid under State law are not required by HAVA to be considered legal votes. Based on the court's interpretation of HAVA, States have the discretion to determine how they define jurisdiction for the purpose of counting provi-

sional ballots. However, the litigation clarified the right of the voter to be directed to the correct precinct to vote and have their vote counted as well as the right to a provisional ballot.

While States are primarily responsible for regulation of Federal, State, and local elections, HAVA was an attempt to allow more voters to have their ballots cast. However, with varying State procedures on provisional balloting, some votes in Federal elections are being counted and others are not. And, according to the EAC report on provisional reporting in the 2004 election nationwide about 1.9 million votes, or 1.6 percent of the turnout, were cast as provisional ballots. Of that number, more than 1.2 million, or just over 63 percent, were counted.

Directly related to provisional voting is election day registration, also called same-day registration. It allows eligible voters to register and cast a ballot on election day. EDR significantly increases the opportunity for all citizens to cast a vote. According to Demos, the 2004 presidential election, the seven EDR States had an average turnout 12 percent higher than that of non-EDR States.

The EDR has shown to have many benefits for voters. Earlier this fall, the subcommittee held a hearing on committee list maintenance, and we discussed the eligible voters who may have been mistakenly purged from the voting rolls. EDR provides those eligible voters an opportunity to vote and have their vote counted, instead of taking the chance with a provisional ballot which may not be counted.

EDR also provides another opportunity for people who have not had time or have just become eligible and who have missed a longer deadline or maybe just forgot to register to vote. And beyond this, EDR leads to the enfranchisement of voters who have recently moved and lower income voters. In States where EDR is in place, it has resulted for lower costs for election administrators because it eliminates the need for provisional balloting.

Election day registration, however, is not without criticism, particularly over whether allowing voters to cast ballots on the same day they register fails to provide adequate security and whether this allows for voter fraud. So I look forward to the testimony from Demos and from the other witnesses. Demos has done a study of the nearly 4,000 news reports for the six EDR States over three Federal election cycles, and found only 10 discrete instances of potential fraud. Of course, there was only one case of voter impersonation at the polls.

Our witnesses today will discuss the pros and cons of election day registration and provisional voting. The panels provide a State and local view of how these affect voter participation and administration, as well as academic and advocacy insights into these two issues.

[The statement of Ms. Lofgren follows:]

Committee on House Administration
Subcommittee on Elections
Election Day Registration and Provisional Voting
Friday, November 9, 2007
Opening Statement
Chairwoman Zoe Lofgren

Good morning and welcome to the Subcommittee on Elections hearing on Election Day Registration and Provisional Voting. Section 302(a) of the Help America Vote Act (HAVA) outlined the provisional balloting process, but left room for states to determine the procedure. This includes who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction the ballot must be cast in order to be counted.

Generally, if a registered voter appears at a polling place to vote in an election for Federal office, but either the voter's name does not appear on the official list of eligible voters or an election official asserts that the individual is not eligible to vote, that voter must be permitted to cast a provisional ballot.

After the 2004 election, there were several law suits on whether a vote cast in the wrong precinct, but the correct county should be counted. The 6th Circuit in *Sandusky County Democratic Party v. Blackwell* held that "ballots cast in a precinct where the voter does not reside and which would be invalid under state law are not required by HAVA to be considered legal votes." Based on the court's interpretation of HAVA, states have the discretion to determine how they define jurisdiction for the purpose of counting provisional ballots. However, the litigation clarified the right of the voter to be directed to the correct precinct to vote and have their vote counted as well as the right to a provisional ballot.

While states are primarily responsible for regulation federal, state, and local elections, HAVA was an attempt to allow more voters to have their ballots cast. However, with varying state procedures on provisional balloting, some votes in federal elections are being counted and others are not. According to an EAC report on Provisional Voting, in the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. Of that number, more than 1.2 million, or just over 63%, were counted.

Directly related to provisional voting is Election Day Registration (EDR), also called "same day registration." It allows eligible voters to register and cast a ballot on Election Day. EDR significantly increases the opportunity for all citizens to cast a vote. According to Demos, in the 2004 presidential election, the seven EDR states had an average turnout 12% higher than that of non-EDR states.

EDR has shown to have many benefits for voters. Earlier this fall, this committee held a hearing on voter list maintenance and we discussed the eligible voters who may have been mistakenly purged from the voting rolls. EDR provides those eligible voters an

opportunity to vote and have their vote counted, instead of taking the chance with a provisional ballot which may not be counted.

EDR also provides another opportunity for people who have not had time, who have just become eligible, missed the deadline, or maybe have just forgotten to register to vote. Beyond this, EDR leads to the enfranchisement of voters who have recently moved and lower income voters. In states where EDR is in place, it has resulted in lower costs for election administrators because it eliminates the need for provisional balloting.

Election Day Registration is not without criticism. Particularly over whether allowing voters to cast ballots on the same day they register fails to provide adequate security and is susceptible to voter fraud. I look forward to the testimony from Demos as they have done a study on the nearly 4,000 news reports for the six EDR states over three federal election cycles (1999-2005) and found only ten discrete incidents of voter fraud or alleged voter fraud. Of these, there was only one case of voter impersonation at the polls.

Our witnesses today will discuss the pros and cons of election day registration and provisional voting. The panels provide a state and local view of how these both effect voter participation and administration as well as academic and advocate insight into these two issues.

Ms. LOFGREN. I would now like to recognize our ranking member, Mr. McCarthy, for any opening statement he may make.

Mr. MCCARTHY. I thank you, Madam Chair. And I am excited about continuing along these lines that we are continuing to look at how people are allowed to vote in America. And the one thing that we do want to always make sure is that we have the ability to make it accessible to everyone. We want to make sure we have checks and balances.

And as this committee continues to look at this, I continue to ask that we make sure we gather all information from all sides. Because, as you said in your opening statement, same day voter registration, some States have it.

There are criticisms on both sides of the aisle. And one thing that I think we are held accountable to as Members is making sure we gather all the information, and that is why I continue to ask that, as we move forward, that we don't limit the number of people that can have witnesses here, that we make sure we have a fair and balanced approach, one that has views from all sides so we are able to gather all the information before we make a decision.

Unfortunately, though, again, this committee has shifted from the past history and tradition of being equal on that basis and the witnesses have not been equal. So I would like to submit under House rule XI a minority hearing so we can continue to gather information.

[The following information was subsequently withdrawn by Representative McCarthy. See page 189 of transcript.]

[The information follows:]

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
www.house.gov/cha

November 9, 2007

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Elections
1309 Longworth HOB
Washington, D.C. 20515

Dear Chairwoman Lofgren:

Pursuant to House Rule XI clause (2)(j)(1), we hereby request that the minority Members of the Subcommittee on Elections be granted a minority day of hearing on matters relating to "Election Day Registration and Provisional Balloting."

Although the testimony of the panel members you have assembled will likely be valuable, it is essential that the Committee examine other perspectives. We feel that a minority day is our only option to ensure that we create a balanced record.

Pursuant to House Rules, you will find the signatures of a majority of the Republican Members of this Subcommittee below.

Kevin McCarthy
Ranking Member
Subcommittee on Elections

Vernon J. Ehlers
Ranking Member
Committee on House Administration

Ms. LOFGREN. I will accept this, and it will be dealt with under the rules. I will note for the record that we did approve a 6–4 witness ratio for this hearing, but the minority only brought 3 witnesses, so there is nothing I can do about that.

Mr. MCCARTHY. Madam Chair, that would be the first time I have heard of more than three witnesses being approved.

Ms. LOFGREN. I did that personally earlier this week.

Mr. MCCARTHY. I would, one, want to thank you for that. Two, I would like to meet with you afterwards then, because I did not have knowledge of that and I am being told by my staff they didn't. So I would, one, want to thank you for the 6–4, and continue to ask that we keep a tradition of the 109th Congress that we actually have 6–6. But thank you for increasing to 6–4.

Ms. LOFGREN. As I said, I don't want to delay this because we do have a room full of witnesses and the public. I have always been available for a discussion and would welcome one at any time, but not at the hearing.

And now I would like to recognize our first two witnesses. We have two Members of Congress.

First, we have Keith Ellison from Minnesota. Congressman Ellison is a newly elected Member of Congress representing the Fifth Congressional District of Minnesota, which includes the City of Minneapolis and the surrounding suburbs. He previously served two terms in the Minnesota State House of Representatives, and while in the State legislature he served on the Public Safety, Policy, and Finance Committee and the Election and Civil Law Committee. Representative Ellison now serves on the Financial Services and the Judiciary Committee, along with me.

We welcome his testimony today. And, of course, he is the author of the bill to provide for same-day election day registration.

We also have Steve King of Iowa. Congressman King was elected in 2002 to represent Iowa's Fifth Congressional District. He serves on the House Small Business Committee, the Committee on Agriculture, and he is also a member of the House Judiciary Committee, serving on the Constitution and Immigration Subcommittees. As a matter of fact, he is the ranking member of the Immigration Subcommittee, which I chair. Prior to joining Congress, he served in the Iowa State Senate for 6 years, where he assumed roles as chairman of the State Government Committee and vice chairman of the Oversight Budget Committee.

And we welcome both of you today. You know the drill. Both of your statements are made part of the official record. We would ask you to limit your oral testimony to about 5 minutes.

And we will begin with you, Mr. Ellison.

STATEMENT OF THE HON. KEITH ELLISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. ELLISON. Let me start by thanking you, Madam Chair, and the Ranking Member McCarthy for holding this important hearing on election day registration and provisional voting. Madam Chair, I would also like to thank your staff and the House Administration staff as well as my own staff who have done an excellent job preparing for today.

I would also like to acknowledge the presence of Minnesota Secretary of State Mark Ritchie, who is here to testify, and of course our former Minnesota Secretary of State, Mary Kiffmeyer, who is also here, and I thank them both for being here.

I am honored to be here to discuss the importance of election day registration. Madam Chair, I am also committed and passionate about election day voter registration, and I am so committed to it that I introduced H.R. 2457, the Same Day Voter Registration Act of 2007. We have 41 cosponsors. My distinguished predecessor, Martin Sabo, championed this legislation in years past, and I am honored to continue that tradition, and I feel we have made some important progress in our effort to extend voting rights to all Americans.

My home State of Minnesota has been a national leader when it comes to elections and election administration. We consistently rank in the top nationally in voter turnout. For example, in the 2004 presidential elections 78 percent of eligible voters in Minnesota cast a ballot. This is more than 18 percent higher than the national average. In 1998, a nonpresidential year, there were nationally only 30 to 35 percent of eligible voters who cast a ballot. Voter turnout topped out more than 60 percent.

Additionally, when it comes to election administration, Minnesota consistently conducts one of the most efficient, fraud free and error free elections time and time again. And though I do believe some share credit—many people share credit for Minnesota's national leadership on elections, credit needs to go to committed public servants like Mark Ritchie and several local officials who manage these elections.

Minnesota laws, like the same day voter registration statute, have contributed to this stellar national reputation. My home State enacted same day voter registration about almost 25 years ago.

Since the right to vote is such an important and fundamental right, I believe the right to vote should not be conditional on any ability to navigate bureaucracy or to meet artificial and arbitrary deadlines.

America, Madam Chair, has consistently moved towards voter access throughout its entire history: The 13th amendment striking down involuntary servitude; the 14th amendment, which actually incentivized voter participation of the newly freed men; and of course the 15th amendment, which allowed for universal male suffrage.

Of course, America wasn't done yet. The 19th amendment allowed universal adult suffrage when it included and recognized the right of women to vote in 1920.

But of course it didn't stop there. The 24th amendment banned the poll taxes and other taxes associated with being a barrier, a financial barrier to voting.

But then, in 1965 we saw the Voting Rights Act, which for the first time really struck down all the tools, devices and tricks that eliminated people from voter participation.

And then of course in the 1970s we lowered the voting age to 18 years old.

Madam Chair, I believe that EDR is a logical extension of America's ever increasing desire to see more and more people express

their view as to who should represent them in this great representative democracy. I strongly encourage colleagues in Congress to follow the lead of States like Minnesota to enact same day voter registration.

Let me conclude by quoting from a New York Times op ed piece written by a Republican and Democratic Secretaries of State of Ohio and Maine. The quote is as follows: Though one of us is Republican and the other is a Democrat, we can attest that political affiliation isn't relevant here. This is a policy election day registration that is good for voters regardless of party and good for our democracy. When it comes to elections, America is best served when all eligible voters cast ballots, even those who miss the registration deadline.

And I might add, Madam Chair, that in my own State of Minnesota we have seen Republican Governors elected and reelected. We saw an Independent Party Governor, Governor Ventura, elected. We have seen Democratic Governors elected. And we have seen both houses shift back and forth. Same day voter registration doesn't favor a party, it favors voters.

Madam Chair and members of the committee, I could not agree more with both the Republican and Democrat Secretaries of State of Idaho and Maine.

Thank you so much for the opportunity to testify this morning.

Ms. LOFGREN. Thank you very much, Mr. Ellison.

[The statement of Mr. Ellison follows:]

CONGRESSMAN KEITH ELLISON
TESTIMONY BEFORE THE HOUSE ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
NOVEMBER 8, 2007

Let me start by thanking Chairwoman Lofgren and Ranking Member McCarthy for holding this important hearing on "Election Day Registration and Provisional Voting."

Let me also acknowledge Minnesota Secretary of State Mark Ritchie who is also here to testify today. Mark, thank you for your strong leadership and your commitment to ensuring that all citizens in Minnesota are enfranchised.

I am honored to be here to discuss the importance of Election Day Registration. Madame Chair, I am so committed and passionate about Election Day Voter Registration that I introduced H.R. 2457, *the Same Day Voter Registration Act of 2007*, with 41 cosponsors. My distinguished predecessor Martin Sabo championed this legislation in years past and I am honored to continue this important tradition.

My home state of Minnesota has been a national leader when it comes to elections and elections administration.

We consistently rank on top nationally in voter turnout.

For example, in 2004 Presidential Election, 78% of eligible Minnesota voters cast a ballot, this more then 18% the national average.

In 1998, a non-presidential election year, where nationally only 30 – 35 percent of eligible voters cast a ballot, voter turnout topped more than 60 percent.

Additionally, when it comes to election administration, Minnesota consistently conducts one of the most efficient, fraud and error free elections time and time again.

And though, I do believe some share of the credit for Minnesota's national leadership on elections needs to go committed public servants like Mark Ritchie and the local election officials who manage these elections.

Minnesota laws, like the state's same day voter registration statue, have contributed to this stellar national reputation. My home state enacted its same day voter registration law more than 30 years ago.

Since the right to vote is such an important and fundamental right, I believe the right to vote should not be conditional on the ability to navigate bureaucracy or meet artificial, arbitrary deadlines.

Opponents of election day registration often claim that EDR will encourage fraud. But there has been no evidence that states with EDR have higher rates of fraud than non-EDR states. And in fact, in the state of Maine which has had EDR since the 1970s, no case of voter fraud has ever associated with this policy.

I strongly encourage my colleagues in Congress to follow the lead of states like Minnesota to enact election day registration.

Let me conclude by quoting from New York Times Op-Ed piece written by Republican and Democratic Secretary of States of Idaho and Maine:

> Though one of us is Republican and one is a Democrat, we can attest that political affiliation isn't relevant here: this is a policy [election day registration] that is good for voters, regardless of party, and good for our democracy. When it comes to elections, America is best served when all eligible votes cast their ballots – even those who missed the registration deadline.

Madame Chair and members of the committee, I could not agree more.

Thank you for the opportunity to testify this morning.

Ms. LOFGREN. Mr. King.

STATEMENT OF THE HON. STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. KING. Thank you, Madam Chair and Ranking Member McCarthy. I appreciate these hearings today. And I listened carefully and attentively to the gentleman from Minnesota's testimony, and I want to commend him for taking an initiative on something he believes in, in fact to the point where we had a conversation about these bills. And that I think was when the gentleman from Minnesota became aware that I have taken an entirely different position on this 180 degrees off. And I would like to just take, if I could, the committee back through some of those points that brought me to the position that I have taken, and that is the 2000 elections.

This Nation and the world stood transfixed wondering who would be the next leader of the free world. All eyes went to Florida. We watched it 24/7. I was for 37 days investigating the things that were coming up as allegations in Florida and the challenge as to what would be counted as a legitimate vote and what would not be counted as a legitimate vote.

At the time, I was the chairman of the Iowa State Government Committee, and I knew the responsibility fell to me to make any changes in the Iowa law if we were going to avoid ever becoming a State in the position that Florida was in. And while those 37 days unfolded, some say 36, it was 37 for me, I chased down every rabbit trail on the Internet that I could find for voter integrity, ballot integrity, and examined this thing from a constitutional perspective, an historical perspective, and also from the statutory perspective.

I believe in the concept of federalism. This is something that we have left to the State. But the question that hangs out here for anyone who takes a side on federalism, and that being the States rights component of this, you still have to ask the question: But for 527 votes in Florida, there would be a different leader of the free world probably today. That changes history. And this Nation is susceptible to decisions that are made within the State.

Now, we are here talking about Federal legislation, but I came to this conclusion that there was significant fraud taking place in many places across the country. There was plenty of evidence of that in different areas. I came to the conclusion that we needed a voter registration list in each of the States that would be free of duplicates, deceased, and, where the law applies, felons, and that we need to verify that the people that showed up to vote under the name that they alleged that they had actually could prove that they were that person. That means a picture ID. And, I believe that they should be citizens and they should verify that they are citizens.

I would ask that the Secretary of State of each of the States certify the citizenship of the people on the voter registration roles. I think that the lists should be sorted and crunched, and the most recent registration be the one retained, and the duplicate registrations that might be in multiple precincts or multiple counties or multiple States eventually would be purged.

That is my view, because 527 people in Florida selected the leader in the free world. When they did that, if there had been just that many that cast illegitimate ballots and canceled out the legitimate ballots that made that difference. It is as egregious to have a legitimate ballot canceled out as it is to tell someone who is legitimate that they can't vote. And I ran into protection for opportunities for fraud.

And so as I look at this legislation, and I am opposed to motor-voter, by the way, because that brings in people that aren't citizens and brings in people that aren't legitimate to vote in those precincts. But it gives them that opportunity that, here is your driver's license, and now how would you like to register to vote? The implication is that you are a citizen. And I know that there are restraints on perjury charges, but that isn't something that we have seen people use.

So, as I look down through this list of things; if someone shows up to vote same day registration and their ballot goes into the pot with everyone else and it is not a provisional ballot, you have no way to correct the inequity that is there. So I would say, first of all, if this legislation is to be approved, it should be provisional ballots only for same day registration.

I would also point the cause out here to say that you do not have to produce an identification. You can walk in then and allege to be anyone and no one can challenge who you are and you are allowed to vote.

So, the limitations that we would have left if the Ellison legislation is approved is any willing voter, any willing traveler-voter can vote in any precinct they choose under an unchallenged ballot, one that is not provisional that goes right into the count with everyone else. And there is no way to verify then. And if we lose our electoral process, we have to have the maximum amount of integrity here, and this is something that I would be willing to take significant political loss on policies and issues that I care a lot about in order to preserve this constitutional republic that depends, for Democrats and Republicans, upon the integrity of the electoral system.

We have seen the acrimony that came out of the questions in Florida, and yet I haven't seen the evidence that there was anything other than the appropriate result in those 2000 elections. But if we lose our faith in our electoral process, if we fail to maintain the integrity that the American people will demand of us, our electoral system will collapse around us, and neither Republicans nor Democrats will be standing when the dust settles.

So I want the maximum amount of integrity. I want to preserve this system no matter who it advantages, Republicans or Democrats. It is more important we preserve our constitutional republic.

I conclude my oral testimony. Thank you, Madam Chair.

[The statement of Mr. King follows:]

Testimony by Congressman Steve King

Thank you Chairwoman Lofgren, Ranking Member McCarthy, and members of the Committee for inviting me to testify today. I appreciate this opportunity to address the Committee about the need to protect the integrity of our democratic process, by guarding against illegal aliens and noncitizens taking part in only the American citizen's right to vote.

Currently, there are approximately 14 million illegal aliens in the United States who are of voting age. There are approximately 23 million legal noncitizens currently residing in the U.S. Beyond requiring applicants to sign a pledge on voter-registration forms affirming that they are U.S. citizens, there are no restraints to prevent the nation's illegal aliens and legally present noncitizens from casting ballots in local, state and federal elections. Our voting system is subject to fraud by noncitizens. Illegal voting by legally residing non-citizens may be more prevalent than voting by illegal aliens. There are no existing structures in place to prevent illegal aliens from voting or to know if noncitizens are illegally voting in federal elections.

Numerous tactics are being employed by illegal aliens and noncitizens to fraudulently vote in federal elections. The first approach begins by obtaining a state drivers' license. States vary greatly in their laws governing the issuance of those licenses. A few states require and verify documentation that an applicant is either a U.S. citizen or a legal resident. However, other states purposely or inadvertently allow aliens to receive a drivers' license. Seven states allow registrants to use an individual taxpayer identification number (ITIN) instead of a Social Security number. The problem with an ITIN, stems from the fact it is available to noncitizens for purposes of tax withholding. On the opposite side of the spectrum, eleven states are lax and negligently permit illegal aliens to obtain drivers' licenses, by refusing to verify the authenticity of the Social Security Number.

Under the National Voter Registration Act of 1993, information provided by the applicant for a driver's license may also be used for voter registration unless the applicant specifically indicates that he did not want to be registered to vote. With many states making driver's licenses available to legal noncitizens and illegal aliens, it is probable voter rolls contain large numbers of non-citizens and illegal aliens.

Another tactic employed by illegal aliens and noncitizens to obtain voting rights involves absentee voting. Absentee voting has become increasingly common, and there are no safeguards in place to ensure the actual voter is voting or for elections officials to challenge the voter in person as a possible illegal voter. In effect, there are no safeguards in place to ensure the person requesting the absentee ballot is actually the person voting. Elections official's hands are tied to protect the integrity of the voting ballot.
To preserve the integrity of the election process, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act in 1996. Under the Act, it became a federal crime for non- citizens to vote in any federal election. Ineligible non-citizens who knowingly voted illegally could also be deported. Furthermore, a non-citizen who

fraudulently claimed to be a U.S. citizen would also violate this Act. Despite these penalties, there have been frequent substantiated reports of illegal aliens and non-citizens taking part in elections.

One of these reports is well- known to another witness before the committee today, because it involved Loretta Sanchez's California race in 1996. This is probably the best example of documented illegal voting to date. Loretta Sanchez defeated Republican incumbent Robert Dornan by 984 votes. Dornan called for an investigation of alleged illegal voting by noncitizens. The House Oversight Committee found that while there was insufficient evidence to void Ms. Sanchez's victory, the Committee found evidence of 748 improper ballots, 624 by individuals who were not citizens when they registered to vote. ("Dornan's Election Challenge Dismissed," *Los Angeles Times*, February 13, 1998). This is a striking number because it illustrates in that election, 83% of all the fraudulent votes cast were by noncitizens.

In the 2000 Presidential election, noncitizens may have directly influenced the outcome of this race in eleven different states. Colorado, Florida, Georgia, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Tennessee, Texas, and Virginia, all had small enough winning vote margins that illegal voting could have shifted the balance to Vice President Gore. With only a three vote margin in the Electoral College, if enough noncitizens had voted to reverse the outcome in any one of those eleven states, it would have changed the entire election.

In preparation for the 2004 elections, Iowa and South Dakota issued directives to voter registration officials that voters should be added to the voter rolls even if their application did not affirmatively designate they were United States citizens. These directives were in blatant violation of the National Voter Registration Act, which requires every potential voter to designate citizenship on the voter registration application.

In Utah, it was discovered that more than 58,000 illegal aliens had fraudulently obtained drivers' licenses. A legislative audit bureau determined that possibly 383 illegal aliens were registered to vote. Immigration and Customs Enforcement (ICE) conducted a sample consisting of 135 of these individuals and discovered that five were naturalized citizens, twenty were "deportable", one was a permanent legal resident, and 109 had no record and were assumed to be in the United States illegally. More alarmingly, it was revealed that at least fourteen had voted in a recent Utah election.

In North Carolina, ICE agents inspecting voter registration records last November revealed at least four cases of noncitizens illegally registered to vote. Three of the people were arrested, and officials are looking for the fourth. Tom O'Connell, resident agent in charge of the ICE agency's Cary office, said that "It's a very personal charge to us, it goes to the integrity of the entire democratic system when we have... aliens registering to vote." ("Voter rolls risky for aliens," *The News & Observer*, December 7, 2006.)

There is a very simple solution to the problem of illegal aliens and non-citizens voting in our elections. A bipartisan commission headed by former President Jimmy Carter and ex-

Secretary of State James Baker announced after their study into Federal Election Reform, that Americans should be required to have photo identification to vote.

> "Instead of creating a new card, the Commission recommends that states use 'REAL ID' cards for voting purposes. The REAL ID Act, signed into law in May 2005, requires states to verify each individual's full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver's license or personal ID card. The REAL ID is a logical vehicle because the National Voter Registration Act established a connection between obtaining a driver's license and registering to vote. The REAL ID cards adds two critical elements for voting — proof of citizenship and verification by using the full Social Security number. The REAL ID Act does not require that the card indicates citizenship, but that would need to be done if the card is to be used for voting purposes. In addition, state bureaus of motor vehicles should automatically send the information to the state's bureau of elections." "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," *The Carter-Baker Report* (Sept. 2005).

Allegations that implementing REAL ID will suppress voting participation are unfounded. Every illegal vote by a non-citizen ultimately voids the vote of a U.S. citizen and it is as injurious as not allowing the citizen to vote in the first place.

While advocates for illegal aliens and noncitizens claim such individuals would not take the risk of registering to vote for fear of being discovered, the evidence I have just presented before you suggests otherwise. It is foolishness to believe fraud is absent when efforts are not being made to ensure the integrity of our electoral process. Remember, it only takes one vote to change an election.

Thank you and I would be happy to take questions from the Committee.

Ms. LOFGREN. Thank you very much, Mr. King and Mr. Ellison. I am advised that we will have votes at about 10:30, so we will have time to throw a couple questions to our colleagues now, if we wish, and then we will come back for the other two panels.

Mr. McCarthy.

Mr. MCCARTHY. Thank you, Madam Chair.

One, I want to thank both panels. This is what I always envisioned. Before I gather information, I want both sides. And, Mr. Ellison, I respect both opinions, Mr. King, you want to make it easier for voters to be able to go vote. Mr. King's concern is you want to make sure that there is integrity in the election system. So, really, that is what I want to be able to gather. I have a belief in both of you, and so I want to find how we can make it that we get the voters to the polls but at the same time we have trust in what elections are held.

Now, you want to take this nationwide. And I will tell you, as we have gathered information here on other bills, we had the Secretary of State from Vermont here talking about absentee ballots. In Vermont, they don't even check your signature. And her answer to me was: We trust everybody. We know everybody. That may work in a very small State. I have concerns with that. But putting things nationwide, I have great concerns.

One question I have for you, Mr. Ellison. If you vote, and you have to vote to register that same day inside your bill. Is that correct? First. And then, secondly, would you be open to making that a provisional ballot? Because once you put that into the mainstream, the ballot into the box, there is no way of checking how that person voted. There is no way of checking if there is any concerns or questions. That would be my first question to you.

Mr. ELLISON. Well, first of all, let me make sure I understand what you are asking me. You are saying that you are asking if someone wants to engage in same day voter registration, would they be expected to register and vote on the same day?

Mr. MCCARTHY. The way I read your bill, if you want to register that same day, you have to vote. Am I reading it wrong?

Mr. ELLISON. I don't think you would be required to vote. I think that you could—but you certainly would show up to the polls in order to register to vote. So I think people would be expected to vote and people would be expecting to vote. And I would bet that people who show up would be there to vote. But I don't read a fundamental requirement that you must vote if you register on that day. In order to participate in that election, you have to register in that vote.

Mr. MCCARTHY. So you don't have to vote if you register that same day, on your bill?

Mr. ELLISON. So basically you want to know, can you go in and just register and then walk away?

Mr. MCCARTHY. Yes.

Mr. ELLISON. I think a person could register to vote at any time during the year to register for that election. To be able to vote in that election, you would be expected to vote on that day. But I don't think you would necessarily have to.

Mr. MCCARTHY. Now, what about that person voting a provisional ballot instead of voting a regular ballot?

Mr. ELLISON. I would not favor that, because I think we have other protections to make certain that the person is who they say that are. Now, remember, there has been talk about photo IDs today. That is not what we are talking about here. When you register to vote, when you register, not cast a ballot but register, you would have to—and the State, there is nothing in this bill to prohibit the State to require that you identify yourself with valid identification in order to register to vote.

Mr. MCCARTHY. Now, I know we are not talking about your other bill. But you have introduced another bill, 4026, that prohibits election officials from requiring an ID.

Mr. ELLISON. Right.

Mr. MCCARTHY. I only bring that up because later that could come into play here. Are you familiar within Milwaukee on their same day registration where they had a task force. And I don't know, in Minnesota you say there hasn't been any concerns and I haven't found any yet, but in Milwaukee they had the FBI, the chief of police, and they found 1,300 same day registrations that were cast with problems. They found 141 that weren't even inside the city. And I get concerns when you go statewide.

What checks and balances do you have in Minnesota in this provision that you go forward now?

Mr. ELLISON. Well, Minnesota has a long reputation of having good clean elections. I think that you will hear that from the former Secretary of State and the present one who will testify today. But if you vote, if you fraudulently vote in Minnesota, that is a felony offense. That subjects you to serious criminal penalties, something that just people don't do.

Also in Minnesota, we have provisions to challenge people. So if you have substantive information that the person is not who they say they are, there are provisions for challenges.

Mr. MCCARTHY. But if you challenge somebody, how do you find that ballot of what they voted? Because if you do provisional, it is off to the side. If you let them have the exact same ballot when they are going in the same day and you find the 141 or the 1,300, there is no way of knowing which ballot was there or how they voted. So I am just wondering, from a checks and balance point, how do you answer that question?

Mr. ELLISON. Well, the fact is, is that we have—it is a crime to do. We have people who did challenge you. You have to sign, you have to swear under penalty of perjury. And the fact is, I can tell you that our track record has been excellent. And so it is what we have been doing has been working. I mean, if the proof of the pudding is in the tasting, elections in Minnesota taste pretty good.

Mr. MCCARTHY. Just a quick second, yes or no. Would you be open to, if you moved your bill forward, amending it that at the beginning you make these individuals vote provisional to make sure these checks and balances were there?

Mr. ELLISON. Well, let me say this, Representative. I am one who never says we won't talk, but I don't think I would agree to that provisional provision.

Mr. MCCARTHY. Thank you for your time.

Ms. LOFGREN. I would just like to ask Mr. Ellison about, you have got a real experience here in your State in the whole issue

of voting, lots of times various hints of there is fraud. But I would like to just take a look at, have there been any prosecutions? Because that is the real proof. I remember going to a hearing a year ago in August and all these wild comments about it. But there has been no prosecutions. So the proof is in the pudding. And what has been your experience in Minnesota? Has anybody been prosecuted for fraud associated with this?

Mr. ELLISON. Madam Chair, I cannot report any known cases of convictions for election fraud. Now, we do have two Secretaries of State coming behind me.

Ms. LOFGREN. I will ask them, too.

Mr. ELLISON. But I will just tell you that I am not inexperienced on this. I have researched this. I have looked into this carefully. And I have a close friend who some of my Minnesota colleagues know very well; his name is Pat Diamond. He is a tough prosecutor. He will charge you and toss you in jail if you violate the law. And Pat Diamond, who is a prosecutor in Hennepin County, he has told me that he has never prosecuted an imposter voter case. This just hasn't happened. And this is a gentleman who takes his role as a prosecutor extremely seriously.

So I would like to know, but—so I guess the answer is no. But there are better minds than mine here.

Ms. LOFGREN. Now, what has happened to turnout in Minnesota? Usually the problem is not one where people are trying to fake it to vote, it is to try to get people to vote. What has turnout been?

Mr. ELLISON. Madam Chair, we have trouble getting people to vote one time let alone two. But the fact is, voter turnout in Minnesota is excellent. 78 percent.

Ms. LOFGREN. 78 percent.

Mr. ELLISON. We have experienced very high voter turnout. We did have high voter turnout in the early years, 50s, 60s, then it dipped. And since we enacted voter EDR, it dramatically came back up to a point where we are real happy about.

Ms. LOFGREN. Now, I remember the election of Governor Ventura, I mean just reading about it. But it seemed to me from the press reports that that just took off at the end, and that it was people who had not been registered voters but who got excited by his campaign after the registration would have been over who actually decided to come forward; that he had touched something in them and surprised the whole country that this guy who no one thought was going to win won. Was that, do you think, because of election day registration?

Mr. ELLISON. Yes, I do. And I think it is a very good thing. I think it is important to leave alone what kind of Governor people thought Governor Ventura made.

Ms. LOFGREN. It is up to the voters in Minnesota to decide, not me.

Mr. ELLISON. But they expressed a preference. Students expressed a preference. People who had moved had expressed a preference. I think that if what we are trying to do is most closely approximate how people really feel, that EDR brings us very close to that. Because of course, as you know, Madam Chair, there is a lot of voter information that comes through in the last days of the campaign. You know, people may not focus, people are busy. But

in that last month of the campaign where an artificial deadline may cut you out, you can still listen, read, focus, hear debates, and really make up your mind as to who you want to vote for.

Ms. LOFGREN. I am going to yield back my time because we are being called to votes and I want Mr. Ehlers to have his chance to ask questions before we run off to vote.

Mr. EHLERS. Thank you, Madam Chair.

Just in response to a previous question-and-answer interchange with Mr. McCarthy. As I read the bill, you say: On the date of the election, the polling place may not make services available under this section to any eligible applicant who does not cast a ballot.

So, basically, you are saying if they register they have to vote. Or, in other words, they are not even going to be registered if they don't agree to vote.

Mr. ELLISON. Well, Mr. Representative, I read it a little bit differently. I don't think this is the most critical part of the bill.

Mr. EHLERS. I agree. And I don't think—that is not a major matter. I am just pointing out it is in your bill.

Mr. ELLISON. Yeah, it is in my bill and I am familiar with that section. The way I read that is if you want to vote in that election that day, then registering that day makes you eligible to vote in that election for that day. But I think that if you wanted to register to vote the next day, the day after election, I don't see any rules that would say you couldn't fill out a voter application to register to vote.

Mr. EHLERS. I just wanted to try to clarify that issue.

I was born in Minnesota, southwestern Minnesota.

Mr. ELLISON. Congratulations.

Mr. EHLERS. Thank you. It has made me what I am today, a good solid Republican. Seriously. I grew up in Edgerton, a very fine town. Everyone knew everyone, very little crime. There was some crime. But I think same day registration would work there easily because everyone knew everyone, and maybe that is what you are referring to. But I refuse to believe that there are no criminals in Minnesota, and that no one might try to take advantage of this.

Even if there weren't, we are talking about Federal legislation. And the history of our country, frankly, a shameful history, is that in certain areas of the country there is considerable dishonesty in elections. And in this particular issue, and I totally agree with Mr. King on this, this creates incredible opportunities for mischief and, frankly, for breaking the law.

We are all familiar with Tammany Hall, the Pendergrass machine, the Daley machine. You can go on and on. They certainly played every trick in the book. And same day registration has the potential for doing that, unless the ballot that the person casts is a provisional ballot so in case they are breaking the law by what they have done, then you can discard their ballot and no harm is done.

If you allow the ballot to be tossed in the hopper and counted, you have done permanent damage. You have cheated the public of a fair election. And I think the key factor of same day registration is to make certain that it is a provisional ballot.

Related to this of course is the requirement that we passed with HAVA that every State has to establish a statewide voter database

to keep track of registrations and so forth. That is essential to determine if someone, regardless of whether they are registering the same day or not, are voting twice.

And so, I just have experienced and seen enough fraud around the country that I am very worried about adding something that would make fraud easier for those who are dishonest. It also, what you are proposing, makes voting easier for those who are honest. And I don't object to that, really, but you have to protect against fraud if you are going to provide extra opportunities for fraud, which is what your bill does. And I think we have to be very, very careful about that.

If we are going to try to make this a national issue instead of an issue State by State, where all the good people of Minnesota who by and large obey the law and wouldn't do anything wrong, I am very worried about passing a law that is going to apply everywhere in the country, where there is plenty of chance for mischief and downright dishonesty.

I would appreciate your comments.

Mr. ELLISON. May I comment very briefly, Madam Chair? Let me say this very quickly. The people who live in a precinct, even if you live in an urban area, it is like a small town. For example, there might be just one building that people vote at and that is like the whole precinct. So even though it is an urban area, it is a closely knit unit that people are voting in. So there really is quite a substantial amount of that small town atmosphere. People know each other.

So I think we have probably got a vote. But I do appreciate your question.

Mr. EHLERS. Well, I would hate to depend on that, simply because I live in a relatively small urban neighborhood, and I have served in local government, I know a lot of people. But when I go to the precinct to vote, I see a lot of people there I don't know. And when I talk to the election clerks, they see a lot of people they don't know. And so I think caution is best in a situation like this.

As Mr. King said, we really have to guarantee the purity of the ballot to reassure the voters that the result is accurate and that it follows the intention.

Ms. LOFGREN. The gentleman's time has expired. And we have been called to vote. So I will recess the hearing now, thanking both of our colleagues for their testimony. We will return as soon as votes are done and commence with the other two panels.

[Recess.]

Ms. LOFGREN. I am sure that the Ranking Member is on the way back. Under the rules we can proceed when we have two members. But I am going to begin because we have more votes in an hour, and we can start introducing now, while Kevin is on his way.

I would like all the members of the next panel to come forward. And I am searching for my introduction here. We have three witnesses before us. We have the Honorable Mark Ritchie, who is currently serving as Minnesota Secretary of State, where he is the State's chief elections officer. Mr. Ritchie has made many contributions to improving civic participation in the electoral process, including his leadership of National Voice, a national coalition of over 2,000 community-based organizations working together to increase

voter participation. Mr. Ritchie was able to lead this organization in registering over 5 million new voters nationwide, one of the largest nonpartisan voter mobilizations in our Nation's history.

Next we have Mr. Tim Moore. Mr. Moore currently serves as a representative in the North Carolina House of Representatives. He was first elected in 2002, and now serves as chairman of the Committee on Elections Law and Campaign Finance Reform Committee. Mr. Moore is also an attorney with the law firm of Flowers, Martin, Moore & Ditz.

And finally, we have Mr. Neil Albrecht, who is the Assistant Director, City of Milwaukee Elections Commission. He has been the Deputy Director for the city of Milwaukee's Election Commission since July of 2005. His focus in this position has been on the full implementation of system improvements identified by the Milwaukee Task Force on Elections. He is a lifelong resident of the city of Milwaukee and has a professional background in finance and nonprofit management.

And we do thank all of you for coming today to share your insights with us.

STATEMENTS OF HON. MARK RITCHIE, SECRETARY OF STATE, MINNESOTA; HON. TIM MOORE, NORTH CAROLINA STATE REPRESENTATIVE; AND NEIL ALBRECHT, ASSISTANT DIRECTOR, CITY OF MILWAUKEE ELECTION COMMISSION

Ms. LOFGREN. And if we could, we will begin with Secretary of State Mr. Ritchie. Welcome.

Let me just interrupt and note that your full written comments will be made part of the official record of this hearing. We do ask that your oral testimony consume about 5 minutes. And that little machine there has lights. And when the yellow light goes on it means that you have consumed 4 minutes. It is always a surprise. And when the red light goes on it means you have actually spoken for 5 minutes. We would ask you to try and summarize at that point so that we can hear everybody. Mr. Ritchie. There is a little button. There we go.

STATEMENT OF HON. MARK RITCHIE

Mr. RITCHIE. Chairwoman Lofgren, Representative Davis, thank you for this opportunity to present testimony on election day registration. When I began the process of running for the office of Secretary of State, one of the first persons I sat down with and asked his support was the Secretary of State of Minnesota, who was serving in that position when I came of age when they lowered the voting age, Arlen Erdahl. Arlen Erdahl had been a Congressman, a Republican Congressman from Minnesota, had come back to Minnesota, was Secretary of State when Election Day Registration was passed and implemented in our State. He gave me an amazing history of the process, particularly pointing out the problems that were being solved at that time by making that change. But he also urged me to go meet with and talk to all of our 87 county election officials and to get their point of view, because, as he said, county election officials, city election officials, that is where the rubber hits the road. If you want to know about Election Day Registration, its benefits, and how it functions, go talk to those officials.

So I did. And in meeting around the State—and I have met with all 87—I heard four consistent themes about election day registration in Minnesota. So this is based on 34 years of experience. And some of these election officials have been in their jobs for most of that time.

Number one, it clearly has increased turnout, but it has been especially important for increasing turnout for young people. Minnesota was on a decline from 1956 to the early 1970s, and with the introduction of the 18-year-old voting in this country, another hit on participation. But we passed Election Day Registration at roughly the same time. And so we have been able to build up over the past few years so that we are top in the Nation, but especially we are proud of the fact that it brings in young people. In fact, Election Day Registration has been shown to have about twice the positive impact on bringing young people into the process as older adults.

The second thing that election officials pointed out is that this has largely eliminated the disputes, the problems, the mistakes. It just made election administration much easier and much cleaner, much less expensive, and allows election officials to do their job better.

Third, it is a much more accurate and secure system. You are registering somebody in person. They are standing in front of you instead of a form received in the mail. If there is some error in the registration form, hard to read, poor writing, some missing information, you can correct it right there on the spot. And we have a whole series of safeguards, including requiring our proofs, our oaths. We have provisions for challenging. And of course we have criminal prosecution for anyone who is lying under oath. So we feel like it has been a much better and more accurate and secure system.

And finally, since most of the same-day registrations are simple address changes, we also think that there are some ways to, you know, make this great system even better in the future. And so we are looking forward on that.

I took their comments and their suggestions to heart in my campaign and now that I am in this position, and Minnesota is going to be an even better and stronger participant in the Election Day Registration process. But what I have noticed is that many other states are very interested because they have the problems of provisional ballots and other problems. They are asking us for our advice, for our help.

Many other States have come to visit Minnesota to look at our system. I always have those visitors meet with local election officials because those are the folks who really know how the system works. They have seen every problem, every unusual situation, and they have tackled those very well. And so Minnesota at this point is a state where this system works for us and it works well.

In the closing of Congressman Ellison's comments this morning he quoted from my colleagues, the Secretaries of State from Idaho and from Maine, about how this is not a partisan issue, this is an issue that is in favor of voters. And I want to underline that. Our 87 county election officials are very, very fiercely independent, and they range from all spectrums of the political climate in Minnesota,

and they all feel strongly that this is a great system. Our 34 years of history gives us great confidence. And we are very happy to see this idea being adopted in other States, and potentially at the national level.

Madam Chairwoman, thank you again.

Ms. LOFGREN. Thank you very much, Mr. Ritchie.

[The statement of Mr. Ritchie follows:]

Testimony to the Sub-Committee on Elections of the Committee on House Administration

Oversight hearing on "Election Day Registration and Provisional Voting"

November 9, 2007

Prepared by Mark Ritchie, Minnesota Secretary of State

Chairwoman Lofgren, Representative Ehlers, and members of the committee, thank you very much for the opportunity to testify today on the important subjects of Election Day Registration and provisional voting.

Thirty-four years ago the Minnesota State Legislature decided to implement a statewide system of voter registration that included Election Day Registration (EDR). The legislature included the option of registering at the polls because they recognized that traditional voter registration systems created many barriers to participation, often inadvertently. For example, setting an arbitrary cut-off date for registration means that a large percentage of voters enfranchised by the U.S. Constitution are disenfranchised by bureaucratic rules.

Election Day Registration, in contrast, ensured that eligible voters could not be denied their right to vote due to lack of pre-registration. The state implemented procedures for registering to vote on Election Day at each polling place. This system, also called "same-day registration," now exists in some form or is under serious consideration in a dozen states.

One of the most important results of Election Day Registration is a significant increase in turnout among eligible voters. This can be seen in Minnesota where 78% of eligible voters cast a ballot

in the 2004 presidential election—more than 18% above the national average. That same year, nearly 600,000 eligible voters registered on Election Day, making same-day registrants roughly one quarter of all voters. Clearly, same-day registration is a factor in Minnesota's consistently high voter turnout.

Election Day Registration is an especially useful tool for anyone who has moved just before Election Day, for young voters, and for others who do not decide to participate until just days before an election. Election Day Registration is a source of much of the confidence that Minnesota voters express about our voting system. No one can be kept from voting due to lack of prior registration and no one can be denied the right to vote due to some flaw or failure in the voter registration system.

In addition to the increase in both voter turnout and the public's confidence about the electoral process, another huge benefit of Election Day Registration is that it all but eliminates the need for provisional ballots, thus enfranchising voters and simplifying election administration. The past few election cycles have featured battles over provisional ballots in Ohio, Florida, and other states that became front-page news nationwide. With EDR these problems are nearly eliminated. Voters that come to the polling place who believe that they have pre-registered, but for some reason whose names do not appear on the rolls, have recourse in an Election Day Registration state. Instead of casting a ballot that may or may not be counted, they can simply register to vote on the spot. Once they have filled out a voter registration form and provided proof of residence, they can cast a ballot that will be treated the same as all others. Voters do not need to worry about following up with election administrators to ensure that their ballot is counted and our poll

workers do not need to segregate provisional ballots or use alternate procedures to handle them. Same-day registration helps poll workers and election administrators deal with the human and computer errors that are one of the realities of running an election.

Higher voter turn out and the elimination of many of the problems associated with provisional ballots are two powerful arguments for Election Day Registration. Another advantage is that "in person" voter registrations, which Election Day Registrations are by definition, are actually more secure than voter registrations sent through the mail. Every Election Day registrant must appear in person, provide an approved identification document or sworn witness, and swear that they meet the eligibility criteria. Issues such as citizenship status, residence, and other concerns are dealt with immediately and directly by trained poll workers on Election Day. After Election Day, local election officials verify same day registrants' residences by sending them a non-forwardable postcard. Local election officials also ensure that no one has voted twice, which is a felony; if they find that anyone has, the case is immediately forwarded to the county attorney. I believe that there have only been two such cases prosecuted in Minnesota in recent years.

When Minnesota introduced Election Day Registration in the 1970s a new era in voting rights opened in the United States. By making it possible for every eligible citizen to register on Election Day the problem of voter registrations procedures becoming barriers to voting was addressed in a simple yet fundamental way. With over thirty years of election experience using EDR in Minnesota we know that this approach increases turn out of eligible voters by at least 10% while simultaneously improving the integrity and accuracy of the voter registration process. Our system also avoids the most dangerous frustration facing voters—when eligible citizens take

time away from work and other responsibilities to vote and are turned away without being able to cast a ballot that they have any faith will really be counted. Congress should make Election Day Registration standard practice around the country so that no computer error will ever again result in the denial of any eligible citizen's constitutional right to vote.

Ms. LOFGREN. I see that our colleague Mr. Ellison has joined us. And by unanimous consent we will invite him to participate with us. And we are now joined by our Ranking Member, Mr. McCarthy, time for Mr. Moore's testimony. Proceed, please.

STATEMENT OF HON. TIM MOORE

Mr. MOORE. Thank you, Madam Chair, Ranking Member McCarthy, members of the committee. It is really an honor to be here today speaking before this committee both as a citizen and as a member of the North Carolina State House of Representatives. I am here today because our General Assembly recently this past session enacted same-day voter registration in North Carolina through the enactment of House Bill 91. I opposed that measure in the General Assembly because I felt like there were real concerns with a number of issues to protect against voter fraud, and that we failed to fully address that.

Support for same-day voter registration is, of course, based upon the noble intention of increasing voter turnout. But I don't think any member of this committee or this Congress would also doubt that we also have to be equally vigilant not only about voter turnout, but accuracy and legitimacy in the elections to prevent against fraud.

This process first started actually—or this past week, the elections which were held for a lot of municipal elections is the first time same-day voter registration has occurred in North Carolina. The data I have seen thus far indicates that it has not had an impact on the voter turnout. So I guess that remains to be seen, and the canvass has yet to occur, and that will be fleshed out in the coming weeks. But at least tentatively at this point, the data does not show there was an increase in turnout, at least in North Carolina, in the municipal elections.

But same-day voter registration does have the very real potential to decrease confidence in the elections, particularly if there are increases in the amount of fraud. And I will point out two examples to kind of show it.

I suppose if the only goal was to increase voter turnout, we could take a cardboard box, cut a hole in it, and put it on the street corner and leave it there for a couple days and come back and pick it up. You would probably have an increase in voting in that precinct. But it is obvious what the concerns for fraud would be. Someone could stuff the ballot box or anything. There are other ludicrous examples where you could require fingerprint ID or something like that. The point is there has to be a balance struck between voter security and between ease of voting.

It is my concern that same-day registration at the State level, and particularly with the Federal bill, tips that balance dangerously away from ensuring accuracy and fairness of the voting.

The bill that is before Congress is similar in some ways, but different in one. One thing I would stress, one difference I would stress, is the fact that in North Carolina the ballots are provisional ballots. They are retrievable ballots. So if there is a challenge to fraud it can be retrieved. But the issue of voter I.D. really dovetails with this, because if we are going to increase the opportunity for voter registration, and, at the same time, decrease the period of

time that the Board of Elections would have to ensure the accuracy and verify the eligibility of the voter, we need to find ways to enhance the security component.

I have supported, or I ran an amendment in North Carolina to our bill to add photo I.D. That bill did fail along partisan lines, unfortunately. But I would encourage Congress, if you pass this, that you implement at least a photo I.D. component. Because the types of I.D. that HAVA sets forth right now are things that are very easy to fabricate, such as a power bill, and very difficult to verify.

The allegations as to past fraud, I think in some ways those may be understated. History is full of examples of where fraudulent conduct has affected elections. And any time we are going to expand the opportunity for that to occur, we need to put in place those protections.

Additionally, North Carolina, like many other States across the Nation, has seen a huge growth in population, some of those being illegal foreign nationals. In fact, some estimates in our State estimate that as many as a half million members of our new population are folks who are here illegally. By getting rid of the period of time that the Board of Elections has to verify the eligibility, we increase the opportunity that we could have those who aren't even citizens voting. So again, I think the photo I.D. component would be very important.

We did at the State level find some examples of voter fraud that were discussed on the floor. One where a person went to vote, or went to vote on election day, and then discovered someone had voted in their place on the early day. They were disenfranchised. There were several examples of where dogs had registered to vote. I think one dog even got some votes. I don't think they voted. But it does appear that there is an issue and that there has to be a way to strike the balance.

And in sum, I will say this. I do think that this also is a State issue as to election administration. I am all for finding ways to increase voter turnout and participation. One thing that I would recommend Congress look at doing is finding ways to ensure that the ballots of our military personnel who are overseas are counted. I am aware there are some problems with some logistical issues getting those back and forth. I would hope Congress would look at ways to address that. But I do appreciate your time, Madam Chair, and members of the committee.

Ms. LOFGREN. Thank you very much, Mr. Moore.

[The statement of Mr. Moore follows:]

TESTIMONY of REPRESENTATIVE TIM MOORE
NORTH CAROLINA HOUSE of REPRESENTATIVES

COMMITTEE on HOUSE ADMINISTRATION
U.S. HOUSE of REPRESENTATIVES
WASHINGTON, D.C.

On House Bill 2457 To amend the National Voter Registration Act of 1993 to require States to permit individuals to register to vote in an election for Federal office on the date of the election.

FRIDAY, NOVEMBER 9, 2007

Thank you, Madam Chair and members of the committee for allowing me to offer my perspective on House Bill 2457 and *same-day voter registration.* As a US citizen, it is a great honor to offer my observations before this body. As a former co-chair of the North Carolina House Committee on Election Law and Campaign Finance Reform it was within my capacity as a state representative serving Cleveland County, NC to offer a minority party opinion on same day voter registration.

Our General Assembly passed legislation creating same-day voter registration this past legislative session with the enactment of House Bill 91. I opposed the measure in our legislature and offered reasonable amendments to this legislation, and although the bill passed, I remain opposed to same-day voter registration, even if it is based on the best of intentions.

Support for same-day voter registration is based on the very noble intention of increasing participation by more of our citizens in the very serious civic responsibility of voting in fair and free elections, but I don't think any member of this committee or this Congress would disagree that the issue of voter confidence is as important as voter participation.

Whether or not same-day voter registration actually increases overall voter participation is still disputed, but most would agree that voter confidence in a fair, free and honest election process would certainly increase overall voter participation.

While easing the enrollment of new voters might increase overall participation, same-day voter registration, is certainly putting the cart before the horse.

Same-day voter registration has the real potential to decrease confidence in the integrity of the electoral process, and in turn, may actually decrease the level of confidence in our respective legislative bodies.

If our goal is to simply increase turnout, I suppose we could place a cardboard box on every street corner for a couple of days and invite everyone to simply drop off a

ballot at their convenience. I suspect we might see a 400 percent increase in voter participation right away, as this would certainly make it easier to vote and probably increase participation, but concern about voter fraud would be more than evident.

On the other hand, if we were obsessed only about the integrity of the election, I suppose we might go to the ridiculous extreme of requiring a DNA sample before voting, or require a home visit by election officials and five sworn witnesses to assure voters are residents of the district where they cast a ballot.

Such absurd examples show there must be a balance between insuring reasonable confidence in the election process and ease of voting. It is my assessment as a state legislator that same-day voter registration in North Carolina tips the balance in a dangerous way, inviting fraud and potentially lowering expectations and confidence in elections, and in turn, confidence in those who are duly elected.

As the committee considers this bill, I want to reiterate my objections to similar legislation enacted in North Carolina. North Carolina's House Bill 91 permits citizens to register at "one-stop" voting sites operating to facilitate "no-excuse early voting," from the third Thursday before an election until the Saturday immediately prior to Election Day.

Before House Bill 91 became law, voters were required to register at least 25 days before Election Day. The time between registration and Election Day afforded the local Elections Board enough time to verify the physical address and eligibility of newly registered voters. Without this time there is concern that Boards cannot fully ensure eligibility. House Bill 91 requires minimal proof of ID, but items as simple as a utility bill are easy to fabricate and nearly impossible to verify.

It is true that same-day voter registration ballots are given the status of Provisional Ballots, but in North Carolina, Provisional Ballots are essentially counted as absentee ballots in official counts.

To register and vote at the early voting period on the same day in North Carolina requires less identification than needed for airline travel. How could this measure possibly increase voter confidence, when under this new law, it is harder to cash a check at the grocery store than it is to register and vote?

It is my understanding that a significant number of the ballots of our military citizen's serving overseas, were deemed ineligible because they were not returned to North Carolina in time due to logistical problems with the mail in and out of a war zone. Finding a solution to this problem is one way Congress could improve voter participation and instill greater confidence in the electoral process.

North Carolina is experiencing phenomenal population growth. Some estimates say as many as 450,000 of those are illegal foreign nationals. The same day registration proposals make it more possible for ineligible persons to cast a ballot. It is argued by

some that voter confidence is the primary reason for lower participation, and not the difficulty of voting. Put simply, voters expect their votes to count and for only legitimate ballots to be counted.

For those North Carolinians already registered and presumably verified, our law not only lacks identification requirements for early voters, it also lacks identification requirements for those voting on Election Day.

When it became apparent that our same-day voter registration legislation would pass, I introduced an amendment requiring photo ID for same-day voter registration. It was ultimately defeated along partisan lines and opposed by the Democratic leadership of both Houses of our General Assembly. My intent was to moderate the legislation and to set-up safeguards for the integrity of electoral process.

Before and during debate the state House was shown examples of voter fraud, where registered voters were turned away from the ballot box because records showed they had already voted. This occurred almost certainly because another individual had misrepresented themselves and voted in their place. Because there are no photo ID requirements in place, legitimate voters were already being disenfranchised due to voter fraud.

Even if the number of such examples is only proportionally low, to any such disenfranchised voter, the confidence in the election process is forever tainted with suspicion.

While researching this issue in other states, it appeared more appropriate to require photo identification prior to registration. Without digressing into discussion of photo identification by itself, I feel it is worth mentioning in light of the booming trade of identity theft. It seems more appropriate to increase and not decrease the security component for voting.

It is argued voter fraud is no higher in states with same-day voter registration. But to ignore voter fraud, is to ignore the reality that identity crime remains very difficult to prove.

The anecdotal evidence in North Carolina is, when fraud occurs, rarely is there enough evidence to prosecute, and with voter fraud there is no way to invalidate fraudulent votes.

I believe that the disenfranchised citizens who have their votes stolen, due to our same-day voter registration will take from that experience a perception that the people elected to represent them and the electoral system are illegitimate.

Finally, I would like to stress to the committee that despite my worries about what I have likened to a dangerous experiment with same-day voter registration in North Carolina, the issue addressed by House bill 2457 does still rightly belong to the States.

In this case it would be best not to enact H.R. 2457. This appears to be one example where a state's interest in regulating the administrative functions of voter registration would best protect the most basic of civil rights. As a state legislator who has demonstrated a commitment to improving the actual and the perceived integrity of North Carolina's election process, we all can benefit from the differing experiences presented by forty nine other examples there for all of us to discover what works.

With relatively few states enacting same-day voter registration, there should be no rush by Congress to impose such an experiment on every state. With such vast numbers of Americans concerned with confidence in government, securing the right to vote ought to be of higher priority than opening the door wider for those already engaged in actual fraud or where the election process is already perceived as tainted by fraud. Nor should this committee and this House fix what is not broken in those states who have more strident voter registration requirements.

Trusting this committee is concerned with the actual integrity and the perception of legitimacy of American elections, I respectfully ask that you not enact House Bill 2457.

Thank you, Madam Chair and members of the committee for allowing me this opportunity.

Representative Tim Moore
North Carolina House of Representatives
District 111
604 Legislative Office Bldg.
Raleigh, NC 27603
(919) 733-4838
TimM@ncleg.net

Addendum:

(6.) ***History of the Enactment of House Bill 91 - Session Law 2007-253***
2007 General Assembly of North Carolina, Information Services Division - July 20, 2007

(9.) ***Bill Analysis- House Bill 91, Ratified Edition***
William R. Gilkeson, Staff Attorney & Erika Churchill, Research Division
2007 General Assembly of North Carolina - July 12, 2007

(11.) ***Text of House Bill - Session Law 2007-253***
2007 General Assembly of North Carolina, Information Services Division - July 20, 2007

(14.) ***Chapter 162-82 - General Statutes of the State of North Carolina As Prior to Amendment by House Bill 91, Session Law 253***
2007 General Assembly of North Carolina, Information Services Division, *with caveats* - Nov. 8, 2007

House Bill 91 / S.L. 2007-253 (= S195)

2007-2008Session
North Carolina General Assembly

Registration and Voting at One-Stop Sites.

Text	Fiscal Note
Filed [PDF]	-
Edition 1 [PDF]	-
Edition 2 [PDF]	-
Edition 3 [PDF]	-
Edition 4 [PDF]	-
Ratified [PDF]	-
SL2007-253 [PDF]	-

Status: [R] Ch. SL 2007-253 on 07/20/2007

Sponsors

Primary: Ross; Holliman; Parmon; Tolson;

Co: Adams; Alexander; Allen; Bell; Blue; Bordsen; Bryant; Carney; Church; Coates; Coleman; Cunningham; Dickson; Earle; England; Faison; Farmer-Butterfield; Fisher; Gibson; Glazier; Goforth; Goodwin; Haire; Hall; J. Harrell; Harrison; Insko; Jeffus; Jones; Love; Lucas; Luebke; Martin; McLawhorn; Michaux; Mobley; Owens; Pierce; Rapp; Saunders; Spear; Sutton; Tarleton; Tucker; Underhill; Wainwright; E. Warren; R. Warren; Weiss; Wilkins; Womble; Wray; Yongue;

Attributes: Public; Text has changed;

Vote History

Date	Subject	RCS #	Aye	No	N/V	Exc. Abs.	Exc. Vote	Total	Result
03/28/2007 4:25PM	A1 Moore\Second Reading	[H] - 98	51	62	2	5	0	113	FAILED
03/28/2007 4:33PM	A2 Boylan\Second Reading	[H] - 99	52	61	2	5	0	113	FAILED
03/28/2007 4:41PM	Second Reading	[H] - 100	68	45	2	5	0	113	PASSED
03/29/2007 2:26PM	A3 Blust\Third Reading	[H] - 106	48	63	2	7	0	111	FAILED
03/29/2007 2:53PM	A4 Allred\Third Reading	[H] - 107	48	63	2	7	0	111	FAILED
03/29/2007 2:54PM	Third Reading	[H] - 108	66	45	2	7	0	111	PASSED
06/20/2007 3:40PM	Amendment 1\Motion 1\To Table	[S] - 597	29	19	0	2	0	48	PASSED
06/20/2007 3:49PM	Motion 2\Prev Question	[S] - 598	29	19	0	2	0	48	PASSED
06/20/2007 3:52PM	Amendment 2	[S] - 599	39	9	0	2	0	48	PASSED
06/20/2007 3:52PM	Second Reading	[S] - 600	33	15	0	2	0	48	PASSED
06/26/2007 4:10PM	M11 Not Concur	[H] - 811	74	41	3	2	0	115	PASSED
07/11/2007 3:46PM	C Rpt Adopt	[H] - 900	69	47	1	3	0	116	PASSED
07/11/2007 4:52PM	Conference Rpt\Motion 7\To Adopt	[S] - 780	34	15	0	1	0	49	PASSED

Continued

History Continues

Date	Action

02/07/2007	[H]	Filed
02/08/2007	[H]	Passed 1st Reading
02/08/2007	[H]	Ref To Com On Rules, Calendar, and Operations of the House
02/14/2007	[H]	Withdrawn From Comm
02/14/2007	[H]	Re-ref Com On Election Law and Campaign Finance Reform
03/22/2007	[HA]	Reptd Fav Com Substitute
03/22/2007	[H]	Cal Pursuant Rule 36(b)
03/27/2007	[H]	Placed On Cal For 3/28/2007
03/28/2007	[H]	Amend Failed 1
03/28/2007	[H]	Amend Failed 2
03/28/2007	[H]	Passed 2nd Reading
03/29/2007	[H]	Amend Failed 3
03/29/2007	[H]	Amend Failed 4
03/29/2007	[H]	Passed 3rd Reading
04/02/2007	[S]	Rec From House
04/02/2007	[S]	Ref To Com On Select Committee on Government and Election Reform
06/04/2007	[S]	Reptd Fav Com Substitute
06/04/2007	[SA]	Com Substitute Adopted
06/05/2007	[S]	Withdrawn From Cal
06/05/2007	[S]	Placed On Cal For 6/6/2007
06/06/2007	[S]	Withdrawn From Cal
06/06/2007	[S]	Placed On Cal For 6/12/2007
06/12/2007	[S]	Withdrawn From Cal
06/12/2007	[S]	Placed On Cal For 6/20/2007
06/18/2007	[S]	Withdrawn From Cal
06/18/2007	[S]	Re-ref Com On Select Committee on Government and Election Reform
06/19/2007	[S]	Reptd Fav
06/20/2007	[S]	Amend Tabled 1
06/20/2007	[SA]	Amend Adopted 2
06/20/2007	[S]	Passed 2nd & 3rd Reading
06/20/2007	[S]	Engrossed
06/25/2007	[H]	Rec To Concur S Com Sub
06/25/2007	[H]	Cal Pursuant Rule 36(b)
06/25/2007	[H]	Placed On Cal For 6/26/2007
06/26/2007	[H]	Failed Concur in S Com Sub
06/26/2007	[H]	**Conf Com Appointed**
06/27/2007	[S]	**Conf Com Appointed**
07/10/2007	[S]	Conf Com Reported
07/10/2007	[S]	Placed On Cal For 7/11/2007
07/10/2007	[H]	Conf Com Reported
07/10/2007	[H]	Placed On Cal For 7/11/2007
07/11/2007	[HA]	Conf Report Adopted
07/11/2007	[SA]	Conf Report Adopted
07/12/2007	[H]	Ratified
07/12/2007	[H]	Pres. To Gov. 7/12/2007
07/20/2007	[H]	Signed By Gov. 7/20/2007
07/20/2007	[R]	Ch. SL 2007-253

Note: a bill listed on this website is not law until passed by the House and the Senate, ratified, and, if required, signed by the Governor.

ABBREVIATIONS KEY

- **H** = House Action
- **S** = Senate Action
- **R** = Ratified
- **HF** = Failed in the House
- **SF** = Failed in the Senate
- **HA** = Adopted in the House
- **SA** = Adopted in the Senate

Bill Analysis- House Bill 91, Ratified Edition

William R. Gilkeson, Staff Attorney & Erika Churchill, Research Division
2007 General Assembly of North Carolina - July 12, 2007

SUMMARY: The ratified version of House Bill 91 would create a process to allow individuals to register in person and vote during the early voting period.

[As introduced, this bill was identical to S195, as introduced by Sen. Shaw, which is currently in Senate Select Committee on Government and Election Reform.]

CURRENT LAW: Generally, NC voters may not vote in an election unless they have registered 25 days before election day. G.S. 163-82.6 (c). Current exceptions are:

- For those persons who have become qualified after the deadline by naturalization or restoration to citizenship after serving a felony sentence, they may register on election day only. G.S. 163-82.6.
- For those persons who may register and vote by absentee ballot because of their overseas or military status, they may register at any time prior to the election. Article 21 of Chapter 163.

One-stop absentee voting, popularly called "early voting," begins on the third Thursday before an election and ends the Saturday before the election. One-stop begins six days after the standard close of registration. G.S. 163-227.2

BILL ANALYSIS:

Section 1. Creates a process to allow any person who is qualified to vote to register in person and vote at a one-stop site after the general close of voter registration in G.S. 163-82.6. In order to register and vote, the person would have to do both of the following:

- Complete the standard voter registration form, including the attestation that they are a U.S. citizen and reside at the address given. That attestation is signed under penalty of a Class I felony.
- Provide "proof of residence," which could be one of several valid documents that had the person's name and current residence address: a NC drivers license, a photo I.D. from a government agency, a utility bill, bank statement, paycheck, government check, or other government document. (This is similar to the list of I.D.s that satisfy the Help America Vote Act federal I.D. requirement for certain first-time voters, except that HAVA list allows any valid photo I.D., while the bill allows only a government-issued one. Also, the HAVA photo I.D. does not require a residence address.)

Once registered at the one-stop site, the person is entitled to vote then, or later at another one-stop site. The person will vote a retrievable ballot, just as other one-stop voters.

Within 2 business days after the person has registered at the one-stop site, the board of elections must proceed to verify the person's identity and address. The person's one-stop ballot must be counted unless the board determines that the applicant is not qualified to vote.
A person already registered may update information on that person's voter records at the one-stop site during the one-stop voting period, except that that person cannot change party registration before a partisan primary.

Sections 2 and 3. Make conforming changes.

Section 4. Requires the State Board of Elections to monitor the implementation of the act, and to report to the Joint Legislative Commission on Governmental Operations no later than March 1, 2009, on its findings regarding expanding the process to include same-day registration and voting on election day.

EFFECTIVE DATE: Sections 1 through 3 of the bill become effective with regard to registration and voting in primaries or elections as follows:

- If preclearance under Section 5 of the Voting Rights Act comes before September 1, 2007, they become effective for registration and voting for any primary or election on or after October 9, 2007.
- If preclearance comes during the month of September 2007, they become effective for registration and voting for any primary or election on or after November 6, 2007.
- If preclearance comes on or after October 1, 2007, they become effective for registration and voting in any primary or election held on or after the 60th day after preclearance comes.

The idea is to begin one-stop registration for this year's municipal primaries and elections if preclearance comes soon enough for orderly implementation, but not if the timing of preclearance would cause confusion. The remainder of the act is effective when it becomes law.

BACKGROUND: Eight states allow voter registration on election day. Those states are: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming. (One state, North Dakota, does not have voter registration.) At least some of the states that allow registration on election day also allow it to be done in person during the period after the deadline for mail-in registration and election day. NC would apparently be the first state to allow in-person registration during the early voting period but not on election day.

(Erika Churchill substantially contributed to this summary.)

Text of House Bill - Session Law 2007-253
2007 General Assembly of North Carolina, Information Services Division - July 20, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-253
HOUSE BILL 91

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT ONE-STOP ABSENTEE VOTING SITES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.6A. In-person registration and voting at one-stop sites.**

(a) Who May Register in Person. – In accordance with the provisions in this section, an individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting provided under G.S. 163-227.2. For purposes of this section, a one-stop voting site includes the county board of elections office, if that office is used for one-stop voting.

(b) Both Attestation and Proof of Residence Required. – To register and vote under this section, the person shall do both of the following:

(1) Complete a voter registration form as prescribed in G.S. 163-82.4, including the attestation requirement of G.S. 163-82.4(b) that the person meets each eligibility requirement. Such attestation is signed under penalty of a Class I felony under G.S. 163-275(13); and

(2) Provide proof of residence by presenting any of the following valid documents that show the person's current name and current residence address: a North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in G.S. 163-166.12(a)(2). The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence.

(c) Voting With Retrievable Ballot. – A person who registers under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2 immediately after

registering. If a person declines to vote immediately, the registration shall be processed, and the person may later vote at a one-stop voting site under this section in the same election.

(d) Verification of Registration; Counting of Ballot. – Within two business days of the person's registration under this section, the county board of elections in conjunction with the State Board of Elections shall verify the North Carolina drivers license or Social Security number in accordance with G.S. 163-82.12, update the statewide registration database and search for possible duplicate registrations, and proceed under G.S. 163-82.7 to verify the person's address. The person's vote shall be counted unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter.

(e) Change of Registration at One-Stop Voting Site. – A person who is already registered to vote in the county may update the information in the registration record in accordance with procedures prescribed by the State Board of Elections, but an individual's party affiliation may not be changed during the one-stop voting period before any first or second partisan primary in which the individual is eligible to vote."

SECTION 2. G.S. 163-82.6(c) reads as rewritten:

"(c) Registration Deadlines for an Election. – In order to be valid for an election, except as provided in G.S. 163-82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section."

SECTION 3. G.S. 163-227.2(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this ~~section.~~section and of G.S. 163-82.6A, as applicable."

SECTION 4. The State Board of Elections shall monitor the implementation of this act and determine the feasibility and timetable for expanding same-day registration and voting to all voting places on Election Day. The State Board shall report its findings no later than March 1, 2009, to the Joint Legislative Commission on Governmental Operations of the General Assembly.

SECTION 5. Sections 1, 2, and 3 of this act become effective as follows:

(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2007.

s/ Charlie S. Dannelly
Deputy President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:41 a.m. this 20th day of July, 2007

§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. – The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(b) Signature. – The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for an Election. – In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Election Day. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;
(2) The county director of elections; or
(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but
(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss., 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s., 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 1997-456, s. 27; 1999-426, s. 1(a), (b); 2001-315, s. 1; 2001-319, s. 6(a); 2003-226, s. 4; 2004-127, s. 9(a).

This document (also available in PDF and RTF formats) is not an official document.
Please read the caveats on the main NC Statutes page for more information.

Ms. LOFGREN. And our last witness on this panel is Mr. Albrecht. And we would be pleased to hear from you.

STATEMENT OF NEIL ALBRECHT

Mr. ALBRECHT. Good morning, Madam Chairwoman, and members of the committee.

Ms. LOFGREN. Can you pull the microphone a little bit closer? Maybe it is not on. There is a button you have to—there you go. Thank you.

Mr. ALBRECHT. Good morning, Madam Chairwoman, and members of the committee. Thank you for this opportunity to represent the city of Milwaukee in this discussion. My name is Neil Albrecht, and I am the Deputy Director of the city of Milwaukee Election Commission. My purpose in testifying this morning is to speak to Milwaukee's positive and productive experience administering election day registration, and also to address the allegation that Milwaukee is a voter fraud city, and that election day registration has contributed to a voter fraud problem in the city of Milwaukee.

Nationally, use of the words "voter fraud" have been applied randomly, and are often unsubstantiated. In recent elections in Hawaii, there were allegations of widespread voter fraud when six polling sites did not open on time. In Indiana, problems with new touch-screen voting machines were construed as election fraud. In Utah, where poll workers forgot a step in setting up a voting machine, there were allegations of voter fraud.

It has been our experience in Wisconsin that misrepresentation of these two words is often intentional, and has been successful at intimidating and disillusioning voters.

Voter turnout during the 2004 Presidential election was unprecedented. Beyond any dispute, the city's elections systems were overwhelmed by the sheer volume of preelection registration and absentee voting activity. Due to Wisconsin's status as a battleground State, the problems that were experienced attracted significant national attention, as did allegations of widespread voter fraud. After both a State and Federal investigation into the election, there were two voter fraud prosecutions, and neither related to election day registration.

While the act of voter fraud in any election is not acceptable, two prosecutions hardly warranted the labeling of Milwaukee as a voter fraud city. Fortunately, allegations of voter fraud did not overshadow Milwaukee's recordbreaking turnout in the 2004 Presidential election; 277,535 ballots were cast, representing 70 percent of the city's 307,000 registered voters. Nationwide, Wisconsin ranked second in voter turnout, just below our neighboring State of Minnesota.

There were many factors that contributed to Milwaukee's success in motivating voter turnout, including the city's longstanding history of engagement in political processes. Unquestionably, the most significant contributing factor was the availability of election day registration. Of the nearly 278,000 voters, over 80,000, or 29 percent, registered to vote on election day.

I think it is time to get bifocals. In Milwaukee, voting is a citywide event that crosses into every neighborhood, community, gender, age, and economic class. Despite the overzealous and inac-

curate allegations of Milwaukee being a voter fraud city, voting as a right is woven deeply and throughout the very cultural diverse fabric of Milwaukee. Election day registration has consistently encouraged voter participation.

In Wisconsin, in the most recent gubernatorial election nearly 35,000 of the 172,000 voters who voted on election day were election day registration. That number represents one in five voters.

Offering election day registration does require an additional administrative investment on the part of any municipality. Voting rooms are set up to allow separate areas for election day registration so as to avoid long lines and delaying the issuance of ballots to registered voters. In Milwaukee, we provide trained registrars at every polling site. At our 208 sites, this represents an investment of 320 additional election workers, a minimal investment considering the outcome: civic engagement and voter participation.

The value of election day registration exceeds increased voter participation. It is also evidenced by the demographics of the election day registrants themselves: young people, apartment occupants, people who are more transient, and persons from the lower socioeconomic classes.

During the 2006 gubernatorial election I received a call from the chief inspector at Riverside High School, a voting site close to the UW-Milwaukee campus, notifying us that they were running out of election day registration applications. On delivering additional applications to the school, I found a registration line that spanned approximately four blocks long. Nearly every person in that line was a college student. Voters from the neighborhood and school faculty distributed bottled water and power bars to the people standing in line. It is difficult for me to imagine turning away young people from the polls because they did not register 15 or even 30 days prior to the election.

In Wisconsin, State law clearly identifies that election day registrants must be prepared to provide a proof of residence that includes their name and registration address. The legislature has approved a comprehensive array of acceptable documents similar to HAVA that can include student identification cards, leases, property tax bill, government-issued identification, and utility bills. An elector may also produce a corroborating witness who will certify their identity and address.

Ms. LOFGREN. Mr. Albrecht, could you try and summarize? We are a little bit over. And we do have a separate panel.

Mr. ALBRECHT. I am sorry.

Ms. LOFGREN. That is all right. We are giving you extra time because you didn't have your bifocals.

Mr. ALBRECHT. I know.

Ms. LOFGREN. But we do need to, if you could summarize and conclude, that would be great.

Mr. ALBRECHT. All right. Elections should be about inspiring and engaging people, particularly young people or people that have been disenfranchised by the political process. In Wisconsin, we do not believe in setting up barriers that prevent students from experiencing the power of casting their first ballot or further disenfranchise the more transient residents of the city or the poor or the elderly with cumbersome I.D. requirements.

Ms. LOFGREN. Thank you very much.
[The statement of Mr. Albrecht follows:]

TESTIMONY

Good morning. My name is Neil Albrecht and I am the Deputy Director of the City of Milwaukee Election Commission. My purpose in testifying this morning is

- To speak to Milwaukee's positive and productive experience administering Election Day registration.
- And to address the allegation that Milwaukee is a "voter fraud" city and that Election Day registration has contributed to a "voter fraud" problem.

Nationally, use of the words "voter fraud" have been applied randomly and have been most often unsubstantiated. In a recent election in Hawaii, there were allegations of widespread voter fraud when six polling sites did not open on time. In Indiana, problems with new touch-screen voting machines were construed as election fraud. In Utah, where poll workers forgot a step in setting up a voting machine, there were allegations of voter fraud. The misrepresentation of these two words is often intentional and has been successful at intimidating and disillusioning voters.

Voter turn-out in Milwaukee during the 2004 presidential election was unprecedented. Beyond any dispute, the city's election systems were overwhelmed by the sheer volume of pre-election registrations and absentee voting activity. Due to Wisconsin's status as a "battleground state," the problems that were experienced attracted significant national attention, as did allegations of widespread voter fraud.

After both a state and federal investigation into the election, there were two voter fraud prosecutions and neither related to Election Day registration. While the act of voter fraud in any election is not acceptable, two prosecutions hardly warranted the labeling of Milwaukee as a voter fraud city.

Fortunately, allegations of voter fraud did not overshadow Milwaukee's record-breaking turn-out in the 2004 presidential election. 277,535 ballots were cast representing 70% of the city's 397,000 registered voters. Nationwide, Wisconsin ranked second for voter turn-out, just below our neighboring state of Minnesota. There were many factors that contributed to Milwaukee's success in motivating voter turn out, including the City's longstanding history of engagement in political processes. Unquestionably, the most significant contributing factor was the availability of Election Day registration. Of the nearly 278,000 voters, over 80,000 – or 29% - registered to vote on Election Day.

Voting is a citywide event that crosses into every neighborhood, community, gender, age and economic class. Despite the overzealous and inaccurate allegations of Milwaukee being a voter fraud city, voting as a right is woven deeply and throughout the cultural fabric of Milwaukee. Election Day registration has consistently encouraged voter participation. In Wisconsin's most recent gubernatorial race, nearly 35,000 of the 172,000 voters registered to vote on Election Day. That number represents one in five voters.

Offering Election Day registration does require an additional administrative investment on the part of any municipality. Voting rooms are set up to allow separate areas for Election Day registration so as to avoid long lines and delaying the issuance of ballots to registered voters. In Milwaukee, we provide trained registrars at every polling site. At our 208 sites, this represents an investment of around 320 additional election workers… a nominal investment considering the outcome: civic engagement and voter participation.

The value of Election Day registration exceeds increased voter participation. It is also evidenced by the demographics of the Election Day registrants: young people, apartment occupants – or people more transient, and persons from the lower socio-economic classes.

During the 2006 gubernatorial election, I received a call from the Chief Inspector at Riverside High School, a voting site close to the UW-Milwaukee campus, notifying us that they were running out of Election Day registration applications. On delivering additional applications to the school, I found a registration line that spanned approximately four blocks long. Nearly every person in that line was a college student. Voters from the neighborhood and school faculty distributed bottled water and power bars to the people standing in line. It is difficult for me to imagine turning away young people from the polls because they did not register 15 or even 30 days prior to an election.

In Wisconsin, State law clearly identifies that Election Day registrants must be prepared to provide a proof of residence that includes their name and registration address. The legislature has approved a comprehensive array of acceptable documents that can include student identification cards, leases, property tax bills, government issued identification, and utility bills. An elector may also produce a corroborating witness who will certify their identity and address. The level of cooperation from voters in producing this document – and from election workers in securing the document – is profound. Election Day registration is a process that recognizes the hardships often presented by identification requirements but also ensures public confidence in the integrity of the election

Finally, while administering Election Day registration does require an additional investment, there is tremendous effort saved though minimal provisional ballot voting. In the 2006 gubernatorial election, there were only 40 provisional ballots issued to voters. It is distressing to report that of that 40, only three contacted the Election Commission after the election so that their votes could be included in the election results. While offering at least an option to voters, provisional ballots do little to address many of the barriers to voting that are become increasingly institutionalized on a national level.

It has become well-evidenced that, as a nation, we must continue to invest in our election systems. Voter-related legislation should be directed toward expanding what is good and public enthusiasm and confidence the voting is good, as is preventing barriers that keep members of the public from the polls. Let us be certain that we have not or do not compromise the historic integrity of voting and citizen participation in elections by responding to sensationalized anecdotal information about voter fraud.

Elections should be about inspiring and engaging people, particularly young people or people that have been disenfranchised by the political process, to participate in democracy. In Wisconsin, we do not believe in setting up barriers that prevent students from experiencing the power of casting their first ballot, or further disenfranchise the more transient residents of the City - or the poor and elderly - with cumbersome and restrictive ID requirements, or people with perpetuate a fear of voting among people with felony convictions that have completed probation or parole. Wisconsin's election experience, as one of only eight states in the nation offering Election Day registration, has demonstrated that Election Day registration is a critical and essential tool to encouraging voter participation and does <u>not</u> contribute to voter fraud. My hope is that this philosophical belief in encouraging voter participation – not discouraging – is embraced beyond the current list of eight states and is met instead with national enthusiasm.

Ms. LOFGREN. And thanks to all of our witnesses.

Now is the time when we can proceed to questioning for 5 minutes each. And I will turn first to Susan Davis, our colleague on the committee from California.

Mrs. DAVIS of California. Thank you, Madam Chair. And thank you to all of you for being here. I was actually going to ask a question that in some ways, Mr. Albrecht, I think you answered partly, but I think that there are in some ways—I mean there are so many things that need to be done in communities to outreach for registration.

I am guessing, and perhaps you can clarify for me, that in some ways same-day registration is sort of a last attempt effort in many ways. But that would suggest that somehow we are not doing everything that we should do beforehand. But I also am very aware of your testimony that largely we are talking about college students, perhaps, and others who have moved who are more transient.

Mr. Ritchie, is that your assessment as well? I mean is there something that we should be doing more prior to—or in those areas where we have same-day registration, now is it considered not a last resort necessarily and it is just the way it is?

Mr. RITCHIE. Madam Chair, Representative Davis, Minnesota, I think, is similar to Wisconsin in that on large election years, presidential years, it can be 25 percent of our voters. So this is for us, it is a full spectrum; it is old, young, it is all kinds of people. It does represent approximately 80 percent of those people who are changing their address, so they are prior registered, they have been in the system, they have moved. And the other 20 percent have just come of age, just moved to the state, or were just recently motivated because a candidate or an issue caught their attention. So I think it is a wide range. But what we see is that for young voters, it is often of greater benefit to young voters than to others.

But I think your question gets to an issue that we are addressing in Minnesota right now, which is how do we get more people into the system earlier? And there are so many benefits to that. As an elected official, of course, we are buying, you know, voter lists, that kind of thing for door knocking, for registration purposes, for direct mail. And the more people that are registered before, the better are the lists. So that is one advantage.

The second is that Secretaries of State offices and other organizations like League of Women Voters are distributing information about where to vote, about candidate information, about what is needed. And so the better, the more people registered the better the information is shared.

And then finally, it is certainly true that getting people to feel they are part of the process somehow is going to have a positive overall benefit. We don't think of it as necessarily sort of a last-ditch effort, because so many of our Minnesotans use this opportunity. But it certainly is true that we want to do everything in our power to get more people registered before. And we have some specific proposals to begin using U.S. Postal Service data on change of address, being more directly tied into our other State systems that are requiring citizenship identification. And I would be happy

to provide you with further information about that after I go back to my office.

Mrs. DAVIS of California. Yeah. In terms of your situation, are you voting with machines or are you—what is the method of voting?

Mr. RITCHIE. Chairwoman Lofgren, Representative Davis, Minnesota only votes on paper, paper ballots. They are counted by optical scan equipment. And we have HAVA-compatible equipment that assists voters in marking their paper ballots, and then those are then used in the optical scan system. And frankly, it is the fact that we vote on paper that we have same-day registration, so everyone is welcome, and we do post-election random audits. Those are the three pillars of our voter confidence.

Mrs. DAVIS of California. Can you help me understand if in fact you have a situation where somebody may be in the area but it is not necessarily their precinct, or I am thinking even in terms of, you know, if they are voting on some county propositions versus city propositions, how do you deal with that, then, if in fact they are to show up in the wrong area? Are they sent to another area or are they——

Mr. RITCHIE. Chairwoman Lofgren, Representative Davis, it is a felony to vote outside of your precinct in the State of Minnesota, so we do not permit or allow this. We instruct people where they need to go. But we are looking closely at the experience in Colorado, which has been really in the forefront of looking at some county-wide voter registration systems where you could go to near your workplace or your school.

So right now in Minnesota we don't have the option of voting outside of our precinct. But we are looking how other States are doing this, and we think there is something there.

Mrs. DAVIS of California. Mr. Albrecht or Mr. Moore, are you also voting on paper in Wisconsin?

Mr. ALBRECHT. Identical systems. Paper ballots. And then we also have the HAVA-mandated equipment for a person with a disability to mark their ballot.

Ms. LOFGREN. The gentlelady's time has expired. We will grant an additional 30 seconds for Mr. Moore to answer and then we will go to Mr. McCarthy.

Mr. MOORE. In North Carolina we have both forms. And one additional concern in our State on the same-day voter registration, our early voting folks actually are voting in places other than their poll site. A county will set up one, maybe a couple facilities throughout that county. And one of the concerns on the identification component is that they may be in a part of the county which they do not reside, and so no one there would know who they are. And that was one thing we actually raised at the State level.

Ms. LOFGREN. We now recognize the Ranking Member of the committee, the gentleman from California, Mr. McCarthy.

Mr. MCCARTHY. Thank you, Madam Chair. Just a quick housekeeping—I have a couple reports that are relevant today, and just ask unanimous consent they get entered in the record.

Ms. LOFGREN. Without objection.

Mr. MCCARTHY. Thank you very much.

[The information follows:]

DIVISION OF THE HUMANITIES AND SOCIAL SCIENCES
CALIFORNIA INSTITUTE OF TECHNOLOGY
PASADENA, CALIFORNIA 91125

THE EFFECT OF VOTER IDENTIFICATION LAWS ON TURNOUT

R. Michael Alvarez
California Institute of Technology

Delia Bailey
Washington University in St. Louis

Jonathan N. Katz
California Institute of Technology

SOCIAL SCIENCE WORKING PAPER 1267

October, 2007

The Effect of Voter Identification Laws on Turnout*

R. Michael Alvarez Delia Bailey Jonathan N. Katz

Abstract

Since the passage of he "Help America Vote Act" in 2002, nearly half of the states have adopted a variety of new identification requirements for voter registration and participation by the 2006 general election. There has been little analysis of whether these requirements reduce voter participation, especially among certain classes of voters. In this paper we document the effect of voter identification requirements on registered voters as they were imposed in states in the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections. Looking first at trends in the aggregate data, we find no evidence that voter identification requirements reduce participation. Using individual-level data from the Current Population Survey across these elections, however, we find that the strictest forms of voter identification requirements — combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the identification card, as well as requirements to show picture identification — have a negative impact on the participation of registered voters relative to the weakest requirement, stating one's name. We also find find evidence that the stricter voter identification requirements depress turnout to a greater extent for less educated and lower income populations, but no racial differences.

1. INTRODUCTION

That election rules and procedures have been used historically to deny the right to vote to potential participants in democracies is no surprise to any student of elections.

*Previous versions of this paper were presented at the 2007 Summer Methods Meeting, The Society for Political Methodology, Pennsylvania State University, and at the 2007 Annual Meeting of the American Political Science Association, Chicago, Illinois. We thank Shigeo Hirano and Thad Hall, who provided comments at each conference respectively, as well as conference participants. We also thank Andrew Gelman for helpful conversations. We thank the Carnegie Corporation of New York and the John S. and James L. Knight Foundation for their support of our research through grants to the Caltech/MIT Voting Technology Project. The analysis presented here, and the interpretations of our analysis, are those of the authors and not of the Caltech/MIT Voting Technology Project, nor the foundations supporting this research. Please note that Katz has served as an expert witness in two lawsuits involving voter identification requirements, however the research presented here was neither funded by any interested party to those lawsuits nor discussed in court testimony.

There has been a great deal of research showing how election rules and procedures have systematically denied suffrage to women, racial and ethnic minorities, and other groups, especially in the United States (see Kousser 1974; Keyssar 2001 for summaries and analysis). Another line of research on voter participation in the United States has looked at the modern period, and focused on possibly less pernicious, but still potentially problematic, procedures and laws that are argued to make voter registration and turnout more onerous: voter registration deadlines, inaccessible registration and voting processes, and the availability of polling places. This line of research was sparked by the seminal work of Wolfinger and Rosenstone (1978) and their research has been followed by a vast array of studies that mainly focus on the effects of registration laws on voter participation (see Highton 2004 for summaries), though recent research has begun to look directly at how aspects of the voting experience, like the availability of voting machines, might affect participation (e.g., Highton 2006, Mebane 2005).

In recent years, especially in the wake of the disputed 2000 presidential election, there has been much debate about imposing what some see as important safeguards of electoral integrity, but what others see as additional barriers to participation — new requirements for voter identification. The debates about voter identification became central during the legislative maneuvering prior to the passage of the Help America Vote Act (2002), and since passage of HAVA, these arguments have been front and center in the public discussion of election reform. HAVA addressed one aspect of the voter identification debate, as HAVA's Section 303 required that all new registrants must show an identification or provide proof of identification, either with their by-mail application or the first time they show up to vote.

But since the passage of HAVA, many states have pushed for additional identification requirements, in particular, requiring that all voters show identification before they are allowed to obtain and cast a ballot in any election. The justification for the expansion of these identification requirements is to prevent election fraud and to thus improve the integrity of the electoral process, despite some who argue that there is scant evidence that without identification requirements there are significant levels of double voting or voting by non-eligible individuals (Fund 2004; Overton 2006a). As of just prior to the 2006 general election, roughly half of the states required some form of voter identification from all voters (Electionline 2006).

There is little research on the effect that voter identification requirements, of any form, have on the participation of registered voters. Thus, while both HAVA and nearly half of the states have implemented a variety of new identification requirements for voter registration and participation by the 2006 general election, there is little understanding about whether these requirements reduce voter participation, and whether they reduce the participation rates of certain classes of voters. This is the central task of our paper: documenting the effect of voter identification requirements on registered voters as they were imposed in states in the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections. Using four election cycles and individual responses to the Current Population Surveys allows us to isolate the effect of voter identification requirements on

voter turnout. The state-level panel data allows us to control for changes in the electoral environment both across states and across time — which we could not do with only one year of data — and the individual-level data allows us to answer questions about whether certain subpopulations are disproportionately effected by these regulations — which is not possible using aggregate data.[1]

Looking first at trends in the aggregate data, there is no evidence that voter identification requirements reduce participation. Once we turn to the individual-level data, however, we find that the strictest forms of voter identification requirements — combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the identification card, as well as requirements to show picture identification — have a negative impact on the participation of registered voters relative to the weakest requirement, stating one's name. In general, there does not seem to be a discriminatory impact of the requirements on some subpopulations of registered voters, in particular minority registered voters; however we do find evidence that the stricter voter identification requirements do depress turnout to a greater extent for less educated and lower income populations. In the next section we discuss the substantive problem of voter identification requirements in more detail, and the relevant research. We then turn to a discussion of our methodology, the data we use (the 2000-2006 Current Population Survey Voter Supplements, from the U.S. Census Bureau), and our results. Our paper concludes with a discussion of the implications of our work, and with our suggestions for future research.

2. IDENTIFICATION REQUIREMENTS AND VOTER PARTICIPATION

Despite much attention in the popular literature, the impact of voter identification requirements on participation in the United States has, to-date, received little academic attention.[2] For example, in 2005 the Commission on Federal Election Reform, after months of hearings and deliberations, released a report recommending that all voters present photographic identification before they could cast their ballot. But, writing in the *Michigan Law Review*, Spencer Overton (a member of the Commission, though a member who dissented from the voter photographic identification requirement recommendation) noted that there was little research on either the basic rationale for voter photo identification requirements (reducing election fraud) or on the effect of these requirements on voter participation: "Rather than continuing to rely on unsubstantiated factual assumptions, election law scholars and policy-makers should look to empirical data to weight the costs and benefits of various types of election regulations" (Overton

[1]For methodological specifics and details about the analysis, please see Alvarez, Bailey and Katz (2007).

[2]Recently there has been some controversy regarding a study that the U.S. Election Assistance Commission sponsored regarding voter identification laws, including a study of the effects of voter identification laws on voter participation. We discuss the specifics of the latter study below, and later we compare our results to theirs. Additional information regarding the EAC's voter identification study can be found at http://www.eac.gov/eac_voter_id_fraud.htm.

2006b, 681).

Unfortunately, few scholars have so far answered Overton's call for research in this area. We are aware of only a handful of recent studies on this subject. One group of scholars has looked recently at the implementation of voter identification laws, using New Mexico in 2006 as their laboratory (Atkeson et al. 2007; Alvarez, Atkeson and Hall 2007). Despite much debate in New Mexico, in 2006 the voter identification law there allowed a broad range of methods of identifying voters, including a simple written or verbal statement of the voter's basic identifying information (Atkeson et al. 2007). But as these studies have shown, how this was implemented in polling places throughout the state in the 2006 general election varied considerably, and these studies provide evidence that Hispanics were more likely to provide some form of identification than non-Hispanics (Atkeson et al. 2007).

Other scholars have asked whether minority voters are less likely to possess potential forms of identification, than non-minority voters. Barreto, Nuño, and Sanchez (2007) utilize exit polls from the 2006 elections in California, New Mexico, and Washington — all states with signature requirements — to ask voters whether they would be able to provide several different forms of identification, such as a birth certificate or recent bank statement, if required. The study finds that "controlling for age, income, and education, ... immigrant and minority voters are significantly less likely to be able to provide multiple forms of identification" (Barreto, Nuño, and Sanchez 2007, 1).

Another recent study is Lott's analysis of county-level data, for general and primary elections, from 1996 through 2004. His analysis of the aggregated data does not find that voter photo identification requirements in place during this period decreased voter participation rates, noting that "it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections" (Lott 2006, 11).

In a different analysis — more like the one we develop and focus on below — Vercellotti and Anderson (2006) analyze the 2004 Current Population Survey's (CPS) Voter Supplement to study the effect of voter identification requirements in the 2004 presidential election. Vercellotti and Anderson study both aggregate and individual-level data, and reach a number of conclusions that differ significantly from Lott's analysis. Vercellotti and Anderson find in their aggregate-level analysis that some forms of identification requirements (signature matches and non-photo identification provision) did reduce voter participation, and that in their individual-level analysis of the CPS survey data they found that the deleterious effects of identification requirements were more substantial for non-whites than for whites. Their study, however, is methodologically flawed.

Our study is similar to Vercellotti and Anderson's in two ways: first, we employ the same basic data source as they did (the Census CPS Voter Supplement data), and second, we employ a similar theoretical framework. We use the CPS Voter Supplement data for the same reasons as Vercellotti and Anderson: these survey data provide a relatively large sample of the American voting population, sufficiently large so that we can attempt to estimate the effects of voter identification requirements for subpopulations

of the electorate (racial and ethnic minorities), and so that we can get variation in the requirements themselves across states. Furthermore, the CPS Voter Supplement data are about as close to a canonical dataset as political scientists have; most of the important studies of political participation, going back to Wolfinger and Rosenstone's seminal contribution (1978) have used the CPS data.[3] But unlike Vercellotti and Anderson's study, we use a much broader array of CPS Voter Supplement data, from four federal elections, 2000, 2002, 2004, and 2006. By employing four federal elections instead of the single election that Vercellotti and Anderson used we are able to correctly estimate the causal effect of voter identification requirements by utilizing the differences between states that changed their requirements and those that did not. Also with much larger sample sizes we can obtain a much more precise estimate of the effects of voter identification requirements on participation.

In another recent analysis, Mycoff, Wagner, and Wilson (2007) utilize the 2000, 2002, 2004, and 2006 American National Election Studies (NES) to measure the effect of voter identification requirements on turnout in federal elections. Mycoff, Wagner, and Wilson examine both aggregate and individual-level data, and suggest, like Lott, that voter identification requirements have no effect on turnout. Although the authors utilize data from the same four recent federal elections as we do, they analyze each year separately, and in doing so, fail to isolate the causal effect of the institutional change in requirements. Furthermore, as has been noted by others, the CPS data are seen as superior for studying voter turnout, because the NES has much smaller samples and hence much less sample coverage, because the NES has a much lower response rate than the CPS, and the NES post-election interviewing can often run well into December following an election while the CPS is typically completed in November (Highton 2005). Additionally, the overreporting of turnout in the NES is commonly seen as higher than what the CPS routinely reports.[4]

We use the same theoretical premise as the Vercellotti and Anderson study, and the Mycoff, Wagner, and Wilson study, which is the theoretical basis for most work on voter participation: the cost-benefit calculus of voter turnout articulated in early work on rational choice (Downs 1957; Riker and Ordeshook 1968). The key assumptions of this calculus of voter turnout are that voters are rational, that they are aware of the costs

[3]There are, of course, exceptions. Like Lott's study cited in the text, there are other aggregate-level studies of voter participation rates, for example, Knack's (2001) study of the effect of the implementation of election-day voter registration on turnout rates across states. Another prominent exception is the study by Verba, Schlozman and Brady (1995), as they collected their own survey data to study civic engagement and participation. But the CPS Voter Supplement data are provide extensive cross-sectional data, comparable over time, and thus are well-suited to our analysis. The CPS Voter Supplement data to pose some problems for the study of voter turnout, especially misreporting of voter turnout; this is an issue we return to in out conclusion.

[4]The U.S. Census Bureau's official report on the 2000 voter supplement data stated: "In the November 2000 CPS, 111 million of the 203 million people of voting age in the civilian noninstitutional population reported that they voted in the 2000 election. Official counts showed 105.6 million votes cast, a difference of about five million votes (5 percent) between the two sources" (U.S. Census Bureau, 2000, page 11). McDonald estimates the NES voter turnout rate in the 2000 presidential election as 72.7%, with his "VAP-reconciled" turnout rate of 55.2%, an overreporting rate of 17.5% (McDonald 2003; see original data at `http://elections.gmu.edu/NES_Bias.htm`.

and benefits of participating in an election, and they behave according to the relative comparison of the costs and benefits. Thus, if it is too costly for them to participate — if for example the barriers to participation are high relative to the returns, with the barriers being such things as registration requirements, long lines at polling places, inaccessible voting locations, and other similar factors — they will not cast a ballot on election day. Like these previous two studies, we assume that the more restrictive a state's voter identification requirements, the more likely they are to constitute a hurdle for registered voters, and thus that more restrictive voter identification requirements are likely to be associated with a reduction in the likelihood that an individual registered voter turns out to vote.

It is also instructive to think about how this basic calculus of voting works for different categories of voters, as well. For example, the basic question about whether or not eligible citizens with lower levels of educational attainment are less likely to vote because the barriers to participation, even at the margin, are greater for them than for highly educated voters, has received attention in the research literature (see Wolfinger and Rosenstone 1978; Nagler 1991). But instead of focusing only on the interaction between education and potential barriers to the exercise of the franchise, we are interested below in the interaction between race or ethnicity and barriers to the franchise, especially voter identification requirements. We see this latter interaction as important to study because of the potential legal ramifications of finding that the effects of voter identification requirements and differential across racial or ethnic groups (Overton 2006a), not to mention the normative implications if we find racial or ethnic differences in the effects of voter identification requirements on participation.

Thus, our critical hypotheses, which we test below, flow clearly from the theoretical literature on participation, and are closely linked to decades of applied research on the effects of barriers to voting on participation. First, we hypothesize that where states have imposed more restrictive identification requirements for registered voters, their participation rates should be lower, ceteris paribus, than in states which have less restrictive identification requirements for voting. Second, we also hypothesize that these effects of more restrictive voter identification requirements should be stronger for black and Hispanic registered voters than for white eligible voters, ceteris paribus, following arguments that minority voters may be less likely to have appropriate government-issued identification, or that they may be less willing to provide that identification in order to vote (Overton 2006a) Similarly, we hypothesize that the effects of identification requirements on voters with lower levels of education and income will be disproportionately negative.

In the end, while the hypotheses we will test below are similar to those tested by previous scholars, our methodology is much more appropriate for this substantive problem. Our multilevel model combines the approaches of both these previous studies of the 2004 presidential election, but by incorporating data going back to 2000, we are able to better identify and estimate critical parameters in our model, especially the direct effect of voter identification requirements on voter participation, as well as the indirect effects of these requirements on racial minorities, and those on the lower rungs of the socioe-

conomic scale. Thus, we argue that our framework presents an important contribution over earlier work in this area methodologically, and more importantly, allows us to more confidently answer questions about the potential of voter identification requirements to disenfranchise. In subsequent sections we present our methodological argument in more detail.

3. VOTER IDENTIFICATION LAWS IN THE STATES

As a starting point for our analysis, we develop a classification scheme for the different voter identification regimes that exist in the United States. Since the enactment of HAVA, there are eight basic types of requirements to vote *at the polls*. They are in listed in order of increasing stringency:

1. Voter must state his/her name.
2. Voter must sign his/her name in a poll-book.
3. Voter must sign his/her name in a poll-book and it must match a signature on file.
4. Voter is requested to present proof of identification or voter registration card[5]
5. Voter must present proof of identification or voter registration card.[6]
6. Voter must present proof of identification and his/her signature must match the signature on the identification provided.
7. Voter is requested to present photo identification.[7]
8. Voter is required to present photo identification.

Combinations of the above requirements are often in place, such as requiring a voter to both state *and* sign his/her name. In our analysis, cases are coded at the level of requirement that is more stringent. In this example, the case would be coded as a signature requirement. Most states in 2004 required that first-time voters who registered by mail to present identification (per HAVA requirements), but here we are interested in the effect of requirements on all registered voters.

Thus, we want to measure the extent to which voter identification requirements affected voter participation at the polls, but this is a difficult methodological problem for several reasons. First, the requirements are not binary. As is apparent from the listing of the types of regimes, it is not the case that a state either requires identification to vote, or does not. States require many different levels of identification from simply stating one's name to showing a picture identification. This further complicates the question, as we

[5]An affidavit may be signed in lieu of presenting identification and a regular (non-provisional) ballot may still be cast.

[6]The range of acceptable proof of identification ranges across the states, but in addition to a form of government-issued photo identification, other acceptable pieces of identification include utility bills, social security cards, student identification cards, paychecks, and bank statements, as well as hunting and fishing licenses and gun permits.

[7]An affidavit may be signed in lieu of presenting photo identification and a regular (non-provisional) ballot may still be cast.

must determine not just one effect but several potentially incremental effects. Second, states may differ in their implementation of similar requirements. While one state may consider a student identification card or discount club membership card to be valid photo identification, another state may only recognize government-issued photo identification cards. Third, the data we have to answer this question is relatively sparse. That is, since the changes in voter identification requirements have really only started since the passage of HAVA in 2002 and the law we are most interested in — photo identification requirements — was only implemented in 2006, we have only a small amount of information in the available data about how each type of voter identification requirement might affect participation. Finally, identification requirements are not randomly assigned across states. This is a problem if states with historically lower turnout also tend to adopt stricter identification requirements, we will have trouble isolating whether the low level of turnout is due to the identification requirement or to other factors that lead a given state to have lower turnout rates.

Figure 1 presents the geographical distribution of voter identification requirements across states over the period 2000 to 2006.[8] The lightest shade represents the "state name" requirement, while the darkest shade represents the requirement for a photo identification card. In 2000, nine states had the weakest identification requirement, 18 states required a signature to vote, nine states required a matching signature, four states requested an identification card, eight states required an identification card and three states required that the voter's signature match that on the identification card. In 2006, seven states only required voters to state their name at the polls, ten states required a signature, seven states required a matching signature, two optionally required identification, 20 required some form of identification card, three requested a photo identification card and two required that the identification be photo. In Florida, the photo identification allowed ranged from government-issued cards to discount club cards with photos. In Indiana, only government-issued photo identification and student identification from Indiana state universities were accepted. In addition to the differences between states in any particular year, many states strengthened their identification requirements between 2000 and 2006 and only one state weakened their requirements as can be seen by the darkening of the figure.[9]

The change in requirements over time and across states will allow us to identify and estimate the causal impact of the voter identification requirements. That is, we can compare changes in turnout rates in states that altered their requirements to those that did not, and we can attribute any changes to the change in requirements. Figure 1 also brings to light a critical methodological problem of non-random treatment assignment that we believe plagues some of the earlier work that uses single elections. Close examination of

[8]In order to save space only the Continental states are included. Alaska required government-issued identification cards in all elections covered here. Hawaii requested identification in 2000 and 2002, required identification in 2004 and requested photo identification in 2006.

[9]South Carolina is the only state to have reduced its requirements during this time frame. It required both an identification card and a matching signature in 2000 and 2002. In 2004, South Carolina requested photo identification, but in 2006 returned to only requiring some form of identification or a voter registration card.

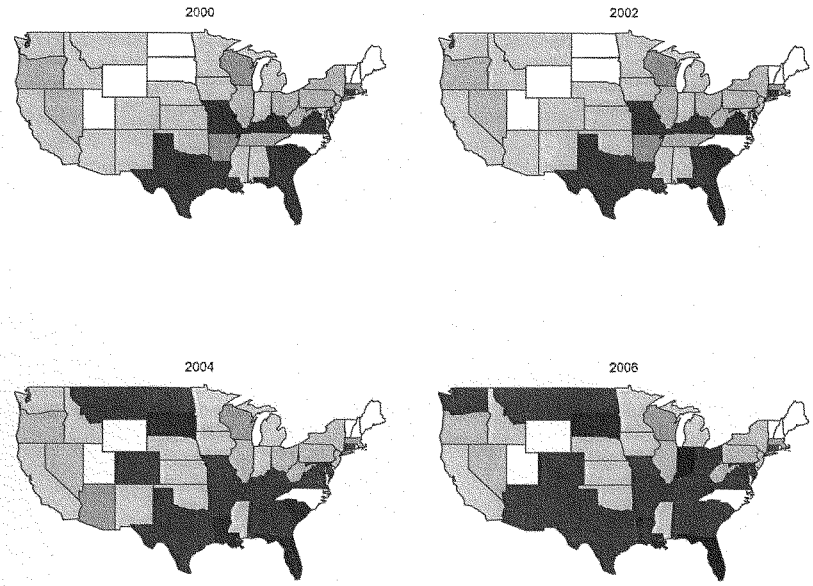


Figure 1: *Voter Identification Laws, 2000-2006. Darker shades correspond to more stringent authentication requirements. In general, identification requirements became stricter between 2000 and 2006.*

the figure shows that states in the Southern and Western regions are more likely than states in the Northeast to have strengthened their voter identification requirements over our study period. As can be seen in Figure 2 turnout in both the South and West is historically lower than that of states in the Northeastern and Midwestern regions. The combination of these two factors in these regions of the United States raises the problem of non-random assignment, an issue that complicates the analysis of the effect of identification requirements on voters.

For example, if we were to look at only 2004, we might conclude that stricter voter identification requirements cause voters to turnout at lower rates because of the correlation between regional turnout rates and likelihood of adopting a more stringent identification requirement. Similarly, if we were to look at one state over time, we might make the same false inferences because of the cyclical turnout rates apparent in the graph.

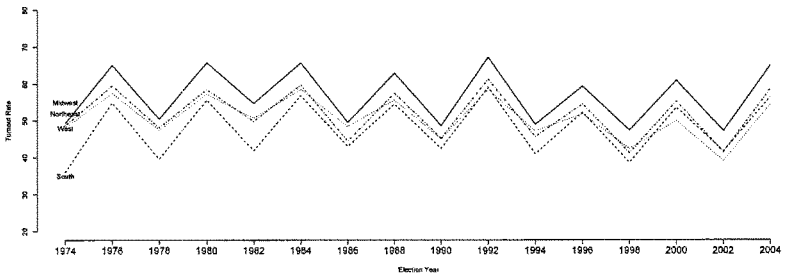


Figure 2: Estimated Turnout of Registered Voters by Region, 1974-2004. Estimates from United States Election Project (`http://elections.gmu.edu/`).

Consider, for example, if we were to compare a state that adopted more stringent requirement in 2002. If we compare 2000 to 2002, we would incorrectly conclude that the decline was caused by the change in identification requirements, but all states saw a drop in turnout because 2002 was a midterm election. Again, this is a critical flaw in earlier studies — by focusing solely on single presidential elections, they are confusing voter identification requirements with other causal factors that cannot be separated in the use of only a single election in their analysis.[10]

Our estimation strategy exploits the temporal and geographic variability in voter identification requirements to sidestep the problem on non-random assignment. This is referred to as a difference-in-differences estimator and our analysis is built on a generalization of this procedure. In particular, we use a multilevel model — also referred to as a random effects model — to assess how voter identification requirements affect participation by registered voters, using data from four years of recent CPS Voter Supplement data. While multilevel models have seen many applications in fields outside of political science, only in relatively recent years have we seen the use of multilevel models in political science applications and journals (e.g., Steenbergen and Jones 2002; Raudenbush and Bryk 2002; Western 1998).[11] The multilevel model allows us to control for the constant factors that cause turnout rates to vary within states and for the cyclical changes in turnout over time.

In addition to using a much richer dataset than previous studies with a generalization of a difference-in-differences estimator to minimize the problem of non-random assignment, we also attempt handle the sparse and ordinal nature of the data. The data is sparse because with eight different types of identification requirements and only fifty

[10]In general, it is only possible to identify a causal effect in a single cross-section (i.e., one year's data) with random assignment or with an instrumental variable approach (Moffitt 1991).

[11]More recently, a special issue of *Political Analysis* was devoted to the topic of multilevel modeling in political methodology, with applications to a wide variety of important substantive problems (Kedar and Shively 2005).

states, we do not observe that many elections under a given type of procedure. The standard approach around this problem is to assume some sort of linear (or other parametric) effect. That is, if we consider our list presented at the beginning of the section, we would assume that the effect of a signature match was three times that of merely stating one's name on an individual's probability of voting, since it is third on the list. While the ordering of the list seems plausible, the linear growth (or dose-response curve) is a very strong assumption that seems implausible. We, instead, leverage the ordinal nature of the data to allow for deviations for this linear effect insofar as the data suggest via a Bayesian shrinkage estimator.

In the next section, we present the results from the aggregate component of our multilevel model, examining how voter identification requirements may affect voter participation at the state level. That is followed by a presentation of the results from our individual-level model of participation.

4. ESTIMATES FROM AGGREGATE LEVEL DATA

In addition to the unobservable effects on voter turnout, such as regional trends or yearly shocks, we want to control for any observable characteristics that might affect turnout as well. There are two approaches we consider — aggregate and individual-level data — and our model allows us to consider both levels of data simultaneously. Aggregate data can be a useful source of information about voter turnout mainly because there is no concern that survey respondents are "incorrectly remembering" turning out to vote. We know from surveys that have validated turnout of survey respondents using public voting records, misreporting occurs between five and ten percent of validated cases.[12] The use of aggregated data to study individual behavior, however, also raises concerns about aggregation bias. That is, it is not be possible to draw conclusions about individual voter's decisions based on solely on the analysis of aggregate data. Further, we are also interested in the impact of these identification requirements on sub-populations, such as racial and ethnic minorities and seniors. Given the coarse nature of state level data, we can not say anything about these populations of interest.

For the aggregate analysis, following the previous literature on turnout, we gathered data on demographic variables at the state-level, such as the percentage of the population who have graduated from high school, the percentage of the population who are minorities, the unemployment rate and per capita income. The specific empirical model of voter identification requirements on state-level turnout rates for this data is:

$$\ln(\text{turnout rate}) = \alpha ID_{st} + \beta^0 + \beta^1 X_{st} + \epsilon_{st}; \quad s = 1, \ldots, 51; \quad t = 1, \ldots, 4;$$

where s indexes states and t indexes years. That is, the logarithm of the turnout rate is a linear function of observable regressors.

[12]There are an array of published studies that have looked at the validated turnout data. See, for example, the early studies by Abramson and Claggett (1984, 1986, 1989, 1991 and 1992), or the more recent analyses by Bernstein, Chadha and Montjoy (2001) or Cassel (2004).

The turnout rate is measured relative to registered voters in the state, and the variable of interest, ID_{st}, is coded as an ordinal variable ranging from zero (state name) to seven (photo identification).[13] The vector of covariates, X_{it}, includes the following:

% HS Grad: the percent of high school graduates in state s at year t, according to the Census Bureau;
Per capita income: the per capita income in state s at year t according to the Bureau of Economic Analysis;
Unemp rate: the unemployment rate in state s at year y according to the Bureau of Economic Analysis;
South: an indicator equal to one if the state is southern and zero otherwise;
% Nonwhite: the percent of individuals in state s at year t that are reportedly not white, according to the Census Bureau.

As the level of turnout in a state may vary due to yearly shocks or regional trends (see Figure 2), random effects are included for state and year.

$$\beta^0 = \gamma_s^0 + \gamma_t^1;$$
$$\gamma_s^0 \overset{\text{iid}}{\sim} N(0, \sigma_{\gamma_s});$$
$$\gamma_t^0 \overset{\text{iid}}{\sim} N(0, \sigma_{\gamma_t});$$
$$\text{for } s = 1, \ldots, S \text{ and } t = 1, \ldots, T.$$

Our results from the aggregate model can be found in Figure 4. The figure displays the estimated percentage change in turnout among registered voters at the state-level, for voter identification requirements and other contributing factors to aggregate turnout. The circles represent the point estimates, the heavy black lines denote the 50% confidence interval, and the thin black lines denote the 95% confidence interval.

As can be seen from the figure, the only state characteristic that has an effect on the rate of turnout in a state is the percentage of high school graduates. As the percentage of high school graduates in a state increases by one unit, the rate of turnout in that state increases about two percent. The coefficient on the rate of unemployment has the expected sign — increasing the unemployment rate one point has a negative impact on turnout — but it is not statistically significant. The other variables in the model — per capita income, percent of the population nonwhite, whether the state is in the south, and interestingly voter identification — have no discernible impact on statewide turnout rates. Thus, our analysis of our critical hypothesis at the aggregate level yields no support for the claim that voter identification requirements have any effect on the turnout decisions of registered voters.

[13]Given the limited amount of state-level observations, it is not possible to do much more than a linear treatment specification. When we turn to the individual level specification with much more data we can relax this assumption.

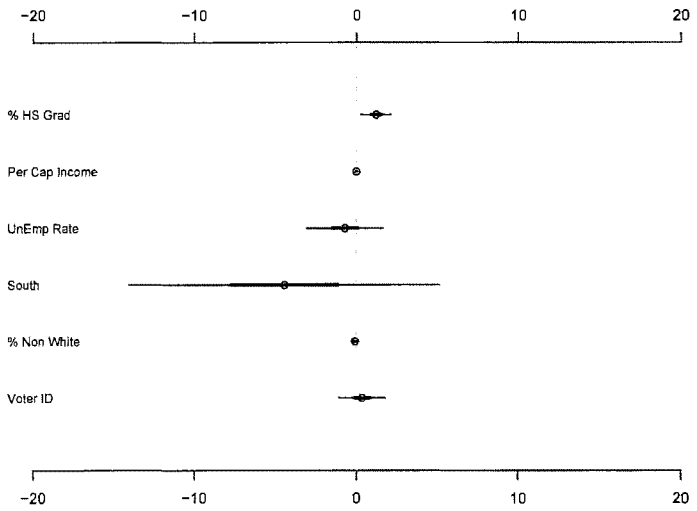


Figure 3: *Estimates of the determinants of state level turnout of registered voters, 2000-2006. The graph shows the result of regression of log(turnout) on the covariates, including state and year effects. The center dots correspond to the point estimates, the thicker lines to the 50% confidence interval, and the thinner lines to 95% confidence interval.*

5. ESTIMATES FROM INDIVIDUAL LEVEL DATA

The aggregate data poses two problems. First, with only 50 states and four years of data, there is very little information available to inform us about the effects of voter identification requirements. Second, answering questions about voter identification laws effects on subgroups is not possible. Because we are most interested in the effect of voter identification laws on individual subgroups of voters — not on state-wide trends — and we would like to be able to more precisely identify these effects, we turn to individual responses from the Current Population Survey in 2000, 2002, 2004 and 2006.

The CPS has a very large sample size (120,000 per year), which affords us good coverage of both states and populations of interest. We do need to worry about overreporting of turnout, an issue we return to in our discussion of future research. In addition to answering questions about voter registration and turnout, respondents to the CPS provide basic demographic information, such as their education level, age, income, sex and race. Not only do we use these demographic questions to control for varying propensities of

turnout based on individual characteristics, we also are able to determine whether voter identification requirements are affecting certain groups disproportionately after controlling for other factors.

As mentioned previously, an additional complication arises because of the non-binary nature of the voter identification requirement. We could not do much about this in the aggregate level model, but with the greater number of respondents in the individual-level data we have some flexibility estimating the effects of the varying identification requirements. But given the sparseness of the data, precisely estimating individual effects for each of the eight identification requirements is difficult. This would involve coding each voter identification regime as a binary indicator variable in our model, but the concern then is that we simply will have too little information for some of the less-used regimes to identify (let alone precisely estimate) the effects of each voter identification requirement relative to the others. On the other hand, we could assume that the effect is linear across the eight requirements, as we did in the aggregate level model. That is, the effect on the probability that a voter turns out is the *same* if we change the requirement from stating one's name to signing one's name as if we change the requirement from merely requesting a photo identification card to requiring a photo identification card.[14] This is a strict assumption. As compromise we, in effect, compute a weighted average these two approaches with the weights being proportional to the amount of information in the data about that particular identification regime.[15]

Specifically, we start with a logistic model of turnout from the CPS. Because we are interested in the effect of identification requirements *at the polls* and not the various unobserved barriers to voting associated with the registration process, the estimation is conditioned on the subset of respondents who are registered to vote. Our logistic model takes the form:

$$\Pr(Y_{it} = 1) = \text{logit}^{-1}(\alpha_{j[i]} + \beta^0 + \beta^1 X_{it}),$$
$$\text{for } j = 1, \ldots, 8; \quad i = 1, \ldots, N; \text{ and } t = 1, \ldots, 4.$$

where j indexes identification regime, i indexes the respondents, and t indexes years. The variable Y_{it} is binary and equal to one if the respondent reported voting in that year's election. The variable β^0 is an intercept term. The vector of covariates, X_{it}, includes the following:

South: an indicator equal to unity if the respondent resides in a southern state;
Female: an indicator equal to unity if the respondent is female;
Education: a ordinal variable indicating the reported level of education — 'some high school,' 'high school graduate,' 'some college,' or 'college graduate';
Education^2: the squared value of *Education*;

[14]Recall that requesting a photo identification card allows the voter the option of signing an affidavit swearing their identity and then casting a *regular* ballot, whereas requiring a photo ID only allows the voter the option of casting a *provisional* ballot.

[15]The particular analysis we use, a Bayesian shrinkage estimator, is documented in Alvarez, Bailey and Katz (2007).

Age: the respondent's age in years;
Age^2: the squared value of *Age*;
Income: an ordinal variable indicating the reported level of household family income that takes on 13 values — ranging from 'Less than $5,000' to 'More than $75,000';
Non-White: an indicator equal to unity if the respondent reported a race other than White.

This covariate vector replicates what we consider to the be canonical model of voter turnout in the literature that uses CPS Voter Supplement data (e.g., Nagler 1991).

As the level of turnout in a state may vary due to yearly shocks or regional trends, random effects are included for state and year.

$$\beta^0 = \gamma^0_{s[i]} + \gamma^1_{t[i]};$$
$$\gamma^0_{s[i]} \overset{\text{iid}}{\sim} N(0, \sigma_{\gamma_s});$$
$$\gamma^0_{t[i]} \overset{\text{iid}}{\sim} N(0, \sigma_{\gamma_t});$$
$$\text{for } s = 1, \ldots, S \text{ and } t = 1, \ldots, T.$$

That is, each individual i in state s and year t share a common intercept term, with each level of intercepts pooled toward zero and with common variance.

As noted above, we could model the impact of the variable of interest, $VoterID$, as an unpooled additive effect (e.g., indicator variables for each regime), or alternatively, constrain the effect to be linear. Rather than commit to either extreme, we effectively combine the first two approaches into a sort of weighted average, where the weighting variable is determined by the data:

$$\alpha_{j[i]} = \alpha^0 + \alpha^1 ID_{it} + \nu_j,$$
$$\nu_j \overset{\text{iid}}{\sim} N(0, \sigma_\alpha).$$

That is, for each identification requirement level, j, the estimated impact on turnout is a random intercept term, ν_j, and is pooled toward a group linear impact, $\alpha^0 + \alpha^1 ID_{it}$.[16]

Our results for the individual model can be found in Figure 5. The figure displays the estimated percentage change in the probability of turning out to vote, conditional upon being registered, for voter identification requirements and demographic control variables. The circles represent the point estimates, the heavy black lines denote the 50% confidence interval, and the thin black lines denote the 95% confidence interval.

[16]A final consideration in the third model is interpretation of the α^0 and α^1 parameters. These parameters are partially unidentified between the linear trend in the ν_j parameters. The identification is partial, as the ν_j parameters are pooled toward zero, but with only $J = 8$ groups, converging the algorithm is time consuming. To correct for this problem, after estimation, the data is "post-processed" to obtain finite population slope parameters based on the regression of α_j on ID_j. This is equivalent to constraining the ν_j parameters to have mean zero and slope zero (Gelman and Hill, 2006).

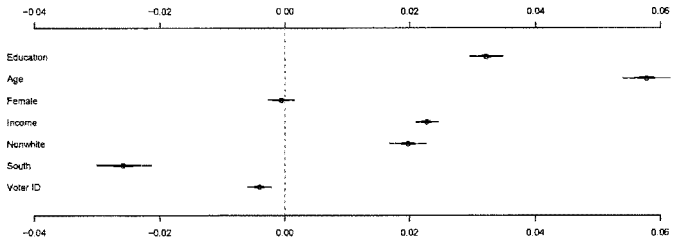


Figure 4: *Estimates of the determinants of individual level turnout of registered voters, 2000-2006. The graph shows the result of logistic regression of the probability of voting on the covariates, including state and year effects. The center dots correspond to the point estimates, the thicker lines to the 50% confidence interval, and the thinner lines to 95% confidence interval.*

Living in the South decreases the odds that an individual in our sample votes, while being older, more educated and wealthier increases the odds an individual turns out to vote. In our sample, being female does not effect the probability of voting, but being a minority increases the probability of turning out to vote, conditional on being registered to vote. These effects are all consistent with the previous literature on turnout, lending credence to our model's specification (e.g., Nagler 1991). Increasing the strength of voter identification requirements, on average, decreases the probability of turning out to vote. We examine the deviations from this linear trend below.

Figure 5 plots the marginal effect of voter identification regimes on the probability that a respondent turns out to vote. The horizontal axis represents the voter identification requirements. The vertical axis plots the probability of turning out to vote. The line represents the probability of voting for a mean respondent in our sample, for each identification requirement being in place. This average individual is a white male, aged 48, with some college education, has an income of between $35,000 and $39,999, and lives in Ohio in 2004. The points on the graph denote the deviation from the linear trend estimated for each requirement and the vertical bars denote the 95% intervals of uncertainty around each. Interestingly, we see that the requirements for signature matching, requiring an identification card and requiring a photo identification card have a more negative effect on participation than suggested by the simple linear model. Requesting identification cards and requesting photo identification cards is less strict than suggested by the linear trend. These estimates first indicate that indeed, voter identification requirements do not have a simple linear effect on the likelihood that a voter participates. In addition, we see that the stricter requirements — requirements more than merely presenting a non-photo identification card — are significant negative burdens on voters, relative to a weaker requirement, such as merely signing a poll-book.

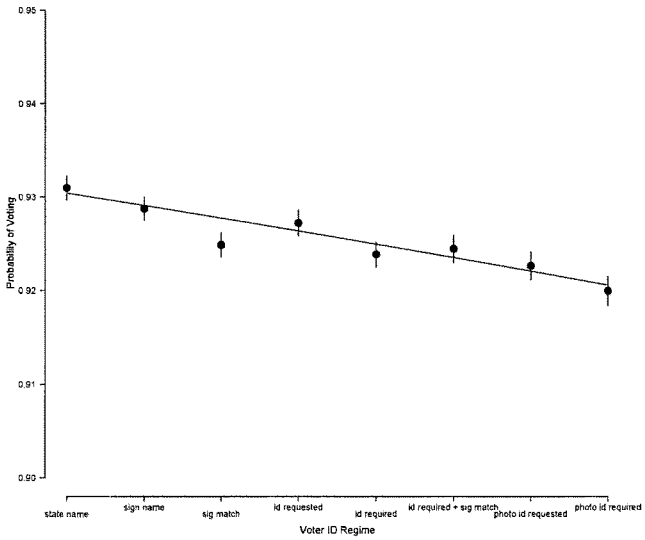


Figure 5: *Estimated probability of voting by identification requirement. The graph plots the impact for an average registered voter from the Current Population Survey (2000-2006). The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The solid line is the linear trend that the identification effects are shrunk towards. The dots are the point estimates and the bars represent the 95% confidence intervals for the effect.*

Previous studies that we are aware of, however, did not use multiple election cycles in their analysis; thus those studies have likely confused the possible effects of new voter identification requirements with the cross-sectional correlations we discussed earlier. Again, there we saw that states with low turnout were also states which had imposed strict voter identification requirements in 2004. Here, as we have data that varies by state and time, we are able to separately identify and estimate the effects of voter identification requirements on voter turnout, that is, separately from the confounding effects of past voter participation rates and voter identification regimes.

Next, we turn to the critical question of the possible interaction between the various voter identification regimes and the racial identify of registered voters in the CPS samples: do voter identification requirements, especially the stricter ones, depress the likelihood of turnout more for nonwhite registered voters than for white registered voters? To answer this question, we estimated a slight variant of the model used above, which includes interaction terms for voter identification requirements and the racial identity of the voters

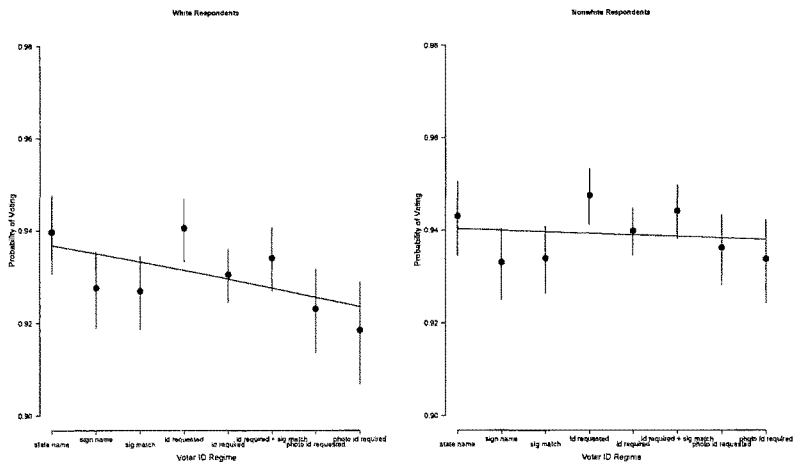


Figure 6: *Estimated probability of voting by identification requirement and race. The graphs plot the impact for an average registered voter from the Current Population Survey (2000-2006) for Whites and Non-Whites. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The solid line is the linear trend that the identification effects are shrunk towards. The dots are the point estimates and the bars represent the 95% confidence intervals for the effect.*

in the CPS samples. This model includes both the shrinkage estimator and in our linear term an interaction between the voter identification regimes and the racial identify of each registered voter. These results from this analysis are given in Figure 6.

In the left panel we give the results of the voter identification regimes for white registered voters, and in the right panel of Figure 6 the results for nonwhite registered voters. It is clear from comparison of the two graphs that we can reject the hypothesis that there is a substantial racial difference in the impact of voter identification requirements. First off, we see that the slopes differ in the two panels, and in fact, the slope for white registered voters is more strongly sloped than for nonwhite registered voters. Also, when we look at some of the specific regimes, especially the most restrictive ones, our analysis here indicates that they have a more strongly negative effect on the participation of white, relative to nonwhite voters, all other variables held constant in our model. This is an important result. Controlling for the factors usually seen in models of voter participation, we see no evidence that voter identification are racially discriminatory.

Next we turn to three other important socio-demographic variables in our turnout model: education, age and income. We are interested here in seeing whether these variables have any interactive effect with identification requirements. In particular, there is reason to believe that registered voters who are of lower educational attainment, lower

income, or who are younger may more likely to be deterred from voting as identification requirements increase. These next figures plot the probability of voting conditional on being a mean respondent under each identification regime, tracing out the likelihood for voting as education, age, and income levels vary. The estimated models include an interaction term between the demographic variable of interest and identification type. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.

Beginning with the interactive effect between voter identification regime and educational attainment in Figure 7, we see that there is a slight, but significant, interaction between these two variables, controlling for everything else in our model. As we move from the less to more restrictive voter identification requirements, we do see that registered voters at the lower end of the educational attainment scale are less likely to participate. For example, in states that require only that a registered voter provide their name, or sign their names, relative to states that require that a registered voter produce a photographic identification, registered voters with only some high school are significantly less like to vote.

Next, in Figure 8, we see little interaction between voter identification requirements and age. In particular, we expected to see that younger voters would be significantly less likely to vote in states with more restrictive identification regimes in place; we see little evidence in this figure to support that hypothesis. Nor do we see older voters being deterred more.

Finally, we show the interaction between the other measure of socioeconomic status and voter identification regimes in Figure 9. The various panels show the different voter identification regime effects for the various levels of household family income. As we have seen in the graph in Figure 7 for education, we do see evidence of an interactive effect, even after controlling for all of the other variables in our model. This is not surprising given that household income and education levels are highly correlated. As expected, voters with lower levels of income are less likely to vote under the more restrictive voter identification regimes; comparing again the extremes of states that simply require the voter provide their name, to those states that require a photographic identification from the registered voter in order to cast a ballot, we see that lower income registered voters in the latter type of state are significantly less likely to vote.

In conclusion, our analysis of the individual-level component of our multi-year and multilevel model, we have found a number of significant results. First, we see that there is evidence to support the claim that the most restrictive forms of voter identification requirements do lead to lower levels of participation by registered voters. However, we find no evidence to support the hypothesis that this effect is more profound for nonwhite registered voters, controlling for other variables, especially income and education. Yet we find that these other socioeconomic status variables, especially education and income, do show a significant interactive effect with stricter identification requirements. In particular, we find that registered voters with low levels of educational attainment or lower

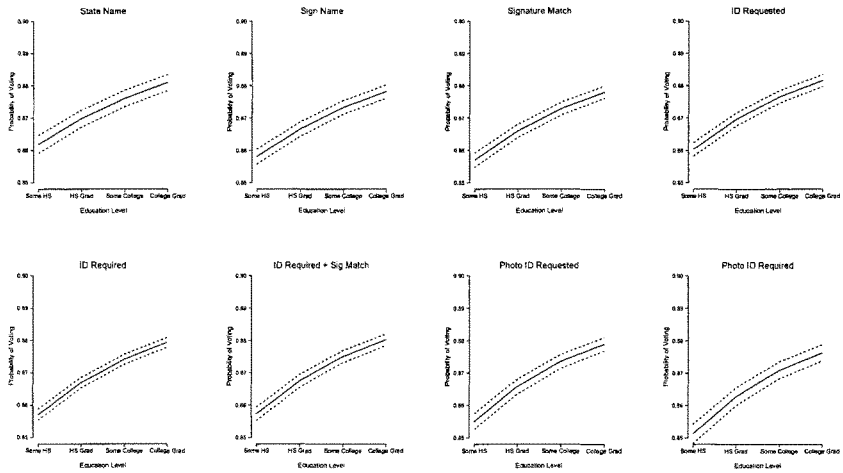


Figure 7: *Estimated probability of voting by identification requirement and education level. The graphs plot the estimated probability of voting by an average registered voter from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

levels of income are less likely to vote the more restrictive the voter identification regime.

6. DISCUSSION

In general, there is scant research on the effect that voter identification requirements, of any form, have on the participation of registered voters. In an attempt to understand whether the requirements imposed by both HAVA and nearly half the states reduce registered voter participation, we used a novel methodology to study the effects of voter identification requirements on the likelihood that voters participate in these two presidential elections, a multilevel binary logit model that allows us to appropriately model how covariates from both the individual and state level, and their interaction, affect the decision to participate (Gelman and Hill 2006). In addition, a random effects model of the ordinal nature of the voter identification treatment variable is also employed. By combining these two approaches we are able to simultaneously get the most out of sparse data to answer important policy questions, particularly about subgroups, and to address

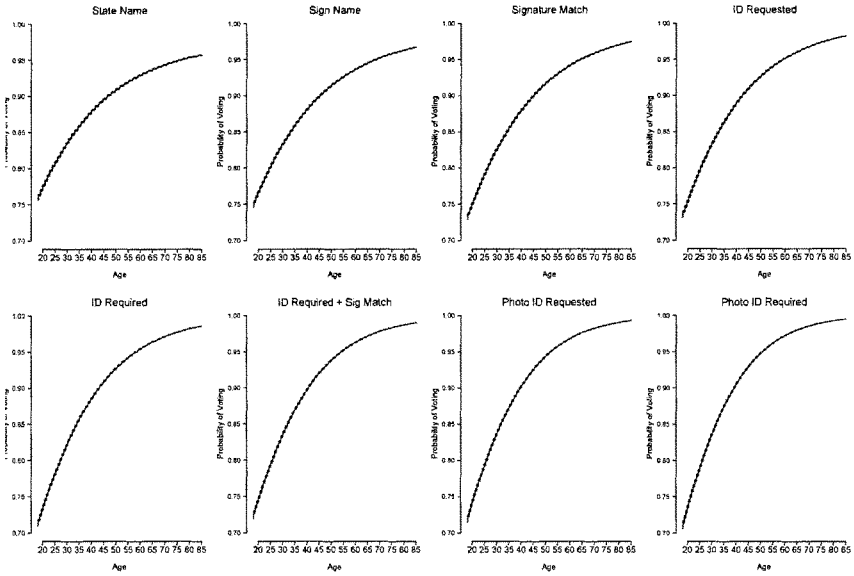


Figure 8: *Estimated probability of voting by identification requirement and age. The graphs plot the estimated probability of voting by an average registered voter respondent from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

concerns about properly modeling the ordinal treatment variable. We find no evidence that voter identification requirements reduce participation at the aggregate level. At the individual level, voter identification requirements of the strictest forms — combination requirements of presenting identification and matching signatures, as well as photo identification requirements — have a negative impact on voter participation relative to the weakest requirement of stating one's name. In general, there does not seem to be a discriminatory impact of the requirements for some subgroups, such as nonwhite registered voters. However, we do find that for registered voters with lower levels of educational attainment or lower income, stricter voter identification requirements do lead to lower turnout.

Further research is necessary, however, as there is little information in the current data on photo identification requirements — and only with the passage of time will we build up larger databases with more information on the behavior of registered voters in states

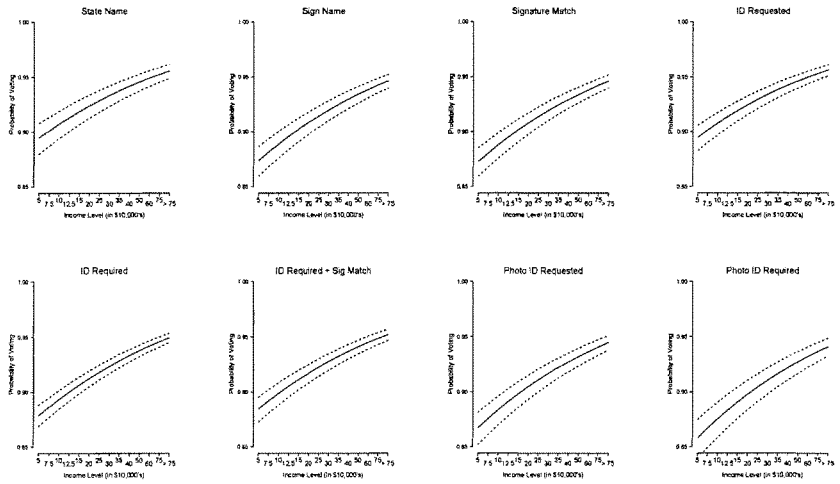


Figure 9: *Estimated probability of voting by identification requirement and income level. The graphs plot the estimated probability of voting by an average registered voter respondent from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

with different voter identification requirements. Our analysis, using all of the available CPS Voter Supplement data from 2000 through 2006, demonstrates the methodological and substantive importance of examining how voter identification requirements affect voter behavior, as some states move to implement new voter identification requirements and others do not. Additionally, our methodological innovation in this paper, utilizing a multilevel model to study voter participation, is an important advance in the field. While our focus here has been on a new substantive problem, our model did provide important new estimates for the canonical questions about voter participation that have existed in the research literature for the past few decades. We believe that this multilevel approach towards studying the question of voter participation, as well as many other questions of voting behavior that involve data measured at multiple levels, will represent an important advance in the study of this important substantive question.

However, one methodological issue will need to be addressed in the next round of our research, and that will be to incorporate a correction in the model for the misreporting of turnout. While the misreporting of turnout in the CPS Voter Supplement is not a severe as that noted for other surveys of voter behavior (for example, the American National

Election Survey as studied in past research, e.g., Burden 2000). The 2004 CPS Voter Supplement reports a discrepancy of 3% between the CPS estimate of turnout and the official count of the Clerk of the House of Representatives; historically, the disparity has ranged between 4 and 12%.[17] Given that research has shown that misreporting of turnout is systematically related to demographic attributes like education, and also varies by race and ethnicity, clearly adjusting for misreporting of turnout in models of participation is an important methodological step towards obtaining consistent estimates of how factors like identification requirements affect turnout.[18]

Finally, we need to bring other data to bear as we seek to answer research questions regarding voter identification laws. Our analysis, and others like it using CPS Voter Supplement data, focuses on what we know of voter identification laws across states and how those laws, if implemented as written, might influence the behavior of registered voters. We cannot not easily study, however, the extent to which these laws are not being implemented as written; for example, it might be the case that in some places registered voters (or just some registered voters) are being asked to provide photographic identification when they try to vote, when that is not current state law, or that in other places registered voters (or again just some registered voters) are not being asked for identification when that should be required under state law. Additional research should focus on implementation of voter identification laws, both in states with such requirements and those without, to determine the extent to which they are being correctly applied, and if incorrectly applied, whether that is affecting the ability of potential voters to exercise their franchise effectively (Alvarez, Atkeson and Hall, 2007; Atkeson et al. 2007). Furthermore, future research should also look at the requirement identifications now in place, as required by HAVA, and whether those additional identification requirements are imposing additional hurdles for eligible citizens as they seek to register to vote.

7. REFERENCES

Abramson, Paul and William Claggett. 1984. "Race-Related Differences in Self-Reported and Validated Turnout." *Journal of Politics* 46, 719-738.

Abramson, Paul and William Claggett. 1986. "Race-Related Differences in Self-Reported and Validated Turnout in 1984." *Journal of Politics* 48, 412-422.

Abramson, Paul and William Claggett. 1989. "Race-Related Differences in Self-Reported and Validated Turnout in 1986." *Journal of Politics* 51, 397-408.

Abramson, Paul and William Claggett. 1991. "Race-Related Differences in Self-Reported

[17]See the report of the U.S. Census Bureau, "Voting and Registration in the Election of November 2004", PS 20-556, March 2006, `http://www.census.gov/prod/2006pubs/p20-556.pdf`.

[18]As we noted earlier, there has been much research on the attributes of voters who misreport turnout, for example Abramson and Claggett 1984, 1986, and 1991; Bernstein, Chadha and Montjoy 2001; Claussen 1968; Hill and Hurley 1984; Katosh and Traugott 1981; Sigelman 1982; Silver, Anderson and Abramson 1986; Traugott and Katosh 1979.

and Validated Turnout in the 1988 Presidential Election." *Journal of Politics* 53, 186-197.

Abramson, Paul and William Claggett. 1992. "The Quality of Record Keeping and Racial Differences in Validated Turnout." *Journal of Politics* 54, 871-880.

Alvarez, R. Michael, Lonna Rae Atkeson and Thad E. Hall, principal authors. 2007. "The New Mexico Election Administration Report: The 2006 November General Election." `http://vote.caltech.edu/reports/NM_Election_Report_8-07.pdf`.

Alvarez, R. Michael, Delia Bailey and Jonathan N. Katz. 2007. "The Effect of Voter Identification Laws on Turnout: A Note on the Estimation of Ordinal Treatment Effects." Manuscript, California Institute of Technology and Washington University in St. Louis.

Alvarez, R. Michael, Thad E. Hall, and Betsy Sinclair. 2007. "Katrina's Voters: Floods and Representation." Paper presented at the 2007 Annual Meetings of the Midwest Political Science Association.

Atkeson, Lonna Rae, Lisa A. Bryant, Thad E. Hall, Kyle L. Saunders and R. Michael Alvarez. 2007. "New Barriers to Participation: Application of New Mexico's Voter Identification Law." Paper presented at the 2007 Annual Meeting of the American Political Science Association, Chicago, Illinois.

Barreto, Matt A., Stephen A. Nunño, and Gabriel R. Sanchez. 2007. "Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters." Paper presented at the 2007 Annual Meeting of the American Political Science Association, Chicago, Illinois.

Bernstein, Robert, Anita Chadha, and Robert Montjoy. 2001. "Overreporting Voting: Why it Happens and Why it Matters." *Public Opinion Quarterly* 65, 22-44.

Burden, Barry C. 2001. "Voter Turnout and the National Election Studies." *Political Analysis* 8, 4, 389-398.

Cassel, Carol A. 2004. "Voting Records and Validated Voting Studies." *Public Opinion Quarterly* 68, 102-108.

Clausen, Aage. 1968. "Response Validity: Vote Report." *Public Opinion Quarterly* 32, 588-606.

Downs, Anthony. 1957. *An Economic Theory of Democracy.* New York: Harper Collins.

Electionline, 2002. "Election Reform Briefing: Voter Identification." `http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf`

Electionline, 2004. "Election Preview 2004: What's Changed, What Hasn't and Why." `http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf`

Electionline, 2006. "Election Reform Briefing 15: The 2006 Election." http://www.electionline.org/Portals/1/Publications/EB15.briefing.pdf

Fund, John. 2004. *Stealing Elections: How Voter Fraud Threatens Our Democracy.* New York: Encounter Books.

Gelman, Andrew and Jennifer Hill. 2006. *Data Analysis Using Regression and Multilevel/Hierarchical Models.* New York: Cambridge University Press.

Highton, Benjamin. 2004. "Voter Registration and Turnout in the United States." *Perspectives on Politics* 2, 507-515.

Highton, Benjamin. 2005. "Self-Reported versus Proxy-Reported Voter Turnout in the Current Population Survey." *Public Opinion Quarterly* 69, 113-123.

Highton, Benjamin. 2006. "Long Lines, Voting Machine Availability, and Turnout: The Case of Franklin County, Ohio in the 2004 Presidential Election." *PS: Political Science and Politics* 39, 1, 65-68.

Hill, Kim and Patricia Hurley. 1984. "Nonvoters in Voters' Clothing: The Impact of Voting Behavior Misreporting on Voting Behavior Research." *Social Science Quarterly* 65, 199-206.

Katosh, John and Michael Traugott. 1981. "The Consequences of Validated and Self-Reported Voting Measures." *Public Opinion Quarterly* 45, 519-535.

Kedar, Orit and W. Phillips Shively. 2005. "Introduction to the Special Issue." *Political Analysis* 13, 4, 297-300.

Keyssar, Alexander. 2001. *The Right to Vote: The Contested History of Democracy in the United States.* New York: Basic Books.

Kousser, Morgan. 1974. *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910.* New Haven: Yale University Press.

Knack, Stephen. 2001. "Election-day Registration: The Second Wave." *American Politics Research* 29, 65-78.

Lott, John R. 2006. "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates." Available at SSRN: http://ssrn.com/abstract=925611.

McDonald, Michael P. 2003. "On the Over-Report Bias of the National Election Studies Turnout Rate." *Political Analysis* 11, 180-186.

Mebane, Walter R., Jr. 2005. "Voting Machine Allocation in Franklin County, Ohio, 2004: Response to U.S. Department of Justice Letter of June 29, 2005." http://macht.arts.cornell.edu/wrm1/franklin2.pdf.

Moffit, Robert. 1991. "Program Evaluation with Nonexperimental data." *Evaluation Review* 15, 291–314.

Mycoff, Jason D., Michael Wagner, and David Wilson. 2007. "The Effect of Voter Identification Laws on Turnout." Paper presented at the 2007 Annual Meeting of the American Political Science Association.

Nagler, Jonathan. 1991. "The Effect of Voter Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review* 85, 1393-1405.

National Association of Secretaries of State. 2003. "Voter Identification Requirements by State." Survey. `http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=80`.

National Commission on Election Reform. 2002. *To Ensure Pride and Confidence in the Electoral Process: Report of the National Commission on Election Reform.* Washington, D.C.: Brookings Institution Press.

Overton, Spencer. 2006a. *Stealing Democracy: The New Politics of Voter Suppression*, New York: W.W. Norton.

Overton, Spencer. 2006b. "Voter Identification." *Michigan Law Review*, forthcoming, v. 105. `http://docs.law/gwu.edu/facweb/soverton/voteridentification.pdf`.

Raudenbush, Stephen W. and Anthony S. Bryk. 2002. *Hierarchical Linear Models: Applications and Data Analysis Methods*, 2nd. edition. Newbury Park: Sage.

Riker, William H. and Peter C. Ordeshook. 1968. "A Theory of the Calculus of Voting." *American Political Science Review* 62, 25-42.

Sigelman, Lee. 1982. "The Nonvoting Voter in Voting Research." *American Journal of Political Science* 26, 47-56.

Silver, Brian, Barbara Anderson, and Paul Abramson. 1986. "Who Overreports Voting?" *American Political Science Review* 80, 613-624.

Steenbergen, Marco R. and Bradford S. Jones. 2002. "Modeling Multilevel Data Structures." *American Journal of Political Science* 46, 1, 218-237.

Traugott, Michael and John Katosh. 1979. "Response Validity in Surveys of Voting Behavior." *Public Opinion Quarterly* 43, 359-377.

U.S. Census Bureau, 2002. "Voting and Registration in the Election of November 2000." `http://www.census.gov/prod/2002pubs/p20-542.pdf`.

Verba, Sidney, Kay L. Schlozman, and Henry E. Brady. 1995. *Voice and Equality: Civic Voluntarism in American Politics.* Cambridge: Harvard University Press.

Vercellotti, Timothy and David Anderson, 2006. "Protecting the franchise, or restricting it? The effects of voter identification requirements on turnout." Manuscript, Rutgers University.

Western, Bruce. 1998. "Causal Heterogeneity in Comparative Research: A Bayesian Hierarchical Modeling Approach." *American Journal of Political Science* 42, 1233-1259.

Wolfinger, Raymond E. and Stephen J. Rosenstone. 1978. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review* 72, 1, 22-45.

Preliminary Findings of Joint Task Force Investigating Possible Election Fraud

May 10, 2005

A. Background

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The purpose of the task force was to determine whether evidence of criminal fraud existed in the irregularities and, if evidence of fraud was found, to pursue criminal prosecutions. A memorandum signed by the head of each of the agencies stated, "This task force is committed to conducting its work in a thorough, non-partisan manner." The memorandum also indicated that federal authorities would not be involved in any evaluations of election procedures outside of potential criminal violations.

Since the task force began its work, it has received further investigative assistance from the United States Postal Inspection Service and the Social Security Administration - Office of Inspector General. The task force has also received assistance from Milwaukee City Attorney Grant Langley and his staff.

As explained below, the task force work to date has focused on an examination of original records, primarily because data base information has proven unreliable and may not otherwise be admissible in court. This has involved the review of thousands of

registration cards and the information contained on such cards. As a result, the task force, particularly members of the Milwaukee Police Department, has expended well over 1,000 work hours. The work has been slow, painstaking and is far from complete. Still, the task force commends the Milwaukee Police Department for committing these resources and particularly notes the investigative work conducted by Detective Michael Sandvick and Officers Neil Saxton and Michael Perez. We also specifically note the work of investigator Aaron Weiss of the Milwaukee County District Attorney's Office.

B. Summary of Findings

Based on the investigation to date, the task force has found widespread record keeping failures and separate areas of voter fraud. These findings impact each other. Simply put: it is hard to prove a bank embezzlement if the bank cannot tell how much money was there in the first place. Without accurate records, the task force will have difficulty proving criminal conduct beyond a reasonable doubt in a court of law.

With that caveat, the task force has made the following specific determinations based on evidence examined to date:

1. The task force has developed evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake. Those investigations continue.

2. In addition, the task force has determined that more than 200 felons voted when they were not eligible to do so. In order to establish criminal cases, the government must establish willful violations in individual instances.

3. Also, the task force has found that persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. The evidence does not indicate that these particular false registrations were later used to cast votes.

4. The number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500.

C. Findings Related to Fraud

Phantom voter identities/addresses/votes. The task force has individually reviewed hundreds of names and addresses associated with the various data bases suggesting that thousands of people registered *and* voted using suspect names and/or addresses. To date, the investigation has concentrated on the 70,000+ same-day registrations. To date, we have found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation has found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

1. Persons with the same name and date of birth recorded as voting more than once.
2. Persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City.
3. Persons who registered and voted with identities and addresses that cannot in any way be linked to a real person.

4. Persons listed as voting under a name and identity of a person known to be deceased.

5. Persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Voter-drive fraud. In separate instances, persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted. There is no evidence gathered to date that votes were cast under these specific false names.

Felons. The investigation has found more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so. Not all felons are ineligible to vote. In order for such action to constitute a criminal offense, the prosecution must establish, beyond a reasonable doubt, that the felon was ineligible to vote under state law and that the felon knew that he or she was ineligible to vote. As a result of this standard, the task force is proceeding cautiously in its charging decisions and is evaluating each case on the individual facts. We note, however, that we have expanded our investigation to include felons who may have voted in suburban areas as well.

In each of the alleged cases of potential fraud, the task force will not be releasing any further details in order to protect the integrity of the continuing investigation.

D. Vote Total Discrepancy

An additional finding of the task force to date is that the number of votes cast far exceeds the total number of recorded voters. The day after the November 2, 2004 election, the City of Milwaukee reported the total number of votes as 277,344. In late November an additional 191 previously uncounted absentee ballots were added, for a total of 277,535 votes cast. Still later, an additional 30 ballots were added, bringing the total number of counted votes to 277,565. City records, however, have been unable to match this total to a similar number of names of voters who cast ballots – either at the polls (under a prior registration or same day registration) or cast absentee ballots. At present, the records show a total of 272,956 voter names – for a discrepancy of 4,609.

The task force will continue to investigate this discrepancy. There remains an open question of how certain absentee ballots were handled or recorded. We further note that no geographic pattern exists for these over-votes, and multiple wards had discrepancies in excess of 100 votes. In addition, some wards had the opposite: more voters than votes. We believe that one explanation for this latter circumstance is that individuals were allowed to register and vote from a specific ward even though they were supposed to register and vote in a different ward. When a data base was later compiled, the voter name was moved to the correct ward, but the vote number remained in the incorrect ward.

A further analysis of this situation continues, but the investigation is hampered by widespread record keeping errors with respect to recording the number of voters. At each polling place, the name and number of voters was supposed to be checked by two

identical poll books, as well as by the voter number (the pink slip). In a preliminary analysis of individual wards, the task force has found: poll books that do not match voter numbers; voter numbers that were skipped; and voter numbers that were used more than once.

E. Additional Record Keeping Problems

As indicated, the task force has been hampered by numerous instances of inadequate record keeping. Any criminal prosecution will depend on access to and the available use of original records accurately recording the names of voters and the corresponding vote numbers. As indicated above, records regarding vote numbers have been inconsistent and conflicting. In addition, for criminal purposes, proof of the identity of the person voting often is best established by the original (green) voter registration card. Yet in the November 2004 election, same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information. These were part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City.

Included in this 1,300 were 141 same-day registrants from addresses outside the City of Milwaukee, but who voted within the City of Milwaukee. In several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards. These included cards that listed "West Allis," "Oak Creek," "Ashland," "Reedsburg," and "Hayward."

Another record keeping procedure hampering the investigation appears to be the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found. As late as April of this year, an additional box of green registration cards was located by election officials.

E. Future Investigations

Although many hours already have been undertaken, we realize that much more investigation is still to be done. There are many leads and interviews that still must be pursued. If individual members of the public believe that they have information on specific instances of election fraud, they are asked to call the Milwaukee Police Department, Election Task Force at 414-935-7802.

James Finch
Special Agent in Charge
Federal Bureau of Investigation

Nannette Hegerty
Chief, Milwaukee Police Department

E. Michael McCann
Milwaukee County District Attorney

Steven M. Biskupic
United States Attorney

Mr. MCCARTHY. First to Mr. Moore. You talked about, and I agree with your concerns on same-day registration, same-day voting. But what you did in North Carolina is actually different than what is being proposed in this House bill. You allowed for provisional ballots if you are a same-day registered and same-day voting. Could you elaborate why?

Mr. MOORE. Certainly. The ballots would be retrievable in that case. So if through the process of the few days between when the ballots are cast and between the canvass, if it was discovered that the ballot was fraudulent or the person was ineligible to vote, then there would be a means to trace the ballot to the voter and for the ballot to be retrievable at that point.

Mr. MCCARTHY. Okay. Thank you very much.

To Mr. Ritchie, thank you for coming. And I read your testimony. Sorry I was a little late. But in part of your testimony you said same-day registration has actually increased turnout.

Now, I have got this here where they have taken an analysis, and you can tell me whether I am wrong or right here, it takes from 1952 to 1972 because in 1973 is when you went to same-day registration, correct? The average then was 77 percent turnout. And then from 1973 now to 2004, the average is 71 percent turnout. So that is a decrease, but I don't know if decrease across the country people turning out. But you still feel, even though the numbers don't show it, that it does increase turnout?

Mr. RITCHIE. Chairwoman Lofgren, Ranking Member McCarthy, yes, that is right. In 1956 we started at 83 percent, we fell to 70 percent in 1972, and we extended the franchise to 18-year-old men and women and we had a further downward pressure on our turnout. And we are now back up to almost 78 percent as of our last presidential election.

I am very sorry you weren't here for my testimony, but I was referring to my meetings with the county election officials, who are really the experts and who does elections. All of them are quite clear.

Mr. MCCARTHY. Could I ask you one thing about your answer? And I appreciate that. You talked about you want to make sure people register beforehand. That is your initial goal. Because people are more well informed. And I was just wondering, people use voter lists for a lot of different things, but candidates use them, too, for talking to voters. Do you feel voters that go in and do the same-day registration, that they are less informed or more informed because people are mailing their positions and where they stand based upon election records?

Mr. RITCHIE. Chairwoman Lofgren, Ranking Member McCarthy, 80 percent of our same-day registrations are people who have been registered from 1 year to 89 years. And so 80 percent of those people have the same level of prior registration as anyone else. So we believe that the people who are registering to vote on election day are more or less equally informed.

However, young people are generally often less informed because they are new to the process. And so it is very important to get more young people directly included. We are working hard on that. And so there are things that we want to do, but generally speaking, most of the people using this opportunity are people who have been

registered for their entire lives, however long they have been adults. And they are quite well informed, especially in Minnesota. But of course, we are all above average.

Mr. MCCARTHY. Well, that is good to know. I come from California, so maybe I am a little below. Have you found any fraud through this? And have you found through those younger people—I know people, they tell stories; people that are here elected tell that they were a little wilder when they were in their college days and they did things, pushing the envelope.

Have you found since that is a larger portion that goes and votes on same-day registration, that they are voting absentee back home and at the same time going in? Have you had any reports about that?

Mr. RITCHIE. Chairwoman Lofgren, Ranking Member McCarthy, yes, thank you for this question. Almost every major election cycle, we find one person who has made the very serious mistake of voting in two places. And it makes me very sad to say it is almost always a young person. And it is often college students who don't understand that this will make it very hard for them to grow up and be a lawyer, which is what happened in one case, or some other. And there are things that we do as young and older people that we know that are wrong. And drunk driving is one. And sometimes there are no consequence and sometimes there are terrible consequences. And so I make it part of my job to try to communicate to young people, not to scare them away from voting, but saying look, this is a very serious mistake. And we always find them because we have a statewide system, and we run all the——

Mr. MCCARTHY. Can I ask just one quick follow-up? I don't mean to cut you off. I only have a couple seconds. Was that vote counted? Because they don't vote provisional, correct?

Mr. RITCHIE. That is correct. That vote was counted. And as I say, in my state, I personally, my preferred system would be where no person could drive until they prove to me or someone that they weren't drunk or impaired. But that is not our system. And in voting it is not our system.

Mr. MCCARTHY. Knowing what you know now, how every time you find someone who has broken the law there, would you change your current law and make a same-day registration vote provisionally so those votes would not be counted?

Mr. RITCHIE. Absolutely not. Madam Chairwoman, Representative McCarthy, your proposal which you asked earlier would disenfranchise 213,000 Minnesotans in a presidential election year.

Mr. MCCARTHY. But they still vote. I don't understand how provisional—if I am allowed.

Ms. LOFGREN. The gentleman is granted an additional 30 seconds so the witness can answer.

Mr. RITCHIE. The national average of counted provisional ballots is 63 percent. Let's say Minnesotans, who are above average, it is 70 or 80 percent. That would leave 100,000 Minnesotans disenfranchised by your idea. This would not be something that I would support.

Mr. MCCARTHY. I wish I had more time.

Ms. LOFGREN. The gentleman's time has expired.

I will begin. We got a letter from Deborah Ross, the majority whip of the North Carolina General Assembly. From her stationery I see she chairs the Ethics Committee and Judiciary I Committee, and is vice chair of the Election Law Committee. And she disagrees with you, Mr. Moore. And I just wanted to put in—I ask unanimous consent to put the letter in the record.

North Carolina General Assembly
House of Representatives

REPRESENTATIVE DEBORAH ROSS
38TH DISTRICT

OFFICE: ROOM 2223 LEGISLATIVE BUILDING
16 W. JONES STREET
RALEIGH, NC 27601-1096
PHONE: (919) 733-5773
FAX: (919) 754-3177
EMAIL: deborahr@ncleg.net

COMMITTEES:
MAJORITY WHIP
JUDICIARY I, CHAIR
ETHICS, CHAIR
RULES, CALENDAR, AND OPERATIONS OF THE HOUSE, VICE CHAIR
ELECTION LAW AND CAMPAIGN FINANCE REFORM, VICE CHAIR
FINANCE
EDUCATION
EDUCATION SUBCOMMITTEE ON UNIVERSITIES

November 8, 2007

The Honorable Robert A. Brady, Chair
House Committee on House Administration
1309 Longworth House Office Building
Independence and New Jersey Avenues, SE
Washington, DC 20515

The Honorable Vernon J. Ehlers, Ranking Member
House Committee on House Administration
1313 Longworth House Office Building
Independence and New Jersey Avenues, SE
Washington, DC 20515

Dear Messrs. Brady and Ehlers:

Thank you for the opportunity to share some information with you about HB 91—Registration and Voting at One-Stop Sites, which passed the North Carolina General Assembly last session. This new law allows North Carolina citizens to register to vote and vote up to three days before Election Day at one-stop voting sites. Before this law went into effect a citizen had to register to vote 25 days before the election in order to be eligible to vote in North Carolina. The law was passed to encourage voter participation and to expand the uses of our popular one-stop voting sites.

North Carolina has one of the lowest voter participation rates in the country. It is estimated that 1,000,000 citizens of the State are not registered to vote, a large percentage of whom are between the ages of 18-25. Several organizations, local boards of elections and citizens encouraged the legislature to pass HB 91 as a method of increasing voter participation.

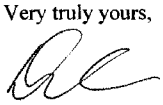
The Director of North Carolina's State Board of Elections encouraged me, as bill sponsor, to use our one-stop voting sites as the ideal locations for same day voter registration for several reasons. In a letter to me dated February 15, 2007, he wrote, "[a] registration application filled out, and sworn to, in the presence of an election official enhances the accuracy of the information obtained and transferred into our database. In person registration also enhances a proper review of the identification documentation provided by the applicant." And, the new law requires that the Board of Elections verify the address of the applicant through DMV and other databases.

Moreover, HB 91 has multiple safeguards against voter fraud. The identification required from the voter is identical to that required of every first-time voter in North Carolina and is HAVA compliant. The applicant must appear in person. The applicant signs under penalty of perjury that s/he is a U.S. citizen. Registering to vote and voting in violation of the citizenship requirement results in two separate felonies. Finally, because ballots cast at one-stop voting sites are considered absentee ballots, they are retrievable if the local or State Board of Elections finds that they have been cast improperly.

HB 91 passed with bi-partisan support, particularly in the North Carolina Senate. The U.S. Department of Justice pre-cleared the new law within a month of its passage. The new law was used in the October and November, 2007, municipal elections without incident. I am confident that this new way of encouraging citizen participation will advance the democratic process in North Carolina.

Thank you for the opportunity to add my thoughts to your committee's work. I would be happy to provide any additional information you might need on HB 91.

Very truly yours,



Deborah K. Ross
Majority Whip

DKR/mp

Ms. LOFGREN. But I would note that she reports to us that the Director of North Carolina State Board of Election encouraged her as the bill sponsor to use one-stop voting sites as ideal locations: And in a letter that he wrote to her she quotes, a registration application filled out, and sworn to, in the presence of an election official enhances the accuracy of the information obtained and transferred into our database. In-person registration also enhances a proper review of the identification documentation provided by the applicant. And the new law requires the Board of Elections to verify the address of the applicant through the DMV and other databases.

She points out that there are many safeguards against fraud. And that in addition to those, that the applicants sign under penalty of perjury that he or she is a U.S. citizen. And failing to adhere to the rules results in two felonies. And notes that the bill—she says HB 91 passed with bipartisan support, particularly in the North Carolina Senate. The U.S. Department of Justice pre-cleared the new law within a month of its passage, and that the law was used in October and November 2007, municipal elections without incident. So I make that part of the record.

And I just, you know, I did a search with the Internet. You can find a lot of things, but you are never sure if it is entirely accurate. But the only instance I could find of a prosecution of voter fraud in North Carolina was a gentleman who worked for Congressman Patrick McHenry who voted twice and was indicted. And apparently he is a young man who made a mistake. He made some kind of plea deal, which I am happy for him in his life. But I couldn't find any other prosecution. Are you aware of any, Mr. Moore?

Mr. MOORE. A couple things, if I may. I used to actually co-chair the Elections Law Committee with Representative Ross. We had a spirited debate on this issue on the floor of the House. The one thing we heard was that there were folks who said they went to vote, they weren't able to, and there were allegations of fraud. One of the difficulties about voter fraud, Madam Chair, is it is very difficult to prove. At least that has been the experience not only in our State, but what I have researched and found in other States. The example I told you where the dog——

Ms. LOFGREN. So were there prosecutions? Do you know any other than this Congressman McHenry's aide?

Mr. MOORE. I am not aware of any that I actually can cite to you this morning, but I am aware there were other investigations.

Ms. LOFGREN. Okay. I think you answered this, Mr. Albrecht. But Mr. McCarthy mentioned in his opening statement, or I guess it was to the first panel, this task force that looked at Milwaukee. And how many—there were prosecutions occurred?

Mr. ALBRECHT. There were two prosecutions——

Ms. LOFGREN. Two prosecutions.

Mr. ALBRECHT [continuing]. Coming out of the 2004 election. Neither was related to election day registration. Both were occurrences of a person who was on probation or parole for a felony conviction at the time of the election.

Ms. LOFGREN. And so they—under State law they weren't eligible to be a voter?

Mr. ALBRECHT. Correct.

Ms. LOFGREN. Okay. And I am just wondering if any of you can answer one of the things that I mentioned in my opening statement is the situation where sometimes provisional ballots aren't counted. And one of the things that I have thought about is whether there should be standards and procedures so there is uniformity on the counting of provisional ballots, because it is sort of an equal, you know, justice thing. You know, if you are in county A it gets counted; if you are in county B it doesn't. And it seems like there ought to be some uniformity to—you know, whatever the rules are ought to apply to all the Americans so that they are treated the same.

Do you have thoughts on why ballots aren't being counted and whether it is the lack of standards or some other reason? Anyone who knows the answer. Mr. Ritchie you might have a thought on that.

Mr. RITCHIE. Madam Chair, I think national standards would be very important, but it would also need to be somehow looked at the overall cause. Provisional ballots are an extremely expensive and time-consuming and complicated process. And so once national standards are under discussion, finding out what are the cost burdens——

Ms. LOFGREN. Right.

Mr. RITCHIE [continuing]. On state and local, particularly local governments. And so that that could be somehow addressed.

Ms. LOFGREN. That would be an important component.

Mr. Albrecht, do you have anything to add on that? I will grant myself an additional minute so you can answer.

Mr. ALBRECHT. I will just agree they can present a pretty significant administrative burden, and that there is substantial cost involved with that as well.

Ms. LOFGREN. Of course under HAVA, you have to have it anyhow. So I think this is something we would certainly welcome additional advice on from not just you two, but other State election officials.

Well, my time has expired, so I will now turn to Mr. Ehlers for his 5 minutes.

Mr. EHLERS. Thank you very much. And Mr. Ritchie, I was born in Minnesota, so I appreciate your comments that Minnesotans are above average. That has been my experience, too. It has also been my experience that the crooks in Minnesota are above average and very clever. And I think you should be concerned about that.

In between the first part of this hearing and the second part we had to go to the floor to vote, and one of my congressional colleagues from Minnesota told me tale after tale of dishonest practices, many of them involving same-day registration. So it is not apparently as copacetic as we have been led to believe here.

I don't understand the reluctance to have provisional ballots. If you are so worried about the sanctity of the ballot, I think it is essential that you have provisional ballots. And you argue the expense. Good grief, it is far more expensive to run an election than to deal with just a minor part of it, which is the provisional ballots. It makes me very suspicious when people say we want same-day registration, but we don't want provisional ballots. That makes no sense. And that leads me to believe people are trying to play games with this. And I just cannot abide that.

Mr. Albrecht, I wanted to turn to you for a moment. After your election in 2005 or 2004, I understand the Milwaukee Police Department, district attorney's office, the FBI, U.S. Attorney, formed a special task force. They found that there were a number of cases in which the number of people who voted exceeded—the count exceeded the number of people who actually voted. I am sorry, the ballots cast exceeded the number of votes. And there were a number of other improprieties. What can you tell us about that?

Mr. ALBRECHT. The number that you are referencing, which was sort of an immediate post-election disparity between the number of people who had been assigned voter numbers on election day and ballots cast in the machine, was actually recently resolved. There was a number from the formula that law enforcement was missing. And that is the people who had registered to vote at City Hall in the 14 days prior to the election. So while the final report from the district attorney's office has yet to come up or be released, the initial significant margin of error that was widely promoted in the media in fact proved to be false.

Mr. EHLERS. Well, we will be following that with great interest.

And I just want to quickly drop back to the issue of costs of provisional ballots. We spent millions, in fact I suspect it is above a billion, dealing with voting improprieties in Florida in 2000. I can't believe that the cost of a provisional ballot comes anywhere near the expense involved in case there is really a legal battle involved about the results of an election. I just think that is a totally mistaken assumption and statement, and I cannot accept that. That is separate from the issue of same-day registration, but I really think it is also crucial to have provisional ballots for those exercising same-day registration.

I am not a babe in the woods. I wasn't born yesterday. I am familiar—I have been working in elections for over 30 years. I am familiar with many, many cases of fraud taking place. And sometimes there are victims, as the one, the gentleman you mentioned, Mr. Ritchie, who was convicted. It may have been innocent. But someone told that person to do that. And I have, in contested cases that we have had to deal with in this panel, I have found the same thing. There are outside forces who are persuading people to do things that are illegal.

And we have a case of a group that was trying to persuade illegal aliens that it was perfectly fine for them to vote because they wanted them to vote. But of course they could be deported immediately for doing that.

So it is the organized fraud I worry about, not the average person who comes in and makes a mistake. But there are people out there who try to influence elections fraudulently. And we should be aware of that and we should guard against that.

I will yield any remaining time I may have to Mr. McCarthy if he wishes to follow up on anything.

Ms. LOFGREN. The gentleman yields 10 seconds.

Mr. MCCARTHY. The only comment I would make is that your statement about the provisionals, you let a vote go that is an illegal vote, knowing it is an illegal vote. Provisionals, the majority aren't counted because they are not determining the outcome. JFK was elected by one vote per precinct. President George Bush, 500 votes

in Florida. We have congressional Members here that are here by 83 votes.

I think the accuracy and the trust of elections is of utmost importance. I would say you have to have provisional. Why you go beyond, and knowing that you are going to have and accept illegal votes in, is not a way to move. Thank you.

Ms. LOFGREN. The gentleman's time has expired.

The gentleman, Mr. Davis, is recognized for 5 minutes.

Mr. DAVIS of Alabama. Thank you, Madam Chairwoman. Let me, I guess, make one observation at the outset that I don't think anyone on either side of the aisle disputes that we have election fraud that happens.

There is a particular gentleman in Alabama who ran for Congress in a county that had 13,000 people, and the problem is he got 16,000 votes in that county. Happened to be my predecessor. So I know the story fairly well. What is interesting to me is we spend a lot of our energy and a lot of our time focusing on just that side of the equation.

The other side of the equation is voter suppression. The other side of the equation is deliberate tactics designed to suppress the vote, particularly in minority communities. Let me mention two notable examples. The Ranking Member mentioned one example that is odious, encouraging people who are not legal citizens to vote. But there is another example that I know of from the opposite side. And in one election in California there was a congressional candidate in the last cycle who apparently sent out notices to immigrants who were documented, who were capable of registering to vote, and suggested to them that they could not vote unless they were born in the United States. That is not accurate.

And another election in Louisiana, 2002, Senator Landrieu's reelection to the Senate, there were polling places, it was alleged and documented, where certain individuals went into minority voting precincts with bullhorns and announced that anybody in this line who has an outstanding judgment or an outstanding warrant can't vote. That is not the law in this country.

There are other tactics that are hard to describe and hard to explain, dealing with calling certain households in certain communities and telling them that the polling places may be moved on election day, so make sure you know where your polling place is. Or there could be long lines on election day, if you don't get to the polling place by a certain time you can't vote. Or it may not be in your interest to vote because you may not be able to get back to work on time. All of those things I would label as voter suppression. And frankly, it is my understanding that all those tactics violate existing laws that we have today.

So let me just ask the panel, Mr. Albrecht, Mr. Ritchie, the two election officers who are on the panel, do you agree with me that voter suppression as you understand it violates existing Federal laws? And would it also violate existing State laws in your jurisdictions?

Mr. ALBRECHT. I would agree. I think in the State of Wisconsin, in Milwaukee, for example, the two cases that were prosecuted of felons who were on probation or parole at the time of the election became such lightning rods for allegations of voter fraud and atten-

tion to that issue that it has now really succeeded as a suppression tool for felons who have completed their probation or parole, not believing that in fact they are eligible to vote in elections.

Mr. DAVIS of Alabama. And you would agree with me that communicating, knowingly communicating false information to convicted felons about their status and suggesting to them—for example, in Alabama, now there are circumstances in which convicted felons can vote. There were allegations from the 2006 election cycle, as I understand it, that there were some campaigns and some communities saying remember, if you are a convicted felon you can't vote, irrespective of a new law in Alabama that changed that.

So you would agree that that kind of technique would be illegal in your jurisdiction.

Mr. ALBRECHT. I would agree.

Mr. DAVIS of Alabama. Mr. Ritchie.

Mr. RITCHIE. Madam Chair, Representative Davis, I would agree this is a problem. And I participated in a number of the hearings and studies for the reauthorization of the Voting Rights Act. And the thousands of pages of voter suppression that were documented in the Midwest region and throughout the entire country were stunning to me.

And one morning in a recent election in my neighborhood somebody put flyers underneath every windshield wiper, urging people to go vote to a place that would seem logical but was absolutely not the place to vote and had never been the place to vote.

I feel very fortunate to live in Minnesota, where now Congressman Ellison passed laws in our state legislature against deceptive voting practices. And I am very encouraged to see debate and conversation about that here in Washington. But it does happen, and it is enough of a problem that the Congress, I believe unanimously, reauthorized the Voting Rights Act. So it must be widespread and nationwide.

Mr. DAVIS of Alabama. Well, two last observations. I wish it were unanimous. Unfortunately, it was not. There were about 60 Members who voted against it.

But if I could just make two quick observations.

Ms. LOFGREN. The gentleman is granted an additional minute.

Mr. DAVIS of Alabama. Thank you.

The first observation, I serve with the Chairwoman on the Judiciary Committee, and we have oversight hearings periodically with the voting rights division chiefs, the people who are in charge of enforcing voting rights laws. I have asked the question at several different hearings if the Ashcroft-Gonzalez Justice Department have brought a single voter suppression case, and the answer I receive varies from "I have no idea" to "I don't know of any." That is unacceptable.

The final point, Madam Chairwoman, something else that I wish this committee would take up at some point, is the very odious practice of anonymous election calls that communicate slanderous and false information. For example, suggestions that John McCain had an illegitimate child; that happened in the State of South Carolina in 2000.

Ms. LOFGREN. The gentleman's time has expired.

Mr. DAVIS of Alabama. False and defamatory.

Ms. LOFGREN. Mr. Ellison is participating per our UC earlier and is recognized for 5 minutes.

Mr. ELLISON. Thank you, Madam Chair.

Could the panelists share with us if the States have a standard and consistent definition of provisional ballot between them? Do you understand my question? Is there one standard, uniform definition of what a provisional ballot is?

Mr. RITCHIE. Madam Chair, Representative Ellison, to my knowledge, no.

Mr. ALBRECHT. I would agree, there seems to be varying definitions between States.

Mr. ELLISON. And, Mr. Moore, would you agree with that?

Mr. MOORE. I would. We define it in our North Carolina statutes, which is what I am used to working with, but how it compares to other States I am not aware.

Mr. ELLISON. And is there any standard requirement among the States as to when a provisional ballot will be counted and when it will not be? How is it ultimately determined?

Mr. MOORE. Well, in North Carolina it is counted when the determination is made that the person is an eligible voter; or actually that the person is not an ineligible voter, I should say. So most provisional ballots, it is my understanding most provisional ballots are counted, and they are treated much like an absentee ballot in North Carolina.

Mr. ELLISON. So, for example, in North Carolina if you vote provisionally, then some election official will determine whether you are an eligible voter. And if it is confirmed to be that case after you cast your ballot, it will be put in the batch with the rest of the ballots. Am I right about that?

Mr. MOORE. That is correct. And the eligibility criteria would be determined in large part to the HAVA guidelines.

Mr. ELLISON. Now, are you aware of other States where that is not the case? It seems to me I am aware of some States where provisional ballot sort of is really no ballot; it is just something for you to fill out to feel like you voted, but you don't really ever have your ballot counted. Are you aware of any other kind of definitions like that? Perhaps there are some other panelists on another panel that may speak to that issue.

Mr. ALBRECHT. No. Our issuance of a provisional ballot is comparable to what has been described, the two identification requirements consistent with HAVA. And if the I.D. is produced, the ballot is counted in the election.

Mr. ELLISON. What if the person votes, they are eligible, but they don't come back to give, you know, for reasons of their own, they can't come back and give that I.D. or whatever it is that was lacking?

Mr. ALBRECHT. Which unfortunately happens often. We had 40 provisional ballots in one of our most recent elections, and only three of them responded the next day to meet the identification requirement. The 37 other ballots then were not counted in the election.

Mr. ELLISON. Mr. Ritchie.

Mr. RITCHIE. Madam Chair, Representative Ellison, I believe this is why somewhere over a third of provisional ballots are never counted. That is the national average. And you are describing some of the reasons, but there is no standard, there is no national approach.

Mr. ELLISON. Of course it might be—I mean I don't take any issue at this moment with the North Carolina procedure, but I mean there could be—you could define provisional ballot as just, you know, pretty loosely. I mean you could just sort of fill it out and then maybe it never gets counted. I mean that is my concern with this whole provisional ballot thing. Well, one of them is that it could simply result in people not voting even if they are in all other ways qualified to vote. You have any response to that?

Mr. MOORE. I would. I think that the provisional ballots, though, in not counting those, the State still has to comply with HAVA. So you do have that Federal law, the same thing that applies on voting on election day would apply to the provisional ballots.

And secondly, I think it is important to mention when we say we don't count all provisional ballots, well, the reason is because a lot of those ballots may be invalid, the person was not eligible to vote for some reason and that is why they are voting provisional.

So I think when the percentages are thrown around that a certain percentage of provisional ballots aren't counted and that folks are being disenfranchised, that that in some way ignores the reality that the reason they are provisional ballots is that we don't know. And once they are reviewed, it is determined that actually some of those ballots were not valid and that they should not be counted. So that would at least count for some of that percentage.

Mr. ELLISON. Well, Representative Moore, you would agree that there is a percentage of those ballots that were cast that the individual is in all other respects eligible to vote, they just didn't happen to have what they needed at the moment when they were at the polls. You would agree with that, wouldn't you?

Mr. MOORE. Just as in answer to the other question about prosecutions, I am unaware of the data on that, but I can tell you——

Mr. ELLISON. I know, but you suppose that hey, maybe some of the reasons that these folks don't come back is because they are not eligible to vote. I am just asking you to agree to the other side of that equation, that there are a lot of those people who were eligible to vote, they just—because they got five kids and grocery shopping, two jobs and life on top of their shoulders, they just can't make it back to the polls. You would agree with that, too, wouldn't you?

Mr. MOORE. I would certainly hope it wouldn't happen.

Mr. ELLISON. Come on now. I agreed with you on your side. You don't want to agree with me on mine?

Mr. MOORE. I am sure there are examples.

Ms. LOFGREN. The gentleman's time has expired, and all time to question this panel has expired.

Mr. EHLERS. Madam Chair, may I just have 10 seconds?

Ms. LOFGREN. Certainly. Without objection.

Mr. EHLERS. I just want to make clear, and I am sorry that Mr. Davis has left, but I totally agree with his statements. I abhor all fraud, no matter which party, which people, whoever does it, how

they do it. I abhor it, I want to stop it. And I want to make that clear. And I think that is true of everyone on this panel.

Ms. LOFGREN. Thank you very much, Mr. Ehlers.

We want to thank the panelists, the witnesses. And we will have 5 legislative days, if we have additional questions we will forward them to you. And we would request if that happens that you answer them as promptly as you can. And we thank you very much for sharing your expertise with us.

And we will call the next panel forward at this time.

Ms. LOFGREN. As the witnesses are coming forward, I will begin our introductions.

First I would like to introduce Mr. Miles Rapoport. He is the president of Demos, a nonpartisan public policy research and advocacy organization committed to building an America that achieves its highest democratic ideals. Prior to his service at Demos, he served for 10 years in the Connecticut legislature. As a State legislator, he was a leading expert on electoral reform, chairing the Committee on Elections. In 1994, he was elected as Secretary of State of Connecticut. And as Secretary of State, Mr. Rapoport released two reports on the state of democracy in Connecticut. He was also executive director of Democracy Works, a nonpartisan group that works on democracy reform.

Next we have Daniel Tokaji. He is an assistant professor of law at Ohio State University's Moritz College of Law, and associate director of election law at Moritz. In addition to his work with Ohio State University, Mr. Tokaji has written numerous publications and articles on election issues, as well as co-authored an EAC study with the Eagleton Institute of Politics on provisional voting. Prior to arriving at Moritz College of Law, Mr. Tokaji was a staff attorney with the ACLU Foundation of Southern California.

Ms. LOFGREN. Next we have Jan Leighley, who is a Professor of Political Science at the University of Arizona. Her current research focuses on the determinants and consequences of voter turnout in the United States and effects of various States' policies regarding election administration and voter registration. Professor Leighley's work appears in various journals, such as the American Political Science Review, the American Journal of Political Science, and the Journal of Politics in American Politics Research.

And, finally, we have Mary Kiffmeyer. She served as the Secretary of State of Minnesota, the 20th Minnesota Secretary of State, from 1999 to 2006. Ms. Kiffmeyer also served as the President of the National Association of Secretaries of State, and she is also a former member of the Election Assistance Commission Standards Boards.

So we welcome all of our witnesses who have tremendous expertise to share with us today. We appreciate your being here.

STATEMENTS OF MILES RAPOPORT, PRESIDENT, DEMOS; DANIEL P. TOKAJI, ASSOCIATE PROFESSOR OF LAW, THE MORITZ COLLEGE OF LAW; JAN E. LEIGHLEY, PROFESSOR, UNIVERSITY OF ARIZONA; AND MARY KIFFMEYER, FORMER SECRETARY OF STATE, MINNESOTA

Ms. LOFGREN. We will start with Mr. Tokaji.

STATEMENT OF DANIEL P. TOKAJI

Mr. TOKAJI. Thank you so much, Madam Chair and members of the committee. I am very grateful to have been invited today to testify on this very important subject.

I am going to start with some background on election reform, including the various values over the past several years that have informed the debate. I will then turn to a more detailed discussion of the issues of provisional voting and election day registration, focusing on the nexus between the two of them.

As explained below, provisional voting has undoubtedly had enormous benefits in some respects, but it also should be acknowledged that it carries with it some significant problems. Foremost among them are the rejection of the votes of some eligible voters, the unequal treatment of voters across counties that was referenced a moment ago and, perhaps most significantly, the potential for post-election litigation of the type that we saw after Florida's 2000 election over whether those ballots should count. For reasons that I will explain, I think election day registration has the potential to both increase turnout while minimizing our reliance on provisional ballots and avoiding some of these problems.

Two of the values that have been at the center, properly so, of the debates over election reform over the past several years are access and integrity. By access, the idea that everyone should be able to vote and everyone's vote should count. By integrity, the idea that we want to minimize cheating and fraud.

What I would like to suggest today is that there is a third value that needs to be added to the mix, and that is finality, the idea that we need to resolve elections promptly, ideally with a minimum of judicial involvement.

Now, we have had some significant and I think very helpful legislation both at the Federal level and at the State level in recent years. Among the provisions of the Help America Vote Act was a requirement that all States have provisional voting and that they issue provisional ballots to at least two categories of voters: those who show up at the polls and find their names not at the list and those who fail to present required identification.

The idea as expressed by the Carter-Ford Commission is that no American qualified to vote anywhere in his or her State should be turned away from the polling place in that State.

Now, I think provisional voting has had some significant advantages, but there are also some downsides, and one of them is that a lot of the provisional ballots that are cast by eligible voters wind up not being counted. Nationwide, 63 percent were counted, but some 37 percent were not counted. Now, I think there are some procedural things that can be done to improve that number and to see that more provisional ballots are counted, which I have referenced in my written testimony, but it is an issue that we have to be concerned with.

Perhaps an even more significant issue is disparities in how provisional ballots are treated across counties, different standards and different procedures that are followed, as was referenced just a moment ago. This is a serious problem and could raise equal protection concerns of the kind that caught the Supreme Court's attention in Bush versus Gore.

Third and finally, the more provisional ballots you have, the greater the potential for protracted, post-election litigation over the result of the type that we almost had in my own State of Ohio in 2004, where we had a whopping 159,000 or so provisional ballots cast. And there is no question that if the result had been closer we would have seen litigation in our State over whether to count those provisional ballots, something comparable to what we saw in Florida 2000 over whether to count those punch cards.

Let me turn in the short time I have left to the subject of election day registration. There is no reasonable basis for disputing that election day registration increases turnout. I know that Professor Leighley will address that question. What I want to focus on is that election day registration can also significantly reduce the number of provisional ballots that have to be cast, and thus advance the value of finality as well as access, by reducing the likelihood of this very disruptive post-election litigation.

So, again, election day registration is something that can increase access, can advance the goal of finality, and does so without increasing the risk of fraud.

I know my time is up, so I would call the committee's attention to a study that I cited in my testimony from Professor Lorraine Minnite, investigating very carefully the incidents of fraud in election day registration States and finding it is not greater than in any other States.

Ms. LOFGREN. Thank you very much, Professor.

[The statement of Mr. Tokaji follows:]

Testimony of Daniel P. Tokaji

Committee on House Administration, Subcommittee on Elections

"Election Day Registration and Provisional Voting"

November 7, 2007

My name is Daniel P. Tokaji. I am an Associate Professor of Law at the Ohio State University's Moritz College of Law, and the Associate Director of *Election Law @ Moritz*, a group of scholars whose mission is to provide nonpartisan and reliable analysis on election law matters.[1] My research and scholarship focuses primarily on election administration and voting rights. Thank you for inviting me to testify before you today.

I start with some background on election reform, including the central democratic values that are at stake with respect to voter registration. I then turn to a more detailed discussion of provisional voting and election day registration ("EDR"), focusing on the relationship between these two topics.

As explained below, provisional voting has its benefits, but carries with it some significant concerns as well. Foremost among them are the potential for the rejection of eligible voters' ballots, unequal treatment of voters due to inconsistent practices, and post-election litigation over whether to count provisional ballots. In addition to increasing voter participation, EDR has the advantage of reducing reliance on provisional ballots and thus

preventing these problems. EDR thus provides a promising avenue – at this point probably *the* most promising avenue – for making our democracy more accessible to all citizens, while at the same time reducing the likelihood of protracted post-election litigation.

Background

Over the past seven years, issues of election administration have received an unprecedented level of attention. That attention has come not only from legislators, administrators, judges, and scholars, but also from concerned members of the general public.

The Help America Vote Act of 2002 ("HAVA") was truly a landmark piece of legislation, in that it represented an acknowledgment that the federal government should take responsibility for the manner in which federal elections are conducted. Of course, the day-to-day administration of elections remains primarily in the hands of thousands of state and local officials across the country. But HAVA provided much-needed funds to improve the deteriorating infrastructure of American democracy, as well as some minimal standards aimed at promoting the ideal that every eligible citizen should be able to vote and have his or her vote counted accurately.

While there are particular provisions of HAVA over which there is legitimate disagreement, Congress' acceptance of responsibility for how federal elections are conducted

---

[1]My affiliations with the University, the College of Law, and Election Law @ Moritz are provided solely for purposes of self-identification. This testimony is offered solely on my own behalf.

was clearly a step in the right direction. It is equally clear, however, that the work of election administration is far from complete. It is therefore encouraging that this Committee is holding hearings on the question of what further upgrades can be made to the infrastructure of our democracy.

Voter registration and provisional voting are at the top of the list, in terms of election administration topics most in need of further examination. Although voting machines got most of the attention shortly after the 2000 election, it quickly became apparent that voter registration was at least as significant a cause of lost votes. The Caltech/MIT Voting Technology Project estimated that between 1.5 and 3 million votes were lost in 2000 due to voter registration foul-ups, compared to 1.5 to 2 million lost due to faulty equipment and ballot design.[2]

HAVA's provisional voting requirement[3] was intended to protect people from having their votes rejected due to registration errors. The idea was the people whose names did not appear on the registration list, but claimed to be eligible and registered, would be permitted to cast a provisional ballot, which would be counted if their information could later be confirmed. Voters who do not provide required identifying information are also entitled to cast a provisional ballot, as a sort of "fail-safe voting" method of voting.[4]

---

[2]Caltech/MIT Voting Technology Project, *Voting – What Is, What Could Be* 9 (2001).
[3]42 U.S.C. § 15482.
[4]42 U.S.C. § 15483(b)(2)(B).

In a similar vein, HAVA's requirement that every state implement a statewide voter registration list[5] was intended to help make registration systems more accurate. This would at once help ensure that the votes of eligible citizens would be counted and making it more difficult for ineligible people to vote. As Representative Steny Hoyer so memorably put it, the idea was to make it "easier to vote" but "harder to cheat."[6]

This comment highlights the two central democratic values that election reform efforts generally have sought to promote: *access* and *integrity*. The value of access refers to the idea that our democracy should do its best to facilitate participation by all eligible citizens. The value of integrity entails the notion that our elections ought to be conducted in a fair and transparent manner so as to minimize the potential for fraud and other improprieties. While there may sometimes be some tension between these oft-cited values, they are both essential to a well-functioning election system.

While access and integrity are the democratic values that have received the greatest attention in recent years, there is a third value that also warrants mention. That is the value of *finality* when it comes to the resolution of elections. Finality refers to the idea that any disputes regarding the outcome of elections, should be fairly resolved within a reasonable period of time after Election Day. For disputes over the outcome of an election to stretch on for weeks or months afterwards risks damaging public confidence, as well as election officials' practical

---

[5]42 U.S.C. § 15483.

[6]Daniel P. Tokaji, *Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act*, 73 GEO. WASH. L. REV.1206, 1213 (2005). This article discusses the history, goals, and requirements of HAVA more extensively than is possible here. *Id.* at 1209-20.

ability to do their jobs. While post-election litigation may sometimes be inevitable, it is certainly not desirable. To the extent possible, steps should be taken to avoid the need for post-election disputes of the type seen after Florida's 2000 general election. In other words, our elections system ought to serve the value of finality, as well as the values of access and integrity.

Provisional Voting

This brings me to the topic of provisional voting which, as mentioned a few moments ago, is one of HAVA's cornerstone requirements. This requirement had its genesis in the recommendations of the bipartisan National Commission on Federal Election Reform, jointly chaired by former Presidents Jimmy Carter and the late Gerald Ford.[7] This Commission, commonly known as the "Carter-Ford Commission," articulated a vision of provisional voting in which: "No American qualified to vote anywhere in her or his state should be turned away from a polling place in that state."[8] The Carter-Ford Commission cited as a model the system in the State of Washington, in which provisional ballots were provided in cases where there was a question about a voter's eligibility. Election officials researched the voter's eligibility after the election and, if it turned out that the voter was eligible to vote somewhere else in the state, the provisional ballot would be sent there to be tallied for those races in which the person was entitled to vote.[9] Provisional ballots would also have the side-benefit of improving the accuracy of registration lists, by allowing officials to catch and correct mistakes.

---

[7]National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* (2001).

[8]*Id.* at 35.

Consistent with the Carter-Ford Commission's recommendation, HAVA required that provisional ballots be required in certain circumstances. Under HAVA, two groups of voters must be issued provisional ballots: 1) those who claim to be eligible and registered, but whose names do not appear on the official registration list,[10] and 2) those who did not, at the time of voting, present the identifying information required for first-time voters who registered by mail.[11] A voter's provisional ballot should then be counted, if he or she is determined eligible to vote after the election.[12] Provisional voting, if administered properly, can advance the values of both access and integrity. It can advance the value of access by making sure that eligible voters aren't turned away from the polls. At the same time, they can advance the value of integrity by making sure that only eligible voters have their votes counted.

On the other hand, if not administered properly, provisional ballots can cause some serious problems. Perhaps the most significant is eligible voters' provisional ballots *not being counted*, due to inadequate verification procedures or overly stringent standards. If that happens, provisional ballots can wind up functioning as nothing more than a placebo for voters[13] – it may make them feel better by allowing them to cast a ballot on Election Day, but will not really promote access if many ballots are rejected.

There is some evidence that this has in fact happened, particularly in states that implemented provisional ballots for the first time in the 2004 election. Those states counted only

---

[9] *Id.*
[10] 42 U.S.C. § 15482(a).
[11] 42 U.S.C. § 15483(b)(2)(B).
[12] 42 U.S.C. § 15482(a)(4).
[13] *See* Demos, *Placebo Ballots: Will "Fail-Safe" Voting Fail?* (2004).

33% of provisional ballots, compared to 58% in states that had experience with provisional ballots.[14] The time that states allotted to verify the eligibility of provisional voters also made a significant difference, with those states allowing more time counting more ballots.[15] Another factor is whether states counted provisional ballots cast in the wrong precinct, for those races in which the voter was entitled to vote, as originally envisioned by the Carter-Ford Commission. States that did not count out-of-precinct provisional ballots counted only 42% of all their provisional ballots, compared to 56% in states that did count out-of-precinct provisional ballots.[16]

A second problem with provisional ballots is that *inconsistent standards and procedures* may be applied within a state. One of the peculiar features of American election administration is its highly localized nature, in which county or municipal officials have primary responsibility for conducting elections – including the counting of votes. If different jurisdictions within a state have different practices, for determining who should receive a provisional ballot or which provisional ballots will be counted, then it is very likely that voters will be treated unequally in different parts of the state. There is some evidence of inconsistencies in how provisional voting in handled from county to county (or from municipality to municipality) within states. There are substantial differences not only in the number of provisional ballots issued, but also in the

---

[14]Eagleton Institute of Politics & Moritz College of Law, *Report to the U.S. Election Assistance Commission on Best Practices to Improve Provisional Voting Pursuant to the Help America Vote Act of 2002*, at 12 (June 28, 2006). I was part of the research team for this report, which was funded by the U.S. Election Assistance Commission ("EAC").

[15]*Id.*, App. B, Tab. 1 (finding that, in states with a high level of provisional voting, those allowing more than two weeks counted 73.8% while those allowing less than one week counted 58.6%).

[16]*Id.* at 14.

percentage counted among jurisdictions within states.[17] This could very well give rise to a claim that voters' rights under the Equal Protection Clause of the U.S. Constitution have been violated, on a theory similar to that accepted by the Supreme Court in *Bush v. Gore*.[18] In fact, such a lawsuit was brought in Ohio during the 2004 election, alleging that different counties were applying different standards for determining which provisional ballots to count, though it was not litigated to judgment.[19] It is distinctly possible that we will see such litigation in future elections, however, particularly in cases involving close statewide races.

This raises a third problem with provisional voting: a large number of provisional ballots creates and *increased risk of post-election disputes* over the outcome. In fact, whether to count provisional ballots is probably one of the two most important things that candidates can fight over in the wake of a close election (the other being ambiguously marked ballots, such as those which gave rise to the Florida 2000 litigation, or other equipment-related problems). It follows that a large number of provisional ballots can negatively affect the value of finality. The more provisional ballots that remain to be counted after Election Day, the more there is for the parties and their candidates to fight over. All other things being equal, a congressional election decided by 250 votes is much more apt to lead to post-election litigation if there are 5000 provisional ballots than if there are 50 such ballots.

My description of these problems should not be interpreted as an argument that it was a mistake to require provisional ballots as part of HAVA. In fact, I believe that this was a worthy

---

[17] *Id.* at 15.
[18] 531 U.S. 98 (2000).
[19] *See* Tokaji, *Early Returns on Election Reform*, at 1232-33.

reform that has had beneficial effects. At the same time, the problems identified above – eligible voters ballots being rejected, inequalities in administering provisional ballots, and post-election litigation – all command serious attention. I would call special attention to the risk of disputed elections, in states where a large number of provisional ballots are cast. This risk points to the desirability of reducing reliance on provisional ballots, by implementing alternative procedures that will allow eligible voters to cast a regular ballot.

Election Day Registration

One of the practices that can most successfully reduce the need for provisional ballots is election day registration or "EDR." Nine states currently have laws in place that allow for some form of EDR.[20] While the details of these laws vary somewhat from state to state, the basic idea is that a voter can appear at his or her polling place on Election Day and cast a vote. This has the advantage of mobilizing voters who become engaged relatively late in the election system. In states with an earlier deadline for voting – say 30 or even 14 days before Election Day – those people would not be able to participate in the election. In EDR states, by contrast, those citizens may exercise their right to vote, provided that they comply with the state's verification requirements. In Wisconsin and Minnesota, both which have had EDR systems in place for many years, voters may confirm their eligibility either by presenting proof of residence (such as a driver's license, utility bill, or paycheck) or by having another eligible voter corroborate their eligibility.

Empirical research confirms that EDR substantially increases participation. One study found that Maine, Minnesota, and Wisconsin (all of which adopted EDR in the mid-1970s) saw increases in their turnout after adopting EDR and sustained their high turnout rates in the years that followed, even as turnout in other states declined.[21] This accords with research in other states, which finds a consistently positive increase in turnout associated with EDR. One study found that average turnout with EDR is 59%, compared to 53% with a 30-day closing date for registration.[22] Overall, EDR is estimated to increase turnout somewhere by 5 - 10%.[23] The increase does not appear to yield a partisan advantage for either Democrats or Republicans.[24] EDR can, however, help bring in younger voters as well as new state residents.[25]

Despite the increase in voter participation, EDR has its detractors. The most commonly made argument against EDR is that it will increase the likelihood of voter fraud, to the extent that ineligible people try to vote on Election Day. The available evidence does not support the conclusion that EDR results in an increase in voter fraud. A recent study found only ten cases of

---

[20]Those states are Idaho, Maine, Minnesota, New Hampshire, Wisconsin, Wyoming, Iowa, Montana, and North Carolina.

[21]*See* Mark J. Fenster, *The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992*, 22 AM. POLITICS RESEARCH 74, 80, 84 (1994).

[22]*See* Craig L. Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOC. SCI. QUARTERLY 170, 176-77 (2001) (finding a 7% increase with EDR in the average state).

[23]Fenster, *The Impact of Allowing Election Day Registration*, at 74, 84 (national EDR would increase turnout 5%); Benjamin Highton, *Easy Registration and Voter Turnout*, 59 JOURNAL OF POLITICS. 565, 568 (1997) (finding turnout approximately 10% higher in states with EDR or no registration).

[24]Brians & Grofman, *Election Day Registration's Effect on U.S. Turnout*, at 177, 178.

[25]*See* R. Michael Alvarez & Jonathan Nagler, *Election Day Voter Registration in Iowa* (estimating that turnout of those 18-25 would increase by 10.7% with EDR); Stephen Knack & James White, *Election-Day Registration and Turnout Inequality*, 22 POLITICAL BEHAVIOR 29 (2000)(noting increase among younger voters with EDR).

documented voter fraud in EDR states between 1999 and 2005.[26] Of these, only one was a case of voter impersonation at the polls, and that case was unrelated to that state's EDR law. The study included a survey of county prosecutors, who reported only a handful of documented cases of voter fraud. In sum, "the collective evidence suggests that there has been very little vote fraud in EDR states over the past several election cycles."[27] The implementation of statewide voter registration databases, which under HAVA must now be coordinated with state motor vehicle, criminal, and death records,[28] makes it even more difficult for an ineligible person to vote without detection.

While the turnout benefits of EDR are widely recognized, another advantage has received virtually no attention: allowing EDR can almost entirely eliminate the need for provisional ballots. That is primarily due to the fact that voters whose registration forms are mishandled need not cast a provisional ballot in EDR states. Instead, they may simply register at the polls. Consider, for example, voters whose names do not appear on registration lists when they appear at the polling place for any of the following reasons:

$ a third-party registration group soliciting voter registration inadvertently failed to return the form,

$ a public agency that took the voter's registration application, such as a state motor vehicle office, failed to transmit that registration to the appropriate county election office, or

[26]Lorraine Minnite, *Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security* (2007), http://www.demos.org/pubs/edr_fraud_v2.pdf.

[27]*Id.* at 4.

$ the county election office made a data-entry error, say in the voter's home address, causing the voter's not to appear on the registration list for his or her polling place.

In each of these circumstances, the voter's name would not appear on the registration list for the proper polling place when he or she shows up to vote on Election Day. In a state without EDR, that voter would be relegated to the provisional voting process. In an EDR state, by contrast, the voter would be permitted to register and vote on Election Day, provided that he or she satisfied state requirements for confirming eligibility.

The data on provisional voting confirms that EDR states are much less reliant on provisional ballots than other states. In the 2004 election, for example, the EDR states of Maine, Wisconsin and Wyoming all had 0.05% or less of their registered voters cast provisional ballots.[29] Maine had only 483 provisional ballots cast *statewide*, while Wisconsin had only 374, and Wyoming just 95.[30] In Minnesota, there were zero provisional ballots cast in the 2004 presidential election.[31] By contrast, almost 2% of Ohio's registered voters – a total of 157, 714 people – cast provisional ballots in 2004.[32] Quite clearly, the much larger number of provisional ballots cast increases the likelihood of a close election turning into a disputed election. It is not difficult to imagine the nightmare scenario that would have emerged in Ohio in 2004, had the margin of victory been closer. The two candidates would have wound up arguing over whether

---

[28]42 U.S.C. § 15483(a)(2)(A) & (a)(5)(B).

[29]Kimball W. Brace & Michael P. McDonald, *Final Report of the 2004 Election Day Survey Submitted to the U.S. Election Assistance Commission* 6-9, Tab. 6a (2005).

[30]*Id.* at 6-14.

[31]*Id.*

[32]*Id.* at 6-9, Tab. 6a, and 6-14.

provisional ballots should be counted in counties across the state, just as they argued over whether punch card ballots should be counted after Florida's 2000 election.

Greater participation in our democracy is thus only one of the benefits of EDR. Adopting EDR can virtually eliminate the need for provisional ballots and, with it, a potential source of contestation and litigation over close elections. It can also eliminate the numerous problems associated with provisional ballots that I have already mentioned. Put more simply, EDR promotes the value of *finality* as well as access, and does so without sacrificing electoral integrity.

I thank you for granting me the opportunity to appear before you and look forward to your questions.

Ms. LOFGREN. Professor Leighley.

STATEMENT OF JAN E. LEIGHLEY

Ms. LEIGHLEY. Madam Chairwoman Lofgren, Ranking Member McCarthy, and other members of the subcommittee, thank you very much for the opportunity to present to the committee an overview of what scholarly research has demonstrated regarding the effects of election day registration on voter turnout.

Political scientists have long been interested in State-level policies and their effects on whether individuals choose to cast ballots on election day, perhaps the ultimate act of engagement and equality in a democratic political system. Of course, we know a relatively small proportion of individuals choose to exercise this democratic right in the United States compared to other countries, and seeking to understand whether policies might be adopted to increase voter turnout is indeed a critical endeavor, as we seem to have agreed so far today. Widespread participation in the democratic process is an important part of maintaining faith in government.

Briefly, my testimony shows that we know quite a bit about the impact of election day registration. My own research has shown that its adoption in the 1970s by the three early adopter States—Maine, Minnesota, and Wisconsin—led to overall increases in turnout of over 4 percentage points, increases in the turnout of young people between 8 and 12 percentage points, and increases in turnout of lower-middle-class people of over 5 percentage points. And this research is consistent with all existing research which has shown that those States had substantial increases in turnout from the adoption of election day registration.

Modern research on the impact of electoral reforms on voter turnout starts with the seminal work, Who Votes, by Professors Ray Wolfinger and Steve Rosenstone; and Wolfinger and Rosenstone showed that requiring people to register well in advance of election day decreased voter turnout by about 6 percentage points. A substantial body of research produced in 27 years since Who Votes has unambiguously supported its conclusion that lowering the costs of voting would increase turnout. The only questions open to debate are what are the most effective ways of lowering the cost of voting and which persons would be most affected by any reforms.

The existing literature on the effects of election day registration points to four key conclusions:

First, election day registration has a positive and significant effect on voter turnout. Not a single study based on the experience of the Wave I States suggests that voter turnout would decrease or remain unchanged. Instead, this research suggests that voter turnout would increase at a minimum from between 3 to 6 percentage points.

Second, the magnitude of this effect is larger for the three States that adopted election day registration earlier than for those who adopted it later, Idaho, New Hampshire, Wyoming.

We don't have any firm evidence as to why election day registration seems to have had less of an impact in these States. However, they did adopt election day registration as an alternative means of complying with the National Voter Registration Act—Motor

Voter—which allows those States to avoid complying with other substantive provisions of that law. So any analysis of impact of election day registration in these States is implicitly comparing the adoption of election day registration to the adoption of the provisions implemented of the National Voter Registration Act.

Third, the two groups who are most affected by the availability of election day registration are young individuals and individuals who have moved recently.

Michael Alvarez at Cal Tech has written several reports with other co-authors and published by Demos showing that election day registration would have increased turnout in other States that were considering it, New York and Iowa, and estimating that the turnout of younger individuals and of recent movers would likely increase by approximately 10 to 12 percentage points. These studies show the effects of election day registration are somewhat larger for middle and lower income and education individuals than for high income and high education individuals. My current research confirms these estimates.

Fourth, existing research suggests the two potential disadvantages of election day registration, the possibility of fraudulent registration and voting and increased implementation costs, are minimal.

As consistent as these research findings are, they are nonetheless somewhat captive of the empirical reality that we have only six States—I guess we now have more—with evidence on that that have adopted election day registration, and these States adopted election day registration in two different periods. The common mode of analysis is to estimate the difference in turnout in election day registration States pre- and post-EDR adoption and to compare the difference with the difference observed in non-EDR States. Methodologically, this raises issues about what the relevant comparison groups should be.

For example, some non-EDR States might well adopt other policies meant to increase registration or turnout, and such actions could minimize observed differences between the two sets of States. This is precisely what we believe occurred in comparing the Wave II State adopters with the non-EDR States and their compliance with NVRA.

My current research with Jonathan Nagler provides some advantages in research design over these previous approaches. Our analysis at this point strongly reinforces the four key points of previous research: an estimated positive impact of approximately 4 percentage points in Wave I States, the greatest impact for youngest age group and greater impacts of election day registration for individuals in the middle and lower income and educational groups rather than in the highest groups.

Ms. LOFGREN. Thank you very much, Professor; and I just want to take this opportunity to say what a pleasure it is to hear Ray Wolfinger being quoted. He was my absolute favorite professor as an undergraduate at Stanford quite a few years ago. So thank you very much.

[The statement of Ms. Leighley follows:]

TESTIMONY OF

PROFESSOR JAN E. LEIGHLEY, UNIVERSITY OF ARIZONA

U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON ELECTIONS OF THE COMMITTEE ON HOUSE ADMINISTRATION OVERSIGHT HEARING ON "ELECTION DAY REGISTRATION AND PROVISIONAL VOTING"

NOVEMBER 9, 2007

Mr. Chairman, and distinguished members of the Subcommittee on Elections:

Thank you very much for the opportunity to present to the committee an overview of what scholarly research has demonstrated regarding the effects of Election Day Registration on voter turnout. Political scientists have long been interested in the effects of state-level policies on whether individuals choose to cast ballots on election day, perhaps the ultimate act of engagement and equality in a democratic political system. Of course, we know that a relatively small proportion of individuals choose to exercise this democratic right in the United States compared to other countries, and seeking to understand whether policies might be adopted to increase voter turnout is indeed a critical endeavor. Widespread participation in the democractic process is an important part of maintaining faith in government.

Briefly, my testimony will show that we know quite a bit about the impact of Election Day Registration. My own research has shown that its adoption in the 1970s by the 3 'early adopter' states --- Maine, Minnesota, and Wisconsin, led to:

1. Overall increases in turnout of over 4 percentage points.
2. Increases in turnout of young people of between 8 and 12 percentage points.
3. Increases in turnout of lower middle class people of over 5 percentage points.

LEIGHLEY TESTIMONY, P. 2

And this research is consistent with all existing research has shown that those states had substantial increases in turnout from adoption of Election Day Registration. The comments that follow highlight the strong empirical evidence that the adoption of Election Day Registration in the states has resulted in increased voter turnout and underscore my belief, based on this evidence, that Election Day Registration is perhaps one of the most effective voter registration and election administration policies that one might adopt in an effort to increase turnout.

Introduction

I received my Ph.D. from Washington University in St. Louis in 1988, and since have focused my research on the demographic determinants of voter turnout (i.e., who votes), whether the legal and political context facilitates or depresses turnout, and whether turnout matters for citizens and for public policies. I have published 14 articles in peer reviewed political science journals, 2 books, and have edited *The American Journal of Political Science*, a leading journal in the discipline. My book "Strength in Numbers" which focused on racial and ethnic political behavior, published by Princeton University Press in 2001, has been widely cited

Most importantly, my current research, with Jonathan Nagler, Professor of Politics at New York University, focuses largely on how various registration and election administration laws influence overall levels of voter turnout and whether such laws have differential effects on different types of people—most specifically, groups that tend to be under-represented in the electorate (e.g., younger individuals, low income individuals, less educated individuals and racial and ethnic minorities) relative to the size of these groups as a proportion of the U.S. voting age population Drawing on data on voter

turnout in presidential elections since 1972, we have found that the electorate is increasingly *unrepresentative* with respect to age, increasingly *representative* with respect to African-American voter turnout, and that the heavy class bias (in favor of high income and highly-educated individuals) in the electorate persists despite the fact that various states have experimented with their voter registration and election administration laws, typically in an effort to enhance citizen access and participation.

The bottom line here is that the adoption of Election Day Registration would indeed increase voter registration and voter turnout, and it would have the greatest effect on youth, lower-status individuals and racial and ethnic minorities, all of which are groups that tend to be underrepresented in the electorate. In short, Election Day Registration is an effective means to achieving a larger and more representative electorate.

Overview of Existing Literature

Modern research on the impact of electoral reforms on voter turnout starts with the seminal work *Who Votes?* by Professor Roy Wolfinger and Steven Rosenstone. Published in 1980 by Yale University Press, this book established the impact that various barriers to registration and voting had on turnout in the United States. Professor Wolfinger and Rosenstone showed that requiring people to register well in advance of election day decreased voter turnout by 6 percentage points. A substantial body of research produced in the 27 years since the publication of *Who Votes?* has unambiguously supported its conclusion that lowering the costs of voting would increase turnout. The only questions open to debate are what are the most effective ways to lower the costs of voting, and which persons would be most affected by any reforms.

LEIGHLEY TESTIMONY, P. 4

The existing literature on the effects of Election Day Registration points to four key conclusions:

- First, there is substantial empirical evidence that Election Day Registration has a positive and significant effect on voter turnout.

  In research published in 1994 Professor Fenster compared turnout in the Wave I Election Day Registration States (Maine, Minnesota, and Wisconsin) in the 1960 to 1972 pre-adoption period to turnout in the post-EDR adoption period, 1976-1992. He found that Election Day Registration resulted in approximately a 5 percentage point increase in turnout. In research published in 1999, Professors Brians and Grofman found that EDR has its largest impact on respondents with less than a college degree.

  In research published in 1997, Professor Ben Highton of the University of California looked at voting in 1980 and 1992, and compared EDR and non-EDR states. He found that the well documented relationship between education and voter turnout in the United States was even stronger in the non-EDR states than in the EDR states, suggesting that Election Day Registration is most beneficial for those with lower levels of education.

  All the studies I mention here were published in peer reviewed journals. Not a single study based on the experience of the Wave I states suggests that voter turnout would decrease or remain unchanged; instead, this research suggests that voter turnout would increase *at a minimum* from between three to six percentage points.

LEIGHLEY TESTIMONY, P. 5

In states with certain demographic groups, it is possible that the turnout increase would approach eight to ten percentage points. Professors Michael Alvarez of Caltech and Stephen Ansolabehere of MIT, for example, suggest that the adoption of Election Day Registration in California would likely result in as many as 1.2 million new voters, with those "new voters" coming disproportionately from young people and people who have moved recently.

- Second, the magnitude of this effect is larger for the three states that adopted Election Day Registration earlier (Maine, Minnesota, Wisconsin) than for those states who adopted it later (Idaho, New Hampshire, Wyoming).

  We do not have any firm evidence as to why Election Day Registration seems to have had less of an impact—though still a positive one—in these states. However, these three states adopted Election Day Registration as an alternative means of complying with the National Voter Registration ("Motor Voter") Act (NVRA) that allows those states to avoid complying with other "substantive" provisions (such as allowing voter registration when applying for a drivers license) of the law. Thus any analysis of the impact of Election Day Registration in these states is implicitly comparing the adoption of Election Day Registration to the adoption of the provisions of the National Voter Registration Act. Note, too, that there may also be differences in the implementation of Election Day registration in these states, and this is surely a question for future research.

- Third, the two groups who are most affected by the availability of Election Day Registration are young individuals and individuals who have moved recently.

LEIGHLEY TESTIMONY, P. 6

Professor Alvarez has written several reports with other co-authors and published by Demos showing that Election Day Registration would have increased turnout in other states such as New York and Iowa, and estimating that turnout of younger individuals and of "recent movers" would likely increase by approximately 10 to 12 percentage points. These studies, along with others, also show that the effects of Election Day Registration are somewhat larger for middle and lower income and education individuals than for high income and high education individuals. My current research confirms these estimates. In addition, the work of Professor Alvarez and others suggests that the adoption of Election Day Registration could possibly increase the turnout of Latinos and African-Americans from around 5 to 10 percentage points.

- Fourth, existing research suggests that two potential disadvantages of Election Day Registration—the potential for fraudulent registration and increased implementation costs—are minimal.

Although any change in election registration and administration laws is likely to have costs associated with implementation, previous research focusing on election administration officials and public reports of (potential) fraud or inefficiencies associated with Election Day Registration in the six states that currently offer Election Day Registration finds little evidence of widespread dissatisfaction on the part of election officials, political candidates or citizens. In short, these six states seem to have found effective ways to implement Election Day Registration.

LEIGHLEY TESTIMONY, P. 7

Another perspective on this point is that Election Day Registration may even offer the potential to improve the quality of existing registration lists (and hence improve efforts to educate citizens), and the potential for fraud may be less for this policy innovation than it might for some others (existing or proposed) in that it would return more of the registration process to the supervision of election officials at the polling place rather than having registration available or conducted by various citizen groups on an "ad hoc" basis.

Current Research by Leighley and Nagler

As consistent as these research findings are, they are nonetheless somewhat captive of the empirical reality that we have only six states that have adopted Election Day Registration, and these states adopted Election Day Registration in two different periods. The common mode of analysis is to estimate the difference in turnout in Election Day Registration States pre- and post-EDR adoption, and to compare this difference with the difference observed in non-EDR states. Methodologically, this raises issues about what the relevant comparison groups should be. On the latter point, for example, some "Non-EDR" states might well adopt other policies meant to increase registration or turnout, and such actions could minimize the observed differences between the two sets of states. This is precisely what occurred with the Wave II states and non-EDR states that simultaneously adopted provisions of the National Voter Registration Act.

My current research with Professor Jonathan Nagler focuses on changes in the determinants of voter turnout since 1972, including voter registration and election administration laws in the states, and provides some advantages in research design

over these previous approaches. Specifically, for a wide range of voter registration and election administration laws, we will be able to estimate the effects of such policy adoptions since 1972 on individuals' probability of voting. And we can examine more rigorously than previous scholars whether these policy adoptions increase the probability of some types of individuals voting compared to others.

Our analysis at this point strongly reinforces the key points of previous research: an estimated positive impact of approximately 4 percentage points in "Wave 1" states, the greatest impact for the youngest age group and greater impacts of Election Day Registration for individuals who in the middle and lower income and educational groups rather than in the highest groups.

Conclusion

To summarize, any scholarly recommendations regarding Election Day Registration and its effects on voter turnout must build on the substantial evidence we have that EDR is an effective policy for increasing voter turnout. Our best estimates are that the adoption of Election Day Registration would increase voter turnout by 3 to 6 percentage points. Perhaps just as importantly, Election Day Registration would likely have a greater effect on those individuals in the middle of the education and income groups rather than for those "on top," as well as on young individuals and those who have moved recently. These are especially important observations as they suggest that Election Day Registration might be the mechanism by which lower-status individuals might become more engaged in the political system. Thus, our democracy would benefit from the advantages of an election system oriented toward

maximizing citizen participation, but do so without threatening the integrity and legitimacy of the electoral process.

The relative advantages of Election Day Registration are also important to note. In my recent work with Bob Stein, Rice University, we find that "early voting" may lead to a one to two percentage increase in voter turnout, depending on the particulars of the election. The individuals who seem to be more likely to vote as a result of the availability of early voting, however, are those who have a high probability of voting regardless: strong partisans, highly educated and highly interested citizens. This has led us to conclude that early voting allows individuals who would otherwise vote the convenience of doing it over a longer period of time, rather than mobilizing a significantly large group of previous non-voters. Similarly, absentee voting has made it more convenient for individuals with an already high probability of voting to vote, but has not necessarily increased the turnout of non-voters and therefore has not enhanced the representativeness of those who choose to cast ballots.

And so I believe that we must be careful in what we claim when such reforms are offered in an effort to reduce the costs of registration and voting, and therefore make it easier for citizens to voice their preferences in politics. Yet I also believe that Election Day Registration is a proposed reform that can deliver on the promises of its advocates: its adoption for federal elections will most certainly lead to higher turnout and to a more representative electorate.

LEIGHLEY TESTIMONY, P. 10

APPENDIX: SELECTED REFERENCES

Alvarez, R. M. and S. Ansolabehere. 2002. "California Votes: The Promise of Election Day Registration." Published by Demos. (www.demos-usa.org).

Alvarez, R. M. and J. Nagler. N.D. "Election Day Voter Registration in Iowa." Available from Demos. (www.demos-usa.org).

Alvarez, R. M., J. Nagler and C. H. Wilson. 2004. "Making Voting Easier: Election Day Registration in New York." Available from Demos (www.demos-usa.org).

Brians, C. L. and B. Grofman. 1999. "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice* 99: 161-176.

Fenster, M.J. 1994. "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992." *American Politics Quarterly* 22: 74-87.

Highton, B. 1997. "Easy Registration and Voter Turnout." *Journal of Politics* 59: 565-575.

Knack, S. 1995. "Does Motor Voter Work? Evidence from State-Level Data." *Journal of Politics* 57: 796-811.

Knack, S. 2001. "Election-Day Registration—the Second Wave." *American Politics Research* 29: 65-78.

Knack, S. and J. White. 2000. "Election-Day Registration and Turnout Inequality." *Political Behavior* 22: 29-44.

LEIGHLEY TESTIMONY, P. 11

Leighley, J. and J. Nagler. "Electoral Laws and Turnout, 1972-2004." Presented at the Conference on Empirical Legal Studies, New York, November 9-10, 2007. [Most recent version available on-line at Social Science Research Network, www.ssrn.com, or by email request from the authors, leighley@email.arizona.edu or jonathan.nagler@nyu.edu]

Stein, R.M. 1998. "Early Voting." *Public Opinion Quarterly* 62: 57-69.

Stein, R.M. and P.A. Garcia-Monet. 1997. "Voting Early but Not Often." *Social Science Quarterly* 78: 657-671.

Stein, R.M., C. Owens and J. Leighley. 2003. "The Role of Candidates and Parties in Linking Electoral Reforms with Voter Participation." Unpublished paper.

Wolfinger, R. and S. Rosenstone. 1980. Who Votes? New Haven: Yale University Press.

Ms. LOFGREN. Ms. Kiffmeyer.

STATEMENT OF MARY KIFFMEYER

Ms. KIFFMEYER. Madam Chair Lofgren, Representative McCarthy, members, I am here today to testify in favor of integrity in the elections system.

It is so often that we take a little piece of an election and we focus so much on that that we lose sight that it is a system. It is an entire system. It begins with registration, and it concludes at the finality of actually having those votes recorded and included. So my approach here is, let's stop just focusing on just that one piece. Let's think of it as a whole. Because the ballots in the box are integrally tied to who gets the ballot.

Does same-day registration increase turnout? In taking a look at some of these statistics, in the years before same-day voter registration in Minnesota, it went below 60 percent one time. In the years after same-day voter registration, it went below 60 percent six times. So I think it is important to realize not only in the average but in the individual years it is certainly seen.

And I think part of that is attributed to Minnesota's culture. We are Germanic, Norweigian. We just are involved. If there is an organization for anybody, we have got it in Minnesota. So a lot of this I believe has a lot to do with just simply that kind of culture.

Our high school students, almost 100 percent of them are registered to vote before they leave high school. It is a very active part of that. So for those young people it is really an issue. The college students who are coming here from other States are often using same-day voter registration to vote in elections in Minnesota on election day though they are from another State.

My approach was to encourage everyone; and certainly the results and that message of hope and focus on integrity, I believe, did contribute to the upward trend in Minnesota's election turnout during the last years. I took those principles—access, accuracy, integrity, and privacy—before I thought of running for Secretary of State, because I felt those embodied all of the election system.

In Minnesota, when it came to paper ballots, which I took office before the 2000 election and served during the time including the tragic death of Senator Wellstone, we did an election in 11 days, and as well we did many other things, but we focused on those ballots. I stood for paper ballots when the technology trend was just out of this world; and I said, no, it can't withstand that scrutiny. We deserve better.

In Minnesota, we implemented Precinct Optical Scan paper ballots during my watch, the methodical recounts of ballots, aggressive training at all levels of election workers. Having been one myself for 12 years in the polling place, I knew how much training could really implement these changes we needed. The auditing statewide of results and certification of the code was implemented during my time as Secretary of State.

Now, on the other issue as well, incidents, some that you might say, is there no stealing of votes, all these kind of things you hear? Well, any of you who don't believe that there is stealing of votes, next time you leave, don't lock your house and don't lock your car door if you have that kind of absolute trust. It is important to real-

ize that, of course, I think what we want is a balanced system that recognizes those situations not only in the final end, counting ballots, but in the beginning, which is registration.

I think that recently, as a matter of fact this week, in the University of Minnesota daily newspaper a commentary was written by the students in support of photo ID. These young folks stated, in synch with the minds of Jimmy Carter, James Baker, and Andrew Young, former mayor of Atlanta, Georgia: A photo ID would not be a poll tax but a voting enabler. This comes from the mouth of the University of Minnesota college student newspaper themselves. I think that should carry a lot of weight from these young people.

I know that also there are a lot of folks who will maybe tout and gloss over some of the challenges. I have experienced that. Of major import, when time is short and urgency is great and you are doing elections in the polling place on election day, you will have lines. It is hard to guess the number of poll workers you need because you don't know exactly how many are coming.

A personal instance for me in Minnesota was hearing on the news a polling place that had run out of ballots and people were there. I walked to the polling place. About 200 people, they had run out of ballots. I sent my staff person with a $20 bill from my own pocket, and I said, "Go get pens, because when the ballot gets here they are also out of pens." So we were able to pull that together. But I felt so bad that there were people because of this situation who didn't get to vote simply because we had election day registration and the polling place was flooded.

Those are issues that are important. If we are going to have a let-everyone-vote measure, then let's make sure that everyone-is-eligible measure balances those two situations as well.

In regards to some of the cases in Minnesota, we have the Coates city had 93 people falsely registering to vote. Fortunately, it was before election day, it was caught, and it was prevented.

We had another deputy county administrator who told a polling place person, yes, a green card is okay to register to vote.

We had a car trunk that was collected with over 300 voter registrations just stuffed in a trunk; and, again, that was caught by a routine traffic stop at the airport.

Thirty-four non-U.S. citizens registered to vote in Minnesota, documented after HAVA, because we are required to verify things. Twelve of those also did vote. Those were turned in to the Department of Justice.

Those are some of just the larger ones, and indeed two of those that were actually prosecuted. It is difficult to prosecute after an election.

Thank you very much for the opportunity to be here.

Ms. LOFGREN. Thank you for your testimony.

[The statement of Ms. Kiffmeyer follows:]

TESTIMONY OF MARY KIFFMEYER, FORMER SECRETARY OF STATE OF MINNESOTA

COMMITTEE ON HOUSE ADMINISTRATION, HEARING ON ELECTION DAY VOTER REGISTRATION AND STATEWIDE PROVISIONAL VOTING NOVEMBER 9, 2007

Mr. Chairman and members of the Committee on House Administration. Thank you for the opportunity to testify today regarding the integrity of elections. I am here to testify in favor of integrity in the entire election system.

The question is asked, "Does same day registration increase turnout?" The record shows that Minnesota consistently had higher turnout rates before same day registration. In the 24 years prior to same day, the average turnout was 77 %. After same day, it is an average of 71%.

As Minnesota Secretary of State for 8 years, I worked very hard to return Minnesota's voter turnout to those higher numbers and in all years of my service, Minnesota did have the highest voter turnout in the country for 2000, 2002, 2004 and 2006. But I believe that with added integrity to our same-day registration process, Minnesota's numbers will go higher.

My approach was to encourage everyone to participate and focus on a positive message of optimism for our country and a message of integrity. The principles of accuracy, access, integrity and privacy of the vote guided every action I took. I believe that my message of hope and focus on integrity contributed, as much as an election official's words can, to the upward trend in Minnesota election turnout."

Those principles resulted in taking positions as Secretary of State even when the tide was strong against it. I stood strong for paper ballots while protecting the access of voters with disabilities and testified to Congress to the importance of that level of integrity in the election system. Minnesota is recognized as a leading state on that subject having chosen Precinct Optical Scan equipment as our first choice and has used our HAVA money well to accomplish what Congress intended. In Minnesota, with this equipment, the methodical recounts of ballots, aggressive training of all levels of election workers, the auditing statewide of results and certification of the code has given my state great confidence in that part of the election system.

I have read and heard a great deal since the 2000 election about the need for counting the ballots accurately and to give voters confidence in the outcome. We have accomplished that in Minnesota.

But an election is a system from registration to final counts of the ballots. The whole election system is only as strong as the components and integrity and confidence can't just rest on the final stage of counting the ballots.

In this bill, focus is on the start of the election system in- voter registration. I believe that the same level of scrutiny as to the counting of the ballots needs to be present when deciding who gets a ballot. The right to vote is given to US Citizens by our constitution and the election system owes it to the American people to give assurance that the registration part of the process is accurate and completed with integrity. If it isn't, the rest of the process becomes suspect.

Anyone who thinks that there is no stealing of votes should go home and next time don't lock their doors or cars when leaving. The focus in the registration and election system overall should be one of prevention and gaining public confidence. After an election, it is very difficult to correct issues in registration. Prevention and assurance of integrity is a good, sound policy to use for elections as well as for your homes and cars. Don't we all check the door before walking away ... just to be sure?

In Minnesota, I have heardon election day, while visiting a university polling place, college students askasked me, when visiting the polling places on Election Day, why we don't we have photo ID.? They mention how easy it would be to bust this system. Matter of fact, in this week's issue of the University of Minnesota Daily Newspaper, a commentary is written supporting Photo ID. These students are in sync with the minds of Jimmy Carter, James Baker and Andrew Young. These young folks state, "..a photo ID would not be a poll tax, but a voting enabler."

Photo ID also needs to be partnered with immediate verification as HAVA requires. In this day of illegals potentially gaining access to the driver license system, the verification of citizenship and accuracy of the connection of the ID card to the person voting is only common sense.

While some tout only the benefits and gloss over the challenges, I will convey some issues you have to deal with in same day registration. Unless you are a very small precinct, you are very likely to have long lines. Long lines with waits of 2-3 hours occur. Local jurisdictions find it hard to staff appropriately when they don't how many are coming to vote. So they need to have extra staff. Confusion over ID requirements (which are very hard to sort out in the polling place with lines of voters) creates Election Day issues sometimes of major import when time is short and the urgency is great. Not knowing how many are coming results in needing to have extra ballots printed or sometimes running out of ballots (since you don't know for sure how many are coming.) I was called to a downtown Minneapolis precinct where they had run out of ballots and pens. I

gave my staff person money and instructed him to go find pens if he has to knock on the neighbor's doors one by one to get them. The ballots came, we had the pens, but it was not a pretty sight. Yes, many of those situations were rectified, but they just should not happen. However, with same-day, it is nearly impossible to prevent. And in this type of situation, cheating is easier to slip through. Once the election is over, the messiness of dealing with those issues is well recognized. That is why it is imperative to structure policy and methodology in the preventive mode.

Even with tremendous amounts of voter education in Minnesota, the urgency on Election Day about registration while in the polling place with lines of voters waiting has caused some to leave and not vote. Young parents with daycare cannot just wait this out. This is especially true on college and urban polling places.

In Minnesota, a case was successfully prosecuted for several students who double-voted and another case where someone triple voted. Same day registration can facilitate that happening. Remember that these are those who are caught and it is only after their votes have been counted. Verification is required for all other citizens who pre-register to vote and I believe it is unfair to allow those on Election Day to bypass those safeguards.

If provisional voting is implemented with verification of ID at time of registration, provisional voting can become the safeguard to making voting easy, but cheating hard.

We not only do not have Provisional voting in Minnesota, we have a policy of "vouching". This is where on Election Day, any person can come in without any form of ID, and on the written word of another person who is already registered but not vouched for, get a ballot that is immediately cast. This ballot once cast, even if later determined it is dishonest, cannot be removed.

There is no surer way to undermine the motivation of an honest voter than the fear that an honest ballot will be cancelled out by an illegal one.

"Does same day registration increase turnout?" Minnesota consistently had higher turnout rates before same day registration. The pattern of higher turnout in presidential years and lower in gubernatorial continues, but even though Minnesota leads the nation in turnout, the comparison of those years before and after Election Day registration still shows a decline in the ratio of turnout in Minnesota compared to that in the rest of the nation. Election Day registration has reduced, not increased Minnesota's advantage.

I believe our federal system of government, where states make their own decisions about how elections are run works better than having politicians in Washington impose their views. I oppose federal preemption of state election

procedures. Under our Constitution, we do not have federal elections, we have state-run elections for federal office. We do not have, and should not have "federal elections" run from Washington by the federal government in every local precinct in America.

But if you in Congress are going to go with imposing same-day registration on every state, whether they like it or not, take some steps to try to protect the integrity of the process as well. If you impose a rigorous let-everyone-vote measure, then at the very least you should couple it with rigorous make-sure-everyone-is-eligible measures like, prohibiting states from issuing drivers licenses to illegal aliens and requiring a state-issued photo ID like a drivers license and verification in the polling place before the ballot is cast, with provisional balloting as a safeguard.

Don't we owe the American people that kind of election?

I believe and functioned as Secretary of State that turnout in elections is tied to integrity in the election system and integrity in politicians. Where people see a lack, they don't vote. Cynicism is the greatest deterrent to voting. Please do not feed that cynicism by designing an election policy or implementation that is fatally flawed and will feed that cynicism and thereby reduce involvement and participation in the most basic function of citizenship, voting.

Thank you again for the opportunity to testify today.

Ms. LOFGREN. Finally, we go to Mr. Rapoport.

STATEMENT OF MILES RAPOPORT

Mr. RAPOPORT. Thank you very much, Chairman Lofgren.

I am Miles Rapoport, and I currently serve as the President of Demos: A Network for Ideas and Action. Demos is a nonpartisan public policy center in New York, which has been dedicated since its founding in 2000 to the expansion of democratic participation. We have felt all along that Election Day Registration is one of the mechanisms we could use, one of the policies that we could adopt that would significantly enhance voter participation.

I want to make mention of the fact that I have longer written testimony that I will summarize; and also that there are three reports, including Professor Lorraine Minnite's report.

Ms. LOFGREN. Without objection, those will be entered into the record.

Mr. RAPOPORT. Thank you.

[The information follows:]

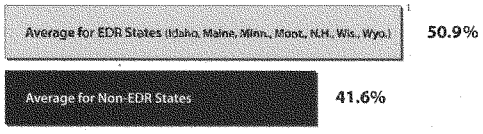
A DĒMOS POLICY BRIEF Updated Winter 2008

Voters Win with Election Day Registration

What is Election Day Registration?

Election Day Registration (EDR), sometimes called "same day registration" (SDR), allows eligible voters to register and cast a ballot on Election Day. Nine states currently have EDR or SDR laws. Maine, Minnesota and Wisconsin adopted EDR in the 1970s. Idaho, New Hampshire and Wyoming enacted Election Day Registration two decades later. Montana implemented EDR in 2006. In 2007, Iowa and North Carolina both enacted same day registration. Iowa now allows registration and voting on Election Day. North Carolina permits registration and voting on the same day during the state's liberal early voting period.

Voter Turnout in the 2006 Midterm Election



By counteracting arbitrary voter registration deadlines, EDR greatly enhances the opportunity for Americans to participate in the electoral process and cast a ballot that will be properly counted. States with EDR have consistently boasted turnout rates 10 to 12 percentage points higher than states that do not offer Election Day Registration. The 2006 midterm election was no different.

Dēmos
A Network for Ideas & Action

State by State Summary 2006

Idaho

Idaho recorded 54,531 individuals registering to vote on Election Day in November 2006, representing 12 percent of the total ballots cast in the election.[2]

Iowa

Iowa enacted Election Day Registration in 2007.

Maine

Turnout among eligible voters topped 53 percent in Maine in 2006—significantly higher than the 41.6 percent average for non-EDR states.[3]

Minnesota

Over 292,000 people registered using EDR in Minnesota in the 2006 election. Their ballots accounted for more than 13 percent of the votes cast in the 2006 general election.[4]

Montana

9,200 Montana citizens registered and voted using the new "late registration" option from October 7, 2006, to November 7, 2006 (Election Day).[5] Of those, 3,947 registered on election day itself. These ballots figured in the 8 percent increase in voter turnout among eligible voters over the 2002 midterm election.[6]

New Hampshire

25,796 New Hampshire residents registered and voted on Election Day in 2006. Of the 417,436 ballots cast in the state, 6.2 percent were from individuals registering on Election Day.[7]

North Carolina

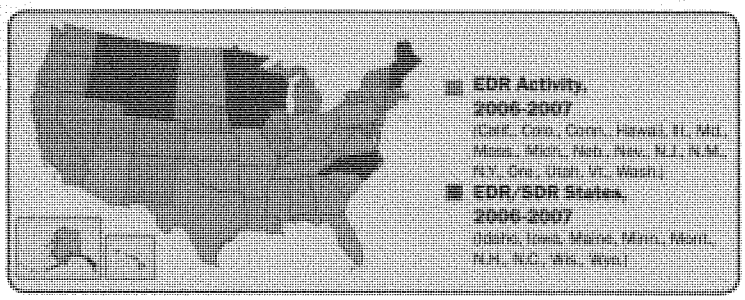
North Carolina adopted Same Day Registration in 2007.

Wisconsin

Wisconsin reported 392,391 registrations on Election Day in 2006. This figure accounts for 18 percent of the total turnout for the state.[8]

Wyoming

13,393 Wyoming residents registered and voted on Election Day in November 2006. Their votes comprised over 5.5 percent of the ballots cast in Wyoming.[9]



National Summary

EDR States in the 2006 Midterm Election

The midterm election of 2006 featured some of the most highly contested races of the decade. The votes of Election Day registrants became more important as the number of closely contested races rose in the final hours of the election. Preliminary data indicates that EDR greatly facilitated voter participation in these elections.

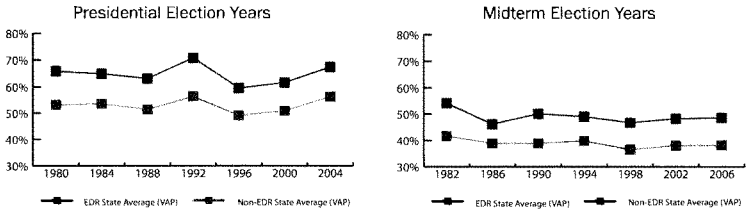
EDR Enfranchised Over Three-Quarters of a Million Voters on November 7, 2006

More than 787,000 votes were cast by individuals who registered on Election Day in the six EDR states for which data is available, representing 5.5 to 18 percent of citizens in those states who participated in the 2006 general election.[10] Without Election Day Registration, hundreds of thousands of Americans might have been excluded from exercising the most fundament right of democracy.

2006 EDR Overview

- More than 787,000 individuals used EDR to register and vote in the 2006 general election. This bloc of voters is larger than the populations of Washington DC, Des Moines, Iowa, Tacoma, Washington, Jackson, Mississippi, or Ft. Meyers, Florida. In fact, this number is larger than the entire populations of Wyoming or Vermont.
- Voter turnout in the seven states that offered Election Day Registration in the 2006 election was, on average, nearly 10 percentage points higher than states without EDR.[11]
- Five EDR states made the list of top 10 voter turnout states in 2006 (Minnesota, Montana, Maine, Wisconsin and Wyoming).

Turnout Rates in EDR vs. Non-EDR States from 1980 to 2006



Source: United States Election Project, http://elections.gmu.edu/voter_turnout.htm, using Voting Age Population

EDR Benefits Voters and State Election Administrators

EDR states consistently boast higher turnout than non-EDR states. States with Election Day Registration have boasted higher voter turnout than those without EDR for over 25 years, in both presidential and midterm elections. In the 2004 presidential race, EDR states had an average turnout 12 percentage points higher than the average turnout for non-EDR states. While that full increase cannot likely be attributed to EDR, research shows that at least 3 to 6 percentage points of the increase is directly related to EDR.

EDR counteracts arbitrary voter registration deadlines. Voter registration deadlines vary widely across the nation. The experience of EDR states show that these cut-off dates bear little relevance to a state's ability to run smooth elections. Nevertheless, 25 states close off voter registration 25 or more days before the election—well before many would-be voters have been fully apprised of candidates and campaign issues.

Voter registration deadlines close before the media and the public fully focus on elections. For example, the University of Wisconsin's NewsLab found that over 40 percent of election news stories were aired in the final week before the 2006 election in seven Midwest media markets.[12] A 2000 election poll found that the percentage of people giving "quite a lot" of thought to the election rose significantly as Election Day approached, from 59 percent in September to 75 percent in the first week of November.[13]

Competition can also increase in the final weeks of an election. The *Cook Political Report* classified 25 U.S. House seats across 16 states as highly competitive in early October 2006. By November 6, after all registration deadlines had passed, the number of House seats considered to be highly competitive increased to 39 across 23 states.[14] An unregistered voter moved to action in this final week would have been ineligible to cast a countable ballot in 42 states.

EDR allows eligible voters who may have been mistakenly purged from the voting rolls to cast a meaningful ballot. The Help America Vote Act of 2002 requires states to offer provisional ballots at the polls to voters whose names do not appear on the voter rolls. These provisional ballots are only counted if election officials subsequently determine that the individuals were eligible to vote.[15]

> "In Minnesota, we not only believe citizenship is an American right, it is also an American responsibility. We go out of our way to make sure every single Minnesotan exercises his or her duty and is allowed to vote. For the past 34 years, Election Day Registration has guaranteed them that right — fairly and freely. It's a right that all Americans should share."
>
> U.S. Rep. Keith Ellison (D-MN)

More than one in three of the almost 2 million provisional ballots cast in 2004 were ultimately discounted.[16] Dêmos' analysis of preliminary provisional balloting data for the 2006 midterm election shows continuing problems.[17] Much like patients sent home with a placebo, many provisional voters mistakenly believed that they were given a genuine opportunity to vote. EDR allows voters who have been purged or mistakenly left off the rolls to re-register and cast a ballot that will be counted.

EDR assists young voters. Young Americans move frequently—for school, for jobs, for family—making it harder for them to keep their voter registrations current. Although voter turnout increased among youth in 2004, it still lagged behind the overall turnout rate. EDR is a powerful tool that can be used to ensure that young people are able to register and vote.

Research indicates that allowing young people to register to vote on Election Day could increase youth turnout in presidential elections by as much as 14 percentage points.[18] Montanans between the ages of 18 and 25 comprised more than a third of the approximately 9,200 individuals who registered to vote under Montana's new "late registration" statute. The state allowed registration and voting after the close of the early registration period, up to and including Election Day (October 7, 2006, and November 7, 2006).[19]

EDR enfranchises geographically mobile and lower-income citizens. Census data shows that almost 40 million Americans moved between 2004 and 2005. Over one-third of those moving during this period had incomes of less than $25,000.[20] With early voter registration deadlines, many Americans who have recently moved are unable to fulfill their duty as citizens to vote in elections. With EDR, they can re-register on Election Day and cast a ballot.

> "Nevada has consistently been near the bottom in terms of the number of registered voters and those who actually cast their ballots. There are several factors that contribute to this poor showing, but certainly the fact that in Nevada people must register to vote atleast 30 days before an election serves as a stumbling block for increasing participation."
>
> U.S. Rep. and former Nevada Secretary of State Dean Heller (R-NV), supporting state EDR bill

EDR is cost-effective and easier for elections officials to administer than provisional ballots. An authoritative study indicates that elections are no more expensive to administer in EDR states than elsewhere.[21] Most respondents to a 2007 telephone survey of local election officials in the EDR states of Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming described the incremental cost of EDR as minimal.[22]

Non-EDR states are also far more likely to distribute large numbers of provisional ballots. According to Wisconsin's elections director, his state's ability to avoid provisional balloting "alone makes EDR worthwhile."[23] After an election, officials

must spend extra time and effort to comb voter registration records and determine whether a provisional voter had actually registered and whether her ballot should be counted. This process can take days or weeks. EDR spares election officials from these efforts, and ensures that voters can cast ballots that will be counted.

> "As an election official, I seek to facilitate the highest possible vote turnout through a secure process. Election Day Registration is a big part of our success in achieving those goals. EDR ensures that all eligible voters can cast their ballots, without jumping through unnecessary hoops. And EDR keeps voter turnout in our state very high. It's good for democracy and good for Wyoming."
>
> Max Maxfield
> Wyoming Secretary of State

EDR does not encourage voter fraud.
A bi-partisan team of consultants to the Election Assistance Commission reported widespread agreement that very little evidence existed of voter impersonation at the polls.[24] A recent analysis of 2002-2005 data from EDR states also found very little evidence of voter fraud.[25] And the great majority of local elections officials participating in a 2007 survey in Election Day Registration states rated current fraud-prevention measures sufficient to protect the integrity of elections.[26]

EDR: A Policy that Benefits Millions

Election Day Registration has assisted millions of voters in casting valid ballots and participating in the democratic process. The 2006 midterm election was another illustration of EDR's potential.

Momentum around EDR/SDR continues to grow. Three states have enacted same or election day registration since 2005: Iowa, Montana and North Carolina. Seventeen other states also saw EDR activity in 2006-2007: California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Utah, Vermont and Washington.

By passing EDR, states can reduce unnecessary barriers to participation and empower their residents.

> "Election Day Registration increases voter participation by allowing all eligible voters to cast a ballot. Election Day Registrations are processed by trained election officials at their polling location. When successfully registered by the election official, the voter is allowed to cast their ballot and have their voice heard. EDR provides an alternative method for individuals to register and vote, providing the services that citizens want and need to fully participate in their government."
>
> Mark Ritchie, Minnesota Secretary of State

Never Too Late to Vote
By Ben Ysursa And Matthew Dunlap

Originally published in
The New York Times, May 11, 2007

LAST month, Gov. Chet Culver of Iowa signed a bill authorizing Election Day Registration, which allows previously unregistered voters with proper ID the opportunity to cast a ballot that day. This is a powerful tool to promote voting and, as secretaries of state of two states that already have this policy in place, we welcome Iowa in joining our ranks.

With Election Day Registration, all qualified voters can participate in the vital American tradition of voting without finding themselves hampered by arbitrary registration deadlines. Seven states—ours, as well as Minnesota, Montana, New Hampshire, Wisconsin and Wyoming—now use EDR, and the evidence is convincing: voter turnout in these states is on average 10 to 12 percentage points higher than in other states.

While opponents are concerned that this option might encourage voter fraud, such crime is exceedingly rare or nonexistent in states that offer Election Day Registration. Citizens of Maine, for instance, have benefited from same-day registration since the early 1970s and no case of voter fraud has ever been attributed to the policy. With simple, fair and safe methods to verify voters, and by relying on effective poll-worker training and sophisticated election administration, our states have ensured the integrity of the process while allowing every eligible citizen to cast a ballot.

We also reject the oft-used argument that voters not registered in advance should be effectively barred from voting as punishment for not heeding existing deadlines. While it's true even EDR states have deadlines in place for registration by mail, we firmly believe that missing a deadline should not prevent interested and engaged parties from being able to register in person on Election Day. We are committed to leaving no voter behind, including first-time voters, newly naturalized citizens and those who may have recently changed addresses.

When it comes especially to voters ages 18 to 25—a demographic often absent at the polls—a recent study by Demos projected that in Iowa, Election Day Registration could result in a 10.7 percent increase in voting among that group.

Other beneficiaries are registered voters inadvertently removed from the rolls, newlyweds who just changed their names and people who, because of whatever mix-up, are asked to cast a provisional ballot instead. In same-day registration states, these folks don't leave the voting booth wondering if their ballots will count equally alongside their neighbors'.

Legislatures from Hawaii to Massachusetts to North Carolina are taking serious steps toward putting Election Day Registration into effect. And the need for this critical reform did not escape the notice of Congressional leaders who recently introduced a proposed Count Every Vote Act, with an added provision for Election Day Registration nationwide.

Though one of us is a Republican and one is a Democrat, we can attest that political affiliation isn't relevant here: this is a policy that is good for voters, regardless of party, and good for our democracy. When it comes to elections, America is best served when all eligible voters cast their ballots—even those who missed the registration deadline.

Ben Ysursa and Matthew Dunlap are the Secretaries of State for Idaho and Maine, respectively.

(Reprinted with Permission of the Authors.)

Early voting, late registration begin

By Josh Shaffer, staff writer

Originally published in
The News & Observer, September 20, 2007

RALEIGH – North Carolina's new and relaxed voting guidelines kicked in today, allowing voters to register and cast ballots at the same time.

State elections officials expect overall turnout to jump by 5.4 percent, and more than 10 percent for the youngest voters now that restrictions have been dropped.

Early voting in local elections started at 8:30 a.m., allowing North Carolina voters to register and vote in a single trip for the first time.

In the Triangle, early voting periods began today in Wake and Durham counties. For other counties, early voting will begin in October.

Those who choose to register and vote during the early period use an absentee ballot. Those ballots can be disqualified if a voter's identity, checked through drivers' licenses and Social Security numbers, proves to be false.

That level of security is impossible on Election Day itself, when voting is much heavier.

"This is a great balance," said State Elections Director Gary Bartlett. "It gives that last-minute voter a chance."

The new rules last until three days before the election. On Election Day, voters will need to have registered in advance.

Polls were open in Raleigh and Cary on Thursday. By 10:45 a.m., seven people had voted in Raleigh.

"This is a major step," said Bill Page, the seventh person to vote in Wake and a Wake County Democratic Party official. "It could eventually put us beyond (an extra 5.4 percent), but I'm not sure about this time. The word is not out yet."

(Reprinted with Permission of The News & Observer of Raleigh, North Carolina.)

ENDNOTES

1. North Dakota, which has no statewide voter registration requirement, was included among EDR states for purposes of turnout comparison. Iowa and North Carolina had not yet adopted same day registration in 2006.

2. Idaho Secretary of State, "General Election Results," November 7, 2006, http://www.idsos.state.id.us/elect/RESULTS/2006/general/cnty_votestat.htm.

3. Maine voter turnout figures were derived from the number of votes cast for the highest office and the voting age population (VAP); United States Election Project, "2006 Voting-Age and Voting Eligible population Estimates," July 3, 2007, http://elections.gmu.edu/Voter_Turnout_2006.htm.

4. Minnesota Secretary of State, "Minnesota General Election Statistics 1950-2006," http://www.sos.state.mn.us/docs/election_result_stats.pdf.

5. Bowen Greenwood, "Montana Election Day Registration PowerPoint," Email to Regina Eaton, September 6, 2007.

6. United States Election Project, "2006 Voting-Age and Voting-Eligible Population Estimates," July 3, 2007, and "2002 Voting-Age and Voting-Eligible Population Estimates and Voter Turnout," http://elections.gmu.edu/voter_turnout.htm.

7. New Hampshire Secretary of State, "State General Election," November 7, 2006, http://www.sos.nh.gov/general2006/sumnames06.htm.

8. Wisconsin Board of Elections, "Election Detail," November 2006, http://elections.state.wi.us/docview.asp?docid=11077&locid=47.

9. Wyoming Secretary of State, "Wyoming Voter Registration and Voter Turnout Statistics," August 17, 2007, http://soswy.state.wy.us/election/profile.pdf. Population figures reported by the U.S. Census Bureau on November 29, 2006, http://eadiv.state.wy.us/pop/CO-05EST.htm.

10. Maine does not track Election Day Registration numbers and has not been included in this total. Data from other states reported by Secretaries of State.

11. Voter turnout figures were derived from the number of votes cast for the highest office and the voting-eligible population (VEP); United States Election Project, "2006 Voting-Age and Voting Eligible Population Estimates," July 3, 2007, http://elections.gmu.edu/voter_turnout_2006.htm.

12. Wisconsin NewsLab, "Midwest Local TV Newscasts Devote 2.5 Times as Much Air Time to Political Ads as Election Coverage, Study Finds," University of Wisconsin-Madison, November 21, 2006, http://www.mni.wisc.edu/pdfs/MNI%202%20Release%20FINAL.pdf.

13. The Gallup Poll, *The Nine Weeks of Election 2000*, http://www.galluppoll.com.

14. The Cook Political Report, "Competitive House Race Chart," October-November 2006, http://www.cookpolitical.com./races/house/chart.php.

15. 42 U.S.C. § 15482.

16. Kimball W. Brace and Michael P. McDonald, *2004 Election Day Survey* (U.S. Election Assistance Commission, 2005), http://www.eac.gov/election_survey_2004/toc.htm.

17. Scott Novakowski, *A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election* (Dēmos, November 2007), http://www.demos.org/page575.cfm. The U.S. Election Assistance Commission's official analysis of provisional balloting in 2006 has yet to be released as of the date of this publication.

18. Mary Fitzgerald, *Easier Voting Methods Boost Youth Turnout* (James Madison University, February 2003), http://www.civicyouth.org/PopUps/WorkingPapers/WP01Fitzgerald.pdf.

19. Bowen Greenwood, "Montana Election Day Registration PowerPoint," Email to Regina Eaton, September 6, 2007.

20. U.S. Census Bureau, *Geographical Mobility 2004 – 2005*, Tables 1 and 11, October 17, 2007, http://www.census.gov/population/www/socdemo/migrate/cps2005.html.

21. Michael Alvarez, Stephen Ansolabehere, and Catherine Wilson, *Election Day Voter Registration in the United States: How One-Step Voting Can Change the Composition of the American Electorate* (Caltech/MIT, June 2002), http://www.vote.caltech.edu/media/documents/wps/vtp_wp5.pdf.

22. Dêmos, *Election Day Registration: A Ground-Level View* (November 2007).

23. J. Joseph Curran, Jr. and Linda H. Lamone, *Joint Report of the Office of Attorney General and the State Administrator of Elections on Election Day Registration* (Office of the Attorney General, December 2006), http://www.oag.state.md.us/Reports/elect_registration.pdf.

24. United States Election Assistance Commission, *Status Report to the Voter Fraud-Voter Intimidation Research Project*, May 17, 2006, http://www.usatoday.com/news/pdf/2006-10-11-election-report.pdf.

25. Lorraine C. Minnite, *Election Day Registration: A Study of Voter Fraud and Findings on Voter Roll* Security (Demos, August 2007), http://www.demos.org/pubs/edr_fraud_v2.pdf.

26. Depending on the jurisdiction, the measures already in force included proof of identity and residency requirements, address confirmation mailings via non-forwardable postcards, criminal penalties, and reliance on statewide voter registration databases to prevent multiple registrations. See Dêmos, *Election Day Registration: A Ground-Level View* (November 2007).

Related Resources from Dēmos

Challenges to Fair Elections Series

- Voter Intimidation and Vote Suppression
- Poll Worker Training
- The Case Against Felony Disenfranchisement
- Ballot Access for Language Minority Voters and People with Disabilities
- Voter ID/Proof of Citizenship Requirements

Democracy eJournal

www.democracydispatches.org

Election Day Registration

- Election Day Registration in 2007: State Legislative Activity
- Anatomy of a Successful Campaign for EDR in Iowa
- Election Day Registration: A Ground-Level View (A Survey of Election Clerks)
- Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security
- Same Day Voter Registration in North Carolina
- Election Day Voter Registration in Iowa
- Voters Win with Election Day Registration

Election Integrity

- An Analysis of Voter Fraud in the U.S.
- Fusion Voting: An Analysis
- Improving Access to Voting: A Report on the Technology for Accessible Voting Systems
- Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals
- One to a Customer: The Democratic Downsides of Dual Office Holding

National Voter Registration Act

- Implementing the National Voter Registration Act in Public Assistance Agencies: A Guide for Election Officials and Human Services Professionals
- A Promise Still Unfulfilled: The National Voter Registration Act Twelve Years Later
- Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the NVRA

Provisional Ballots

- A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election
- Continuing Failures in 'Fail-Safe' Voting: A Preliminary Analysis of Provisional Voting Problems (Election 2004)
- Placebo Ballots: Will 'Fail-Safe' Provisional Voting Fail? (Election 2004)

Candidate Briefing Book

- Fulfilling America's Promise: Ideas to Expand Opportunity and Revitalize Democracy

  A Dēmos briefing book, with state- and federal-level application, to help elected officials advance new policies that promote electoral participation.

Books

- Momentum: Igniting Social Change in the Connected Age
- Stealing Democracy: The New Politics of Voter Suppression
- Conned: How Millions of Americans Went to Prison and Lost the Vote

A NETWORK FOR IDEAS & ACTION

Dēmos: A Network for Ideas & Action is a non-partisan public policy research and advocacy organization committed to building an America that achieves its highest democratic ideals. We believe this requires a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a strong and effective public sector with the capacity to plan for the future and provide for the common good. Founded in 2000, Dēmos' work combines research with advocacy—melding the commitment to ideas of a think tank with the organizing strategies of an advocacy group. *As with all Dēmos publications, the views expressed in this briefing paper do not necessarily reflect the views of the Dēmos Board of Trustees.*

Visit www.demos.org or contact:
Regina Eaton, Deputy Director of The Democracy Program | reaton@demos.org | (212) 389-1403

Media inquiries: Timothy Rusch, Communications Director | trusch@demos.org | (212) 389-1407

220 Fifth Avenue, 5th fl., New York, NY 10001
T. (212) 633.1405 F. (212) 633.2015
info@demos.org | www.demos.org

Election Day Registration: a ground-level view

What Local Election Officials Have Learned About Letting Americans Register and Vote on the Same Day

» **Is EDR a burden to administer?**

» **Does it make elections more expensive?**

» **Does it cause confusion at the polls?**

» **Does it encourage fraud?**

Background

Maine, Minnesota and Wisconsin adopted the practice of Election Day Registration (known as EDR) in the early 1970s. After a two-decade lull in reform activity, Wyoming, New Hampshire and Idaho passed EDR laws in the early '90s.

We are now seeing a third wave of interest in EDR. Montana approved an EDR law in June 2006. Iowa followed in April 2007. In July 2007, North Carolina enacted a "same day registration" law which allows registration and voting at the state's early voting sites (open from 19 to three days before an election), though not on Election Day. During the 2007 legislative session 23 states considered EDR or same day registration measures.

Dēmos' Survey of Election Officials in EDR States

Election Day Registration draws more people into the political process. In the 2006 midterm elections, EDR states achieved, on average, a 10 percent edge in voter turnout over other states. In most states, EDR is likely to increase turnout by about 5 percentage points, researchers project. EDR can be particularly effective at raising turnout among young adults, newly naturalized citizens, people of color, and those with lower incomes and levels of educational achievement. But while the benefits are clear and well-documented, opponents claim that they come at a steep price—in administrative complexity, implementation cost, and the potential for error or fraud.

Dēmos
A Network for Ideas & Action

To assess the validity of these assertions, Dēmos conducted a telephone survey of local election officials in the EDR states of Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming. The interviews took place from February through April 2007. (Montana, which first implemented EDR in 2006, was excluded because of its limited experience.) The jurisdictions ranged widely in median household income (from $25,000 to $66,000) and population (from under 600 to over 500,000 residents). We were careful to include areas with substantial college populations, in order to reflect concerns about an unusually mobile subset of voters.

Most of the officials surveyed were town, city or county clerks for whom election administration was often just one of multiple responsibilities. In a few comparatively large jurisdictions, the respondents were full-time election administrators. In all, 49 officials took part. They were asked a variety of questions concerning the administration of EDR, its cost, and the integrity of election results. Here is a summary of what they said.

Does EDR Create Unreasonable Burdens for Election Administrators?

In non-EDR states, election officials often express opposition to EDR, arguing that it will make their jobs much more difficult. Based on the survey results, those fears are rarely borne out by experience. About one-third of the respondents characterized the workload impact as modest or marginal. The other two-thirds agreed that the impact was significant, but with very few exceptions they spoke about it in a matter-of-fact rather than a complaining way.

"Naturally, it's more difficult," said the clerk of a small city in Maine.

"It's not bad—it's just the way it is," said the clerk of a comparable-sized community in Minnesota.

A number of officials brought up compensating benefits. While EDR creates more work on Election Day itself, about half the survey respondents suggested that it had reduced or eliminated the familiar pattern (in non-EDR states) of a pre-deadline surge of registrations. Twenty-four of the 49 respondents said they had not been experiencing such a surge in their jurisdictions; of these, 19 gave EDR a share of the credit.

How are polling places organized in EDR states?

In 40 of the 49 jurisdictions, EDR voters are directed to a separate line or table to fill out a registration form and have their identities and eligibility checked. Once they have completed this process, they join other voters waiting to cast their ballots.

In three rural jurisdictions, EDR voters go directly to the same table with other voters. "As few as we are, it's not a problem," said the deputy clerk of one Idaho county (pop. roughly 1,000). A few jurisdictions use both arrangements—separate tables in high-turnout elections and a common table in low-turnout elections.

Is EDR Expensive to Implement?

Most of the respondents described the incremental cost of EDR as minimal. One Idaho election administrator, whose service predated her state's adoption of EDR in 1993, said she could not recall any rise in election expenses at the time.

The costs (where cited) were mainly those of training and deploying additional staff—more poll workers or election judges on Election Day and/or more clerical workers in the post-election period to add the new names and data to the permanent voter rolls.

The deputy clerk of a mid-sized New Hampshire city said that EDR required one or two extra registrars per polling place (at $15 an hour or $125 a day). The clerk of one of Maine's largest jurisdictions put the Election Day price tag at $3,900. "EDR is great, because procrastinators can still vote," she added. "It makes elections a little more expensive, but it's worth it."

In a New Hampshire community of 23,000 people, the city clerk estimated the post-election cost at about $1,700—or 10 hours a week of service over 14 weeks on the part of a worker earning $12 an hour. In Idaho, the elections administrator of a county with a population of about 50,000 projected one or two extra persons working full-time for a week and a half. A Wisconsin official in a municipality of about 70,000 spoke of spending about $5,000 on temporary workers to process EDR registrants after the November 2006 election.

But the overall effect, a number of respondents indicated, was not to add work or expense, but merely to shift the cost burden from one time and place to another. As a result of EDR, the elections manager of a college community in Minnesota said he ends up spending more money on election judges at the polls, and less money on in-house staff or temp workers at the office. (At least in his jurisdiction, he added, there is a net savings in the end, because the election judges are paid $8 to $9 an hour, while the in-house staff or temp workers earn $11 to $12 an hour.)

Can EDR Be Implemented at The Polls Without Confusion?

The overwhelming majority of respondents reported no confusion at polling places because of Election Day Registration—a concern sometimes raised by EDR opponents. A Minnesota official noted that EDR voters occasionally resent being asked for identification, especially in small communities "where everybody knows everybody."

> "EDR is great, because procrastinators can still vote."
>
> -the clerk in one of Maine's largest counties

Some of the most frequently-asked questions on Election Day involve the documents required for EDR, an official of a Minnesota city (pop. 85,000) reported. EDR voters

will sometimes complain about being asked to wait in line twice, a Wisconsin official said. Regular voters, the same official added, may be miffed when they see EDR voters being funneled into special express lines—a practice followed in a few jurisdictions.

Several officials said that EDR had helped defuse confrontations with voters whose names turn out to be missing from the registration lists. Without EDR, "we'd have a lot of unhappy people" at the polls, said the clerk of a New Hampshire town of 30,000.

Election Day Registration makes things harder for election workers but easier for voters—that was the overall judgment of a number of respondents. But one Idaho official, after initially answering in those terms, corrected herself: In the end, she said, EDR makes Election Day go more smoothly for both parties—the election workers are happier because the voters are.

Does EDR Lead to Voter Fraud?

Fraud has been the subject of the most potent criticisms of EDR. In our survey, it was also the question that elicited the clearest and most reassuring responses. Just one of 49 respondents suggested a link between EDR and an increased likelihood of vote fraud. (This official, the clerk of a Wisconsin town of fewer than 9,000 people, was also unique in expressing emphatic opposition to EDR.)

By contrast, the great majority of respondents rated current fraud-prevention measures sufficient to protect the integrity of elections. This was the prevailing view in large and small jurisdictions, and also in college communities, including one Idaho city where, in 2006, some 5,000 out of a total 26,000 to 27,000 voters used EDR.

> An election administrator in a populous Minnesota jurisdiction has never seen an organized attempt at mass voter fraud in his 22 years on the job.

Asked if they could recall any cases of fraud involving EDR voters, 40 of the 49 officials in our survey answered with a flat-out "no." A Maine election worker could not remember a single case of voter fraud in the state since the introduction of EDR in 1973. Several clerks recalled isolated allegations of voter misconduct involving false addresses or students at college campuses. It was unclear whether any resulted in criminal charges or convictions.

Most respondents indicated that they did not see fraud as a serious problem, with or without regard to EDR. An election administrator in one populous Minnesota jurisdiction said that in 22 years on the job, he had not seen a single attempt to commit mass voter fraud.

A number of respondents took the position that EDR had actually reduced the risk of fraud. Several agreed with the deputy town clerk in New Hampshire who said that her staff could process voter registrations with greater accuracy after Election Day than in the hectic pre-Election Day period, when the labor was more likely to be performed by temp workers or by in-house staff working overtime.

In the years before EDR, an Idaho official recalled, her office had relied on untrained staff from another agency to process last-minute registrations, resulting in many errors. EDR, she said, had made it possible to use trained personnel to do this work in a less pressured atmosphere after Election Day, allowing for much cleaner records.

Conclusion

Opponents have depicted Election Day Registration as an administrative nightmare and an invitation to fraud. This alarmist picture turns out to bear little relation to the experience of local election officials in EDR states. The great majority of the officials we surveyed said they had been able to handle EDR in an efficient and orderly way without much—if any—added expense. Virtually all expressed confidence in existing anti-fraud measures, and none could cite even a single clear case of EDR-abetted fraud. Several pointed to ways in which EDR might actually improve election security in the long term.

Throughout our national history, Americans have faced legal and procedural barriers to the exercise of their fundamental democratic rights. Today, as in earlier periods, many concerned Americans and voting rights advocates are looking for ways to clear away the obstacles and make it easier for all citizens to vote. EDR has a track record of doing exactly that. Without producing the problems cited by its critics, EDR increases political participation and holds the promise of creating an electorate that better reflects the composition of the country as a whole.

Related Resources from Dēmos

Challenges to Fair Elections Series

- Voter Intimidation and Vote Suppression
- Poll Worker Training
- The Case Against Felony Disenfranchisement
- Ballot Access for Language Minority Voters and People with Disabilities
- Voter ID/Proof of Citizenship Requirements

Democracy eJournal

www.democracydispatches.org

Election Day Registration

- Election Day Registration in 2007: State Legislative Activity
- Anatomy of a Successful Campaign for EDR in Iowa
- Election Day Registration: A Ground-Level View (A Survey of Election Clerks)
- Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security
- Same Day Voter Registration in North Carolina
- Election Day Voter Registration in Iowa
- Voters Win with Election Day Registration

Election Integrity

- An Analysis of Voter Fraud in the U.S.
- Fusion Voting: An Analysis
- Improving Access to Voting: A Report on the Technology for Accessible Voting Systems
- Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals
- One to a Customer: The Democratic Downsides of Dual Office Holding

National Voter Registration Act

- Implementing the National Voter Registration Act in Public Assistance Agencies: A Guide for Election Officials and Human Services Professionals
- A Promise Still Unfulfilled: The National Voter Registration Act Twelve Years Later
- Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the NVRA

Provisional Ballots

- A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election
- Continuing Failures in 'Fail-Safe' Voting: A Preliminary Analysis of Provisional Voting Problems (Election 2004)
- Placebo Ballots: Will 'Fail-Safe' Provisional Voting Fail? (Election 2004)

Candidate Briefing Book

- Fulfilling America's Promise: Ideas to Expand Opportunity and Revitalize Democracy

  A Dēmos briefing book, with state- and federal-level application, to help elected officials advance new policies that promote electoral participation.

Books

- Momentum: Igniting Social Change in the Connected Age
- Stealing Democracy: The New Politics of Voter Suppression
- Conned: How Millions of Americans Went to Prison and Lost the Vote

Dēmos

A NETWORK FOR IDEAS & ACTION

Dēmos: A Network for Ideas & Action is a non-partisan public policy research and advocacy organization committed to building an America that achieves its highest democratic ideals. We believe this requires a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a strong and effective public sector with the capacity to plan for the future and provide for the common good. Founded in 2000, Dēmos' work combines research with advocacy—melding the commitment to ideas of a think tank with the organizing strategies of an advocacy group. *As with all Dēmos publications, the views expressed in this briefing paper do not necessarily reflect the views of the Dēmos Board of Trustees.*

Visit www.demos.org or contact:
Regina Eaton, Deputy Director of The Democracy Program | reaton@demos.org | (212) 389-1403

Media inquiries: Timothy Rusch, Communications Director | trusch@demos.org | (212) 389-1407

220 Fifth Avenue, 5th fl., New York, NY 10001
T. (212) 633.1405 F. (212) 633.2015
info@demos.org | www.demos.org

ELECTION DAY REGISTRATION:

A Study of Voter Fraud Allegations and Findings on Voter Roll Security

A PRELIMINARY REPORT

BY LORRAINE MINNITE, SENIOR FELLOW

Dēmos: A Network for Ideas & Action

The specter of fraud in American elections has pervaded our political and media landscape for a long time. In recent years it has been raised again as a key lever in arguments for or against certain state or federal election reforms—in legislative and judicial bodies, and in the media. Allegations of voter fraud in elections have been widely publicized, but the question of whether voter fraud threatens the integrity of elections in the United States has long been neglected by serious researchers. This report draws on my research into the scale and scope of the problem of voter fraud and the politics of election reform. Here I look at the question of voter fraud in states with Election Day Registration (EDR), a vital reform which, like other procedures that lower barriers to the vote, has been resisted based on unfounded allegations of fraud.

I. DEFINING AND MEASURING VOTER FRAUD

The federal government defines election fraud as an election crime involving conduct that corrupts the process of "obtaining and marking of ballots, the counting and certification of election results, or the registration of voters."[1] Voter fraud is a subsidiary form of election fraud defined as *the intentional corruption of the electoral process by voters.* Measuring the actual incidence of voter fraud is difficult. There are no reliable, officially compiled, national or even statewide statistics on the incidence of voter fraud crimes upon which we can draw. Though many criminal acts associated with "voter fraud" are classified as felonies, voter fraud crimes fail to appear in the F.B.I.'s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime, and no states collect and publish statistics on voter fraud.[2]

II. EDR DOES NOT INCREASE OPPORTUNITIES TO COMMIT VOTER FRAUD

The focus of this study is the recent record of voter fraud in Idaho, Maine, New Hampshire, Minnesota, Wisconsin and Wyoming, the six states where Election Day Registration has been law for the last several decades.[3]

To compile the record, I carefully examined a number of different sources of information since no one source measuring the incidence of voter fraud is available. I studied news reports, federal government prosecution records, and conducted a survey of county prosecutors. A summary of the findings follows:

News reports

I reviewed nearly 4,000 news reports for the six EDR states over three federal election cycles (1999-2005) and found only 10 discrete incidents of voter fraud or alleged voter fraud that appeared to have some merit.[4] Of these, there was only one case of voter impersonation at the polls—ironically one of the most frequently claimed abuses when fraud enters the public debate. A 17-year-old New Hampshire high school student, who shares his father's name, cast his father's ballot in the 2004 Republican presidential primary, knowing that his father was out of town. The polling place was in the student's school. The fraud was uncovered after a teacher overheard the student tell others that he had "subbed" for his father and voted for George W. Bush. This young man lied about his identity to the poll worker. The fraud was unrelated to Election Day Registration rules because the student's father was already registered and enrolled in the poll book. See Table 1 for a summary of these incidents and the Appendix for additional details.

Federal prosecutions

Under a new initiative of the U.S. Department of Justice (DOJ), the federal government has been concentrating more effort and resources on investigating and prosecuting voter fraud in recent years. "Under the ongoing initiative," reports DOJ's Election Offenses manual, "election crimes are a high law enforcement priority of the Department."[5]

Despite the high priority, the federal government prosecuted only 40 voters nationwide for election crimes related to illegal voting between 2002 and 2005.[6] Among EDR states, Wisconsin was the only one where a federal investigation led to any voter fraud prosecutions. Four Milwaukee voters were

charged with double voting and 10 were charged for casting votes while disfranchised because of a felony conviction. The charges, however, were dismissed or the defendants exonerated in all of the alleged double voting cases and all but five of the felon voting cases.[7] This record of convictions compares poorly with an average 90 percent conviction rate obtained by the federal government in nearly all felony crime cases.[8]

Survey of local county prosecutors

Election administration and the enforcement of state election laws rests in most states on the shoulders of local officials. I therefore designed and implemented a survey of county prosecutors, requesting statistics on fraud complaints investigated, cases prosecuted, type of defendant, and disposition of such cases across three broad categories of voter fraud for 2004 and 2005. These categories are: voter registration fraud, illegal voting, and absentee ballot fraud. This survey is still in the field, but partial results are available for 36 of 252 prosecutorial jurisdictions (mostly counties) in the six EDR states.

Among those sampled, only two county prosecutors—both in Minnesota—report that they investigated complaints of voter fraud in 2004 or 2005. These resulted in the investigation of 11 people, seven in County A and four people in County B.[9] The cases in County B were dismissed, and the seven people accused of illegal voting in County A were not prosecuted (they were sent warning letters). There were 1,238,021 ballots counted in the 2004 election in the sample counties, yielding a voter-fraud rate of zero when considering convictions, and a 0.0000088 percent rate if counting investigations.

The near absence of voter fraud is echoed by election officials in EDR states. In the course of litigation challenging Connecticut's voter registration

TABLE 1

VOTER FRAUD ALLEGATIONS REPORTED IN SELECTED STATE AND LOCAL NEWSPAPERS BY NUMBER OF INDIVIDUALS ALLEGEDLY INVOLVED, AND NUMBER OF INCIDENTS[10]

IN EDR STATES: IDAHO, MAINE, MINNESOTA, NEW HAMPSHIRE, WISCONSIN, WYOMING

January 1999 – February 2005

	Types of Claims	Individuals				Cases
		Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud	Reports of official charges or official reports of voter fraud (final disposition unknown)	Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown)	Total number of people involved	Total number of incidents
1	Registration fraud	95			95	2
2	Voter impersonation at the polls	1			1	1
3	Multiple voting	1		1	2	2
4	Absentee ballot fraud (forgery or use of an illegal address)	9	2		11	3
5	Illegal voting by disfranchised felons		7	361	368	2
	TOTAL	106	9	362	477	10

Source: See endnote 4, and note: the Wisconsin search covered only 8/21/03-2/12/05. For a description of the cases, see the appendix.

TABLE 2

ELECTION DAY REGISTRATION STATES—2004 PRESIDENTIAL ELECTION
ELECTION ADMINISTRATION AND VOTING STATISTICS

	Idaho	Maine	Minnesota	New Hampshire	Wisconsin	Wyoming
Estimated citizen-eligible population	986,664	1,022,248	3,736,578	975,065	4,091,525	380,564
Registered voters	798,015	1,023,956	2,977,496	855,861	2,439,282	232,396
EDR applications	117,622	N/A	590,242	94,431	443,772	41,554
% EDR applications	12.8	N/A	19.8	9.9	15.3	15.2
Total ballots counted	612,786	754,777	2,842,912	686,390	3,009,491	245,789
Absentee ballots counted	34,609	162,663	231,711	62,059	264,898	47,008
Provisional ballots cast	0	483	N/A	N/A	374	95
Federal voter fraud convictions [14]	0	0	0	0	5	0

Sources: U.S. Election Assistance Commission, *Final Report of the 2004 Election Day Survey*, September 27, 2005; http://www.eac.gov/election_survey_2004/pdf/EDS-Full_Report_wTables.pdf; Maine Secretary of State author's analysis of federal prosecution records.

deadline, Wyoming's former Republican Attorney General and Secretary of State Joseph B. Meyer said that, "there have been very few cases, if any...of voter fraud," and that in his 35 years of governmental experience, "there has not been much evidence of it" in his state.[11] Secretaries of State Ben Ysursa of Idaho (a Republican) and Matthew Dunlap of Maine (a Democrat) wrote, in a May 11, 2007, op-ed appearing in *The New York Times*, that the crime of voter fraud was,

> "exceedingly rare or nonexistent in states that offer Election Day registration. Citizens of Maine, for instance, have benefited from same-day registration since the early 1970s and no case of voter fraud has ever been attributed to the policy."[12]

New Hampshire officials "made a major effort" to enforce the election laws during the 2004 election. According to a report by the Attorney General's Office, "attorneys and investigators from the...[o]ffice and specially trained Deputy Sheriffs were either positioned at polling places or were traveling around the State checking polling places and responding when complaints were received."[13] Staff also set up and monitored a toll-free number to receive complaints and after the election, met with concerned citizens who suspected fraud may have occurred on Election Day. The state legislature held a hearing at which several people testified about suspected fraud in the November election. Overall, the main concerns were about EDR leading to multiple voting and voting by people who were not legally domiciled in New Hampshire.

Each specific complaint or allegation was investigated, which involved an initial database analysis of thousands of voting and registration records and follow-up investigations of about 240 people, most of whom had registered to vote on Election Day. In the end, all but six people who provided false information when they either registered or voted were shown to be legal voters in New Hampshire. Four who registered to vote on Election Day provided recent but no longer accurate addresses on their registration forms. Three of these four still lived in New Hampshire and were prosecuted for providing a false address; by the time of the investigation, the fourth had moved to another state and a warrant was issued for his arrest. The other two people used or forged false names—one was the 17-year-old who "subbed" for his father, and the other was a man who signed a nominating petition twice, once using his name and a second time with the name of a relative. Both of these individuals were prosecuted. The attorney general found no evidence that anyone voted more than once.

III. EDR DOES NOT COMPROMISE VOTER ROLL SECURITY

There are several possible reasons why Election Day Registration does not facilitate voter fraud and, in fact, may help deter it. First, EDR brings the registration process into the polling place where it is conducted under the eyes and authority of election officials on one day, Election Day. One would expect to see more polling place fraud in the EDR states if it actually threatened ballot security.

Critics of EDR argue that reopening voter registration at the polls on Election Day could facilitate voter impersonation and polling place fraud because election officials have no opportunity to verify information provided in a voter registration application before the applicant casts a ballot. But across the nation, the most egregious (though rare) types of election fraud involving voters are vote-buying and absentee ballot fraud—forms of electoral corruption that occur 1) before Election Day and 2) away from the polling place. They are not affected by EDR procedures.

The second reason why EDR procedures do not compromise voter roll secrutiy is that states offering Election Day Registration require registrants to substantiate their residency and identity at the polls. They do this by allowing voters to present a wide variety of acceptable forms of documentation.[15] The Help America Vote Act of 2002 added new safeguards by requiring states to collect information from registrants that could be used to cross-check their identity and residency with other state or government databases, principally through the collection of driver's license or partial social security numbers on all voter registration forms.

Third, some of the EDR states adopted procedures for list maintenance and post-election audits of Election Day Registration applications that add an extra identity-verification level for newly registered voters who may have registered at the polls. New Hampshire recently adopted a new law requiring the secretary of state to send a non-forwardable letter to all first-time EDR voters who did not provide photo ID when they registered at the polls. If the letters are returned, the secretary of state's office conducts an investigation and refers any possible criminal matters to the attorney general. Minnesota requires post-election audits of a sample of EDR voters and compels district attorneys by law to investigate any irregularities.

IV. CONCLUSION

The data on voter fraud in the states with the most convenient registration rules suggest that liberalized registration procedures on their own do not cause voter fraud, nor do they compromise voter roll security. If they did, one would expect more press reports on fraud and more prosecutions and enforcement actions by the federal government and county prosecutors. Instead, the collective evidence suggests there has been very little voter fraud in EDR states over the past several election cycles. The problems leading to the federal investigation in Wisconsin, for example, were directly attributable to clerical errors, poll worker shortages and incompetence, not any organized scheme or intent on the part of voters to scam the system.[16] State and local election officials are addressing these problems with the implementation of a computerized statewide voter registration system, an overhaul of the administrative rules and procedures for registration, and enhanced poll worker training.

Administered effectively, Election Day Registration may actually provide more security for the ballot, not less. As the secretary of state of Minnesota recently put it, "EDR is much more secure because you have the person right in front of you—not a postcard in the mail. That is a no-brainer. We have 33 years of experience with this."[17]

Endnotes:

1. Craig C. Donsanto and Nancy L. Simmons, *Federal Prosecution of Election Offenses*, 7th Ed. (U.S. Department of Justice, May 2007), pg. 2.

2. The California Secretary of State's office has compiled information on electoral fraud cases referred to it from 1994 to 2006, but that data is not publicly available.

3. Maine, Minnesota, and Wisconsin all adopted Election Day Registration in the 1970s; Idaho, New Hampshire, and Wyoming followed in the mid-1990s. Montana, Iowa and North Carolina recently adopted forms of Same Day Registration, but are excluded from the analysis because their experience with EDR is too recent. North Dakota is excluded because it does not require voters to register.

4. To be precise, I reviewed 3,890 news stories mentioning voter or election fraud retrieved from Lexis-Nexis databases for the period 1999-2005. The Wisconsin search was for the period August 21, 2003 to February 12, 2005. The newspapers searched include *AP* state and local wire services in all six states; and, in Idaho: *The Idaho Business Review, Idaho Falls Post Register, Lewiston Morning Tribune*; Maine: *Bangor Daily News, Portland Press Herald*; Minnesota: *The Legal Ledger, The Minnesota Lawyer, The Star Tribune*; New Hampshire: *The Manchester Union Leader*; Wisconsin: *The Capital Times, The Daily Reporter, The Milwaukee Journal Sentinel, Wisconsin Law Journal, Wisconsin State Journal*; Wyoming: *Wyoming Tribune-Eagle*.

5. Donsanto and Simmons, pg. 10.

6. Only 26 voters were convicted, for an average of 8-9 people a year.

7. All five people convicted had felony convictions and had not yet had their voting rights restored. They used their real names and addresses, and there is reason to believe none of them understood the law, despite the prosecutor's ability to convince a jury to the contrary in the cases that went to trial. Poll workers contributed to the problem and at the time, Wisconsin's voter registration card did not clearly inform applicants that they were not eligible to vote if they were serving out a sentence on probation or parole.

8. In the period, October 1, 2003 through September 30, 2004, the Justice Department prosecuted 425 defendants for felony tax law violations, including tax fraud, and won a conviction rate of 95.3 percent. The conviction rates for all other cases of felony fraud (9,261 defendants) were 90.3 percent. The conviction rate for all offenses charged, including misdemeanors (83,391 defendants) was 89.7 percent. *See* Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2004* (U.S. Department of Justice: December 2006), pg. 62.

9. Until the survey is completed, the names of the jurisdictions must be concealed to protect grants of confidentiality to survey respondents.

10. These are reports of voter fraud in which there is some mention of the involvement of elections or law enforcement officials in the reporting, investigation, or criminal prosecution of the fraud. They do not include unsubstantiated allegations of fraud by party officials, candidates, campaign workers, or voters. "Voter fraud" refers to corruption of the voting process; specifically, violations of federal or state election laws or procedures regulating the voting process, and committed by voters or by others encouraging the commission of fraud by voters.

11. Deposition of Joseph B. Meyer, *ACORN, et al. v. Bysiewicz*, Civil Action No. 3:04-cv-1624, U.S. District Court for the District of Connecticut (2005).

12. Ben Ysursa and Matthew Dunlap, "Never Too Late to Vote," *The New York Times*, May 11, 2007.

13. Memorandum from Bud Fitch, Deputy Attorney General to Chairman Robert Boyce, and Members Senate Internal Affairs Committee Chairperson, Chairman Michael D. Whalley, and House Election Law Committee Chairperson, dated April 6, 2006.

14. These are convictions and guilty pleas stemming from federal indictments brought between 2002 and 2005. They do not include convictions and guilty pleas in state court.

15. Only one state, Idaho, requires a photo ID to register on Election Day.

16. Steve Schultze, "No Vote Fraud Plot Found; Inquiry Leads to Isolated Cases, Biskupic," *Milwaukee Journal-Sentinel*, December 6, 2005.

17. Email communication with author, May 10, 2007.

APPENDIX

1. **Registration fraud: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

Two incidents, one in Minnesota and one in Wisconsin.

The Minnesota case involved an on-going dispute between Richard J. Jacobson (of Prescott, Wisconsin), the owner of Jake's Gentleman Club in Coates, Dakota County (pop. 163), about 13 miles south of St. Paul, and the local five-member city council that kept changing city ordinances, as Jacobson evaded them, to shut down his club. The mayor and two city council members were facing contested elections at the time. Jacobson, who planned to run for mayor of Coates, was charged with felony conspiracy to commit forgery, and felony conspiracy to commit forgery for promoting a vote fraud scheme in which 93 other people fraudulently registered to vote using Jake's Gentleman Club as their legal address. The other 93 people were all charged with felony forgery and felony conspiracy to commit forgery. None actually voted and were offered a deal to pay a $240 fine and plead guilty to a misdemeanor. The scheme was uncovered when the county treasurer-auditor rejected a batch of suspicious voter registration cards. Eighty-nine these cards, bearing the address of Jake's as the applicants' addresses, were postmarked and mailed on October 5, the day after U.S. District Judge Donovan Frank ruled in a 10-year dispute between Jacobson and the town by upholding the city ordinances regulating sexually-explicit businesses, and ordering Jake's closed for violating the ordinances. The court found Jacobson in contempt for violating previous court orders, fined him $68,000 and ordered him to pay legal and other fees. In February 2004, the Eighth Circuit Court of Appeals overturned the ban on clothed lap dancing and the fine, but left the ban on nude dancing in place.

Update: A March 14, 2007, press release from the Dakota County Attorney announced: "Dakota County Attorney James C. Backstrom announced today that a Dakota County jury has found Richard Jacobson, age 36, formerly of Prescott, Wisconsin, not guilty of Conspiracy to Procure Unlawful Voting and Conspiracy to Commit Forgery, both felonies, in connection with a scheme to have 93 patrons, employees and other persons solicited elsewhere register to vote falsely in a 2002 election in the city of Coates, listing the strip club as their residence."

Source: Steve Karnowski, "Dakota County Charges 95 People in Alleged Voter Fraud Scheme," *The Associated Press State & Local Wire,* October 16, 2002; Jim Adams, "The Charges Laid Bare: Trying to Rig Election; 94 Accused of Helping Coates Strip Club Owner," *Star Tribune,* October 17, 2002; "Nearly All of Coates Votes to Send Message to Strip Club Owner," *The Associated Press State & Local Wire,* November 11, 2002; Amy Becker, "Strip Club Owner Jacobson Is Dancing Around the Law," *St. Paul Pioneer Press,* January 26, 2003; Jim Adams, "Array of Stories Emerging in Voter Fraud Case; Defendants Testify in a Case Connected to the Former Jake's Gentlemen's Club in Coates," *Star Tribune,* February 13, 2003; Ben Steverman, "Court Overturns Fine on Coates Strip Club; Jake's Has Fought Court Battles Over Zoning Ordinances and Other Issues for 10 Years," *Star Tribune,* February 11, 2004.

For the Wisconsin case, see #3 below: Even though the case involves only one person, it is counted twice—once as registration fraud, and once as multiple voting involving absentee ballots—because the defendant was charged with felony voting for voting more than once (using an absentee ballot in one town and voting in person in another), but pled down to a misdemeanor charge of providing false information on a registration form.

2. **Voter impersonation at the polls: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

One incident in New Hampshire.

The case involved an underage voter, Mark Lacasse, a 17-year old honors student at Londonderry High School, who lied to elections officials giving them his father's name so that he could vote in the January 2004 Republican presidential primary. A teacher overheard Lacasse say he voted, telling others he had "subbed" for his father and voted in his father's name because he had known that his father, who was out of town, wanted to vote for George W. Bush. The polling site was located in his school and his teacher or class had visited the site to observe the voting process. The students were encouraged to vote if they were 18 years old. The teacher turned in the student to an elections moderator and his illegal voting was discovered. Lacasse eventually pled guilty to a misdemeanor and was sentenced to eight hours of community service and required to deliver a speech on voting to his high school class.

Source: David Lazar, "Trial Set in Illegal Voting Case," *The Union Leader,* April 21, 2004; David Lazar, "Underage Voter Gets Civics Lesson," *The Union Leader,* June 29, 2004.

3. **Multiple voting: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

One incident in Wisconsin.

Michael R. Howard, 20, of Appleton, Wisconsin, was charged with felony voting for requesting and voting an absentee ballot from the Appleton city clerk in an April 6, 2004, nonpartisan state primary election. He then registered and voted in the same election in Eau Claire where he was a student at the University of Wisconsin. Howard claimed he did not know he couldn't vote twice in the same election, nor had he ever been informed in any of his civics classes at college that he couldn't vote twice. The Outagamie County assistant district attorney, John Daniels, said it was a rare case: "The clerks caught this one somehow. This is pretty uncommon. I have been doing this for 14 years and this is the first case of voter fraud I have seen." Daniels continued: "He did not vote twice for the same individuals. Therefore, the state does not believe at his young age he should be labeled a felon for the rest of his life." When asked by the judge why he thought he could vote twice, Howard replied, "I became aware of the city council elections and not thinking, I did it." He pled down to a misdemeanor, one year probation and 150 hours of community service, the conviction for making a false statement on a voter registration form to be expunged at the completion of probation.

Source: "College Student Accused of Voting Twice in Primary," *The Associated Press State & Local Wire,* August 11, 2004; "Student Charged with Voter Fraud," *Wisconsin State Journal,* August 13, 2002; "College Student Makes Court Appearance on Voter Fraud Charge," *The Associated Press State & Local Wire,* September 10, 2004; "Plea Deal Ends in Probation for Voting in Appleton, Eau Claire," *The Associated Press State & Local Wire,* January 10, 2005.

Multiple Voting: Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown)

One incident in New Hampshire.

According to a report in *The Union Leader,* "Last year [in 1999], a Nashua [New Hampshire] man voted in one ward and then traveled to another ward and asked for a ballot using another's name...although he received two ballots, he never voted, so the case wasn't prosecuted..."

Source: Mark Hayward, "Thousands In New Hampshire Register, Vote at Same Time; Inquiry Reveals Some Weak Links in the Six-Year Old System," *The Union Leader* December 13, 2000.

4. **Absentee ballot fraud (forgery or use of an illegal address): Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

Three incidents, one in Wisconsin and two in Wyoming.

The Wisconsin case involved a March 2003 special Milwaukee County Board recall election for Board chair, Lee Holloway. Holloway won the election easily, but nine people who sought absentee ballots through a voter group, the African American Coalition for Empowerment, Inc. (ACE), were charged with a variety of election law violations. Vincent Knox, a longtime local voting rights activist, spearheaded a campaign for ACE to increase the inner city vote by canvassing door-to-door to convince more people to apply for absentee ballots. ACE told voters to request that their absentee ballots be sent to ACE's office, and upon delivery, ACE workers would bring the ballots to the voter, witness the voted ballot and then deliver it to city hall. Forgeries (forged signatures, voting on behalf of phony people, and voting from nonexistent addresses in the forged ballots) were suspected in about 40 of 160 ballots returned by ACE and nine people who had signed the ballot envelopes as witnesses were charged with various election law violations. A jury found Knox, as supervisor of the drive, partially responsible for the forgeries—he was convicted of three felonies—felony election fraud, misconduct in office (he was a deputy registrar), and perjury—related to a single forged registration card. The girlfriend of the applicant of the forged card admitted in court that she had signed his name to the card while he slept; Knox's signature as a witness was on the card. Knox was sentenced to six months in the House of Detention with work release, and given three years probation. Circuit Judge David Hansher ruled that evidence at trial left it unclear whether there was a grand scheme to defraud, or merely widespread short-cutting by Knox and ACE canvassers, five of whom pled guilty to misdemeanors (Barbara Burton, Velma Jackson, Darcell Grafton, Charles Burton and Prentiss Grafton). One canvasser, Barbara Triblett, was acquitted. At the time of the news search, two continued to face felony charges (Dennis James and Michael Hanford). Because the disposition of their cases was unknown at the time the news search was conducted, they are recorded in the next column of the table under "Reports of official charges or official reports of voter fraud (disposition unknown)."

Source: Milwaukee Journal-Sentinel and *The Associated Press State & Local Wire* (various dates 3/27/03, 7/22/03, 7/24/03, 9/4/03, 12/13/03, 1/13/04, 1/14/04, 1/15/04, 1/17/04, 2/21/04, 1/17/04, 4/15/04).

The first Wyoming case involved state Representative Carolyn Paseneaux (R-Casper), an eight-year incumbent, who was charged with two counts of felony voter fraud—one count of false swearing and one count of false voting. Paseneaux had listed 1989 Glendo as her residence for purposes of obtaining absentee ballots over a 21-month period when she was moving around. Having sold her town house in 1997 for financial reasons, Paseneaux used the false address to vote in the 1998 and 2000 primaries and general elections. She worked out a deal and pled guilty to a misdemeanor, whereupon she was ordered to pay fine of $1,030 and placed on six months unsupervised probation.

Source: "Write-in Candidate Enters Tumultuous State House Race in Casper," *The Associated Press State & Local Wire,* November 4, 2000; "Paseneaux Pleads Guilty of Misdemeanor; Felony Charges Dropped," *The Associated Press State & Local Wire,* November 23, 2000.

In the second Wyoming case, Gary and Leila Blake pleaded no contest to misdemeanor voter fraud when it was discovered that they used absentee ballots to vote from an old address. They lived at 372 Curtis Street in Evansville before moving to 1372 Curtis Street in Casper, about five miles away. In 2000, they requested absentee ballots so they would miss none of the hunting season. The ballots were sent to the couple's post office box. According to an AP report:

> "Natrona County Clerk May Ann Collins said the ballots should not have been sent to the post office box. She also said the wrong address might have been mistakenly listed. But she believes the couple bear some responsibility. 'They received a ballot that had Evansville Town Council and mayor on it, from their old address, so they should have said, 'Wait a minute, we don't vote in Evansville anymore,' she said.' The Blakes claim they were unaware of any problem about the ballots until their arrest Dec. 11. The couple was fined $350 each and put on unsupervised six-month probation."

Source: "Couple Fined, Gets Probation for Miscast Votes," *The Associated Press State & Local Wire*, April 26, 2001.

5. **Illegal voting by disfranchised felons: Reports of official charges of official reports of voter fraud (final disposition unknown)**

One incident in Wyoming.

In his 2000 bid for re-election in the town of Hanna, Carbon County, Wyoming, longtime mayor I.W. "Bill" Coffman lost by 11 votes to challenger Ken Worman (the vote was 234-223). Supporters told Coffman that people who did not live in the town and felons had illegally voted in the election. Coffman filed a complaint and the Hanna police department launched an investigation. The Carbon County D.A. asked the state Division of Criminal Investigation for assistance. Seven people were eventually charged, some with felony false swearing and others with felony false voting. The seven had signed certifications that they were not convicted felons or that their voting rights had been restored, but the investigation by the state investigator, Mike Cole, who checked records back to 1963, showed this to be false. Carbon County D.A. Ed Risha commended Cole for spending hundreds of hours obtaining court records from all over the nation and determining whether the suspects had ever been pardoned, saying that Cole "did one of the most thorough, incredible investigations" he had ever seen.

Source: "Hanna Holds Recount After Allegations of Voter Fraud," *The Associated Press State & Local Wire*, November 14, 2000; "DCI to Probe Claims of Hanna Vote Fraud," *The Associated Press State & Local Wire*, November 25, 2000; "Seven Charged in Hanna After Probe into 2000 Election," *The Associated Press State & Local Wire*, August 7, 2002.

Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown)

One incident in Wisconsin.

Investigative reporting by the *Milwaukee Journal-Sentinel* determined some 361 felons had illegally voted in Milwaukee, Wisconsin, in the 2000 election (see report for more discussion and sources for this case). Three men were initially charged but charges were dropped when prosecutors determined that the men did not intentionally violate the law.

Related Resources from Demos

Challenges to Fair Elections Series

- Voter Intimidation and Vote Suppression
- Poll Worker Training
- The Case Against Felony Disenfranchisement
- Ballot Access for Language Minority Voters and People with Disabilities
- Voter ID/Proof of Citizenship Requirements

Democracy eJournal

www.democracydispatches.org

Election Day Registration

- Election Day Registration in 2007: State Legislative Activity
- Anatomy of a Successful Campaign for EDR in Iowa
- Election Day Registration: A Ground-Level View (A Survey of Election Clerks)
- Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security
- Same Day Voter Registration in North Carolina
- Election Day Voter Registration in Iowa
- Voters Win with Election Day Registration

Election Integrity

- An Analysis of Voter Fraud in the U.S.
- Fusion Voting: An Analysis
- Improving Access to Voting: A Report on the Technology for Accessible Voting Systems
- Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals
- One to a Customer: The Democratic Downsides of Dual Office Holding

National Voter Registration Act

- Implementing the National Voter Registration Act in Public Assistance Agencies: A Guide for Election Officials and Human Services Professionals
- A Promise Still Unfulfilled: The National Voter Registration Act Twelve Years Later
- Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the NVRA

Provisional Ballots

- A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election
- Continuing Failures in 'Fail-Safe' Voting: A Preliminary Analysis of Provisional Voting Problems (Election 2004)
- Placebo Ballots: Will 'Fail-Safe' Provisional Voting Fail? (Election 2004)

Candidate Briefing Book

- Fulfilling America's Promise: Ideas to Expand Opportunity and Revitalize Democracy

  A Dēmos briefing book, with state- and federal-level application, to help elected officials advance new policies that promote electoral participation.

Books

- Momentum: Igniting Social Change in the Connected Age
- Stealing Democracy: The New Politics of Voter Suppression
- Conned: How Millions of Americans Went to Prison and Lost the Vote

ABOUT THE AUTHOR

Lorraine C. Minnite teaches political science at Barnard College, Columbia University. She is also a Senior Fellow at Demos, and the co-author of the 2003 Demos report, *Securing the Vote: An Analysis of Election Fraud.* Some of the research and analysis presented here are derived from her forthcoming book on voter fraud in contemporary American elections.

ABOUT THE DEMOCRACY PROGRAM

The Democracy Program works to strengthen democracy in the United States by reducing barriers to voter participation and encouraging civic engagement. Dēmos supports state and national reform efforts by conducting research on current and long-range issues; advancing a broad agenda for election reform; providing advocates and policymakers with technical support; and strengthening reform networks. Through our recent alliance with the National Voting Rights Institute, we are now able to utilize complementary channels of policy, advocacy and litigation to achieve our goals.

A NETWORK FOR IDEAS & ACTION

Dēmos: A Network for Ideas & Action is a non-partisan public policy research and advocacy organization committed to building an America that achieves its highest democratic ideals. We believe this requires a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a strong and effective public sector with the capacity to plan for the future and provide for the common good. Founded in 2000, Dēmos' work combines research with advocacy—melding the commitment to ideas of a think tank with the organizing strategies of an advocacy group.

As with all Dēmos publications, the views expressed in this briefing paper do not necessarily reflect the views of the Dēmos Board of Trustees.

Visit www.demos.org or contact:
Stuart Comstock-Gay, Director, Democracy Program
scomstock-gay@demos.org | (617) 624-3900

Media inquiries: Timothy Rusch, Communications Director
trusch@demos.org | (212) 389-1407

220 Fifth Avenue, 5th fl., New York, NY 10001
T. (212) 633.1405 F. (212) 633.2015
info@demos.org | www.demos.org

Mr. RAPOPORT. I think the single largest argument for election day registration has been discussed a lot, and that is that it increases voter participation. It seems a fundamental reality that many of us—and I served as Secretary of the State for the State of Connecticut for 4 years in the 1990s—have observed the precipitous drop in voting percentages that occurred in the early 1970s. This has been partly because we allowed 18-year-olds to vote, partly because of disillusion around Watergate, and we have never regained those levels. So we have actually nationwide a serious drop which now we are hoping to come and push back up a little bit.

I think we also understand that people's lives are complicated and that the more you can make something convenient for people the more they will access it. The private sector understands this very well.

When I was young, I used to get a paycheck every Friday afternoon at 2:30, race to the bank, stand in line for about an hour with all the other people who got their Friday paychecks, because you knew that if you didn't get your paycheck cashed on Friday, you didn't have any money for the weekend. I tell my son, who is sitting back here, that that is the way it used to be, and he looks at me like it is an Abraham Lincoln log cabin story.

So, no self respecting bank would require people to take extra steps in order to get their money. But when it comes to voting we require people to register, in some cases, 30 days in advance.

The turnout figures, the participation rates are clearly 10 to 12 points higher in the States where they do have Election Day Registration. Not all of that can be attributed to Election Day Registration itself. I think the academic studies that Professor Leighley referred to, about 4 percent, with larger increases for certain parts of the population, are accurate.

There are two corollary benefits to election day benefits beyond the increase in participation, which is, of course, first and foremost.

One, it does reduce the problems with provisional ballots. There have been huge problems with provisional ballots on the counting. We know that a third of the provisional ballots in the 2004 Presidential election were not counted. The possibility of huge, lengthy battles about who was eligible to cast a provisional ballot and have it counted is a dramatic possibility.

There are also, as Representative Ehlers mentioned, additional costs, but I don't think that has been a central focus here and doesn't need to be.

The second corollary benefit is interesting, and I say this as a former candidate. I do believe that it widens and enriches the political debate that we will have. You are taught as a candidate only talk to people who are registered and on that list. If you go out knocking on doors, you walk right by a house even if people want to talk to you if they are not on that list. Those people are ignored as far as the political process is concerned. That is efficient as a candidate, but it is not very healthy for our democracy.

I think we want to create a situation in which the campaigns and candidates talk to everyone, because everyone is a potential voter. I think that flow of information and flow of discussion would be much, much better.

Let me deal with the arguments against Election Day Registration that have been mentioned. One has been the administrative complexity at the polls, where there will be difficulties. Clearly, as with any new policy, the poll workers need to be trained, the procedures need to be put in place, a separate desk or whatever needs to be set up for the registrants so they are not standing in line, creating lines. But that has been shown in every State that has had Election Day Registration, some for 30 years, to be entirely manageable.

The second is the cost, where there clearly are additional costs of additional personnel. I think they are minor, and I think they are offset by the costs of hiring additional people to get the voters on the rolls where there is not Election Day Registration and the counting of provisional ballots afterwards.

The most important argument that has been adduced has been the argument that will open the way to fraud, and I want to address that very directly. It is certainly a theoretical possibility. I don't think anybody could say, don't worry, there is no possibility whatsoever. There are problems in our current system in as many States without Election Day Registration as there are in States with. We have had problems in Connecticut, mostly minor, mostly with absentee ballots. But the overwhelming thrust of the evidence here is that it simply has not happened and is very unlikely to happen.

I think that the study by Professor Minnite documents that. She looked at 4,000 news reports for all six EDR States over the period of 1999 to 2005, found only 10 incidents that were even substantive and investigated and prosecuted, and only one of those involved an impersonation and that was in New Hampshire where a son voted for his father.

So I think that the fraud issue is a potential one. We are, as elected officials, election officials, or people who are interested in our elections, having to balance. You will have the responsibility to balance. But we have a situation here where I think there is very little evidence that fraud will increase, a huge amount of evidence that this will draw millions of new people into the polls; and, on balance, for the health of our democracy, it seems that Election Day Registration would be a very, very good policy to adopt nationwide as well as State by State.

Ms. LOFGREN. Thank you very much for your testimony.

[The statement of Mr. Rapoport follows:]

Testimony on Election Day Voter Registration

U.S. House Administration Sub-Committee on Elections

Miles Rapoport, President, Demos: A Network of Ideas and Action

November 9, 2007

Thank you, Chairwoman Lofgren, and members of the Subcommittee on Elections of The Committee on House Administration, for inviting me to testify at today's Oversight Hearing on "Election Day Registration and Provisional Voting."

Introduction: My History and Current Work on this Issue

Currently, I serve as President of Demos: A Network for Ideas and Action. Demos is a non-partisan public policy center in New York city, founded in 2000, whose work has focused on expanding democratic participation and lowering the barriers that exist to that participation since 2001. Since the very beginning of our work, we have seen Election Day Registration as one of the most important steps that could be taken in this regard; over time our belief in its efficacy has only strengthened. We are appreciative of Representative Ellison's efforts on this issue, and we are very encouraged that the Elections Sub-committee is taking up this issue this morning.

In fact, I have believed in and worked for EDR for a far longer time. I served in the Connecticut legislature for 10 years, from 1985-1994. During this time, I served on the Government Administration and Elections Committee, chairing the Committee in 1993

and 1994. One of the very first bills I submitted, in 1985, was Election Day Registration. And while the bill didn't pass, Connecticut has taken several steps to come closer to EDR, lowering its voter registration deadline from 29 days before an election, to 14 days, and now to seven days. A bill to enact EDR was passed by the Connecticut legislature in 2003, but was vetoed by then-Governor John Rowland.

From 1995-1998, I also served as Secretary of the State of Connecticut. I continued to believe that EDR would be an important reform, and that implementation of such a law would be achievable with great benefit to the citizens, with minimal administrative difficulty, and without any increase in voter fraud. I believe that today, and am delighted that this committee is discussing EDR.

Brief History of Voter Registration in the United States[1]

Although contemporary Americans assume advance voter registration to be the norm, most states did not require voter registration prior to the 1870s.[2] As the electorate expanded due to immigration and the enfranchisement of former slaves after the Civil War, so too did calls for stricter controls on the voting process. The majority of states adopted registration requirements between the 1870s and World War I,[3] and by 1929 all but three states required voters to register prior to casting a ballot.[4]

---

[1] Portions of this testimony are adapted from a forthcoming chapter on Election Day Registration appearing in the 2008 Election Handbook of the American Bar Association written by Steven Carbo and Brenda Wright of Demos.
[2] Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000).
[3] *Id.*
[4] Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote* (New York: Pantheon, 1988.

Noted historian Alexander Keyssar has described the mixed motives behind the move to pre-election registration:

> "[r]egistration laws...emerged in the nineteenth century as a means of keeping track of voters and preventing fraud; they also served – and often were intended to serve – as a means of keeping African American, working-class, immigrant, and poor voters from the polls."[5]

While legislative choices about voter registration were likely shaped by a combination of factors – partisan aims, class bias, racial and ethnic prejudice, machine politics, and genuine concern about the electoral process – there is widespread agreement that the imposition of pre-Election Day registration requirements contributed to substantial reductions in voter participation and turnout among eligible voters in the U.S.[6] Election Day Registration is a tool to significantly increase voter turnout while maintaining efficient and secure elections.

Benefits of Election Day Registration

Principal Benefit: Expanded Participation

A fundamental premise of our work at Demos, and a fundamental premise of our democratic system, is that we ought to encourage the widest possible participation in our voting process. It is a matter of broad and deep concern – among all of us concerned

[5] Keyssar, at 312.
[6] Keyssar; Piven & Cloward.

with our public life in America – that voter turnout has, over the last thirty years, dropped precipitously and remained relatively low. In particular, we have seen exceptionally low voting among young people, low-income people, and those Americans who move frequently. While there are many reasons for this, evidence is clear that making the process less daunting and more user-friendly will make a difference in turnout rates.

The private sector understands this. When I was young, I got my paycheck on Friday afternoon, and raced to the bank across the street, waiting in line for 45 minutes with all the other people who knew if you didn't get your check cashed on Friday, you wouldn't have any money over the weekend. I tell this to my son, who is here, and he laughs. Banks understood that making banking functions accessible to people through ATMs 24 hours a day, seven days a week would increase their usage. No self-respecting bank would do it any other way. Yet in encouraging people to vote, we require them not just to stand in line, but to pre-register, often one month in advance.

But not only logic argues for EDR. Objective research has repeatedly demonstrated EDR's potential to increase voter turnout as well. In fact, a typical summary of the social science literature states, "[t]he evidence on whether EDR augments the electorate is remarkably clear and consistent. Studies finding positive and significant turnout impacts are too numerous to list."[7] EDR states as a group generally have an average voter turnout rate that is 10-12 percentage points higher than non-EDR states.[8] This was most recently

[7] Stephen Knack and James White, "Election-Day Registration and Turnout Inequality," *Political Behavior*, 22(1); 29-44 (2000).
[8] Demos: A Network for Ideas & Action, *Voters Win With Election Day Registration: A Snapshot of Election 2006* (Winter 2007), available at http://www.demos.org/pub1280.cfm.

demonstrated in the November 2006 election, in which the now-seven EDR states had an average turnout rate that was 10 percentage points higher than non-EDR states.[9] Academic studies have concluded that a significant part of this difference is *directly* attributable to EDR, *with the elimination of registration deadlines increasing turnout by 3 to 6 percentage points* depending on the states included and the research methods used.[10]

Over the past five years, Demos has commissioned academic experts to conduct studies on the projected impact of EDR on turnout if adopted in California, New York, Iowa, and North Carolina. The results have been consistent. A 2002 report by Professors Michael Alvarez of Cal Tech, and Stephen Ansolebehere of MIT found that California would likely experience a 9 percentage point increase in voter participation if EDR were adopted.[11] Subsequent studies have predicted a 4.9 percentage point increase in Iowa[12] and a 5.4 percentage point increase in North Carolina.[13] In all states, projected gains are expected to be higher for historically marginalized populations. For example, the adoption of EDR in New York is expected to increase turnout 12.3 points among 18-25

---

[9] *Id.*

[10] For example, see Stephen Knack, "Election Day Registration: The Second Wave," *American Politics Quarterly* 29(1), 65-78 (2001); Knack & White 2000; Craig L. Brians & Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Soc. Sci. Q.* 82(1); 171-83 (March 2001); Mark J. Fenster, "The Impact of Allowing Day or Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly* 22(1)(1994): 74-87.

[11] R. Michael Alvarez and Stephen Ansolabehere, *California Votes: The Promise of Election Day Registration*, Demos: A Network for Ideas & Action (2002), available at http://www.demos.org/pubs/california_votes.pdf.

[12] R. Michael Alvarez and Jonathan Nagler, *Election Day Registration in Iowa*, Demos: A Network for Ideas & Action (2007), available at http://www.demos.org/pub1370.cfm.

[13] R. Michael Alvarez and Jonathan Nagler, *Same Day Voter Registration in North Carolina*, Demos: A Network for Ideas & Action (2007), available at http://www.demos.org/pubs/north_carolina.pdf.

year olds, 9.8 points among those with a grade school education or less, 11 points among Latinos, and 8.7 points among African Americans.[14]

Corollary Benefits of Election Day Registration

1. EDR Greatly Reduces Problems with Provisional Ballots

After millions of citizens were denied their right to vote in the 2000 presidential election,[15] Congress included in the Help America Vote Act of 2002 (HAVA) a requirement that all states offer provisional ballots to individuals who believe they are registered to vote but whose names do not appear on the voter list at their polling place. Such ballots are counted if election officials subsequently determine that the individual was a legitimate voter under state law.[16] While adoption of provisional balloting is a step forward, it has also created significant problems. Unfortunately, HAVA's vague language has allowed states to adopt unnecessarily stringent standards for deciding when a provisional ballot would be counted. One of the most indefensible of such standards is a rule currently in effect in at least 30 states in which a provisional ballot cast outside the voter's precinct will automatically be rejected, even if the voter is in the correct

[14] R. Michael Alvarez, Jonathan Nagler, and Catherine H. Wilson, *Making Voting Easier: Election Day Registration in New York*, Demos: A Network for Ideas & Action (2004), available at http://www.demos.org/pub198.cfm.

[15] It has been estimated that between 1.5 and 3 million votes were lost in the 2000 election because of registration problems alone, CalTech/MIT Voting Technology Project, *Voting: What Is, What Could Be* (July 2001.)

[16] Voters can be omitted from voter lists for many reasons. Voters can move and not re-register properly or re-register after the cut-off date. Their names can be purged from the list, properly or improperly. All too frequently, simple administrative errors in data entry such as misspelling a name or transposing numbers in an address can prevent a voter from being on the list.

jurisdiction and eligible to vote in the races on the ballot.[17] A Demos study released before the 2004 election, entitled ***Placebo Ballots,*** was among the first to raise concerns about provisional balloting.[18] Our concerns were well-founded. In 2004, over one in three of the two million provisional ballots cast was rejected. Thirteen states each rejected over 10,000 provisional ballots; 23 states each counted less than 50 percent of provisional ballots cast.[19] In many states, the "fail-safe" had failed.

Provisional balloting problems were not confined to their nationwide debut in the 2004 election. While comprehensive data on the casting and counting of provisional ballots in the 2006 election is not yet available, substantial evidence does exist of numerous problems. The Election Incident Reporting System (EIRS), an innovative, web-based software system, captured almost 18,000 reports of election problems received and logged in by volunteers staffing a national, toll-free hotline for voter problems on November 6-7, 2006. In a recent report, Demos subsequently analyzed 520 EIRS provisional balloting incident reports (450 described actual problems) and reviewed related media reports.[20] What we found is cause for national concern. Many voter registration lists in use on Election Day 2006 were riddled with errors. Poll workers and election officials were often confused about the proper application of provisional ballots two election cycles after HAVA went into effect. Among our findings:

---

[17] See Electionline.org, "Provisional Ballot Verification (Updated 8/28/2007)", available at http://www.electionline.org/Default.aspx?tabid=1113.
[18] Ari Z. Weisbard, *Placebo Ballots: Will 'Fail-Safe' Provisional Voting Fail?*, Demos: A Network for Ideas & Action (October 2004), available at http://www.demos.org/pub296.cfm.
[19] Kimball W. Brace and Michael P. McDonald, *2004 Election Day Survey*, U.S. Election Assistance Commission, 2005), available at http://www.eac.gov/election_survey_2004/toc.htm.
[20] Scott Novakowski, *A Fallible 'Fail-Safe': An Analysis of Provisional Ballot Problems in the 2006 Election*, Demos: A Network for Ideas & Action, (forthcoming), available soon at http://www.demos.org.

- Over one-third of problems involved voters being denied a provisional ballot when they were likely entitled to one, or individuals being required to cast a provisional ballot when they should have voted with a regular ballot.

- Almost 40 percent of the incidents involved problems with voter lists and other breakdowns in election administration occurring prior to Election Day.

- Fifteen percent of incidents involved poll workers either requiring voters to cast provisional ballots even though they had provided proper ID, requesting ID unnecessarily or, in the case of voters who genuinely lacked the appropriate ID, failing to inform such voters what steps they need to take to make their vote count.

Provisional ballots are clearly an unreliable remedy for voter problems on Election Day. They also place an extra burden on election workers trying to determine the validity of such ballots in the days and weeks after the election. And one can easily imagine a weeks-long process challenging the validity of each and every provisional ballot voter in places where provisional ballots could make the difference in a close race.

Election Day Registration greatly reduces the need for provisional ballots. If a voter is not on the roll when they arrive at the polling place, they can register and vote without difficulty or challenge. Questions about eligibility can be resolved at the time of registration, rather than in the days after the election. According to the county clerk in Anoka County, Minnesota,

> "[Election Day Registration] provides us with the most up-to-date information on he voter.... It assures that individuals are voting for offices and districts where

> they live on Election Day and it eliminates the need for provisional ballots because we can resolve any voter registration issues that day."[21]

Indeed, in 2004, voters in EDR states cast far fewer provisional ballots than those in non-EDR states.[22]

Election Day Registration thus greatly reduces the need for provisional ballots while providing a more reliable "fail-safe" to voters and reducing the administrative burden on election workers.

2. EDR Expands Outreach by Campaigns

As a candidate myself, it was drilled into me that I was *only* to be interested in registered voters. If I was walking down the street and saw people sitting on a stoop, if their names were not on the list I carried with me, I was to ignore them. All campaign communication – mailers, phone calls, door-knocking by volunteers – was premised on ignoring those people not registered to vote. A narrowed universe was who we focused on. While such a strategy may have been efficient for the campaign, it was unhealthy for our democracy. We want a democratic process that speaks to everyone. In addition to skewing the issues of the campaign toward groups (like senior citizens) that are heavily

[21] Electionline.org, *Election-Day Registration: A Case Study*, February 2007, at 8, available at http://www.electionline.org/Portals/1/Publications/FINAL%20EDR%20pdf.pdf.

[22] Although most EDR states are exempt from HAVA's provisional balloting requirement, some EDR states still choose to use provisional ballots for voters who do not have proper identification at the polls. Wisconsin, for example, recorded only 374 provisional ballots cast in 2004 while Wyoming recorded only 95 such ballots cast. See note 16.

registered, it skewed the schedule of the campaign, and the attitude of the campaign away from young voters, from new citizens, from poorer communities.

In states with Election Day Registration, all eligible citizens are potential voters up until the day of election. Candidates have to talk with everyone. In fact, one recent academic study showed that individuals were more likely to be contacted by a political party in EDR states than in non-EDR states and that those contacted in an EDR state were more likely to actually turn out and vote than those contacted in a non-EDR state.[23] EDR offers clear benefits in this respect.

The Arguments Against Election Day Registration

There are a handful of arguments that are most often used in opposition to Election Day Registration, as well as other policies that would broaden participation. Demos has done extensive research on the arguments over the past several years and I would like to take this opportunity to present some of our findings.

A. Administrative Complications at the Polls

[23] Fitzgerald, Mary. "The Triggering Effects of Election Day Registration on Partisan Mobilization Activities in U.S. Elections," Paper presented at the Annual Meeting of the American Political Science Association, Washington, DC August 31-September 3, 2005, available at http://convention2.allacademic.com/getfile.php?file=apsa05_proceeding/2005-08-29/41525/apsa05_proceeding_41525.pdf.

Some people, particularly election clerks or registrars of voters in non-EDR states, have raised the potential that EDR might cause real administrative complications at the polls. Demos recently completed a survey of election officials in EDR states and found that all six EDR states included in the survey were able to handle registrations on Election Day without disrupting the voting process.[24] The small minority of those surveyed who mentioned the potential for complications were quick to add that such challenges are more than outweighed by the benefit to voters.

It is certainly true that to implement EDR successfully, preparation, voter education, and staff training are essential. The most common and effective mechanism reported by election administrators is to designate a separate area of the polling place for those registering on Election Day, allowing pre-registered voters to avoid unnecessary lines. Most election officials assign a "greeter" at each polling place to direct voters to the appropriate area depending on whether they are already registered or seek to register at the polling place. Educational efforts to inform the electorate of the EDR process prior to Election Day utilizing television, radio, and billboards, along with a poll worker training program that ensures all poll workers are fully versed in state registration and voting regulations also contribute to an effective and efficient voting experience.[25]

---

[24] See Demos, *Election Day Registration: A Ground Level View* (forthcoming November 2007), available at http://www.demos.org. Demos initiated a survey of 49 election officials in Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming over several months in 2007. The survey targeted EDR's costs, administrative burdens, and security. Targeted jurisdictions ranged in size from 520,000 to fewer than 600 residents; several had significant student populations.
[25] *Id.*

In fact, such polling place design and educational efforts can be a streamlining mechanism overall, since some confusion at the polls is a result of bottlenecks created by voters who come and find themselves not on the rolls.

This of course raises another issue for our overall election administration process, which is the supply of poll workers adequately trained on a variety of new tasks, from electronic voting machines to digitized poll books. We clearly need a continuously improving Election Day work force, diversely recruited, with reasonable shift lengths, adequately compensated, and properly trained. Election Day Registration can be easily handled when this is the case, but even under current circumstances, the administrative difficulties have not proven daunting.

B. The Cost of EDR

Understandably, policy makers are concerned about the potential cost of EDR. Accurate calculation of the incremental expense of EDR is difficult, largely due to inadequate record keeping and the fact that EDR costs are often embedded in state, county, and municipal budgets. Nevertheless, election officials in EDR states do not report substantially higher election administration costs because of EDR.[26] Where EDR election clerks in Demos' 2007 survey did identify costs associated with EDR, they mainly involved training and deployment of additional staff – including more poll workers or Election judges on Election Day and/or more clerical workers after the election to add new names to the voter rolls.

[26] *Id.*

It should be noted, however, that the additional expenses reported in EDR states likely replace other costs that would have incurred had the state not had EDR. For example, non-EDR states regularly hire additional clerical staff in the weeks before the election to input the surge of registrations that come in as the deadline approaches. In EDR states, this cost is simply applied to additional workers inputting data after the election, during a time that is less frenzied than the run-up to the election, allowing them to concentrate on accuracy rather than speed.

C. EDR and Voter Fraud

No one who supports Election Day Registration wants to see ballots cast by ineligible voters, and it is reasonable for Congress, for state legislatures, and the public to want reassurance that this is not the case. The fraud issue, however, is a tempest in a teapot.

All available empirical evidence suggests that claims of widespread voter fraud are largely unfounded – including in EDR states. Since the release of our pioneering study ***Securing the Vote*** in 2003, Demos has done considerable work on the topic of voter fraud. In ***Securing the Vote***, Lorraine Minnite, a political scientist at Barnard College and now a Senior Fellow at Demos, conducted extensive research using news search engines, academic literature, government documents, congressional testimony and reports, law journal articles, and an in-depth review of some of the highest-profile cases

of real or alleged fraud and concluded that voter fraud was indeed a very rare occurrence.[27]

More recently, Professor Minnite completed a study focusing exclusively on voter fraud in EDR states between 2002 and 2005.[28] Her review of nearly 4000 news accounts netted one case of confirmed voter impersonation at the polls – the type of fraud most frequently invoked by opponents of EDR. In this case, a 17-year-old New Hampshire high school student who has the same name as his father cast his father's ballot in the 2004 Republican presidential primary. A new Department of Justice initiative to aggressively combat voter fraud resulted in prosecutions in only one EDR state – Wisconsin. Of fourteen Milwaukee residents charged with double voting or voting while disfranchised due to a felony conviction, all but five cases were dismissed or the defendants exonerated. Those five were charged with felon voting – not with double voting or impersonating another voter.

There are a number of reasons for this lack of fraud in EDR states. First of all, voter fraud is a felony with substantial penalties attached in every state. Because of its seriousness, several of the Election Day Registration statutes specify priority status for investigations and prosecutions of election fraud. A voter is taking a very big risk to cast that extra vote, or cast a vote to which they are not entitled. Second, there are voter

[27] David Callahan and Lorraine C. Minnite, *Securing the Vote: An Analysis of Election Fraud*, Demos: A Network for Ideas & Action (2003), available at http://www.demos.org/pub111.cfm. For an updated version see Lorraine C. Minnite, *An Analysis of Voter Fraud in the United States*, Demos: A Network for Ideas & Action (September 2007), available at http://www.demos.org/pub1492.cfm.

[28] Lorraine C. Minnite, *Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security*, Demos: A Network for Ideas & Action, available at http://www.demos.org/pub1493.cfm.

identification provisions connected to state EDR statutes. These are certainly a reasonable component of Election Day Registration, though we strongly believe that Election Day registrants should not be subjected to additional, more stringent identification requirements than other voters. In fact, current EDR states accept a broad range of documents to establish identity (Idaho is the only EDR state that requires Election Day registrants to produce a photo ID).[29] Third, in the particular case of non-citizens, which has been raised a number of times in these debates, the idea that people would risk deportation by attempting to cast a vote, particularly when the evidence suggests that it is extremely difficult to get non-citizens (especially immigrants without legal papers) to respond to any official notification, is a highly unlikely scenario.

The possibility of fraud – as limited as it is – is further receding due to technological advances in voting list management. HAVA mandates all states to have statewide, computerized voter lists – an innovation that many states were already moving forward with on their own. The best lists – and states are moving forward toward this goal – are lists that are accessible at the precinct level in real time. This will allow instantaneous checks on whether a voter registering at a particular place is also registered at another place, anywhere in the state. And the election official will certainly be able to see immediately if the person in front of them has voted elsewhere that day. It should also be noted, however, that computerized voting lists are not a prerequisite to secure EDR elections. In fact, states such as Minnesota, Wisconsin, and Maine have effectively administered secure elections for the past 30 years without such computerized lists, and without any widespread incidences of fraud.

[29] *Id.*

The Momentum of EDR:

It is particularly satisfying to note that three new states have joined the ranks of those allowing voters to register and vote on the same day in the past two years. Montana adopted EDR in 2005, Iowa adopted EDR in March of this year, and North Carolina adopted Same Day Registration at early voting sites – an important step towards EDR – this past summer. Since North Dakota does not have any statewide voter registration requirement, we now have 10 states that allow citizens to register and vote on the same day.

Momentum for the passage of EDR has been steadily growing in the states over the past several years. In addition to the three relatively new EDR states, there were legislative proposals to allow EDR in 21 other states during the 2007 legislative session alone.[30] In a number of these states the EDR proposal made significant progress but did not achieve final passage. In most of these states we expect that the bill will be reconsidered next session. The Massachusetts state legislature is still in session and it is possible that they will adopt an EDR proposal this year. Indeed, interest in EDR has been growing since the 2000 presidential election as state legislators looked for ways to improve the electoral process in their states. During the last seven years, proposals to allow "Same Day" or "Election Day" Registration were introduced in 34 of the remaining 43 states with

[30] Demos: A Network for Ideas & Action, "EDR—Legislation in State Legislatures," as of May 2, 2007, available at http://www.demos.org/EDR/EDRworksheet_05-02-07.pdf

restrictive election registration deadlines. In addition to the new EDR states, same day registration measures were considered from coast to coast, north and south.

Not every proposal gained sufficient momentum to achieve serious legislative attention; however, the mere proliferation of these proposals is evidence that support for EDR is growing, and extends to every region of the country. Consequently, the time is right for significant national attention to this proven election reform. It would be a major step forward if Congress adopts EDR for federal elections nationwide.

In conclusion, the enactment of Election Day Registration would be a major advance toward fully inclusive and participatory elections. EDR has proven its value in seven states so far, and momentum for it is growing in many states around the country. As it has in the past, Congress can dramatically advance the election procedures utilized by the states. It would be a shame not to adopt a measure that can greatly increase participation out of concern for problems that have not been shown to exist or have been shown to be extremely manageable. The benefits to our citizens and our democracy, are extremely strong.

Thank you for the opportunity to testify this morning. I am available to answer any questions at this time, and Demos is eager to work with you going forward.

Ms. LOFGREN. Thanks to all of you for very interesting testimony.

We now go to the time in our hearing when we have a chance to ask questions; and I will turn first to my colleague from California who represents San Diego, Susan Davis.

Mrs. DAVIS of California. Thank you, Madam Chair.

I appreciate your all being here. Thank you very much.

One question that really occurred to me while you were talking, have we done very much tracking of those people who vote in same-day registration, whether or not they continue to return to the polls for subsequent elections? Do we have any data on that, as far as you know?

Ms. LEIGHLEY. I am not aware of any tracking in terms of panel data on individuals. I would note, we do have some work which suggests that the key is getting those people in the door the first time; and at that point the political interest is enhanced. Mobilization is enhanced. They have entered in. So our best guess, from fairly strong theoretical arguments, is that there would likely be a subsequent effect.

Mr. TOKAJI. If I could just add one thing. There is also evidence that the benefits from election day registration in terms of increasing turnout do persist over time, specifically from the three States that Professor Leighley mentioned in her testimony earlier.

Ms. KIFFMEYER. Representative Davis, Chairman Lofgren, I believe that there is an effect that, no matter how you register to vote, no matter where your first time voting is, that once you begin that you are more likely to continue. But I don't think it makes it any more so, as an opinion, how you get registered or which day. But I do think that it does make a difference, and that is why we very much focused on making sure that those young students in Minnesota were registered and had those opportunities right away. First-time voters are more likely to continue as they go along, but I think the methodology where they register isn't proven to be as big a factor.

Mrs. DAVIS of California. Thank you.

You are capturing, though, a lot more people. So I think that you would suggest that if they continue to be voters that you certainly would have them when you might not have otherwise. And I think we still have questions about why we weren't able to get to them in 30 days prior, but that is another issue.

One of the things I think we would all agree on is no fraud is acceptable. But I think we have also talked about the suppression of voting issues as well. And in your experience, is there an acceptable level in some ways? We know that there is going to be problems, but they seem to be rather minimal. And we know that there is tremendous suppression that can exist in communities just as well. I mean, is that something that in your positions you have discussed?

Because it would seem to me that, while we don't like it, there may be an acceptable level. But it is also clear that—what are the red flags that go up when you know that something is really going wrong? And maybe we need to kind of look at what are those red flags. And, again, how would you act to secure whether it is same-

day registration or even registration generally that perhaps we are not addressing?

Mr. TOKAJI. Let me take the position that no voting fraud is ever acceptable. I think we are in agreement on that point.

I would also suggest that, no matter what kind of system you have, there are always going to be a few people out there who are trying to cheat.

I think it is important when we are talking about fraud to be clear about what we mean and in particular separate it into three categories. There is, first of all, the voter who goes to the polls on election day and tries to cheat, pretending to be someone they are not. That is extremely rare. A bit more common, though also rare, is people trying to cheat through absentee ballots; and if you are an individual voter trying to cheat, that is the way you are most likely to pursue. Also rare is the third kind, but again a bit more common than the first, which is insider fraud, people on the inside stuffing ballots or things like that.

What should be emphasized is that the risks of fraud arising from election day registration are very small. Because if voters are going to try to cheat, they more often than not do it through absentee ballots, not through going into the polls on election day, pretending to be someone they are not or otherwise trying to cheat. And that is demonstrated by Professor Minnite's study.

So I don't think there is any acceptable level of fraud, but I also don't think that the evidence supports the conclusion that election day registration increases it. It is clear that election day registration does increase turnout, and this is where we have a huge problem in our society that we have not satisfactorily addressed. Not nearly enough people come out to vote; and, moreover, certain groups, including racial minorities, poor people, younger people, people with disabilities, are underrepresented in our voting polity. And that is a serious problem. Election day registration is the best way I know of, based on the social science evidence, to increase registration and participation through election administration.

Mr. RAPOPORT. I would add a quick comment on that. It seems to me that if we make the assumption that we want to guard against fraud as effectively as possible, there are still two paths to go. One is to create an election system that works as smoothly and as efficiently and where we give the prosecuting authorities, the election enforcement commissions in the States and the Attorney General in the State, the resources that they need to really actively go and search out the fraud, look at it in a case-by-case basis, and do it.

The second path is to sort of tamp down on the process of allowing people to vote in a more general way, catching the fraud but also I think limiting significantly the amount of people that will vote.

And I think the first path we have the capacity to do with the digitized statewide voter lists, with increasing the sophistication of the voter identification processes and mechanisms. I think those are the better ways to go.

Ms. LOFGREN. The gentlelady's time is expired.

I turn now to the ranking member, the gentleman from California, Mr. McCarthy.

Mr. MCCARTHY. Thank you, Madam Chair.

I want to thank the whole panel. I appreciate all the testimony.

Like Congresswoman Davis said, we want to make it as easy as possible for people to vote, and we have evolved so far in everything we do in America. You think today—and Mrs. Davis and I had a conversation just the other day about other countries and how you see the turnout so much larger than America, and people waiting in line, people having to walk to the polls. And we could vote absentee. States let you vote early out there for 2 weeks at a time in shopping centers and everything else.

But one testimony struck me very unique, Ms. Kiffmeyer, taking from the whole perspective. Because in this committee we are also looking at contested elections. We have one issue in Florida 13. So we are looking at, is there an undervote or whatever going through? But do we ever also look at, if we are going to do a complete accounting, if we are looking at just the final product, was this person actually able to vote or should they have?

And I do have a real concern in this whole debate of whether it be a provisional or not. Because once it is inside the ballot, you don't know which ballot it was. There is no way of checking.

And when you look at how close these elections are, then you have the whole argument about, are these people informed? Are we not allowing them to be more informed? The more we get in voter registration, that is how people use the voter rolls. Some people use them for wrong reasons. But that is the main reason why we are able to get information out.

My question would be to Ms. Kiffmeyer, have you found—because you have had same-day voter for quite some time, did you find with the college students—and you put about the ID there. Did you find any fraud within there? That people from other States, because—coming in there, going to college, voting back home and also voting there as well?

Ms. KIFFMEYER. Representative Lofgren and Representative McCarthy, certainly we have cases. There are instances of convictions. But what we have found, though, is that the tools that we need in order to verify some of these things are nonexistent. In other words, is there fraud is one question. The second thing is, do you have a system to catch it? Do you have a system that can give you that degree of certainty?

When you have students coming from other States and voting in your State, there is no ID requirement. They come in on election day. The ballot is live and counted. Then, afterwards, a nonforwardable postcard is sent to them. What happens to that nonforwardable postcard? I mean, those are the kinds of researches.

Newspaper reports, by the time things get to a newspaper, there is lots of stuff going on that never hit the newspaper. You need to dig a little deeper and also be wiser about the actual system and what is really happening to know what to do there.

But those tools to verify that those students—did they vote in their home State? Did they vote also in Minnesota? Can we know? And shouldn't we know?

Where are the tools that enable us to give what I believe we owe to the American people? I mean, we do it on the side of the ballots.

We have the recounts and we have all this and we have attorneys and we have all this stuff going on. But it seems like on this side, when it comes to registration, there is almost a sense of faith-based trust in regards to registration, that, ergo, they registered, ergo, it must be true, without the same level of scrutiny that we give in the ballots themselves.

Mr. MCCARTHY. We are pretty much leaving the door unlocked, like your analogy earlier, because we don't have the information to even check to see about the accuracy within there.

I know HAVA has—if you are a first-time voter and you register, first-time registered and first-time voter, they make you form a check of an ID or you get mailed it back. Would you think, if a person goes to the ballot and they are first-time registering to vote, should there be any other check there? Should people show an ID?

Ms. KIFFMEYER. Well, certainly when you have your check and you go to cash your check, in most every instance you are required to show some sort of identification to tie those two records together. In other words, here is my name on the roster and here is my name on this ID, and you tie those things together. That is just a common-sense thing that is used everywhere else in our society. And the only place it is wholly absent, many times, is in the polling place on election day, where you are getting a vote, a real live ballot.

Mr. MCCARTHY. Because it is the only registering by mail the first time that we do that check.

Now, the only other question I have, maybe to Mr. Rapoport, would you support showing an ID? I know a lot of people use driver's license. I come from a State that first proposed giving driver's license to illegals. It got repealed. Where is your position on that?

Mr. RAPOPORT. I think it is reasonable for a first-time registrant to show identification. I think the question becomes, "what are the acceptable forms of identification?"

We negotiated this very carefully when I was the chairman of the Government Administration and Elections Committee in the Connecticut legislature about what form of ID. And where we ended up was a list of acceptable IDs, driver's license probably the most used, electronic benefit transfer cards, student IDs, but anything that has both a signature and either a picture or an address. And then the last, the sort of fail-safe, is an attestation requirement where a voter can, if they are absolutely lacking ID, sign an affidavit stating—under penalty of perjury stating I am who I am. And if someone else were to come and vote there, under that name you have at least the beginnings of a signature to do it.

I will say that in the 15 years since that system has been enacted in Connecticut, there has been not a single prosecution for false identification. There have been election fraud issues in Connecticut. They have been entirely in the misuse of absentee ballots.

Mr. MCCARTHY. One quick follow-up. I know that was 15 years ago. Would you still have that opinion now, with the debate going on about illegals being able to have a driver's license? Would a driver's license still be okay for you for the IDing, for that purposes?

Mr. RAPOPORT. I imagine that it would. I think there probably would be some differentiation in the license.

But I also say this, that I think that the people who have studied this generally feel that people who are not citizens and who are subject to deportation or subject to real problems are very unlikely to expose themselves by coming out to vote. I think it is hard to get them to respond to many things at all.

Mr. MCCARTHY. Madam Chair, I do want to thank you for—it must have been our miscommunication that you did from 6–4. And if we are moving beyond three in the majority and one on the minority for witnesses, it would be my intent to withdraw my rule 11, and I thank you for that.

Ms. LOFGREN. We should have a discussion of this at a later time.

Mr. Ellison is recognized for 5 minutes.

Mr. ELLISON. Thank you, Madam Chair; and let me thank all the panelists. And I hope you all will forgive me for thanking Ms. Kiffmeyer to be here in particular. She is from Minnesota, and she and I worked together over the years. She could report how we showed up in places around the district and tried to encourage people to go vote, and I want to thank you for the work you did then and for coming out today.

Professor Tokaji, one question I want to ask you is there seems to be sort of a dispute in the statistics about whether or not same-day voter registration increases voter turnout. Secretary Kiffmeyer said that we already had high voter turnout in Minnesota, and so same-day voter registration didn't really change that. What if we look at it in a more broad sense, look at the more comprehensive look at all the States that have it? Can you say with some authority that it actually does increase voter turnout?

Mr. TOKAJI. I say with absolute confidence that election day voter registration increases turnout, and I believe I have looked at all the social science evidence that exists on this subject. I think Secretary of State Ritchie explained one of the blips in Minnesota, which had to do with the fact that we were lowering the voting age at around the same time as some of those studies. But there is no reasonable basis for disputing, based on the evidence that election day registration increases turnout. It is—I would say it is a social scientific fact, just as evolution is a natural scientific fact, is at that level of clarity. There is reason——

Mr. ELLISON. There are people who debate that, too.

Mr. TOKAJI. There are always going to be people who debate certain things. There may be some reason for quibbling about exactly how much you think it increases turnout, but there is no reasonable basis on the evidence for questioning that it increases turnout.

Mr. ELLISON. Thank you, Professor; and thank you. Everybody had an excellent presentation I want to say.

What about your thoughts on this, Professor Leighley? Do you agree or concur with Professor Tokaji on this issue?

Ms. LEIGHLEY. I do. This is one of the few places where, in studying electoral behavior in the United States, there is a clear unanimity in all of the studies about increases that result from election day registration; and it is based on empirical evidence, things that we actually observe in the world, as opposed to concerns or questions or allegations.

Mr. ELLISON. How about you, Secretary Rapoport? Do you concur with Professor Leighley and Professor Tokaji?

Mr. RAPOPORT. I do, and I think the evidence is consistent. I want to call the committee's attention to a chart which is actually not in what I introduced, but I can leave it and copies can be made.

Mr. ELLISON. Can I offer unanimous consent that it be introduced?

Ms. LOFGREN. Yes. Without objection.

[The information follows:]

EXPANDING THE VOTE:

The Practice and Promise of Election Day Registration

Demos A NETWORK FOR IDEAS & ACTION

CONTENTS

Preface 1

Summary and Recommendations 2

Overview 4

The Problem: Low Voter Turnout and Frustrated Voters 4

Beyond Motor Voter: Lowering Registration Barriers 7

Reducing Problems at the Polls 8

Election Day Voter Registration in Practice 9

EDR and Voter Turnout 10

Case Study of Success: EDR in Minnesota 11

Questions and Answers about EDR 14

Notes 19

January 2002

Demos is a non-profit, non-partisan public policy research and advocacy organization. This report was researched and written by Sarah Tobias and David Callahan, with assistance from Steven Carbó and Jeannette Hedgepeth.

Demos: A Network for Ideas and Action
155 Ave. of the Americas, 4th Floor
New York, N.Y. 10013
212/633-1405
www.demos-usa.org

PREFACE

The 2000 election was a deeply troubling episode in the history of our democracy. In addition to the widespread voting and recount problems in Florida and elsewhere, the election cast a harsh light on broader weaknesses in our electoral system. Voter turnout remained at near-record low levels in 2000, and tens of millions of Americans were not even registered to vote. In most states, unregistered voters who became interested in participating during the final days of the election were unable to do so because of registration deadlines up to four weeks before election day. Many voters who went to the polls were barred from casting a ballot because of widespread problems with registration lists - obstacles that existed not just in Florida but also in two dozen other states.

This report examines election day registration (EDR), an important reform measure that would help address some of the problems highlighted by the 2000 election. Currently, six states have election day registration - Wisconsin, Maine, Minnesota, Idaho, Wyoming and New Hampshire. As the research presented in this report shows, allowing voters to register and vote on election day helps to increase participation significantly and to ensure that all voters who arrive at the polls can vote. The six states with election day registration have substantially higher voter turnout than the national average and report few problems with fraud, excessive costs, or administrative complexity. Extending election day registration to other states, and eventually the entire nation, would bring millions of new voters to the polls and help reverse the long-term decline of voting in the United States.

Despite its promise, election day registration is only one part of a broader democracy reform agenda. Many other important reform measures are needed to broaden voter participation and ensure that our democratic system is open and inclusive. These include: ensuring that all existing federal laws governing voter registration and voting rights are vigorously enforced, restoring voting rights to ex-offenders who have paid their debt to society, enacting comprehensive campaign finance reform, proportional or instant run-off voting, computerizing voter registration systems in all states, and strengthening civic education in our schools.

Demos' work seeks to advance this broad democracy agenda. We are working with advocates, scholars, and policymakers around the nation to build a strong and effective movement for reform. In a number of states, efforts are underway to enact election day registration as one critical step toward strengthening our democracy. We hope that this report will be useful to this work.

Miles Rapoport
President

SUMMARY AND RECOMMENDATIONS

The Problem

- Voter turnout in U.S. elections has reached record lows. Only 51% of the population voted in the 2000 presidential election. People of color, the young, the mobile, and low-income Americans are less likely to vote than others. Nearly 50 million eligible Americans were not registered to vote in the 2000 election.
- Voter registration procedures pose barriers to voter participation. In many states, registration deadlines occur substantially before election day. States with registration cut-off dates closer to election day have higher voter turnout than states with earlier cut-off dates.
- In the aftermath of the 2000 election, election officials from numerous states reported that some voters were unable to vote because their names were not on voter lists when they arrived at polling places.

One Response: Election Day Registration

- Six states – Wisconsin, Maine, Minnesota, Idaho, Wyoming and New Hampshire – currently have election day registration (EDR). These states have consistently achieved voter turnout that is 8% to 15% better than the national average.
- One of the biggest advantages of EDR is that individuals who become interested in the campaign close to election day are able to vote.
- EDR helps to ensure that all citizens who arrive at the polls have an opportunity to vote, even if their names have accidentally been left off voter lists.
- EDR enables new residents in an election district to register and vote more easily. Over 40 million Americans moved between March 1999 and March 2000, and these Americans had far lower registration and voting rates than other citizens. The young, people of color, and low-income Americans are especially likely to be mobile.
- States using EDR report few problems with fraud, administrative complexity, or excessive cost.

Policy Recommendations

- All states currently without EDR should move toward instituting this reform.
- All states that do not now have computerized statewide voter registration databases should create them. These systems will facilitate the implementation of EDR, reduce the possibility of voter fraud, increase administrative efficiency at the polls, and enable those citizens who are mobile to retain their opportunity to vote.

- States should ensure that polling places comply with all federal voting rights laws. All polling places should be staffed by adequately trained and well-paid election officials capable of helping citizens register and vote.
- States enacting EDR should avoid erecting unreasonable barriers to registration at polling places. Any requirement that registrants produce evidence of their eligibility should be narrowly tailored and equitably implemented. Provisional ballots should also be available at all polling places.
- In states where the implementation of EDR may not be immediately practical, states should consider reducing voter registration deadlines as an interim measure to increase opportunities for voter participation.

3

Overview

On November 7, 2000, over 80 million Americans eligible to cast a vote in the national election failed to do so. A quarter of eligible American citizens were not even registered to vote on election day. Along with many other flaws in our democratic system, the 2000 election illustrated the enduring and severe problems of low voter registration and participation. The election also exposed serious problems at polling places, including voters in states across the country finding themselves not on voter lists even though they had registered in a timely fashion. Election day registration (EDR) provides the ability both to register and to vote at the polls on election day. The six states using EDR have higher than average voter turnout rates and report few problems with fraud, administrative complexity, or excessive cost. Extending this reform nationwide will make it easier for citizens to become actively involved in the political process.

The Problem: Low Voter Turnout and Frustrated Voters

Voter turnout in elections has reached record lows. Only 51% of the population voted in the 2000 presidential election.[1] This was an improvement in turnout over the previous presidential election in 1996, when just 49% of the population voted. Voter turnout in the U.S. has not risen above 60% since 1968, and is consistently much lower than in other industrialized nations.[2] In addition to the problem of low voter turnout, the 2000 election saw many people who tried to vote turned away at the polls because of problems with voter registration lists.

Low voter turnout raises fundamental questions about the effective functioning and fairness of our democratic process. Declining participation over recent decades has been linked to a wide number of factors, from diminishing public faith in government to the weakening of political parties.[3] Barriers posed by voter registration procedures also play a role in reducing participation.

Prior to 1993, the process of voter registration was made difficult by the lack of convenient opportunities for citizens to register by mail or in the course of routine interactions with government.[4] In 1993, President Clinton signed the National Voter Registration Act (NVRA) or "Motor Voter" Act – an historic piece of legislation brought about by an extended advocacy campaign aimed at increasing voter participation. The provisions of this act were intended to make voter registration easier. The NVRA increased the number of locations where voter registration could take place. In particular, the Department of Motor Vehicles (DMV), public assistance offices, and other state agencies were made into registration sites so that people applying for drivers' licenses or government assistance could register to vote at the same time. The NVRA also mandated states to allow mail-in voter registration.

Voter registration has increased since the passage of the NVRA. The Federal Election Commission (FEC) reports that 76% of the U.S. voting age population was registered in 2000, up from 70.8% in 1992.[5] While 7.6% of the total number of new registrations took place at agencies in 1999 and 2000, and nearly a third of them were conducted by mail, 31.8% of voter registrations took place at the Department of Motor Vehicles.[6] Despite an overall increase in national registration rates, however, there are significant differences in who is registered to vote based on age, education, length of residency, race and ethnicity.

Low voter turnout raises fundamental questions about the functioning and fairness of our democratic process.

One of the largest variations in voter registration rates is correlated with age. People 18-24 years old have the lowest rates of registration, 43.6% in 1998, while older Americans have the highest rates – more than three quarters of those over 65 years old were registered in 1998.[7] Another vast variation in registration rates is due to educational attainment. Only 43.4% of people without a high school diploma reported being registered in 1998, while 73.8% of people with a bachelor's degree were registered. Those with advanced degrees were registered at the highest levels – 77.7% in 1998. Likewise, those with lower incomes were less likely to be registered. Less than half of people with incomes under $50,000 reported being registered in 1998 – compared with 77.3% of those with incomes of $75,000 or over (see table).[8]

Length of residence is the other major factor governing a person's likelihood to be registered to vote. Only 43.2% of those who lived someplace for less than 6 months were registered to vote in 1998, compared to 76% of those who had been in the same residence for 5 years or longer.[9] This is a significant fact in a nation that has a very high level of geographic mobility. According to the U.S. Census Bureau, 43.4 million Americans moved between March 1999 and March 2000, or 16% of the population. Over half of these moves were in the same county and 20% were between counties in the same state. Only 20% of moves were to a different state. Recent movers also tend to be disproportionately younger (the majority are in their twenties), nonwhite, and poor – three groups already less likely to register and vote.[10]

The problem of frustrated voters at polling places who find themselves unable to vote is less systemic and long-term than the phenomenon of declining voter turnout. However, this problem is still significant. According to an August 2001 congressional report, "Eligible voters in at least 25 states went to the polls in the 2000 presidential election and found their names were illegally purged from the rolls or not added in a timely fashion."[11] Most of these problems were caused when people who registered for the first time at state agencies through provisions mandated by the NVRA were not included in voter lists given to poll workers. Many of these new registrations occurred long before statewide registration deadlines expired.

In a July 2001 report to Congress about the effectiveness of the NVRA, the Federal Election Commission (FEC) notes that the 2000 election produced a

5

Table 1. Registration Rates in Four States by Race/Ethnicity, 1998

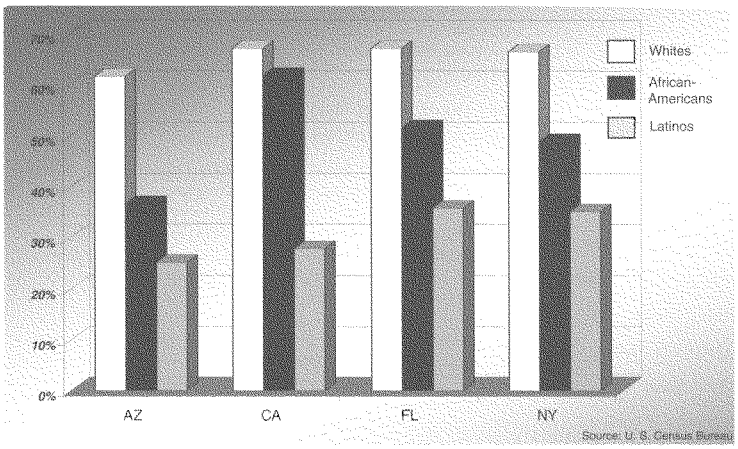
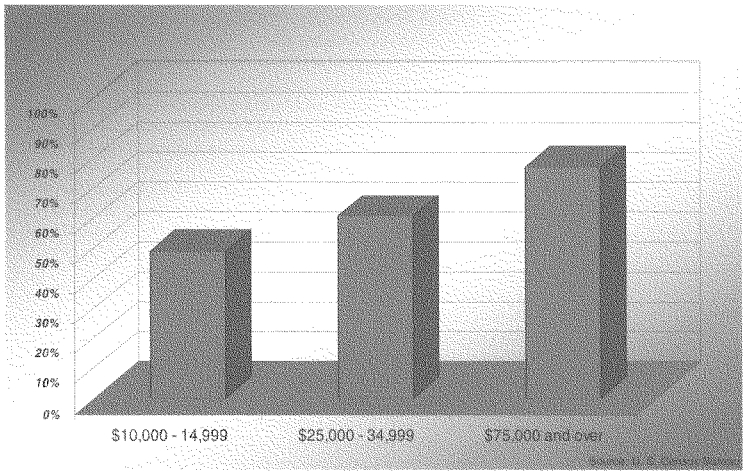


Table 2: Voting Registration Rates by Income, 1998



record number of complaints about registrations that were not added to the voter lists in a timely fashion.[12] A 2001 Caltech/MIT report on voting technology estimates that between one-and-a-half and three million votes were lost or not cast in 2000 because of problems with the registration process and voter lists.[13]

Beyond Motor Voter: Lowering Registration Barriers

After the 2000 election, 25 states reported problems with voters not being on voting lists when they arrived at polling places.

New steps are needed to simplify voter registration and to ensure that all potential voters have maximum opportunities to participate. In all but seven states (the exceptions are North Dakota, which has no voter registration at all, and Maine, Wisconsin, Minnesota, New Hampshire, Wyoming and Idaho, which use EDR), voter registration deadlines occur substantially before election day, often 29 or 30 days in advance. Such deadlines prevent unregistered voters with a late interest in elections from voting.

The number of voters barred from the process in this way can be significant. During the final weeks of a campaign, politicians advertise vigorously to get their messages across, and races inevitably tighten. Typically, the public's interest in elections surges at this time. For instance, in the 2000 Presidential election 59% of people surveyed reported giving "quite a lot" of thought to the election between September 11 and 17, and 62% reported giving "quite a lot" of thought to the election between October 2 and October 8 (the period when most registration-deadlines occur). However, these numbers jumped to 70% between October 16 and October 22, and to 75% between October 30 and November 5.[14] In another indicator of late breaking interest, the number of new voting registrants tends to spike upward as election day approaches.

Not surprisingly, the evidence suggests that those states with cut-off dates closer to election day experience higher voter turnout.[15] An analysis of the relationship between voter registration deadlines and voter turnout in the 1996 and 2000 general elections reveals that states with voter cut-off dates closer to election day had higher turnouts. Nine of the thirteen states with registration deadline cut-offs of 21 or fewer days before election day ranked among the fifteen states nationwide with the highest voter turnout. (Excluding the six states with EDR and North Dakota.)

Electoral reforms beyond the NVRA are needed for several reasons. The NVRA is silent on the subject of registration deadlines; states are free to set their own. They can therefore deny potential voters with a last-minute interest in an election the opportunity to participate. Furthermore, while the NVRA seeks to ensure that registrants who change residence within a voting jurisdiction remain on voter lists, states have wide latitude on how to comply with the Act's so-called "fail-safe" provisions. These provisions are based on the principle that "once registered, a voter should remain on the list of voters so long as the individual

remains eligible to vote in that jurisdiction."[16] The FEC has reported continuing problems with this aspect of the NVRA. For example, nearly half of all states do not offer provisional ballots - the best way to implement fail-safe voting.[17]

Other problems persist with the implementation of the NVRA. One of these involves the failure of states to comply fully with the Act's provisions for offering registration opportunities at government agencies other than the DMV, such as at public assistance offices.[18]

Even when perfectly implemented, the NVRA may not reach people who have recently moved across county lines within their own state, who are unclear as to where to register, and who have not yet gotten a new drivers' license. Recent movers may not have information about mail-in registration, or mail-in registration forms may not be broadly available. Some mail-in registration forms available on the Internet are not considered valid by state election officials.[19] Citizens with limited English proficiency or those with disabilities may have special problems becoming quickly registered.

Overall, according to the Census Bureau surveys, the NVRA has been more successful in reaching some groups of Americans than others. Non-urban Americans are more likely to register at the DMV than are city dwellers, particularly African-American and Latino urban residents. African-Americans are also less likely to take advantage of the mail-in registration provision, and the failure of states to implement the NVRA's provisions for registering in public assistance agencies disproportionately affects people of color. African-American and Latino urban residents are most likely to register through special voter registration efforts unconnected to the NVRA.[20]

More aggressive implementation of the NVRA by all states would increase the opportunities for people to register and help decrease problems at the polls. Even then, however, obstacles to registration would still be greater than they need to be. EDR could help circumvent nearly every remaining obstacle to registration.

Reducing Problems at the Polls

Election day registration systems would enable all voters who come to the polls to cast a ballot. Under EDR systems, voters who mistakenly think they are registered can register on election day. Voters whose NVRA registrations were not added to voter lists in a timely fashion can re-register. Voters who have been mistakenly purged for various reasons can also re-register.

In the 2000 election, states with EDR were not immune from widespread problems with purged voter lists or with new registrations not being added to voter lists in a timely fashion. However, EDR helped cushion the negative impact of these problems. In Maine, for example, lawyers for the Democratic Party accused Portland officials of illegally purging the names of as many as 15,000 voters.[21] In addition, it

was reported that the applications of some voters who registered through the Department of Motor Vehicles were not forwarded to the state elections division. The good news was that in Portland, purged voters did have the recourse, albeit an inconvenient one, of re-registering to vote on election day at City Hall – thanks to Maine's system of election day registration.[22]

There are no reliable estimates of how many people arriving at polling places were unable to vote in the 2000 election because their names were not on voter lists. Clearly, though, if EDR were in place in the 25 states that reported such problems, thousands of excluded voters would have had the option of re-registering on election day and casting a ballot.

Election Day Voter Registration in Practice

Election day registration has long been recognized as a means of reducing the barriers to participation and raising voter turnout. In 1977, after EDR was successfully implemented in Minnesota and elsewhere, President Carter promoted legislation to extend EDR to the national level.[23] Because it lacked bipartisan support, the Carter Administration's proposal was ultimately modified to make EDR optional, rather than mandatory, for states to use. The bill therefore effectively lost its legislative clout.[24] Despite this setback, EDR's proponents have continued to advocate for it as an effective way to extend the franchise. Six states currently use EDR. Three of them – Wisconsin, Minnesota and Maine – have used EDR since the 1970s. Three others – Wyoming, New Hampshire and Idaho – adopted EDR in 1993-1994.[25] All of the states that implemented EDR in the 1990s did so to avoid complying with the NVRA.

All states with election day registration have pre-election registration deadlines. These deadlines vary from 10 days in New Hampshire to 25 days in Idaho. After the cutoff, voters who wish to register have the option of doing so on election day.

Election day voter registration is a relatively straightforward procedure in each of the six states. Before they can register and vote, individuals must show proof of identity and residency. Each state has different requirements concerning the documentation that will suffice for this purpose. For instance, Wisconsin and Minnesota do not mandate the use of picture identification. Appropriate documentation ranges from drivers' licenses and passports to leases and utility bills. By contrast, Idaho has amended its laws to require that potential voters provide picture identification as well as a document providing proof of residency. New Hampshire residents must complete an affidavit and show proof of age and residency. If election clerks doubt the veracity of a person's identity or residency claim, then they can contest the ballot, usually by marking it, or by keeping it to the side so that it may be checked at a later date. After elections, Wisconsin and Minnesota also verify the registrants' residency by sending out postcards that

cannot be forwarded to the addresses they provide.

Election officials receive training, generally at the county or city level, to handle election day registration. In an attempt to head off long lines and to avoid the frustrations associated with them, the state of Wisconsin assigns new registrants to separate voting areas from pre-registered voters. When voters arrive at the polls, a "greeter" talks with them and directs them to the appropriate area. Election officials observe that they have prevented excessive congestion, even in metropolitan locations, by structuring the physical environment of the polling place in this way. They also stress repeatedly that there is a difference between allowing election day registration and having all voters register on election day. Many potential voters pre-register in states using EDR, and those who choose to register on election day are typically insufficient in number to cause significant delays at the polls. Maine avoids congestion at the polls by insisting that residents of large urban areas who use EDR register at a different, centralized location.

Election day registration can be implemented with relative speed and ease in many states.

As noted above, states with EDR were not exempt from the widely reported problems at polling places during the 2000 election. There is no evidence, however, that EDR was responsible for these problems. For example, election officials and advocates report that major disorder and frustration occurred at the polls in Wisconsin, where many polling places were understaffed because of a failure to predict high turnout and an unwillingness to pay poll workers adequately. Similar problems were not experienced in Wisconsin during the 1998 or 1996 elections.

EDR and Voter Turnout

The states using EDR have significantly higher voter turnout than the national average. In the 2000 presidential election, 68.8% of Minnesota residents of voting age turned out to vote, while 67.3% of Maine residents, 66.1% of Wisconsin residents, 62.5% of New Hampshire residents, 59.7% of Wyoming residents, and 54.5% of Idaho residents followed suit. Four of the six states with voter turnouts at least 10% higher than the national voter turnout of 51.3% were states using EDR.[26]

In 1996, when voter turnout in the United States was 49%, all six states using EDR had turnout over 57%. Maine had the highest voter turnout in the nation in 1996 - 71.9% of its electorate voted.[27]

Extrapolating from past experience, political scientist Mark J. Fenster estimates that implementing EDR nation-wide could increase electoral participation in U.S. presidential elections by 8.54 million.[28] Based on an analysis of the states that had EDR between 1972 and 1996, political scientists Craig Leonard Brians and Bernard Grofman estimate that eliminating voter registration deadlines and implementing same day registration would produce a 7-percentage point rise in voter turnout in the average state. Brians and Grofman stress that middle class voters are most likely to take advantage of EDR. They also note that turnout gains in the so-called "second wave" states (those implementing EDR in 1993) have been less sig-

nificant than gains in the three "first wave" states.[29] Stephen Knack specifically examines the three states that adopted EDR in 1993. In contrast with Brians and Grofman, he suggests that EDR produces a 6-percentage point rise in mid-term elections and a 3-percentage point rise in presidential elections.[30]

Voter registration deadlines prevent unregistered voters with a late interest in elections from voting.

A central advantage of EDR is that individuals who become interested in a campaign close to election day are able to vote. When registration deadlines occur well in advance of election day, people who become engaged by the arguments circulating during the final weeks of an election campaign and have not previously registered to vote find themselves effectively disenfranchised. They are unable to support the candidate of their choice at the ballot box. By contrast, in states that have EDR, new voters can register at the last minute and participate in the democratic process.

North Dakota: The Only State Without Voter Registration

[illegible]

Case Study of Success: EDR in Minnesota

Laws establishing election day registration in the state of Minnesota were first passed in 1973. EDR has been used for all primary and general elections in the state since 1974. State officials report that the system generally works well and voters also appear to be happy with EDR. Minnesota has one of the highest voter turnout rates in the country. Over the past quarter century, up to one-fifth of voters who registered in Minnesota did so on election day.

To register at the polls on election day, a person needs to verify his or her residence by showing election judges information from one of the following categories:

- A current Minnesota driver's license or a state identity card. A learner's permit or a receipt for a new identity card will also suffice as adequate documentation for registration.
- Any other document approved by the secretary of state's office for identification purposes (including a notice of late registration card mailed to a Minnesota address; a U.S. passport or military I.D. plus a utility bill mailed to a Minnesota address within 30 days of the election; and a viable registration at a different address in the same Minnesota precinct).
- A valid student picture I.D. with a fee statement or registration summary showing the student's address. A valid student I.D. alone will suffice if the student is already on a student housing list on file at the polling place.
- Alternatively, a person who seeks to register at the polls on election day can have a voter who is already registered in that precinct sign an oath vouching for their residence.

Table 3. Voter Turnout in Presidential Elections in States with EDR, by Percentage, 1968-2000.[32] (boldface indicates when EDR was instituted).

Year	United States	Maine	Minnesota	Wisconsin	Idaho	New Hampshire	Wyoming
1968	60.84	66.37	73.75	66.52	73.34	69.62	66.95
1972	55.21	60.27	68.65	62.49	63.34	63.63	64.41
1976	53.55	**63.66**	**71.53**	**66.52**	60.68	57.27	58.56
1980	52.56	**64.49**	**69.96**	**67.35**	67.71	57.14	53.23
1984	53.11	**64.77**	**68.16**	**63.46**	59.93	52.98	53.38
1988	50.15	**62.15**	**66.33**	**61.98**	58.34	54.81	50.30
1992	55.23	**71.98**	**71.73**	**68.99**	65.16	63.14	62.30
1996	49.08	**71.90**	**64.07**	**57.43**	**57.05**	**57.30**	**59.43**
2000	51.30	**67.30**	**68.80**	**66.10**	**54.50**	**62.50**	**59.70**

Election officials can potentially "challenge" any voter who they suspect is registering fraudulently. All registration cards completed on election day are forwarded to the county auditor. The auditor adds the names of new voters to the registration list unless the original registration is found to be "substantially deficient." The auditor also sends non-forwardable mail to any registrant, and if the mail is returned, may challenge their voting status.

Election day registration helps ensure that all voters who arrive at the polls have an opportunity to vote, even if their names have been left off voting lists.

The 1998 gubernatorial race in Minnesota is indicative of the way in which EDR can facilitate last minute engagement and participation, especially among young voters. Jesse Ventura, a former professional wrestler, ran using a populist's strategy, placing campaign advertisements on *The Simpsons* television program instead of on the nightly news, and working until the very last minute to gain electoral support. His strategy worked. Four weeks before election day a poll showed that Ventura had captured 13% of the vote. Less than a week before the election, these numbers had grown to 23%. As commentator Lisa Disch notes: "Because this jump occurred after the 15 to 29 day period where most states close out registration, and even after the ten day mark where the more progressive states draw the line, Ventura could not have capitalized on it without election-day registration."[33]

The statistics from the 1998 gubernatorial election in Minnesota are very revealing. About 16% of the total vote on election day were new voters, registering for the first time at the polls. Half of these individuals were under age 29, and many of them were from blue-collar districts. Exit polls show that almost everyone who registered to vote on election day voted for Ventura. Although it is impossible to isolate a single variable, such as EDR, and say that it caused Ventura's victory, it seems clear that a correlation exists between voter registration deadlines (or the lack thereof in Minnesota) and voter turnout.

Table 4: Voting in Presidential Elections in Minnesota, 1976-2000[34]

Year	Percent of Voting Age Population Voting In U.S.	Percent of Voting Age Population Voting in Minnesota	Percent of Voters Registering By EDR In Minnesota
1976	53.55	71.53	22.95
1980	52.56	69.96	20.85
1984	53.11	68.16	16.30
1988	50.15	66.33	17.16
1992	55.23	71.73	18.15
1996	49.08	64.07	15.25
2000	51.30	68.80	18.88

Questions and Answers about EDR

Election day registration has the potential to increase voter registration and turnout, and to ensure that all voters who arrive at the polls are able to cast a ballot. But while EDR has the potential to reduce barriers to political participation, it must be instituted carefully to prevent potential pitfalls. EDR proposals raise a series of important questions.

Q: Will EDR encourage voter fraud?

A: While the specter of voter fraud has historically been used to restrict voting opportunities and access to the franchise, concerns about fraud are important to consider in regard to any measure aimed at facilitating the process of registering and voting, including EDR.

Minimal Fraud in EDR States. Officials in the six states where EDR is practiced report minimal problems with fraud. In fact, reports on voting problems and irregularities in the 2000 election found little incidence of fraud throughout the United States. Problems with voter fraud in the past several federal elections have generally been modest in scope and have not been correlated with the existence of EDR. Voter fraud is a federal felony that carries significant criminal penalties.

Computerized Records. In the age of computers, effective measures can be taken to minimize voter fraud. One such measure entails creating a database of registered voters accessible by the last few digits of a person's social security number or other identifying data. Wyoming, for instance, is presently instituting a system in which the names of all registered voters, including those who register at the polls, will be entered into a database that is accessible in "real time" to all election officials. Such a system will prevent people from walking in to register at more than one location under the same name. If this system is designed in a way that facilitates information sharing with other states, then it could also be possible to track mobile voters, and thus to ensure that the one-sixth of the U.S. population who move on an annual basis retain their votes. Computerized systems can also reduce voter disenfranchisement resulting from inadequate record keeping. Eleven states now have statewide, computerized systems. At least seven other states are moving to put such systems in place. It should be noted, however, that none of the states currently using EDR began with a computerized system. Computerization is not necessary for the successful implementation and functioning of EDR.

Reasonable ID Requirements. By using the last few digits of a person's social security number along with another form of identification such as a lease or a utility bill, election-officials can also bypass the need to ask for photographic identification cards at the polls – these are sometimes costly to acquire and, in

the words of Wisconsin State Senator Gwendolynne Moore (D-Milwaukee), serve as "a poll tax on poor people and people of color."[35] One possibility is the use of a "point system" so that potential voters can present either a piece of photographic identification or two other acceptable documents proving identity and residency. Indeed, a major challenge in implementing EDR is to avoid potentially onerous identification requirements. Election officials in most states with EDR believe it suffices to rely on a combination of some form of identification that does not inhibit would-be voters, along with affidavits and confirmation of addresses.

Recommendations for Promoting Voter Integrity While Using EDR

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

Young people and those who move will particularly benefit from election day registration.

Q: Will instituting EDR be an administrative nightmare?

A: The states using EDR do not report greater administrative problems with elections than other states. Indeed, EDR can help address one of the most frustrating administrative problems exposed during the 2000 election: incomplete or inaccurate registration lists that result in people being barred from voting. Also, in states with EDR, the burden of managing significant influxes of new voters has proven manageable. While dealing with such influxes may increase the costs of poll operations, surges of new voters to the polls on election day can be seen as evidence of EDR's success in increasing participation, underscoring the value of this method of voter registration.

Addressing Voter List Problems. As discussed earlier, some 25 states reported that voters arriving at polling places during the 2000 election were prevented from voting because of list problems. EDR itself is not a solution to the problem of poor voter lists. This problem needs to be addressed through better computerization of lists, better coordination between state agencies, and stronger

safeguards to prevent illegitimate purging. However, along with provisional ballots, EDR can help ensure that list problems do not prevent citizens from voting.

Improving Polling Conditions. Election day registration at polling sites does add an additional burden on poll workers, in that they must be able to register new voters in addition to performing their other duties. In exciting elections that attract many new voters to the polls, these strains could be significant – especially in larger states with major urban areas. But officials and advocates from states with EDR do not report that this burden is excessive or unmanageable. They emphasize that educating registration clerks is important, as is attempting to predict voter turnout and making sure that polling places are adequately staffed. Wisconsin offers a good example of how these challenges have been dealt with. Officials in Wisconsin argue in favor of starting to use EDR in an "off-year," or non-presidential election. This enables clerks to gain experience with EDR, and to work out some of the initial problems with its implementation in a non-pressured electoral context. Off-year elections in Wisconsin are characterized by voter turnout that is typically 20% lower than in presidential elections.

Protecting Non-English Speakers Under EDR. The administrative challenges associated with EDR may be more significant in areas where many voters have limited English proficiency. In these areas, polls workers may need to be prepared to provide a higher level of assistance to voters, since registering is a more complex act than many other actions that typically occur at a polling place.[36] Regardless of whether EDR is enacted in more states, there is widespread agreement about the need for better efforts to ensure the voting rights of citizens with limited English proficiency.[37]

Q: Will EDR be prohibitively expensive?

A: Reliable estimates regarding the cost of EDR in the six states that now have it are hard to come by. This reflects the larger difficulty of estimating the costs of elections. According to the 2001 report by Caltech and MIT on voting technology, trying to pinpoint the costs of election administration is extremely difficult given poor record keeping and the way that election costs are embedded in different parts of state, county, and municipal budgets. For this reason, it is hard to compare election administration costs in the six states with EDR to those in states without this system.

An Affordable Reform. Officials in states with EDR do not report substantially higher costs because of EDR. Indeed, as noted earlier, the three states that adopted EDR in the 1990s all did so in part to avoid the costs of complying with the NVRA. (States that implement EDR in the future will still have to comply with the federal requirements of the NVRA).[38] New election costs incurred by states that move to adopt EDR are likely to be manageable, even without feder-

al election assistance. As estimated by the Caltech-MIT study, election costs break down as follows: a) equipment purchases and maintenance: 15-20%; b) election day operations, which include polling place management, poll worker training and salaries, printing, etc.: 15-20%; c) voter registration: 33%; and d) general administration: 33%.[39] Implementing a system of election day registration is likely to place an additional burden on only two of these areas: election day operations and voter registration.

State officials report minimal problems with fraud in the six states where election day registration is practiced.

More Spending on Poll Workers. The most obvious costs associated with EDR relate to training poll workers and increasing their numbers. The problem of underpaid and poorly trained poll workers has been widely highlighted in the wake of the 2000 election. Many states and counties face problems recruiting poll workers willing to work very long hours for low pay, as well as problems providing these workers with proper training. A system of election day registration at polling sites has the potential to further burden poll workers because they would also have to be able to register new voters - an additional task that requires further training. As noted above, however, the cost of election day operations -- including poll worker costs as well as many others -- constitutes one-fifth or less of current expenditures on elections. Most experts already agree that more spending is needed in this area.

Computerization Costs. As already discussed, computerization is desirable, although unnecessary for EDR to work successfully. There is widespread consensus among electoral reform advocates, however, that all states should move forward to computerize statewide voter lists. Costs for computerization can be broken down into two broad categories: those related to establishing and maintaining a computerized system, and those related to equipping polling places with adequate technological resources. Sponsors of a bill to institute EDR in Connecticut want to eliminate costs at polling places by conducting same day registration at the registrar's office, using the computers already located there in conjunction with a pre-existing computerized list of registrants. This may be an interim solution until polling places can be equipped with computers. New federal assistance for electoral reform could enable states to move forward more quickly to computerize polling places. This practice could be most easily adopted by Delaware, Kentucky, Louisiana and a number of other states that already have a database of registrants.

Q. Will EDR favor any particular political party?

A. Reform measures that increase overall registration and participation do not generally have major partisan effects. The NVRA, the last major reform aimed at reducing obstacles to registration and voting, has not notably benefited either political party. In many states, the ranks of Independents have grown most quickly as a result of the NVRA -- reflecting the national shift to political dealignment over the past decade. Implementing EDR in new states is likely to produce more registrations that reflect existing partisan preferences. This

appears to have been the case in New Hampshire and Wyoming, two states that implemented EDR in 1993.

Experience in the EDR States. In New Hampshire, new Republican registrants increased by 7% between 1992 and 1996, while there was a decrease in Democratic registrants by 6%. In Wyoming, the shifts for both parties during this same period were greater. Republican registrants increased by 12%, with the Democratic Party seeing a 10% decrease in registrants. Undeclared, or Independent voter registration within Wyoming remained nearly constant from 1992 to 1996, with a 1.4% decrease in registrants. New Hampshire was a different story, with a 27.8% increase in Independent voters during the same period.[40]

***Q:** Is EDR a system of voter registration that is suitable for all states?*

A: Yes, absolutely. It should be possible to institute EDR with relative speed and ease in many states, particularly in small states and those with computerized registration systems already in place. In the three states that adopted EDR during the 1990s, implementation did not prove to be either a difficult or extended process. It should be noted, however, that all six states that have EDR are relatively small and do not have a history of voter fraud. Increased spending on elections by the states and by the federal government could be important to speeding the pace of reform – helping to pay for better staffed polling places and also for computerized systems. An appropriate interim measure, if necessary, could be to reduce the voter registration deadline in those states on a slower path to EDR systems. This step would provide more citizens with the opportunity to register to vote closer to election day.

NOTES

[1] FEC, "Voter Registration and Turnout 2000," p 1. Please note these numbers reflect the entire voting age population (VAP), including many non-citizens, prison inmates, ex-offenders, and mentally disabled who are not eligible to vote. An estimated 10 percent of US residents of voting age – over 20 million people – do not have voting rights due to their citizenship status, the impact of felony disenfranchisement laws, and prohibitions against voting among the mentally disabled. Immigrants comprise the largest portion of the VAP who are unable to vote. The Census Bureau estimated that in the 1998 election, 92.5 percent of the voting age population were citizens. See: U.S. Census Bureau, "Reported Voting and Registration by Sex, Race, and Hispanic Origin, for States, November 1998," pp. 1-8.

[2] FEC, "National Voter Registration and Turnout in Presidential Elections - 1960 to 1992," p 1.

[3] See, for example, Ruy Teixeira, *The Disappearing American Voter* (Washington, D.C.: Brookings Institution, 1992); and Steven Rosenstone and John Mark Hansen, *Mobilization, Participation, and Democracy in America* (New York: MacMillan, 1993).

[4] Francis Fox Piven and Richard A. Cloward, *Why Americans Still Don't Vote* (Boston: Beacon Press, 2000).

[5] FEC, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office* (Washington, D.C.: GPO, 2001), p. 1; FEC, "Voter Turnout in the 1992 Presidential Election by State," p. 2; and FEC, "Voter Registration and Turnout 2000," p. 1.

[6] FEC, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office*, pp. 1-2.

[7] U.S. Census Bureau, *Voting and Registration in the Election of November 1998*, p 2. Please note that these percentages are from the Current Population Survey, which depends on self-reporting and may produce findings that vary from reality.

[8] Ibid., p. 5.

[9] Ibid., p. 6.

[10] U.S. Census Bureau, "Geographic Mobility: Population Characteristics, March 1999 to March 2000," May 2001.

[11] Democratic Investigative Staff, House Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Slight of Hand in the 2000 Presidential Election* (U.S. Congress, House Committee on the Judiciary, August 20, 2001), p. 4.

[12] FEC, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office*, p. 17.

[13] Caltech-MIT Voting Technology Project, *Voting - What Is, What Could Be*, July 2001, p. 8.

[14] The Gallup Poll, *The Nine Weeks of Election 2000*.

[15] See Steven Rosenstone and Ray Wolfinger, *Who Votes?* (New Haven: Yale University Press, 1980); Steven Rosenstone and Ray Wolfinger, "The Effect of Registration Laws on Voter Turnout," *The American Political Science Review*, Vol. 72, No. 1 (March 1978).

[16] FEC, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office*, p. 8.

[17] Ibid., pp. 28, 36.

[18] On this subject, see for example: National Council on Disability, "Implementation of the National Voter Registration Act by State Vocational Rehabilitation Agencies," October 1, 1999.

[19] FEC, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office*, p. 17.

[20] U.S. Census Bureau, "Voting and Registration in the Election of 1996," July 1998, p. 10.

[21] U.S. House of Representatives, Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Slight of Hand in the 2000 Presidential Election*, pp. 59-60.

[22] Ibid.

[23] See E. Walsh, "Simpler Voting Is Proposed," *The Washington Post*, March 23, 1977, p. A1.

[24] See M. Russell, "Administration, Hill Leaders Gut Voting Bill; White House, Hill Leaders Cut Registration Measure," *The Washington Post*, July 16, 1977.

[25] In a little known provision, Rhode Island also allows people to register to vote on election day, but only for Presidential and Vice-Presidential candidates in a general election.

[26] FEC, "Voter Registration and Turnout 2000," pp. 1-2. Please note again that FEC numbers include persons of voting age who are

not eligible to vote.

[27] FEC, "Voter Registration and Turnout – 1996," pp. 1-2.

[28] Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly*, Vol. 22, No. 1 (1994), p. 84.

[29] Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly*, Vol. 82, No. 1 (March 2001), pp. 171-183. Additionally, in an email to the authors, Grofman commented: "If we compare the three early adopting EDR states pre and post their adoption, they start off (1968-1972) 8.32 percentage points higher than the entire U.S. and end up (1976-2000) 14.51 percentage points higher. Thus EDR seems to yield a shift upward in turnout of more than six percentage points. In contrast, in the more recently converted to EDR states, they start off (1968-1992) 6.39 percentage points higher than the entire U.S. and end up (1996-2000) only 8.21 percentage points higher, a shift of less than 2 percentage points."

[30] Stephen Knack, "Election-Day Registration: The Second Wave," *American Politics Research*, Vol. 29, No. 1 (January 2001), pp. 65-78.

[31] On North Dakota's registration system, see: http://www.state.nd.us/sec/novoterregistrationinND.htm

[32] Data is from the Federal Elections Commission.

[33] See Lisa Disch, "Minnesota and the 'Populism' of Political Opposition," *Theory and Event*, Vol. 3, Issue 2 (undated), p. 3.

[34] Data provided on turnout provided by the FEC. Data on registration in Minnesota provided by the Office of the Minnesota Secretary of State, "Minnesota General Election Statistics, 1950-2000," see http://www.sos.state.mn.us/election/elstat94.pdf.

[35] The National Commission on Federal Election Reform recommends the creation of statewide, computerized voter registration lists referenced by the last four digits of a person's social security number. For Gwendolynne Moore's comment please See Dennis Chaptman, "Voting Reforms in Dispute: Same-Day Registration Likely to Stay," *Milwaukee Journal Sentinel*, Dec. 3, 2000.

[36] Under current federal law, many counties throughout the nation are required to make language assistance available to limited-English-proficient registrants. These jurisdictions would be compelled to provide such assistance on election day with EDR.

[37] See, for example, Juan Figueroa, "Statement Before the United States Senate Rules Committee," Washington D.C., March 14, 2001.

[38] Following the passage of the NVRA, states had a limited window of opportunity to opt out of the law through implementing EDR. All other states must now continue to comply with the NVRA, regardless of other changes to registration procedures.

[39] Caltech-MIT Voting Technology Project, *Voting - What Is, What Could Be*, July 2001, p. 51.

[40] Data is from state election offices in New Hampshire and Wyoming.

Demos: A Network for Ideas and Action
155 Avenue of the Americas, 4th Floor
New York, NY 10013
Phone: 212-633-1405
Fax: 212-633-2015
www.demos-usa.org

25

Mr. RAPOPORT. Thank you very much, Madam Chair.

We did a chart just to look at this very question, about were States higher anyway and does Election Day Registration make a difference? And what we found, that if you go back to 1968 to the Presidential elections, all six of the States that had election day registration in 2002 were indeed higher than the national average by anywhere from 6 to 9 points. But once they adopted election day registration, it went up to 12 to 13 and 14 and, in some cases, 17 and 18 percent higher. So I think there is a very clear distinction to be made.

Secretary Kiffmeyer is correct, that some of the States already had very high voting traditions. But there is no question that EDR has significantly increased this. And I will leave this chart with the committee.

Mr. ELLISON. So, Secretary Kiffmeyer, why are these distinguished, learned individuals wrong?

Ms. KIFFMEYER. I don't think I take a position that way. I think that what I am looking at——

Mr. ELLISON. Excuse me. I am sorry. So you agree with them.

Ms. KIFFMEYER. I don't think that is a point that I was making.

Mr. ELLISON. Well, do you agree with them?

Ms. KIFFMEYER. I think that they are giving a lot of facts and a lot of background that—especially when you get into some of these studies that they have done, such as the study done by Miles, and when you are reporting another study where they were using newspaper reports to do their study as a basis for what you had found—so I think all of their analysis, and I think that, actually——

Mr. ELLISON. Madam Secretary, forgive me for my interruption. I only have 5 minutes. Of course, I would never interrupt you, as you know, I respect you so much. But do you disagree with them or do you agree with them?

Ms. KIFFMEYER. I think I don't have all their studies and facts and figures.

Mr. ELLISON. So you would say that you don't know?

Ms. KIFFMEYER. Well, I haven't looked at all of their studies and all of their research.

Mr. ELLISON. Well, you would have to agree, disagree, or you don't know.

Ms. KIFFMEYER. I think I have stated, though, that they have given a lot of facts and a lot of information, and you are asking me to just ratify all of their statements and their opinions——

Mr. ELLISON. No, I am not asking you to ratify. You could say they are wrong and they have got it all wrong and they looked at the data wrong.

Ms. LOFGREN. The gentleman's time has expired.

Mr. ELLISON. Ten more seconds.

Ms. LOFGREN. By unanimous consent, 10 more seconds. But since you and Ms. Kiffmeyer know each other very well, you can also finish this at a later date.

Mr. ELLISON. That is right. Madam Chair is absolutely correct. I was just hoping to get Secretary Kiffmeyer on the record taking a position on this issue. But if—but I—it may—one last chance to see which——

Ms. LOFGREN. I think Ms. Kiffmeyer has probably concluded her——

Mr. ELLISON. Okay.

Ms. LOFGREN. And we will now turn to Mr. Ehlers.

Mr. EHLERS. It is very tempting to satisfy Mr. Ellison's request by just saying they are wrong and get it over with.

But, no, just expanding on that a bit. I just cast my lot with Ms. Kiffmeyer. I have the same hands-on experience that she has had. I have seen it. And I respect these gentlemen. Since I am supposed to be an egghead myself, I certainly don't want to castigate any of the witnesses for their research. But there is something to be said for the hands-on, having to deal with the problem on election day, which is a very frantic time for all election workers, and deal with all the problems that come up. And there are lots of them, innumerable problems that come up. You can't describe all of them.

But I will certainly cast my lot with Ms. Kiffmeyer and the practicalities and the difficulties that you encounter in this situation. And that doesn't mean that I am against same-day registration. I am just cautioning everyone here that it opens multiple opportunities for fraud. And I am not talking so much about the fraud on the part of an individual. I am talking about organized fraud. Bussing, gathering people up and—well, I shouldn't use the term bus. What I have seen is vans, not buses. But picking up people and getting them to vote when they shouldn't vote and telling them that it is legal for them to vote when in fact it is not legal for them to vote.

You can't just have the pie-in-the-sky attitude. This is great. It improves turnout. You have to look at all aspects of it, and that is what I want to thank Ms. Kiffmeyer for doing, because she has given us those aspects and I respect that.

Thank you.

Ms. LOFGREN. The gentleman yields back.

I just want to ask a couple of questions, and then we will thank you all and go to our floor vote.

We talked earlier about the provisional ballots and that many of them are not counted. Now, maybe—and we don't know why they are not counted. But, for the two professors, have you given any thought to whether there should be some kind of nationwide standard for how provisional ballots are dealt with? And, if so, what those standards ought to be?

Mr. TOKAJI. Let me say a couple things on this.

First, I am actually someone who is generally very cautious about recommending that we implement national standards when it comes to the administration of elections. Our elections have traditionally been run at the State and local level; and I think that, generally speaking, our State and local officials do a fantastic job.

Ms. LOFGREN. I do, too.

Mr. TOKAJI. I do think that there is some place for the Federal Government here. Frankly, I think that HAVA should have been written to make clear that people who mistakenly cast a provisional ballot in the wrong precinct should have those ballots counted, at least for races they were entitled to vote in. We do have statistical evidence which I have cited in my testimony that States

that do count those ballots count a much higher percentage of provisional ballots.

Beyond that, I would be wary of too much Federal legislation on this question. I do think it is essential, however, that every State have clear standards for what provisional ballots should count and that those standards and procedures as well be followed uniformly throughout the State so as to avoid an equal protection problem.

Ms. LOFGREN. Professor—Mr. Rapoport, you have made a multidecade study of these issues. Do you have——

Mr. RAPOPORT. Yes. I think that the absence of national standards on the counting of provisional ballots and on several other kinds of issues is a real problem. So I would, despite having been a State-elected official and not wanting too much Federal control, I think that voters in all jurisdictions are entitled to know that their provisional ballots will be counted more or less in the same way. And it is clear from the testimony that has been given here that one of the real virtues of Election Day Registration, if it were adopted, would be to minimize the problems with provisional ballots. I think that would be a good thing as well.

Ms. LOFGREN. Ms. Kiffmeyer, you were President of the Secretaries of States Association, and I know the Secretaries of State don't like Federal interference. On the other hand, there is an equal protection issue if there is wide variation. What would your thoughts be on some kind of national standard that we work with the Secretaries of States to develop?

Ms. KIFFMEYER. Well, Madam Chairwoman and members of the committee, one of the things you saw in the implementation of HAVA was there was a standard in regards to the equipment. But they also gave a methodology by the standards board, which was made up of local and State election officials, to work together to review those, and under the EAC. And so I think there was a methodology there that enabled the States and locals to do that.

It was interesting, it was very important to us to make the issue that it was still up to the States to voluntarily comply with those standards. Now, interesting enough, all 50 States have. Why? Because they have had input. They have been able to establish that. And it was made up of those who actually administer elections.

So I think in that particular case you see that, even though it was voluntary, the heart and the desire to do good elections—as a matter of fact, making it not voluntary would have actually put a big resistance to the whole situation. So that I think is an example.

I don't know. I think that, really, we don't have Federal elections. We have State elections for Federal officers.

Ms. LOFGREN. I would just like to ask Mr. Tokaji, you have done so much research on this. When I registered to vote in California a long time ago, it was before we had postcard registration, but now that is how everybody registers that way. And you just fill it out and sign it, and there is no—you don't show up anywhere. You don't show any ID. And it sounds to me that what is being proposed on election day acts as a much higher standard. You have to show up in person and sign it. It is a lot more rigorous than what California has. Is that just wrong?

Mr. TOKAJI. I think you are exactly right, Madam Chair. And a couple of other social scientists have made precisely that point,

that when you register on election day you are actually appearing before someone in person, representing that you are who you say you are, signing a statement under penalty of perjury that you are and providing some sort of identifying information.

When things go through the mail, there are all sorts of opportunities—I don't think they happen very often but at least opportunities—for improprieties that don't exist when someone is doing it in person.

Ms. LOFGREN. My time has expired. But I will just say that this whole issue of—I just have to make this statement. Because, in addition to chairing the election subcommittee, I chair the Immigration Subcommittee in the Judiciary Committee. And all that we have learned—I mean, people who are undocumented, they are risking their lives crossing the desert to get a job, they are not risking their lives to come over and vote. It is a whole different dynamic. And once you are here, they are laying low. They do not want to be found out.

So I just think it is important to state that. There is no evidence to support that.

But I will get off my soapbox and thank all four of you for being here today. We have 5 legislative days to pose additional questions. If we do that, we would ask that you try and respond as promptly as possible.

A lot of people don't realize that the witnesses who come before our committees are volunteers and come here just to help our country by sharing their expertise; and so we thank you very much, each of you, for doing that.

And this hearing is now adjourned.

[Information follows:]

[Whereupon, at 1:24 p.m., the subcommittee was adjourned.]

NEW YORK UNIVERSITY
JOURNAL OF LEGISLATION
AND PUBLIC POLICY

Article

Trapped by Precincts?
The Help America Vote Act's Provisional Ballots and the Problem of Precincts

Leonard Shambon & Keith Abouchar

VOLUME 10 2006-2007 NUMBER 1

TRAPPED BY PRECINCTS? THE HELP AMERICA VOTE ACT'S PROVISIONAL BALLOTS AND THE PROBLEM OF PRECINCTS

Leonard Shambon†
*Keith Abouchar**‡

I. Introduction 134
II. Defining Precinct 137
A. Differentiating "Precinct," "Polling Place," and "Jurisdictions" 137
B. The Development and Purpose of Precincts 140
C. Current Precinct Structure 143
D. Criticisms of the Precinct Structure 157
III. Provisional Voting: The Idea and its Implementation 158
A. Pre-HAVA Studies 159
B. HAVA 160
1. The House Version 162
2. The Senate Bill 163
3. The Conference Bill 164
C. The 2004 Pre-Election Litigation Over the Provision's Meaning 166
D. The EAC's Survey of Provisional Ballot Casting and Counting in 2004 175
IV. From Provisional Ballot to Actual Vote: Lessening the Friction Between Jurisdictions, Polling Places, and Precincts 178
A. Where the Courts Went Wrong 178

† Consultant to the then-ranking member of the House Committee on House Administration, Congressman Steny H. Hoyer, for the House-Senate Conference on the Help America Vote Act.

* Senior Policy Advisor to House Majority Leader Steny H. Hoyer. Since 2001, he has been the principal staff advisor for election reform to Congressman Hoyer.

‡ The analysis and opinions contained in this article are solely the private views of the authors and are not to be construed as official or reflecting the views of any other person or organization.

B. Options for Improving Efficiency at the Precinct Level 182
C. Vote Centers: A Possible Solution to the Problem of Precincts 183
1. The Success of Vote Centers in Larimer County 183
2. Cost Concerns 186
V. Conclusion 190

I.
INTRODUCTION

In a nation where sequels have become mainstays of our culture, the 2004 election picked up where the controversial 2000 election left off. Indeed, almost from the moment the United States Supreme Court issued *Bush v. Gore*[1] at 10 p.m. on December 12, 2000[2]—ending thirty-five days of uncertainty that exposed the ugly secret that the nation's electoral infrastructure was not up to the task of handling a close election—the 2004 election became the rallying call for the two major political parties. On one side, lingering doubts that President Bush had been the legitimate winner in 2000 presented a challenge for Republicans.[3] On the other, upset Democrats vowed to focus on ballot-counting reforms, to avoid the problems encountered in Florida four years earlier.[4] In between the two were state and local election administrators, whose principal concern was not which party triumphed but preventing the specter of Florida from visiting their states.[5]

In response to the 2000 election, Congress enacted the Help America Vote Act of 2002 (HAVA).[6] HAVA is a comprehensive piece of legislation designed to address the well-recognized need for reform. HAVA was intended to correct core deficiencies in the American electoral process by introducing: (1) truly statewide voter regis-

1. 531 U.S. 98 (2000) (per curiam).
2. *See* HOWARD GILLMAN, THE VOTES THAT COUNTED: HOW THE COURT DECIDED THE 2000 PRESIDENTIAL ELECTION 140 (2001).
3. *See* John M. Broder, *Imagining the Danger of 2000 Redux*, N.Y. TIMES, Oct. 17, 2004, § 4, at 1.
4. *See* Karen Branch-Brioso, *Floridians Aim to Avoid Repeat of 2000*, ST. LOUIS POST-DISPATCH, Oct. 30, 2004, at 22; John Whitesides, *Democrats Revisit Their Waterloo*, PHILA. INQUIRER, Dec. 7, 2003, at A10.
5. *See* Michael Moss & Alexis Rehrmann, *Absentee Votes Worry Officials as Nov. 2 Nears*, N.Y. TIMES, Sept. 13, 2004, at A1 (discussing concerns over administration and counting of absentee ballots).
6. Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 42 U.S.C.).

tration databases (required in all states by January 1, 2006[7]) to streamline the registration process and improve registration list accuracy; and (2) provisional voting (required in all states by January 1, 2004[8]).[9] Provisional voting is meant to ensure that no one whose right to vote had been questioned will exit a polling place without having at least cast a conditional ballot; once the voter's eligibility is authenticated, that ballot will be counted.[10] HAVA mandated provisional balloting to ensure that neither haste, clerical errors, nor poor notification of precinct boundaries and polling locations on election day would cause widespread disenfranchisement of eligible voters.[11]

Like many sequels, the 2004 election did not bring a neat and tidy resolution to all of the issues that surfaced in 2000. A hard-fought campaign—marked by intense distrust, record spending, and enormous get-out-the-vote efforts—yielded a spate of pre-election and election-day litigation[12] and general despair about our election day processes. While the Democratic presidential nominee quickly accepted the election result as legitimate,[13] the erosion of confidence in our election administration continued. Given the closeness of the election and the fevered support for each candidate,[14] the post-election reaction was not surprising. Bad feelings were not as conspicuous as

---

7. Help America Vote Act (HAVA) § 303(d)(1)(A)-(B), 42 U.S.C. § 15483(d)(1)(A)–(B) (Supp. III 2005). The effective date for the statewide voter registration list was January 1, 2004, but states could receive an extension to January 1, 2006 if they had good cause for their inability to meet the 2004 deadline. *Id.*

8. § 302(d).

9. *See* 148 CONG. REC. S710 (daily ed. Feb. 13, 2002) (statement of Sen. Dodd). Sen. Dodd also mentions implementing voting system standards ensuring that blind and disabled persons and language minority citizens can cast votes "privately and independently." For further discussion of HAVA's provision regarding language minority citizens, see James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 195, 200–29 (2007).

10. *See* NAT'L TASK FORCE ON ELECTION REFORM, NAT'L ASS'N OF ELECTION OFFICIALS, ELECTION 2000: REVIEW AND RECOMMENDATIONS BY THE NATION'S ELECTIONS ADMINISTRATORS 52 (2001), *available at* http://www.electioncenter.org/publications/electionrefortreport2001.pdf [hereinafter NAT'L TASK FORCE ON ELECTION REFORM 2000]; Robert Pear, *Bush Signs Legislation Intended to End Voting Disputes*, N.Y. TIMES, Oct. 30, 2002, at A22.

11. *See* H.R. REP. NO. 107-329, pt. 1, at 38 (2001). *See also infra* Part IV.B.1.

12. *See infra* Part V.

13. *See* Dan Balz, *Bush Wins Second Term; Kerry Concedes Defeat; Both Speak of Need for Unity*, WASH. POST, Nov. 4, 2004, at A1.

14. *See* James E. Campbell, *The Presidential Election of 2004: The Fundamentals and the Campaign*, FORUM, Dec. 2004, at 1, 1 (noting that the 2004 presidential election "ranks in the top tier of closely decided elections in American electoral history" and calling political polarization "the defining feature of recent American politics").

they had been in 2000, but the public's negative perceptions of the way we run elections were becoming increasingly ingrained.

The states did implement provisional ballot regimes in time for the 2004 election.[15] However, to the disappointment of many who anticipated that this requirement would serve as a uniform fail-safe mechanism for voters, provisional ballots were at best a partial success in 2004. A major problem was that some states and localities refused to count provisional ballots cast outside the precinct in which the voter was registered;[16] the national rate for counting provisional ballots was 64.5%.[17] The second most-cited reason for not accepting a provisional ballot was that the ballot had been cast in the wrong precinct.[18]

We believe that much of the dissatisfaction stems from two closely related sources: the methods by which election jurisdictions determine where eligible voters are to vote, and what happens when eligible voters show up in the wrong polling location. We believe that if the states hew to the underlying purpose of HAVA's provisional ballot requirement, eliminate restrictions on out-of-precinct voting for federal races, and rationalize their respective precinct structures, they will make major advances toward reducing the structural frictions that foster the voter frustration that first boiled to the surface in 2000. Building a more harmonious geographical structure will significantly reduce that voter frustration.

In Part II, we discuss the relationship between the three geographical building blocks: polling places, precincts, and jurisdictions. We focus on the historical development of precincts, their current structure, and criticisms of precincts as structures. Part III discusses the call for provisional voting, the legislative history of the HAVA provision, and the litigation surrounding the provision in the months before the 2004 election. This part also summarizes the United States Election Assistance Commission's survey analysis of the effectiveness of provisional ballots in that election. And in Part IV, we suggest a variety of solutions for the structural friction. We conclude with final thoughts in Part V.

---

15. *See* ELECTIONLINE.ORG, BRIEFING: SOLUTION OR PROBLEM? PROVISIONAL BALLOTS IN 2004, 3 (2005), http://www.electionline.org/Portals/1/Publications/ERIP10Apr05.pdf.

16. *See id.* at 6, 12 tbl.4.

17. *See* U.S. ELECTION ASSISTANCE COMM'N, FINAL REPORT OF THE 2004 ELECTION DAY SURVEY, Provisional Ballots 6-5 (2005), http://www.eac.gov/election_survey_2004/pdf/EDS-Full_Report_wTables.pdf [hereinafter EAC SURVEY].

18. *See id.* Overall, the most-cited reason for rejecting a provisional ballot was that the voter was not registered in any precinct. *Id. See also infra* note 221 and accompanying text.

II.
DEFINING PRECINCT

A. *Differentiating "Precinct," "Polling Place," and "Jurisdictions"*

It is the frictional interplay of the three geographical building blocks of voting—jurisdictions, precincts, and polling place—that unfairly disenfranchises a large number of eligible voters. There is, however, substantial statutory support for counting out-of-precinct provisional ballots. The analysis hinges on the word "jurisdiction" appearing in HAVA §§ 302(a) and 302(a)(2)(A), as well as the pivotal provision that became (without using the word "jurisdiction") section 302(a)(4).[19] The questions to be answered are: (1) what is a "jurisdiction" and (2) why was the word "jurisdiction" in an earlier version of section 302(a)(4) eliminated from the final version of the statute?[20]

Answering these questions depends on one's method of statutory interpretation. William Eskridge, Philip Frickey, and Elizabeth Garrett describe the Supreme Court's statutory interpretation standard over the past century as "the soft plain meaning rule"—that "plain meaning can be overcome by compelling evidence of a contrary legislative intent."[21] Therefore, analysis of the plain meaning alone is insufficient, as thorough interpretation also requires weighing the plain meaning against the legislative history.[22] For the textual examination, there are a number of commonly used interpretive rules, including using the ordinary meanings of words (frequently by resort to dictionaries), avoiding absurd results, interpreting individual provisions so as not to undercut or render redundant another provision of the same statute, and construing similar statutes in a similar manner.[23]

Central to the meaning of "jurisdiction" are its relationships to the terms "polling place" and "precinct." While section 302(a) expressly uses the term "jurisdiction," it never uses the word "precinct."

---

19. Section 302(a)(4) reads: "If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law."

20. *See infra* notes 118–20 and accompanying text (discussing deletion of the phrase "in the jurisdiction" between the Senate bill and the bill adopted by the conference committee).

21. WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, LEGISLATION AND STATUTORY INTERPRETATION 231–33 (2d ed. 2006).

22. *Id.* at 232.

23. *Id.* at 236, 243–44; *see also* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 23–29 (1997) (discussing textualism and canons of statutory interpretation).

So what is a "precinct," and should its meaning control the effectiveness of HAVA's provisional ballot requirement or, more importantly, an eligible voter's right to vote? A survey of state laws shows that "precinct" and "polling place" are closely related to one another.[24] Polling places are the *physical locations* where voters go to cast their votes, or, if circumstances require, their provisional ballots;[25] precincts are the *geographical political units* for grouping residents for the purpose of assigning them to a polling place.[26] In almost no instance is a precinct an entity with a separate political representative or with an actual staff of governmental officials other than on election day. It is subsidiary to a jurisdiction and, indeed, defined by the government entities in charge of the jurisdiction.[27]

The term "polling place"—describing the location where a list of eligible voters are to vote—is employed in section 302(a) in a manner that, although not synonymous with "precinct," bears a close resemblance to it. To be sure, this can only be inferred from the text, because HAVA neither defines these terms nor describes how they relate to one another. Nonetheless, it is clear that "jurisdiction" denotes a larger government administrative entity than "polling place," and that a polling place is a part of a jurisdiction. HAVA's assigned responsibilities to jurisdictions demonstrate that a jurisdiction is a regularly functioning unit of government that contains actors with day-to-day responsibility for election administration and occupies a place somewhere between the state and the polling place.[28] "Polling place," more specifically, is used throughout the statute to refer to particular physical locations where voting takes place, not to a unit of government.[29]

---

24. *See, e.g.*, GA CODE ANN. § 21-2-2(28) (2006); 10 ILL. COMP. STAT. 5/1-3(13); MICH. COMP. LAWS ANN. § 168.654 (West 2005); NEB. REV. STAT. § 32-114 (2005); OHIO REV. CODE ANN. § 3501.01(Q) (West 2006); 25 PA. STAT. ANN. § 2602(g) (2006); TENN. CODE ANN. § 2-1-104(18) (2005); VA. CODE ANN. § 24.2-101 (2003).

25. *See, e.g.*, OHIO REV. CODE ANN. § 3501.01(R) (West 1994) (defining "polling place").

26. *See, e.g.*, OHIO REV. CODE ANN. § 3501.01(Q) (West 1994) (defining "precinct").

27. *See id.*

28. *See, e.g.*, HAVA § 303(d)(1)(B), 42 U.S.C. § 15483(d)(1)(B) (Supp. III 2005) ("State or jurisdiction" may apply to federal Election Assistance Commission for waiver of certain effective dates); § 301(c) ("State or jurisdiction" not prohibited from using certain voting systems); § 302(d) (each "State and jurisdiction" must comply with provisional balloting provisions by January 1, 2004); § 303(b)(1)(A) (procedures for those "register[ing] to vote in a jurisdiction" by mail); § 303(b)(1)(B)(ii) (procedures for voters casting their ballots for the first time in "an election in the jurisdiction"); § 254(c)(2) (criminal liability for "State or other jurisdiction").

29. *See, e.g.*, § 241(b)(5) (accessibility of "polling places"); § 241(b)(18) (information on "location or time of operation of a polling place").

A plain reading of the entire statute is consistent with this hierarchy, with the state sitting at the top, polling place occupying the bottom, and jurisdiction somewhere in the middle. Thus, there is intra-textual consistency.[30]

Should there be *inter*-textual consistency as well? As the courts' varied interpretations of the statute show,[31] the answer is yes. The most analogous federal voting statute is the National Voter Registration Act of 1993 (NVRA), which regulates other aspects of federal election administration.[32] The NVRA explicitly equates a "registrar's jurisdiction" with the political unit of government that maintains voter registration.[33] But at least one court rejected the applicability of the NVRA's definition of jurisdiction to the term as it appears in HAVA, finding no "compelling reason" to do so.[34]

The question of inter-textual consistency is compounded by the fact that, unlike other forms of legislation, modern federal regulation of elections has been an episodic, infrequent, and evolving process. It began in earnest with the Voting Rights Act in 1965[35] (and its expansion in 1975[36]), the enactment of the Uniformed and Overseas Citizens Absentee Voting Act in 1986,[37] the NVRA in 1993, and finally HAVA in 2002. In this unusually sensitive area of law, the NVRA is highly relevant to understanding HAVA. It seems that seldom does Congress amend preexisting voting statutes to address new challenges, as often happens with legislation in other areas. Rather, it would appear that voting statutes are more typically complemented by later statutes.[38] Considering all voting statutes collectively is thus essential

30. *See generally* ESKRIDGE, FRICKEY & GARRETT, *supra* note 21, at 272, 291–92 ("the preferred meaning of a provision is the one consistent with the rest of the statute and statutory scheme").

31. *See infra* Part V.

32. 42 U.S.C. §§ 1973gg to gg-10 (2000).

33. *See* § 1973gg-6(j).

34. *See* Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574–75 & n.4 (6th Cir. 2004).

35. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1973 to 1973bb-1 (2000)).

36. Pub. L. No. 94-73, 89 Stat. 400 (1975) (codified as amended at 42 U.S.C. §§ 1973 to 1973bb-1 (2000)).

37. Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified as amended at 42 U.S.C. §§ 1973ff to ff-6 (2000)).

38. In contrast, an example of a federal voting statute itself that has been amended is the Voting Rights Act of 1965, whose central purpose—enforcing the Fifteenth Amendment and eliminating discriminatory election practices—has remained constant since 1965 but has been extended to include, most notably, language minority citizens. *See* Pub. L. No. 94-73, 89 Stat. 400, 401–02 (1975) (codified as amended at 42 U.S.C. § 1973b(f) (2000); Tucker, *supra* note 9, at 207–11, 214–22 (describing evolution of the Voting Rights Act's application to language minority citizens).

in interpreting any one of them. Given that the NVRA contains the only congressional attempt to elaborate on the meaning of "jurisdiction," courts should not interpret HAVA's later draftsmanship as equivalent with congressional intent for a contradictory meaning. But here, incorporation of the NVRA definition, while most helpful to understanding section 302(a), is not essential. Recognition that "jurisdiction" is something geographically bigger than a precinct, and more governmental in nature, is enough.

B. The Development and Purpose of Precincts

Before determining the correct interpretation of HAVA regarding out-of-precinct provisional balloting, we must address whether the existing structure of precincts can be justified on its own terms, irrespective of the availability of provisional ballots. Precincts were initially created to make voting easier for voters,[39] but the current manner of defining and delineating precincts may have turned that justification on its head by replacing it with a standard that values ease for election administrators. The lack of public debate as to how to define precincts, without unwittingly creating barriers to voters, has contributed to arbitrary and conflicting notions of how to define precincts.

At the beginning of the country's history, most voters had to travel to their county seats to vote (except in New England, where voting was organized on a township basis).[40] To travel to the county seat could require traveling ten to twenty-five miles.[41] As early as 1748, Orange County, New York established two polling places because of the difficulty of crossing the mountains that intersected the county.[42] Similar travel concerns induced Pennsylvania to subdivide counties into districts and to provide separate polling places for each district.[43] After the Revolution began, individual states continued to create multiple voting sites within counties. In 1778, New York made voting more convenient by declaring that voting would occur "not by counties but by boroughs, towns, manors, districts, and precincts."[44] New Jersey, which had only one voting site per county before 1776,

39. *See* discussion *infra* Part III.A.

40. ROBERT J. DINKIN, VOTING IN REVOLUTIONARY AMERICA: A STUDY OF ELECTIONS IN THE ORIGINAL THIRTEEN STATES, 1776–1789, at 96–98, 133 (1982).

41. *Id.* at 97.

42. Cortlandt F. Bishop, *History of Elections in the American Colonies*, *in* 3 STUDIES IN HISTORY, ECONOMICS & PUBLIC LAW 1, 109 (Univ. Faculty of Pol. Sci. of Columbia Coll. ed., 1893).

43. *See id.* at 172.

44. DINKIN, *supra* note 40, at 97.

had fifty-three for its thirteen counties by 1788.[45] Similarly, by 1785, Pennsylvania had fifty-two voting sites for its eleven counties.[46]

Use of residency within a precinct itself was a constraint on voting. In 1860 there were thirty-four states, but only three—Kentucky, Minnesota, and Pennsylvania—had minimum residence requirements for "election districts" below the county, town, or parish level.[47] Other states had precinct structures, but not residence requirements, and even mechanisms for voting out-of-precinct. Specifically, quoting from the records of contested congressional elections, Richard Bensel reported that, in many states, people could still vote in state races, such as for governor, if they were temporarily outside of their precinct, but could vote in all races if within their home precinct.[48] So, for example, "[i]f he were still within his home congressional district, he could also vote for congressman, and so forth."[49]

Compounding the operational role of precincts was the evolution of voter registration. While it began as early as 1800 in Massachusetts[50] and shortly thereafter in other New England states,[51] most states did not develop registration systems until after the Civil War.[52] Before the 1870s, "men who sought to vote were not obliged to take any steps to establish their eligibility prior to election day. They simply showed up at the polls with whatever documentary proofs (or witnesses) that might be necessary."[53] But after the Civil War, election fraud became common, and the individual states concluded that regis-

45. *Id.* at 97. Nevertheless, the precinct polling place was not always convenient. Richard Bensel noted that the polling place in one New Mexico precinct was apparently chosen because it was in the exact center of the precinct—even though no one lived within two and a half miles and the site had no buildings. A shed had to be built to hold the election. RICHARD FRANKLIN BENSEL, THE AMERICAN BALLOT BOX IN THE MID-NINETEENTH CENTURY 207 (2004).

46. DINKIN, *supra* note 40, at 97.

47. *See* KIRK H. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 148 tbl.III (Greenwood Press 1969) (1918). These residency requirements were low, however: Kentucky required residency of sixty days, Minnesota thirty, and Pennsylvania ten. *Id.*

48. BENSEL, *supra* note 45, at 166–67.

49. *Id.*

50. JOSEPH P. HARRIS, REGISTRATION OF VOTERS IN THE UNITED STATES 65 & n.1 (Inst. for Gov't Research, Studies in Admin. Study No. 23, 1929) [hereinafter HARRIS, REGISTRATION OF VOTERS] (*citing* Acts and Laws of Massachusetts, 1800, Ch. 74). *See also* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 65 (2000) (noting that concern about transients spurred early interest in formal systems of voter registration).

51. *See* HARRIS, REGISTRATION OF VOTERS, *supra* note 50, at 65.

52. *Id.* at 72; KEYSSAR, *supra* note 50, at 151–52.

53. KEYSSAR, *supra* note 50, at 151.

tration had become a necessity.[54] By World War I, most states had adopted formal voter registration systems[55] to reduce fraud and conflicts at the polls on election day.

As registration systems became a fixture of election administration, some communities, concerned about rising fraud, opted for the registration process to be conducted periodically at the precinct level, where "the precinct election board was a law unto itself," rather than have permanent registration.[56] The periodic requirement to re-register all voters was designed to completely clean the register of people who had moved or died.[57] The results often fell short of expectations, however, because precinct boards failed to purge the lists of such changes adequately[58] and also because, in an environment of uncoordinated precinct-based lists, the lists could easily be padded by organized squads traveling from precinct to precinct to register.[59] Not surprisingly, fraudulent voting remained relatively easy, particularly since many states had not yet adopted signature verification of voters at the polls to permit positive identification of each voter.[60]

To cure the failings of periodic precinct-based registration, many states moved to permanent registration, under which a person remains registered "for as long as he continues to reside at the same address."[61] The responsibility for updating the lists according to death records, transfers based on voters' requests, changes in postal or utility services, failure to vote, and, frequently, house-to-house verifications

---

54. *See* BENSEL, *supra* note 45, at 139–40. The fraud occurred mostly in tightly-spaced urban precincts, where a voter could go to numerous precincts anonymously. *Id.* Without lists, a voter could even vote multiple times at the same precinct, sometimes with the cooperation of sympathetic officials controlling the precinct. *See id.* at 157.

55. *See* KEYSSAR, *supra* note 50, at 152. *See also* JOSEPH P. HARRIS, ELECTION ADMINISTRATION IN THE UNITED STATES 18–20 (Inst. for Gov't Research, Studies in Admin. Study No. 27, 1934) (describing trends in voter registration laws after the Civil War and through the early twentieth century) [hereinafter HARRIS, ELECTION ADMINISTRATION]; HARRIS, REGISTRATION OF VOTERS, *supra* note 50, at 72–89 (providing a detailed discussion of the adoption of registration in New York, Pennsylvania, Illinois, and Indiana as typical of the process and politics); BENSEL, *supra* note 45, at xv n.13. (noting that registration could not take hold until the development of "the systematic identification of residence (e.g., numbers on houses) and clearly legible records (e.g., widespread adoption of the typewriter)").

56. *See* HARRIS, REGISTRATION OF VOTERS, *supra* note 50, at 4, 96–103.

57. *See id.* at 17, 24.

58. *Id.* at 12.

59. *See id.* at 11.

60. *See id.* at 15 (noting that signature verification was highly effective in the states that adopted it).

61. *Id.* at 16–18.

shifted from precinct officials to the city or county central office.[62] This shift to permanent registration minimized the activities of any precinct-based government entities except on election day.

In sum, the purpose of precincts was to make access to the polls easier for voters. However, with multiple voting sites came the increased risk of fraud, including voting more than once and voting in elections for which the voter was not qualified to vote.

C. *Current Precinct Structure*

With this history in mind, we now address whether contemporary precincts are reasonably sized. To answer this question, we compiled data on precincts for each of the fifty states plus the District of Columbia. The analysis that follows points out questions about precinct size both in terms of people per precinct and, as importantly, area per precinct. Area per precinct is central to the question of likelihood of voting out-of-precinct: the larger the area, the lower the probability that voters will vote out-of-precinct. Area per precinct also affects shifting precinct lines and the need for provisional balloting.

Table 1 presents statewide data for the 2004 election, showing the population density of the state, the total number of precincts, the population per precinct, and the area per precinct.[63] We recognize the inherent imprecision in making comparisons of one state to another; each has its own population distribution within its borders, its own level of concentration in one or more large cities, its own amount of uninhabitable land, and its own unique transportation network either encouraging or discouraging urban concentration.

Nonetheless, one can wonder why two neighboring states—Ohio and Pennsylvania—have approximately the same population, area, and population density, yet have average precinct sizes of 3.9 and 4.9 square miles respectively. Indeed, one would expect Pennsylvania, the state with slightly higher density, to have the smaller precinct size,

62. *See id.* at 17, 52–60, 207–13. For a list of the twenty-nine states that had permanent registration in 1929 and the eighteen states still using periodic registration (including the frequency of required new registration), see *id.* at 97–99. By 1934, five additional states had shifted to permanent registration. *See* HARRIS, ELECTION ADMINISTRATION, *supra* note 55, at 22.

63. *See infra* Table 1. Our survey found that, nationally, there were 184,633 precincts in the 2004 election. Election Data Services (EDS) calculated a similar number (185,994). *See* EAC SURVEY, *supra* note 17, at 13-2. EDS explained that the Election Assistance Commission's 2004 survey, *infra* note 210, had a smaller number (174,252) because of the failure of Connecticut, New Hampshire, and Pennsylvania to respond. *Id.* Some of the differences are likely explained by disparate treatment in the underlying data with regard to precincts used for early voting and for absentee voters.

yet it does not. Similarly, Connecticut is about half the size of neighboring Massachusetts in both area and population, so the two states' population densities are similar (630.3 and 609.8 people per square mile). Yet Connecticut's average precinct size is 7.2 square miles, while Massachusetts's is 4.9 square miles. Even rural states like Arkansas and Iowa, which have similar population densities, have comparable discrepancies regarding precinct size (19.7 and 28.3 square miles).

TABLE 1 STATEWIDE PRECINCT DATA

Statewide Precinct Data						
State	Population (estimated July 1, 2004)*	Area of State (sq. mi.)†	Population Density (per sq. mi.)	Number of Precincts (election districts, wards, 2004)‡	Average Population per Precinct	Average Area per Precinct (sq. mi.)
Alabama	4,517,442	52,419	86.2	2,210	2,044	23.7
Alaska	656,834	663,267	1.0	439	1,496	1,510.9
Arizona	5,745,674	113,998	50.4	2,109	2,724	54.1
Arkansas	2,746,823	53,179	51.7	2,693	1,020	19.7
California	35,841,254	163,696	219.0	24,035	1,491	6.8
Colorado	4,598,507	104,094	44.2	3,370	1,365	30.9
Connecticut	3,493,893	5,543	630.3	769	4,543	7.2
Delaware	828,762	2,489	333.0	437	1,896	5.7
District of Columbia	579,720	68	8,525.3	142	4,083	0.5
Florida	17,366,593	65,755	264.1	6,773	2,564	9.7
Georgia	8,935,151	59,425	150.4	3,022	2,957	19.7
Hawaii	1,259,299	10,931	115.2	353	3,567	31.0
Idaho	1,394,524	83,570	16.7	899	1,551	93.0
Illinois	12,713,548	57,914	219.5	11,738	1,083	4.9
Indiana	6,223,329	36,418	170.9	5,602	1,111	6.5
Iowa	2,953,679	56,272	52.5	1,986	1,487	28.3
Kansas	2,738,356	82,277	33.3	2,600	1,053	31.6
Kentucky	4,140,427	40,409	102.5	3,482	1,189	11.6

Statewide Precinct Data						
State	Population (estimated July 1, 2004)*	Area of State (sq. mi.)†	Population Density (per sq. mi.)	Number of Precincts (election districts, wards, 2004)‡	Average Population per Precinct	Average Area per Precinct (sq. mi.)
Louisiana	4,495,706	51,840	86.7	4,124	1,090	12.6
Maine	1,313,921	35,385	37.1	627	2,096	56.4
Maryland	5,553,249	12,407	447.6	1,787	3,108	6.9
Massachusetts	6,435,995	10,555	609.8	2,156	2,985	4.9
Michigan	10,093,398	96,716	104.4	5,219	1,934	18.5
Minnesota	5,094,304	86,939	58.6	4,108	1,240	21.2
Mississippi	2,892,668	48,430	59.7	1,961	1,475	24.7
Missouri	5,752,861	69,704	82.5	5,462	1,053	12.8
Montana	926,345	147,042	6.3	856	1,082	171.8
Nebraska	1,746,980	77,354	22.6	1,668	1,047	46.4
Nevada	2,332,484	110,561	21.1	1,723	1,354	64.2
New Hampshire	1,297,961	9,350	138.8	309	4,201	30.3
New Jersey	8,675,879	8,721	994.8	6,287	1,380	1.4
New Mexico	1,900,620	121,589	15.6	1,510	1,259	80.5
New York	19,291,526	54,556	353.6	15,819	1,220	3.4
North Carolina	8,531,040	53,819	158.5	2,745	3,108	19.6
North Dakota	635,848	70,700	9.0	607	1,048	116.5
Ohio	11,461,347	44,825	255.7	11,366	1,008	3.9
Oklahoma	3,522,827	69,898	50.4	2,152	1,637	32.5
Oregon ♦	3,589,168			Not applicable -vote by mail		

Statewide Precinct Data

State	Population (estimated July 1, 2004)*	Area of State (sq. mi.)†	Population Density (per sq. mi.)	Number of Precincts (election districts, wards, 2004)‡	Average Population per Precinct	Average Area per Precinct (sq. mi.)
Pennsylvania	12,377,381	46,055	268.8	9,400	1,317	4.9
Rhode Island	1,078,930	1,545	698.3	577	1,870	2.7
South Carolina	4,194,694	32,020	131.0	2,168	1,935	14.8
South Dakota	770,188	77,116	10.0	827	931	93.2
Tennessee	5,885,597	42,143	139.7	2,285	2,576	18.4
Texas	22,517,901	268,581	83.8	8,593	2,620	31.3
Utah	2,421,500	84,899	28.5	1,880	1,288	45.2
Vermont	620,795			Not applicable -no precinct structure		
Virginia	7,472,448	42,774	174.7	2,562	2,917	16.7
Washington	6,205,535	71,300	87.0	6,686	928	10.7
West Virginia	1,810,906	24,230	74.7	1,960	924	12.4
Wisconsin	5,498,807	65,498	84.0	7,067	778	9.3
Wyoming	505,534	97,814	5.2	483	1,047	202.5
			Precinct total	187,633		

* Data taken from Michael Barone & Richard E. Cohen, Alamanac of American Politics 2006 (2005)

† *Id.*

‡ Data compiled by authors based on websites and personal interviews. Data is on file with the New York University Journal of Legislation and Public Policy. In cases where website data and interview data conflicted, the authors have used interview data to maintain consistent methodology. The authors believe that the discrepancies are due to the fact that many states have "precincts" that are created simply for absentee voter data and for early voting. It is likely that interview data for some states does include these kinds of precincts in the precinct number data however, such precincts are not germane to the election day out-of-precinct voting problem.

♦ Oregon is complete vote by mail but maintains a precinct structure just in case.

A review of the table also reveals the distinct range of state-to-state differences in total population per precinct. The rates, which do not consider non-voting age population, inactive voters, or recent voter turnout, range from a high of 4,543 people per precinct in Connecticut to a low of 778 people per precinct in Wisconsin. The per precinct numbers would be significantly smaller if measured in terms of voting age population, active voters, or recent voter turnout, and many factors can help to create the differences across states. The most important factor in creating differences among states may be data deviations created by the various states' differing statutory definitions for what constitutes a precinct. For instance, Kansas has many precincts in which no people live but are nonetheless required because of the way that Kansas geographically defines a precinct.[64] Despite these inconsistencies, we can make the very basic conclusion that the wide range in number of people assigned to a precinct seems to have little to do with the most administratively efficient number of people to assign to a precinct.

To adjust for problems in using statewide data, we also examined data for the most populous counties, or "urbanized areas," in each state.[65] In Table 2, looking at comparable urbanized counties, there appears to be some congruity, but wide disparities still exist. Denver County, Colorado and Bergen County, New Jersey have relatively similar population densities and precinct sizes, with 1,318 and 1,318 people per precinct. But Milwaukee County, Wisconsin, which has a similar population density as Bergen County and Denver County, has a precinct area and precinct population twice the size of theirs. New York City (treating all five of its counties as one unit) is by far the most densely populated "county" in the country, with a population density of 26,227 people per square mile. Philadelphia County—the next most densely populated—has only forty percent the density of New York City, with 10,890 people per square mile. Yet both have an assigned 0.1 square mile per precinct. New York City has a population per precinct of 1,338, while Philadelphia's is only 875. The Dis-

64. *See* KAN. STAT. ANN. § 25-26a02(a) (2000) ("Each election precinct shall be composed of contiguous and compact areas having clearly observable boundaries using visible ground features.") This definition mandates the creation of precincts based on geography, not population. The data shown in the table for Kansas ignore those precincts, reporting instead on actual polling places. Other states may have similar requirements that are not compensated for in the data reported by the states to us.

65. *See infra* Table 2. The Census Bureau defines an urbanized area as "a central place(s) and adjacent territory with a general population density of at least 1,000 people per square mile of land area that together have a minimum residential population of at least 50,000 people." U.S. Census Bureau, U.S. Census 2000 Glossary, http://factfinder.census.gov/home/en/epss/glossary_u.html (last visited Jan. 22, 2007).

trict of Columbia has a population density comparable to Philadelphia's, yet uses precincts of 0.5 square miles and 4,083 people per precinct. Illinois's Cook County (Chicago) has a population density of 5,631.3 people per square mile yet has precincts of 1,041 people and 0.2 square miles per precinct. Cook County's precincts seem too small when compared to New York City, let alone the District of Columbia.

TABLE 2

MOST POPULOUS COUNTY PRECINCT DATA

Most Populous County Precinct Data

State	Largest County (based on est. 2004 pop.)*	Population (estimated July 1, 2004)†	Area of County (sq.mi.)‡	Population Density (per sq. mi.)	Number of Precincts (2004)§	Average Population per Precinct	Average Area per Precinct (per sq. mi.)	Principal City in County**
Alabama	Jefferson	658,468	1,113	591.6	188	3,502	5.9	Birmingham
Alaska	Anchorage	274,067	1,698	161.4	119	2,303	14.3	Anchorage
Arizona	Maricopa	3,498,587	9,204	380.1	1,058	3,307	8.7	Phoenix
Arkansas	Pulaski	365,228	771	473.7	134	2,726	5.8	Little Rock
California	Los Angeles	9,917,331	4,060	2,442.7	4,602	2,155	0.9	Includes Los Angeles
Colorado	Denver	555,991	153	3,633.9	422	1,318	0.4	Denver
Connecticut	Fairfield	901,819	626	1,440.6	Not available	Not available	Not available	Bridgeport
Delaware	New Castle	518,728	426	1,217.7	304	1,706	1.4	Wilmington
District of Columbia	Same	579,720	61	9,503.6	142	4,083	0.4	Washington, D.C.
Florida	Miami-Dade	2,358,714	1,945	1,212.7	749	3,149	2.6	Miami
Georgia	Fulton	905,802	529	1,712.3	338	2,680	1.6	Atlanta
Hawaii	Honolulu	899,562	600	1,499.3	217	4,145	2.8	Honolulu
Idaho	Ada	332,545	1,055	315.2	125	2,660	8.4	Boise
Illinois	Cook	5,327,165	946	5,631.3	5,115	1,041	0.2	Includes Chicago
Indiana	Marion	861,847	396	2,176.4	914	943	0.4	Indianapolis
Iowa	Polk	394,031	570	691.3	183	2,153	3.1	Des Moines
Kansas	Johnson	496,892	477	1,041.7	415	1,197	1.1	Overland Park
Kentucky	Jefferson	698,903	385	1,815.3	506	1,381	0.8	Louisville
Louisiana	Orleans	461,115	181	2,547.6	442	1,043	0.4	New Orleans
Maine	Cumberland	273,622	836	327.3	63	4,343	13.3	Portland
Maryland	Montgomery	921,631	495	1,861.9	235	3,922	2.1	Not available
Massachusetts	Middlesex	1,462,822	824	1,775.3	474	3,086	1.7	Cambridge

Most Populous County Precinct Data								
State	Largest County (based on est. 2004 pop.)*	Population (estimated July 1, 2004)†	Area of County (sq.mi.)‡	Population Density (per sq. mi.)	Number of Precincts (2004)§	Average Population per Precinct	Average Area per Precinct (per sq. mi.)	Principal City in County**
Michigan	Wayne	2,013,771	614	3,279.8	1,198	1,681	0.5	Detroit
Minnesota	Hennepin	1,119,866	557	2,010.5	430	2,604	1.3	Minneapolis
Mississippi	Hinds	249,828	869	287.5	104	2,402	8.4	Jackson
Missouri	St. Louis County	1,007,723	508	1,983.7	480	2,099	1.1	Excludes St. Louis City
Montana	Yellowstone	134,806	2,635	51.2	69	1,954	38.2	Billings
Nebraska	Douglas	481,203	331	1,453.8	341	1,411	1.0	Omaha
Nevada	Clark	1,648,524	7,911	208.4	1,042	1,582	7.6	Las Vegas
New Hampshire	Hillsborough	398,355	876	454.7	52	7,661	16.8	Nashua
New Jersey	Bergen	901,745	234	3,853.6	557	1,619	0.4	No dominant city
New Mexico	Bernalillo	592,538	1,166	508.2	496	1,195	2.4	Albuquerque
New York	New York City (5 counties)	8,164,706	309	26,423.0	6,101	1,338	0.1	New York City
North Carolina	Mecklenburg	771,573	527	1,464.1	189	4,082	2.8	Charlotte
North Dakota	Cass	129,583	1,766	73.4	59	2,196	29.9	Fargo
Ohio	Cuyahoga	1,349,047	458	2,945.5	1,436	939	0.3	Cleveland
Oklahoma	Oklahoma	679,498	709	958.4	295	2,303	2.4	Oklahoma City
Oregon ††	Not applicable - vote by mail							
Pennsylvania	Philadelphia	1,471,255	135	10,898.2	1,682	875	0.1	Philadelphia
Rhode Island	Providence	641,874	413	1,554.2	340	1,888	1.2	Providence
South Carolina	Greenville	401,019	792	506.3	136	2,949	5.8	Greenville
South Dakota	Minnehaha	157,158	809	194.3	69	2,278	11.7	Sioux Falls
Tennessee	Shelby	906,287	755	1,200.4	283	3,202	2.7	Memphis

Most Populous County Precinct Data

State	Largest County (based on est. 2004 pop.)*	Population (estimated July 1, 2004)†	Area of County (sq.mi.)‡	Population Density (per sq. mi.)	Number of Precincts (2004)§	Average Population per Precinct	Average Area per Precinct (per sq. mi.)	Principal City in County**
Texas	Harris	3,641,114	1,729	2,105.9	913	3,988	1.9	Houston
Utah	Salt Lake	934,838	737	1,268.4	708	1,320	1.0	Salt Lake City
Vermont	Not applicable - no precinct structure							
Virginia	Fairfax	1,002,488	396	2,531.5	231	4,340	1.7	No dominant city
Washington	King	1,777,746	2,126	836.2	2,616	680	0.8	Seattle
West Virginia	Kanawha	194,941	903	215.9	183	1,065	4.9	Charleston
Wisconsin	Milwaukee	926,764	242	3,829.6	314	2,951	0.8	Milwaukee
Wyoming	Laramie	85,033	2,686	31.7	58	1,466	46.3	Cheyenne

* Data taken from U.S. Census Bureau, available at http://www.census.gov/popest/counties/CO-EST2005-01.html.

† *Id.*

‡ Data taken from National Association of Counties, available at http://www.naco.org/Template.cfm?Section=Find_a_County&Template=/cffiles/counties/usamap.cfm.

§ Data compiled by authors based on websites and personal interviews, on file with the New York University Journal of Legislation and Public Policy.

** Data taken from NACO website, available at http://www.naco.org/Template.cfm?Section=Find_a_County&Template=/cffiles/counties/usamap.cfm. County seat was used as the principal city.

†† Oregon is complete vote by mail but maintains precinct structure just in case.

Looking at populous counties with slightly lower densities, Fulton County, Georgia (Atlanta), Honolulu County (Hawaii), Mecklenburg County, North Carolina (Charlotte), and Providence County, Rhode Island are all close in terms of density. Yet Fulton County's precincts average 2,680 people and 1.6 miles, Providence County's average 1,888 people and 1.2 square miles, and Honolulu County's and Mecklenburg County's average about 4,100 people and 2.8 miles. There are even discrepancies in rural counties. Jefferson County, Alabama and Bernalillo County, New Mexico are comparable, with densities of 591.6 people and 508.2 respectively. Yet the Alabama county's precincts have 3,502 people and 5.9 square miles, while the New Mexico county has 1,195 people and 2.4 square miles per precinct. Clearly the mileage footprints should be reversed, and the precinct population for the New Mexico county seems small.

We ran one more test to learn if there was any consistency within individual states. Table 3 shows those results. Because many states have only one or two major metropolitan areas, it is difficult to pick two counties within a state that have comparable populations, areas, and population densities. The pairings generally show those with the closest fits. Of the seventeen pairs shown, eleven are relatively close in average precinct area, while six—those in Mississippi, Missouri, Nebraska, South Carolina, Tennessee, and Virginia—are noticeably out of alignment. These six pairings suggest conflicting views between the counties paired as to the correct number of people to assign to a precinct. Such intrastate comparisons raise questions of uniform treatment by a state of its voters and of possible equal protection issues. It seems that leaving precinct determination decisions to individual counties opens the door to legally significant disparities.[66]

66. *See* Stewart v. Blackwell, 444 F.3d 843, 869–70 (6th Cir. 2006), *vacated as moot by* Stewart v. Blackwell, No. 05-3044, 2007 WL 77853 (6th Cir. Jan. 12, 2007). (finding equal protection violations where Ohio counties used different types of voting machines).

TABLE 3 ILLUSTRATIVE COUNTY PAIRS' PRECINCT DATA *

Illustrative County Pairs' Precinct Data *							
State	**County Pairs**	**Population (est. July 1, 2004)**	**Area**	**Population Density (per sq. mi.)**	**Number of Precincts**	**Population per Precinct**	**Area per Precinct (per sq. mi.)**
Arkansas	Faulkner	95,074	647	146.9	47	2,023	13.8
	Garland	92,222	678	136.0	41	2,249	16.5
Colorado	Arapahoe	522,346	803	650.5	386	1,353	2.1
	Jefferson	526,648	772	682.2	330	1,596	2.3
Florida	Hillsborough	1,100,333	1,051	1,046.9	359	3,065	2.9
	Orange	989,873	908	1,090.2	263	3,764	3.5
Georgia	Cherokee	174,851	424	412.4	46	3,801	9.2
	Hall	160,788	394	408.1	41	3,922	9.6
Maryland	Montgomery	921,631	495	1,861.9	235	3,922	2.1
	Prince George's	841,642	486	1,731.8	204	4,126	2.4
Michigan	Kalamazoo	239,748	562	426.6	112	2,141	5.0
	Ottawa	252,945	566	446.9	100	2,529	5.7
Mississippi	Lauderdale	77,496	704	110.1	53	1,462	13.3
	Madison	81,935	719	114.0	40	2,048	18.0
Missouri	Greene	247,992	675	367.4	140	1,771	4.8
	Jefferson	210,466	657	320.3	84	2,506	7.8

Illustrative County Pairs' Precinct Data *

State	County Pairs	Population (est. July 1, 2004)	Area	Population Density (per sq. mi.)	Number of Precincts	Population per Precinct	Area per Precinct (per sq. mi.)
Nebraska	Dodge	36,000	534	67.4	32	1,125	16.7
	Madison	35,667	573	62.2	26	1,372	22.0
New Jersey	Camden	515,620	222	2,322.6	331	1,558	0.7
	Passaic	498,939	185	2,697.0	288	1,732	0.6
Ohio	Montgomery	549,553	462	1,189.5	588	935	0.8
	Summit	546,608	413	1,323.5	475	1,151	0.9
Oklahoma	Creek	68,647	956	71.8	42	1,634	22.8
	Muskogee	70,478	814	86.6	33	2,136	24.7
South Carolina	Charleston	327,403	917	357.0	177	1,850	5.2
	Spartanburg	264,106	811	325.7	97	2,723	8.4
Tennessee	Montgomery	141,806	539	263.1	24	5,909	22.5
	Sumner	141,732	529	267.9	33	4,295	16.0
Virginia	Augusta	68,713	972	70.7	27	2,545	36.0
	Pittsylvania	61,790	971	63.6	33	1,872	29.4
West Virginia	Monongalia	84,061	361	232.9	92	914	3.9
	Wood	87,014	367	237.1	85	1,024	4.3

* Data sources are the same as for Table 2, Most Populous County Data.

The inconsistent treatment of precincts also shows states' statutory limitations on the number of persons per precinct. Of the fifty states and the District of Columbia, most have a maximum number of individuals that can be assigned to an individual precinct, and some have minimum number as well. But a substantial minority—twenty-three—have no maximum figure. Of those that do have a maximum, the terms of reference vary. Some are set in terms of total population, some in terms of registered voters, some in terms of active voters, and some in terms of votes cast in the last general election.[67] Some states have maxima differentiating between urban and rural counties.[68] Cognizant of those comparative issues, the range is from Illinois's maximum (in highly urban areas) of 800 voters to Tennessee's and Virginia's uniform statewide maxima of 5,000 registered voters.

While each state presumably established its figure with some notion of administrative efficiency and voter travel time, there is no clear reason why the states have come to such widely disparate conclusions. We make no definitive conclusions from these data, and we leave to the demographers more rigorous study. But the hodgepodge of data presented in these tables establishes the absence of rational state or county principles for creating precincts.

The origin of many state precinct limits may, in fact, be historical artifacts tied to the earlier era when most of the country used lever machines, and there were estimates of how many voters could be processed on each lever machine on election day.[69] We need not re-

---

67. *See infra* Appendix (table listing state statutory precinct requirements). Currently, twenty-seven states have a maximum population for precincts mandated by statute. *Id.* Twenty-three states have no maximum and Wyoming can be read as having no maximum since population growth does not result in creation of new precincts. *Id.*

68. *See id.*

69. Some indication of the weak analytical basis for at least old maxima can be found in a 1968 study by E.S. Savas. Savas, working with colleagues from the Riverside Research Institute, developed a computer model for drawing New York City election districts efficiently, given the state law constraints on the maximum number of voters per election district and the maximum number of voters per lever voting machine. *See* E.S. Savas, *A Computer-Based System for Forming Efficient Election Districts*, 19 OPERATIONS RES. 135 (1971). Prior to the 1957 advent of permanent registration in New York, the City Board of Elections would redraw the election district lines every year. *Id.* at 136. With permanent registration and the apparent lack of time to redistrict, the Board of Elections often added a second voting machine rather than changing the district lines. *Id.* As for the state maxima, at that time the law had an upper limit of voters per election district of 750 for one-machine districts and 1,050 for two-machine districts. *Id.* at 149. Savas noted that "[t]aken together, this is a strange pair of limits. It is much more logical that the latter be twice the former, which would tend to equalize the delays for all voters, regardless of whether they are assigned to one-machine or two-machine districts." *Id.* at 149–50. He

view in detail this theory; tracing this history is beyond the scope of this paper. It is enough that we point out the lack of obvious analytical support.

D. *Criticisms of the Precinct Structure*

In 1934, Joseph Harris offered a number of criticisms of the states' precinct structures, many of which are still valid today.[70] One was that precinct size varied widely from state to state not because of differences among jurisdictions, but simply "due to custom and to state law."[71] Harris also concluded that some states capped the number of voters per precinct at unreasonably low levels. He argued that:

> The great variation in the number of voters to the precinct authorized by the state laws indicates in itself that such provisions are unwise. If the precinct officers of Massachusetts are able to take care of two thousand voters, there can be no justification for state laws restricting the number of voters to the precinct to two hundred in California, two hundred and fifty in Indiana, three hundred in Washington, Oregon, Nebraska, and Colorado, and so on.[72]

Harris pointed out that small precincts probably made sense in the early nineteenth century, when there were few large cities and primitive transportation.[73] However, when Harris published his study in 1934, he noted that many Canadian cities had created election districts with as many as five thousand registered voters.[74] Harris argued that election districts in the United States should similarly be increased in size.[75] The low limits on voters-per-precinct made little sense given data showing that only about half of a precinct's voters would show up to vote.[76]

Harris was not suggesting that the maximum voter caps be raised. Rather, he believed that there should be no maximum caps, just a minimum floor of four hundred voters for precincts in cities.[77] Removing the maximum caps would give local officials more discretion in de-

---

thought the standards should be changed to 600 and 1,200, noting that queuing theory suggested that a two-machine district could accommodate even more than twice as many voters, with equal waiting times. *Id.* at 150.

70. *See* HARRIS, ELECTION ADMINISTRATION, *supra* note 55.
71. *Id.* at 207.
72. *Id.* at 208.
73. *Id.* at 9–10.
74. *Id.* at 211.
75. *Id.*
76. *Id.* at 208–09.
77. *Id.* at 41.

signing precincts.[78] Additionally, Harris argued that larger precincts would result in cost savings through efficiencies, including more productive poll workers and fewer rented polling places, as he found precinct size to be "unquestionably the most important factor determining the cost of elections."[79] Larger precincts also would be less susceptible to alterations that would require moving the polling place from one year to the next, thereby reducing voter uncertainty as to where to go to vote each year.[80] Harris further believed that larger polling places would have greater quality control, because they could be staffed with a responsible person from the central elections office and thus run under more strict supervision.[81]

Finally, Harris did not believe that increasing the size of precincts would greatly inconvenience voters, because "[p]aved streets, improved transportation, and the universal use of the automobile have relieved the necessity for small precincts."[82] Indeed, he noted that in many cities multiple precincts already were located in the same polling place.[83]

III.
PROVISIONAL VOTING: THE IDEA AND ITS IMPLEMENTATION

The right to a provisional voting ballot and the requirement for computerized statewide voter registration lists are centerpiece reforms of HAVA.[84] Because Congress sought to eliminate the chaos and strife regarding disputed registrations at the polling place, HAVA guarantees that every voter encountering eligibility questions has the

78. *Id.* The recommendation that precincts be limited by minimum figures and not maxima had previously been published by the Committee on Election Administration of the National Municipal League, of which Harris was a member. *Id.* at 24. Alexander Keyssar went even further in his critique of small precincts, finding nefarious intent in some historical instances: "[A]lthough justified as a means of insuring that election judges would be familiar with their constituents, the creation of tiny precincts meant that anyone who moved even a few blocks was likely to have to register again and meet a new thirty-day residency requirement." KEYSSAR, *supra* note 50, at 154. For a listing of the precinct residency time requirements from 1870–1923, see *id.* at 380–88 tbl.A.14.

79. *See* HARRIS, ELECTION ADMINISTRATION, *supra* note 55, at 209–10.

80. *Id.* at 213.

81. *Id.* at 42.

82. *Id. See also id.* at 212–13. Harris officially used "size" of precincts to refer to population size, but he also discussed "size" in terms of voters having further to travel. "Increasing the size of precincts" thus implicates an increase in both the population per precinct and its area. *See id.* at 42.

83. *Id.* at 42–43. *See also infra* notes 239–42 and accompanying text.

84. *See supra* notes 7–10 and accompanying text.

right to cast a provisional ballot.[85] Election officials are to review each provisional ballot after election day, research whether the person was in fact an eligible voter, and, if so, count the ballot as valid.[86] HAVA's legislative history, while limited, reinforces the importance of provisional voting, finding that it "represents the ultimate safeguard to ensuring a person's right to vote."[87]

The 2004 election was the first in which the HAVA provisional ballot requirement was implemented, and the implementation was not without difficulties. Questions and legal challenges arose as to whether provisional ballots cast in a precinct other than the voter's assigned precinct should be counted. There were conflicting interpretations of the Act regarding whether state law or federal law controlled the counting of provisional ballots. We discuss below the thin provisional ballot legislative history of HAVA and the litigation about provisional ballots that arose in 2004.

A. *Pre-HAVA Studies*

The bipartisan National Commission on Federal Election Reform—chaired by former Presidents Gerald Ford and Jimmy Carter (Ford-Carter Commission)—recommended in 2001 that voter registration move away from local control and be organized and administered on a statewide basis.[88] Centralization was needed in order to ensure that voters' registration information is updated as voters move.[89] Conceding that no registration system, no matter how sophisticated, will be error-free, the Commission also recommended that provisional balloting be available to all voters within the state on election day, regardless of the location of their precinct or polling place.[90] Both recommendations were motivated by the same objective: that "[n]o American qualified to vote anywhere in his or her state should be turned away from a polling place in that state."[91]

The Ford-Carter Commission then proposed a method for counting provisional ballots. If, after the election, authorities concluded that the provisional voter was eligible to vote, but voted in the wrong jurisdiction, the ballot should not be forwarded to the correct district, as was the practice in some states. Instead, the ballot should be ac-

85. *Id.*; HAVA § 302(a), 42 U.S.C. § 15482(a)(3)–(4) (Supp. III 2005).
86. § 302(a)(3)–(4).
87. H.R. REP. NO. 107-329, pt. 1, at 37 (2001). *See infra* Part IV.B.3.
88. *See* NAT'L COMM'N ON FED. ELECTION REFORM, TO ASSURE PRIDE & CONFIDENCE IN THE ELECTORAL PROCESS 28 (2002) [hereinafter FORD-CARTER COMM'N].
89. *Id.* at 29.
90. *Id.* at 35–36.
91. *Id.* at 34.

cepted as a limited ballot—valid only for the races the voter was eligible for at the place where the ballot was cast, such as statewide races or the congressional district race if within the same district.[92] The Ford-Carter Commission recognized that the post-election administrative effort necessary to process provisional ballots was significant (from five or ten minutes to one hour per ballot) and would slow completion of the official election results.[93] Nevertheless, the Commission believed that this cost was outweighed by the benefits to the system, primarily allowing all eligible voters to vote.[94] Other task forces, made up primarily of state and local election administrators, also recommended that all states establish provisional balloting.[95]

B. HAVA

Section 302(a) of HAVA establishes that if a voter's name "does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote," the individual shall be permitted to cast a provisional ballot.[96] Section 302(a)(2) contains the only HAVA requirements on the voter for casting the provisional ballot: the individual must affirm in writing that he or she is both a "registered voter in the jurisdiction" and "eligible to vote in that election."[97] However, section 302(a)(4) complicates matters by stating, "[i]f the appropriate State or local election official to whom the ballot or voter information is transmitted . . . determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accor-

---

92. *Id.* at 36.

93. *See id.*

94. *See id.* at 36–37.

95. *See, e.g.*, NAT'L TASK FORCE ON ELECTION REFORM 2000, *supra* note 10 (recommending that all jurisdictions adopt provisional ballots in the absence of "election day registration or other solutions to address registration questions"), *available at* http://www.electioncenter.org/publications/electionrefortreport2001.pdf; NAT'L COMM'N ON ELECTION STANDARDS & REFORM, REPORT & RECOMMENDATIONS TO IMPROVE AMERICA'S ELECTION SYSTEM 4, 8 (2001), *available at* http://www.naco.org/Content/ContentGroups/Programs_and_Projects/Information_Technology1/Elections1/election.pdf (recommending that states have provisional ballots that are counted after confirmation of voter eligibility); THE CONSTITUTION PROJECT, BUILDING CONSENSUS ON ELECTION REFORM, 8–9 (2001), *available at* http://www.secstate.wa.gov/documentvault/TheConstitutionProjectBuildingConsensusonElectionReformAugust2001-1023.pdf (recommending that "voters, at a minimum, should have an opportunity to submit provisional ballots").

96. HAVA § 302(a), 42 U.S.C. § 15482(a) (Supp. III 2005).

97. § 302(a)(2).

dance with State law."[98] This sentence is the source of the confusion and discord over the effectiveness of the HAVA requirement.[99]

There is little in the legislative history to explain why the final provision is so written. The reporting House Committee issued an extensive report[100] to accompany the bill that it sent to the floor (H.R. 3295) on December 10, 2001.[101] But the reporting Senate Committee did not issue a report to accompany the bill it sent to the floor (S. 565) earlier that year.[102] On December 19, 2001, shortly after H.R. 3295 passed the House, Senators Dodd, McConnell, and Bond introduced a replacement to S. 565, in the form of an amendment (SA 2688), that Senators Dodd and McConnell, as the floor managers of the debate on the Senate floor, would offer at the outset of the debate (Managers' Amendment).[103] The sponsors of the amendment mentioned but did not discuss the counting portion of the provisional ballot provision at the time of introduction.

The Managers' Amendment, as a complete substitute for the bill reported out of the Senate Committee on Rules and Administration, became the basis of the bill that passed the Senate on April 11, 2002.[104] The House-Senate Conference Report for the final version of HAVA was intentionally written not to elaborate on any of the bill's language.[105] Although individual senators made statements on the floor at the time of consideration of the Conference Report, the House Report is the only document representing the views of more than one member that contains any significant explanatory substance.

---

98. § 302(a)(4).

99. *See infra* Part III.C (discussing the use of provisional ballots in the 2004 election and courts' analysis of section 302(a)(4) prior to the election).

100. *See* H.R. REP. NO. 107-329, pt. 1 (2001).

101. H.R. 3295, 107th Cong. (2001).

102. S. 565, 107th Cong. (2001). The reporting of S. 565 exemplifies the difficulties of enacting HAVA. The committee reported the bill, supported by the ten Democratic committee members, after the nine Republican committee members boycotted the markup session. The boycott was triggered by committee chairman Senator Dodd's refusal to consider S. 953, a competing measure from the committee's ranking Republican, Senator McConnell. *See* Bill Swindell, *Democrats Spurn GOP & Approve Voting Mandates Bill*, CQ MONITOR NEWS, Aug. 2, 2001. *See also* 147 CONG. REC. S8876 (daily ed. Aug. 3, 2001) (statement of Sen. Dodd).

103. *See* 147 CONG. REC. S13764–71 (daily ed. Dec. 19, 2001). *See also* 147 CONG. REC. S13682 (daily ed. Dec. 19, 2001) (statement of Sen. Dodd).

104. *See* 148 CONG. REC. S713 (daily ed. Feb. 13, 2002) (statement of Sen. McCain) ("I urge my colleagues to support the compromise amendment in the nature of a substitute to S. 565."); *id.* at S2544 (daily ed. Apr. 11, 2002).

105. *See infra* Part III.B.3.

1. The House Version

H.R. 3295, as introduced and reported to the House, contained in section 502(3) a requirement that the states enact legislation permitting "in-precinct provisional voting by every voter who claims to be qualified to vote in the State."[106] The bill did not address whether to count a provisional ballot. The House Report that accompanied H.R. 3295, in describing section 502(3) of the bill, also delineates the requirements for casting a provisional ballot as eligibility in the precinct.[107]

Although the term "in-precinct" is used in both the bill and the report, because of its generality, the reference should be read to focus on polling place voting, rather than literally on the question of voting only in the correct precinct. Supporting that interpretation is the detailed discussion in the report of when a provisional ballot might be needed. The report found that there were at least eight reasons why a person's name might not appear on the list of qualified voters for a precinct, almost all of which reference problems at the polling place itself: (1) administrative errors such as oversight or misspelled names; (2) poll workers "may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election"; (3) voters may have been "improperly removed from the voting rolls"; (4) voters may have not received, or received "but did not heed, a notice that their polling place had moved"; (5) administrative agencies "that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner"; (6) "voters may fail to notify their registrar, or fail to re-register, after a change of address"; (7) "well-intentioned nongovernmental organizations may mishandle registration materials"; or (8) the voter may simply have "fail[ed] to register."[108]

A number of these circumstances, most notably (4)—the implied appearance at the wrong polling place—could not be alleviated if "precinct" were read narrowly to exclude the "polling place" meaning. The bill as reported was passed by the full House on December 12, 2001, with no changes to the provision.[109]

---

106. H.R. 3295, 107th Cong. § 502(3) (2001).

107. H.R. REP. NO. 107-329, pt. 1, at 37 (2001) ("In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election.").

108. *Id.* at 38.

109. 147 CONG. REC. H9308 (daily ed. Dec. 12, 2001).

2. *The Senate Bill*

As initially introduced by Senator Dodd on March 19, 2001,[110] S. 565 provided that any voter who declared himself or herself "to be eligible to vote at a particular polling place" and whose name did not appear on the official roll or it was otherwise asserted that the voter was ineligible to vote at the polling place, would be able to cast a provisional ballot after making a written affirmation of eligibility.[111] The provisional ballot was to be "tabulated" after an appropriate official verified the affirmation.[112] The provision did not contain any reference as to if state law would control whether or not to count the ballot.

The Managers' Amendment contained the same requirements for a voter to receive and cast a provisional ballot as the enacted HAVA provision. The voter must affirm to be registered in the jurisdiction and eligible to vote in that election.[113] However, the Managers' Amendment had a different rule for when to count a cast provisional ballot. Unlike both the original Senate bill and the HAVA section enacted after the House-Senate Conference, the Managers' Amendment stated that: "(4) If the appropriate State or local election official to whom the ballot is transmitted . . . determines that the individual is eligible under State law to vote in the jurisdiction, the individual's provisional ballot shall be counted as a vote in that election."[114] The standard for counting a provisional ballot was thus eligibility in the *jurisdiction*, not necessarily in the precinct or polling place.

In his final summary of the bill before passage, Senator Dodd described the counting standard in the following way: "The election official then makes a determination, under state law, as to whether the voter is eligible to vote *in the jurisdiction*, or not, and shall count the ballot accordingly."[115] He then clarified the meaning of "jurisdiction": "It is our intent that the word 'jurisdiction,' for the purpose of determining whether the provisional ballot is to be counted, has the same meaning as the term 'registrar's jurisdiction' in section 8(j) of

110. *See* 147 CONG. REC. S2475 (daily ed. Mar. 19, 2001) (statement of Sen. Dodd).

111. *Id.* Curiously, the GPO website PDF versions of the bill as introduced and as reported on November 28, 2001 differ from the bill as set out in the Congressional Record for March 19, 2001. The Record version does not contain the references to the polling place. *See* 147 CONG. REC. S2477 (daily ed. Mar. 19, 2001).

112. S. 565, 107th Cong. § 301(b)(4) (2001).

113. *See* 147 CONG. REC. S13765 (daily ed. Dec. 19, 2001).

114. *Id.*

115. 148 CONG. REC. S2534 (daily ed. Apr. 11, 2002) (statement of Sen. Dodd) (emphasis added).

the National Voter Registration Act."[116] After Dodd spoke, no one—in particular, neither the minority floor manager (Senator McConnell) nor the other leading Republican spokesman (Senator Bond)—contradicted Dodd's remarks. Thus, the Senate passed the Managers' Amendment on April 11, 2002 with the counting standard relatively unchanged.[117]

3. *The Conference Bill*

The House-Senate Conference reported the final bill on October 8, 2002.[118] In the bill, the Conference Committee adopted the Senate's version of the counting provision with two changes. It dropped the phrase "in the jurisdiction" and added "in accordance with State law" at the end. The corresponding conference report did not elaborate on this shift in language, or indeed on any other HAVA provision.[119] The conference bill passed the House two days after the filing of the report, without any discussion of the counting provision.[120]

Six days after that, the Senate took up consideration of the conference bill, and there was commentary on the provisional ballot provision.[121] Senator Bond, one of the managers of the bill for the Republican minority, was the first to speak about the provision. He said that if a vote was cast outside the jurisdiction in which the voter was registered, it was not to be counted if state law required voting in the jurisdiction of registration.[122] Bond next discussed registered voters showing up at the wrong polling place and the continuation of state law provisions authorizing the poll workers to direct the voter to the correct polling place.[123] He did not tie such redirection to the question

---

116. *Id.* at S2535. The relevant NVRA provision can be found at 42 U.S.C. § 1973gg-6(j) (2000). This statement was also noted by the Sixth Circuit in *Sandusky County Democratic Party v. Blackwell* (*Blackwell I*), 339 F. Supp. 2d 975, 990 n.5 (N.D. Ohio 2004). *See also infra* notes 146, 193–98 and accompanying text; *supra* notes 31–38 and accompanying text.

117. 148 CONG. REC. S2544 (daily ed. Apr. 11, 2002). One difference was the inclusion of the voter information language, which was designed to meet the particular needs of provisional balloting in Michigan. *See id.* at S2471 (daily ed. Apr. 10, 2002).

118. H.R. REP. NO. 107-730 (2002).

119. *See id.* at 74–75.

120. 148 CONG. REC. H7853–54 (daily ed. Oct. 10, 2002).

121. *See generally* 148 CONG. REC. S10488–10516 (daily ed. Oct. 16, 2002).

122. *Id.* at S10491. Senator Bond also noted that "[i]t is not the intent of the authors to overturn State laws regarding registration or state laws regarding the jurisdiction in which a ballot must be cast to be counted." *Id.*

123. *Id.* Senator Bond stated:

> Additionally, it is inevitable that voters will mistakenly arrive at the wrong polling place. If it is determined by the poll workers that the voter

of provisional ballot counting. Bond thus conceived of counting votes cast in the correct jurisdiction, as determined by state law, but not necessarily in the correct precinct.

Bond later continued in a dialogue with Senator McConnell, the ranking Republican minority member of the Senate Rules Committee, which issued the first Senate version, and also a manager of the bill. In this dialogue, Senator Bond concurred with Senator McConnell's description of the counting rule:

> I agree completely with the Senator's description of this provision. Congress has said only that voters in Federal elections should be given a provisional ballot if they claim to be registered in a particular jurisdiction and that jurisdiction does not have the voter's name on the list of registered voters. The voter's ballot will be counted only if it is subsequently determined that the voter was in fact properly registered and eligible to vote *in that jurisdiction*. . . . but the voter's name was erroneously absent from the list of registered voters. This provision is in no way intended to require any State or locality to allow voters to vote from any place other than *the polling site* where the voter is registered.[124]

Most of Bond's explanation implies that the relevant requirement is jurisdiction, not precinct. It is only the last sentence that potentially narrows the counting standard down to the precinct level.

Senator Dodd, the chair of the Senate Rules Committee and the highest ranking participant in the Senate debate for the Democratic majority, also elaborated on the counting requirement in a discussion of a different HAVA provision—the first-time voter mail registrant photo ID requirement.[125] He stated that:

> Any provisional ballot must be promptly verified and counted if the individual is eligible under State law to vote *in the jurisdiction*. Nothing in this conference report establishes a rule for when a provisional ballot is counted or not counted. Once a provisional ballot is cast, it is within the sole authority of the State or local election official to determine whether or not that ballot should be counted, according to State law. Consequently. . . if [a] voter otherwise

---

> is registered but has been assigned to a different polling place, it is the intent of the authors of this bill that the poll worker can *direct the voter to the correct polling place*. In most States, the law is specific on the polling place where the voter is to cast his ballot. Again, this bill upholds state law on that subject.

Id. (emphasis added). There is an ambiguity between the statement's first two sentences and its last two.

124. *Id.* at S10493 (emphasis added).

125. *See* HAVA § 303(b), 42 U.S.C. § 15483(b) (Supp. III 2005).

> meets the requirements as set out in State law for eligibility, the State shall count that ballot pursuant to State law.[126]

This paragraph reestablishes what is missing from the actual language of HAVA § 302(a)(4), that the standard for counting a vote is eligibility in the jurisdiction. The remainder of the paragraph confirms that state law controls whether a voter is eligible in the jurisdiction, even though none of the later sentences contain the wording "in the jurisdiction."

Senator Dodd continued:

> As I stated yesterday, nothing in this bill establishes a Federal definition of when a voter is registered or how a vote is counted. If a challenged voter submits a provisional ballot, the State may still determine that the voter is eligible to vote and so count that ballot . . . . Whether a provisional ballot is counted or not depends solely on State law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter's eligibility to vote is determined under State law.[127]

Even though this statement is in the context of the mail registrant provision, it still leaves the counting decision in state hands.

C. *The 2004 Pre-Election Litigation Over the Provision's Meaning*

The problem of casting and counting out-of-precinct provisional ballots incited a series of court cases in the last months of the 2004 election campaign. Various individuals and Democratic party organizations filed complaints in battleground states that had announced plans not to count such ballots, or—in more extreme circumstances—not even to issue provisional ballots to voters who showed up in the wrong precinct. The spate of litigation was sparked by a fear among Democrats that Republican election administrators in the targeted battleground states, invoking state precinct voting requirements, would improperly and unfairly deny lawfully registered voters the right to cast a provisional ballot and to have that ballot counted.[128]

Over a two-week period, from October 12–26, 2004, five different trial courts and one appellate court weighed in on these issues. Their opinions contained four recurrent themes: (1) the meaning of the

---

126. *Id.* at S10508 (statement of Sen. Dodd) (emphasis added).

127. *Id.* at S10510.

128. *See, e.g.*, Jo Becker, *Legal Battle for Presidency Underway; Lawsuits over Election Results Pending, with Both Sides Gearing up for More*, WASH. POST, Oct. 20, 2004, at A1; Gary Martin, *'04 Court Fight Already Is On; More than 27 Election Lawsuits Have Been Filed in Nine States*, SAN ANTONIO EXPRESS-NEWS, Oct. 25, 2004, at 1A; Vincent Sherry, *Like 2000, 2004 Raises Issue of Disfranchisement, Voter Fraud*, WASH. INFORMER, Nov. 4–10, 2004, at 1.

word "jurisdiction" in section 302(a); (2) whether this use of jurisdiction trumps state requirements to count only provisional ballots cast in the correct *precinct*; (3) the correct textual interpretation of section 302(a)(4); and (4) the importance of the various post-Conference statements on the Senate floor. Each court used one or more of these themes to justify its decision.

The first court decision was *Hawkins v. Blunt*,[129] issued on October 12, 2004. *Hawkins* was filed in a district court in Missouri shortly after the August 3 Missouri primary, on behalf of the Missouri Democratic Party and three individual plaintiffs who cast provisional ballots because their names were not on their polling place registers and they had not been sent to their correct polling places under a Missouri law that they claimed violated HAVA.[130] The court found it reasonable and not in conflict with HAVA for a voter, under the challenged state statute, to be directed to his or her correct polling place before being given a provisional ballot.[131] It also found the state law reasonable and not in conflict with HAVA in requiring that, in cases where a voter so directed refused to go to that polling place, the voter would be given a provisional ballot but that it need not be counted.[132] The court concluded that "Congress did not intend to . . . require that any person residing within one congressional district be allowed to cast a provisional ballot at any polling place within that district."[133] The court then ruled on the portion of the statute stating that provisional ballots cast in the wrong polling place would not be counted.[134] The court found it "troublesome when interpreted literally" that it would "totally negate" the first three paragraphs of the statutory provision.[135] Therefore, the reference to a "wrong polling place" must be read as limited to when a voter is directed properly to the correct polling place but refuses to go.[136] By limiting the reach of the Missouri statute, the court tried to remove its ruling from the general fight over counting wrong-precinct provisional ballots.

---

129. Hawkins v. Blunt, No. 04-4177-CV-C-RED, 2004 U.S. Dist. LEXIS 21512 (W.D. Mo. Oct. 12, 2004).

130. *Id.* at *3–4, *11–13; *see also* MO. REV. STAT. § 115.430.2 (2000 & Supp. 2005).

131. *See id.* at *29–33.

132. *Id.* at *32. *See also* MO. REV. STAT. § 115.430.2.

133. *Hawkins*, 2004 U.S. Dist. LEXIS 21512, at *32.

134. MO. REV. STAT. § 115.430.4.

135. *Hawkins*, 2004 U.S. Dist. LEXIS 21512, at *33–34.

136. *See id.* at *34.

Two days later, a district court in Ohio decided *Sandusky County Democratic Party v. Blackwell* (*Blackwell I*).[137] The plaintiffs challenged Ohio Secretary of State Kenneth Blackwell's Directive 2004-33, issued on September 16, 2004.[138] That directive, according to the plaintiffs: (1) limited access to provisional ballots to only those voters who had moved from one precinct to another, rather than providing provisional ballots to all contested voters; (2) denied provisional ballots to voters attempting to vote out-of-precinct; (3) failed to require notifying disputed voters of their right to a provisional ballot; and (4) required verification of the voter's status at the polling place on election day rather than permitting confirmation after election day.[139]

The court's first finding, and potentially the most important and far-reaching for future HAVA litigation, was the affirmation that plaintiffs could avail themselves of 42 U.S.C. § 1983, a Reconstruction-era statute intended to empower newly enfranchised African-American voters to enforce their civil rights,[140] as a private right of action for enforcing at least the provisional voting requirement of HAVA.[141] The court went on to support the plaintiffs and to issue the preliminary injunction.[142] The basic problem with Directive 2004-33, the court explained, was that it merely reiterated Ohio state law that existed before the passage of HAVA; it had not adjusted to conform to the requirements of HAVA.[143] The judge found this particularly difficult to understand given that Secretary Blackwell had waited until September 16, 2004, to issue the directive, almost twenty-three

137. 339 F. Supp. 2d 975 (N.D. Ohio 2004).

138. *See id.* at 979–80 (reprinting Directive 2004-33).

139. *Id.* at 981.

140. 42 U.S.C. § 1983 (2000). *See also* Monroe v. Pape, 365 U.S. 167, 174–77 (1960) (discussing the origins of section 1 of the Ku Klux Klan Act of April 20, 1871, which later became § 1983); *Developments in the Law: Section 1983 and Federalism*, 90 HARV. L. REV. 1137, 1141–56 (1977) (describing the background to the enactment of § 1983).

141. *See Blackwell I*, 339 F. Supp. 2d at 981–87. While beyond the scope of this paper, the availability of § 1983 to private litigants must certainly have been a shock to those who, during the passage of HAVA, worked so hard to ensure that HAVA itself would create no private right of action. *See* 148 CONG. REC. S10505 (daily ed. Oct. 16, 2002) (statement of Sen. Dodd) (noting that the House "simply would not entertain" a private right of action under HAVA). Their success inadvertently created the conditions for invoking § 1983. *See* 339 F. Supp. 2d at 986 (finding that statements opposing a HAVA private right of action do not show intent to disallow suit but intent not to provide a direct cause of action, opening door to § 1983 suits). It remains to be seen if other provisions of HAVA will be interpreted by the courts to be "unambiguously conferred" rights enforceable under § 1983. *See id.* at 981.

142. *Blackwell I*, 339 F. Supp. 2d at 977.

143. *See id.* at 988.

months after HAVA's enactment and just six weeks before the election.[144]

Then the court turned to the meaning of HAVA § 302(a).[145] The court concluded that while HAVA did not define jurisdiction, Congress intended it to have the same meaning as "registrar's jurisdiction" in the NVRA.[146]

The court next addressed the counting provision, section 302(a)(4). The court did not believe it was necessary to delve into the HAVA legislative history, because the plain text of HAVA required counting out-of-precinct provisional ballots cast by voters validly registered in the jurisdiction (in Ohio, the county).[147] The court nonetheless discussed the various floor statements cited by the defendants in support of their claim that "provisional ballots need not be allowed in the 'wrong' precinct, or, if allowed, need not be counted."[148] The court noted that, of the seven passages cited by defendants, the three statements by Dodd said nothing about "voting in the 'wrong' precinct."[149] Two of the four Bond statements discussed wrong jurisdictions, not wrong precincts.[150] Of the two remaining Bond statements, the court said that one, stating that poll workers may direct a voter to the correct polling place, was not in conflict with HAVA because nothing in HAVA prohibited a poll worker from informing a voter of the voter's correct polling place.[151] Senator Bond's remaining statement, that poll workers may refuse to allow voters to vote at a wrong polling site, was more than offset by statements by Senators Dodd and Durbin that a voter has an express right to cast a provisional ballot.[152]

Returning to the text of section 302(a)(4), the court interpreted the critical HAVA words "determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law," as having two independent clauses.[153] The first clause is conditional, and the second mandates counting the ballot—even if cast out-of-precinct but within the jurisdiction of registration—if the condition in the first

144. *Id.*
145. *See id.* at 988.
146. *Id.* at 990 & n.5. Here, the court cited to HAVA's legislative history for support, in contrast to its view that it was unnecessary to turn to the legislative history to interpret the counting provision generally. *See id.* at 990.
147. *Id.* at 991.
148. *Id.* at 990.
149. *Id.* at 991 n.7.
150. *Id.*
151. *See id.* at 991.
152. *See id.*
153. *Id.* at 992.

clause was met. The reference to state law in the second clause preserved for the state the right to determine how, not whether, to count the vote.[154] The court noted that out-of-precinct provisional ballots were to be counted only for federal offices and not for state or local offices or issues, thus doing no harm to any state interest.[155]

The court distinguished *Hawkins* on the narrowness of the Missouri court's holding that it was permissible not to count a voter's provisional ballot when the voter, who had been directed to his or her correct precinct by poll workers in the wrong precinct, refused to go.[156] The Ohio directive, which absolutely prohibited counting out-of-precinct provisional ballots, was much broader.[157] The court also noted that the *Hawkins* court concluded that a blanket refusal to count any out-of-precinct provisional ballots probably would conflict with HAVA.[158]

On October 20, six days after *Blackwell I*, the same court ruled on a revised Directive 2004-33 issued on October 18.[159] The court found that the revised directive had not cured the failings identified by the court in its October 14 preliminary injunction against the initial directive.[160] The new directive still failed to make provisional ballots available to all disputed voters.[161] To be sure, the revised directive, by allowing counting of provisional ballots that had been cast in the correct precinct, satisfied one of Congress's aims: ensuring that out-of-date registration rolls at the polling place did not prevent someone assigned to that polling place from voting and having that vote counted.[162] What the directive ignored were the other forms of mismanagement, well-recognized during HAVA's drafting, that cause an eligible voter's registration to be challenged and right to vote refused.[163] The revised directive also failed to require notifying voters of their right to vote provisionally and that they could vote provisionally anywhere in the county.[164] The court gave Secretary Blackwell until the end of the day to file a compliant directive.[165]

---

154. *Id.*
155. *See id.* at 990, 993.
156. *See id.* at 993–94.
157. *Id.*
158. *Id.* at 993.
159. *See* Sandusky County Democratic Party v. Blackwell (*Blackwell II*), 340 F. Supp. 2d 815, 816 (N.D. Ohio 2004).
160. *See id.* at 819–20.
161. *See id.* at 819.
162. *See id.*
163. *Id.*
164. *See id.* at 820.
165. 340 F. Supp. 2d at 823.

On October 18, a Colorado state court issued its ruling on counting out-of-precinct provisional ballots in *Colorado Common Cause v. Davidson* (*CCC*).[166] In this case, the plaintiffs challenged a state statute and an administrative rule that no provisional ballot cast in the wrong precinct would be counted, except for presidential and vice presidential elections, arguing that it violated the federal constitution, the state constitution, and HAVA.[167] This court, like the *Blackwell I* court, first found that section 1983 provided the plaintiffs a private right of action under HAVA.[168] The court found that the statute and administrative rule did not violate HAVA. In particular, the court concluded that HAVA's use of the term "jurisdiction" was ambiguous.[169] Relying on the plaintiffs' argument that "jurisdiction" should be given its ordinary meaning of a geographical area having some degree of political self-governance, the court stated that the word could just as easily mean "state" as it could "county."[170] But the court noted that the plaintiffs had conceded that HAVA did not require counting provisional ballots cast in the wrong county.[171] The court did not discuss the relevance of the NVRA definition of jurisdiction. The court also relied on Senator Bond's post-conference floor statement about the authority of poll workers to direct voters to the correct precinct, although, as discussed above, that floor statement does not concern the counting of provisional ballots.[172]

The next day, October 19, a district court in Michigan handed down a ruling in favor of counting out-of-precinct provisional ballots in *Bay County Democratic Party v. Land.*[173] First, the court agreed with the plaintiffs that they could bring a § 1983 action.[174] Then the court addressed the issue of whether out-of-precinct provisional ballots should be counted.[175] The court held that they should be counted; since the Michigan statute prescribing the qualifications to vote did

166. Colo. Common Cause v. Davidson, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004), *available at* http://www.courts.state.co.us/exec/media/cases/04CV7709.pdf.

167. *Id.*, at *1–2.

168. *Id.*, at *8.

169. *Id.*, at *10.

170. *Id.*

171. *Id.* The court also offered two justifications for not counting such ballots, one based on the state constitution and one on administrative practicality. *See id.* at *11.

172. *Id.*, at *11. As discussed above, that floor statement did not concern the counting of provisional ballots. *See supra* note 123 and accompanying text.

173. 347 F. Supp. 2d 404, 438 (E.D. Mich. 2004).

174. *See id.* at 424–27.

175. *See id.* at 428.

not include precinct residency, voting out-of-precinct did not constitute failure to meet a qualification to vote.[176]

Like the *Blackwell I* court, and relying heavily on that opinion, the *Bay County* court found that the distinction between *whether* to count a vote and *how* to count a vote was a meaningful one.[177] The court's bottom line was that states retained the power to organize voting on the basis of precincts and otherwise to enforce precinct-based voting. They could require voters to vote in-precinct, direct voters to their correct precinct, accept regular ballots only from those voting in precinct, and even criminally punish voters who intentionally voted out-of-precinct.[178] But, finding support from both *Hawkins* and *Blackwell*, the court held that states may not refuse to count a provisional ballot for federal races cast out-of-precinct but within the proper jurisdiction.[179]

Finally, the court dismissed the defendants' arguments that counting the votes of people voting out-of-precinct would cause vote dilution; the court held so on the grounds that the vote would count only for races for which the voter was eligible to vote.[180] For instance, for jurisdictions having more than one member of the House, the vote would only count if cast for candidates for the seat in the voter's actual congressional district. If the out-of-precinct ballot included a vote for a House candidate in a different district, that part of the ballot would not be counted.

Two days later, a district court in Florida ruled on the provisional ballot issue in *Florida Democratic Party v. Hood* (*FDP*).[181] Like the prior courts, this district court found that § 1983 was available to the plaintiffs.[182] The court also upheld plaintiffs' arguments that voters must be allowed to cast provisional ballots.[183] But the court disagreed with plaintiffs as to their right to have out-of-precinct provisional ballots counted.[184] This court interpreted HAVA as requiring the state to take the time to determine, with the more "perfect knowledge" available after election day, whether the person was eligible under state law broadly, to vote at any polling place, or only narrowly to vote at the

176. *See id.* at 430–31.
177. *Id.* at 431–32.
178. *Id.* at 432.
179. *See id.* at 432–34.
180. *Id.* at 436.
181. 342 F. Supp. 2d 1073, 1083 (N.D. Fla. 2004).
182. *See id.* at 1077–78.
183. *Id.* at 1081.
184. *See id.* at 1079–80.

polling place where the provisional ballot was cast.[185] The judge rejected the plaintiffs' broader reading of "eligible" as meaning eligibility to vote in the election, without regard to polling place. In doing so, he relied on his interpretation of the post-Conference statements of Senator Bond, but he mistakenly attributed to Senator Dodd Senator Bond's comment that HAVA does not require out-of-jurisdiction ballots to be counted.[186] For this judge, the HAVA phrases "registered voter in the jurisdiction," "eligible to vote in an election for Federal office," and "eligible to vote in that election" were not controlling because they did not appear in section 302(a)(4).[187]

The final court action on provisional ballots was Ohio Secretary of State Kenneth Blackwell's appeal to the Sixth Circuit Court of Appeals, which was decided on October 26 (*Blackwell II*).[188] The appellate court affirmed the availability of § 1983[189] but, in sweeping language, rejected the district court's ruling on the counting standard.[190] Noting that at least twenty-seven states count only in-precinct votes,[191] the court sided with the *FDP* court's interpretation that HAVA's provisional voting section was intended to correct for imperfect knowledge at the poll on election day.[192]

The Sixth Circuit reviewed HAVA's use of the word "jurisdiction" and concluded that the *Blackwell I* court was wrong to derive a congressional intent to ascribe the NVRA meaning to the word.[193] The court found that Senator Dodd's statement about the NVRA definition[194] was outweighed by the last two sentences of Senator Bond's comment on the counting requirement and the last sentence in Senator Bond's colloquy with Senator McConnell, both of which discuss state law requirements to vote at specific polling places.[195] The appellate court concluded that HAVA did not define "jurisdiction" and that the term had too many meanings to compel the conclusion that it meant, in the Sixth Circuit's words, the "geographic reach of the unit of gov-

185. *See id.*
186. *See id.* at 1080 n.7; *see also supra* note 123.
187. *See id.* at 1080–81.
188. 387 F.3d 565 (6th Cir. 2004). The defendants in *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004), also filed an appeal with the Sixth Circuit, but the two cases were consolidated. Bay County Democratic Party v. Land, No. 3044720-1 (6th Cir. Oct. 23, 2004) (order granting motion to consolidate).
189. 387 F.3d at 572–73.
190. *See id.* at 568.
191. *Id.* at 568 & n.1.
192. *See id.* at 570.
193. *Id.* at 574–75 & n.4.
194. *See supra* note 116 and accompanying text.
195. *Id.* at 575. *See also supra* notes 122–24 and accompanying text.

ernment that maintains the voter registration rolls."[196] Furthermore, even if the term "jurisdiction" did have that meaning, it only affected the standard for casting, not counting.[197]

The Sixth Circuit also rejected the district court's two-clause interpretation of the section 302(a)(4) counting provision.[198] The appellate court relied on Senator Bond's statement disavowing intent to overturn state counting laws for out-of-*jurisdiction* ballots[199] and the last sentence of Senator Dodd's statements regarding mail registrants[200] to demonstrate that there was no clear congressional intent to overturn state counting laws.[201] For this court, HAVA was "quintessentially about being able to *cast* a provisional ballot,"[202] not to have it counted.[203]

The Sixth Circuit decision was the last of the pre-election litigation regarding out-of-precinct provisional ballot counting. There was no time remaining in the six days before the election to appeal these decisions or pursue some of the other pending cases. On November 3, the day after the election, the Kerry campaign decided that there were not enough provisional ballots in Ohio to create a meaningful chance for Kerry to capture Ohio's electoral votes.[204] Thus, appeals became meaningless.

In all of these cases, the use of HAVA's legislative history is somewhat ironic. The Democratic litigants and the more liberal judges in Ohio and Michigan took a textual approach to statutory interpretation,[205] while the Republican litigants and the more conservative judges in Florida and the Sixth Circuit Court of Appeals took the

---

196. *See id.*

197. *See id.* at 578–79 & n.5.

198. *See id.* at 577.

199. *Id.* at 578 (citing 148 CONG. REC. S10491 (daily ed. Oct. 16, 2002) (statement of Sen. Bond) ("It is not the intent of the authors to overturn State laws regarding registration or state laws regarding the jurisdiction in which a ballot must be cast to be counted.")); *see supra* note 122 (discussing Bond's statement in the legislative history).

200. *Id.* (citing 148 CONG. REC. S10510 (daily ed. Oct. 16, 2002) (statement of Sen. Dodd) ("Whether a provisional ballot is counted or not depends solely on State law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter's eligibility to vote is determined under State law.")); *see supra* note 127 and accompanying text (discussing Dodd's statement in the legislative history).

201. *See id.*

202. *Id.* at 576.

203. *Id.* at 578.

204. *See* Balz, *supra* note 13.

205. *See supra* Part II.

approach associated with "judicial activism"[206]—relying heavily on post-conference floor statements from only one house of Congress and, even more surprisingly, on the statements of a senator in the minority, Senator Bond. Furthermore, when the various courts delved into the floor statements of Senators Bond and Dodd, they did so in a selective way that did not fully convey what the two senators were saying.[207]

D. The EAC's Survey of Provisional Ballot Casting and Counting in 2004

With the help of a United States Election Assistance Commission (EAC) survey completed in the fall of 2005[208] and some ancillary analysis by the Government Accountability Office in a report completed in June 2006,[209] we now have the opportunity to review the magnitude of the effect of the precinct limitations on provisional balloting in the 2004 election.

The EAC conducted a survey on twelve different general election topics, including the casting and counting of provisional ballots, and received questionnaire responses from 6,568 local election administration jurisdictions (i.e., county or township election administrators).[210] The report's primary author, Kimball Brace, found that the jurisdictions reported that 1,901,591 provisional ballots had been cast, and 1,225,915 (64.5%) of those cast had been counted.[211] The provisional ballots cast represented 2.56% of all ballots cast in polling places on the day of the election.[212]

---

206. *See* Jane S. Schacter, *The Confounding Common Law Originalism in Recent Supreme Court Statutory Interpretation: Implications for the Legislative History Debate and Beyond*, 51 STAN. L. REV. 1, 7 ("[J]udicial use of legislative history enables and perhaps encourages judicial activism.")

207. *See supra* Part IV.B.3.

208. *See* EAC SURVEY, *supra* note 17. The EAC was created by HAVA § 201–10, 42 U.S.C. §§ 15321–30 (Supp. III 2005).

209. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, ELECTIONS: THE NATION'S EVOLVING ELECTION SYSTEM AS REFLECTED IN THE NOVEMBER 2004 GENERAL ELECTION (2006) [hereinafter GAO REPORT].

210. *See* EAC SURVEY, *supra* note 17, at Executive Summary 1, 3; *see also* U.S. ELECTION ASSISTANCE COMM'N, A SUMMARY OF THE 2004 ELECTION DAY SURVEY: HOW WE VOTED: PEOPLE, BALLOTS, & POLLING PLACES, 7 tbl.1 (2005) [hereinafter EAC SUMMARY].

211. *See* EAC SURVEY, *supra* note 17, at Executive Summary 5.

212. *Id.* at Executive Summary 5, Provisional Ballots 6-5. The GAO estimated that between 1.1 million and 1.7 million provisional ballots had been cast. GAO REPORT, *supra* note 209, at 243. The wide range was the result of an estimated 20 percent of GAO's surveyed jurisdictions' failing to provide data on provisional ballots cast. *Id.* The GAO did not estimate the number of counted provisional ballots because of the very large number (40 percent) of jurisdictions not providing that data. *Id.*

The EAC analysis reached nineteen general conclusions about provisional ballots, five of which we discuss here. First, jurisdictions permitting the counting of out-of-precinct ballots nonetheless cast in the proper jurisdiction had higher rates of provisional ballots cast and much higher rates of counting such ballots than did other jurisdictions.[213]

Second, there was a much higher rate of casting provisional ballots in Voting Rights Act § 203 language minority jurisdictions, in which ballots must be offered in languages other than English[214]—more than half (over one million) of all provisional ballots cast were cast in section 203 jurisdictions. Of all ballots cast in section 203 jurisdictions, 5.09% were provisional, compared to 1.38% for other jurisdictions.[215] While section 203 jurisdictions counted such ballots at a slightly higher rate than other jurisdictions, that rate "could not offset the much higher incidence of casting provisional ballots."[216]

Third, urban and other high population density areas had both higher rates of casting and of counting provisional ballots than rural and other low population density areas. The smallest jurisdictions (voting age populations of less than one thousand) had rates of casting as low as 0.08% of all polling place ballots cast, while the rates reached 6.08% in the largest (voting age populations of greater than one million).[217]

Fourth, the rates of counting provisional ballots tended to increase with the average income and educational level of a jurisdiction, with higher income jurisdictions counting nearly twice as many provisional ballots cast (69.30–75.90%) as low-income jurisdictions (39.80%).[218] In the least-educated jurisdictions, the counting rate of provisional ballots was as low as 52.60%, while it rose to 72.30% for jurisdictions with the highest education level.[219]

---

213. *See* EAC SURVEY, *supra* note 17, at Provisional Ballots 6-6. As previously noted, not all states count out-of-precinct ballots. *See* Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 568 & n.1 (6th Cir. 2004) (stating that at least twenty-seven states and the District of Columbia required counting ballots only if cast in the correct precinct); GAO REPORT, *supra* note 209, at 235 fig.45, 236 (finding that thirty-two states and the District of Columbia had such a restriction; fourteen states permitted counting provisional ballots cast anywhere within the relevant county, or in Washington's case, within the state; four states were exempt from provisional voting).

214. 42 U.S.C. § 1973b(f) (2000); *see generally* Tucker, *supra* note 9, at XXX.

215. *See* EAC SURVEY, *supra* note 17, at Provisional Ballots 6-11.

216. *See id.* at Provisional Ballots 6-6, 6-11.

217. *See id.* at Provisional Ballots 6-7, 6-10.

218. *Id.* at Provisional Ballots 6-6, 6-10.

219. *Id.* at Provisional Ballots 6-6, 6-11.

Finally, jurisdictions in states with statewide voter registration databases had noticeably lower rates of casting provisional ballots—almost half of the rate for other jurisdictions—suggesting that better administration of voter rolls may contribute to lowering the need for provisional ballots.[220]

The EAC also asked the states to provide statewide summaries identifying the most common reasons for rejecting provisional ballots without providing standard definitions for the potential reasons and without asking the states to provide the actual number of ballots rejected for each reason.[221] The five most common reasons submitted were: (1) voter not registered (eighteen states); (2) voting in the wrong precinct (fourteen states); (3) improper ID (seven states); (4) incomplete ballot form (six states); and (5) voting in the wrong jurisdiction (five states).[222] Although the EAC Survey questionnaire did not define categories of possible reasons, the response rates for the top five reasons are sufficiently different to establish the relative importance of the precinct constraint as a reason for not counting a provisional ballot.

The EAC Survey also found that, of the forty-six states that had rules for whether to count only provisional ballots cast within the proper precinct or within the jurisdiction generally, twenty-eight only counted those cast within the proper precinct, while eighteen permitted the counting of such ballots cast anywhere within the jurisdiction.[223] Yet the data on the most common reasons for rejecting provisional ballots show only fourteen states mentioning the precinct restriction as one of the most common reasons for refusing to count provisional ballots.[224] Hopefully, the EAC's 2006 Election Day Survey will provide more meaningful information about the magnitude of the out-of-precinct problem.

---

220. *Id.* at Provisional Ballots 6-6, 6-12.

221. *Id.* at Provisional Ballots 6-5. The EAC did not provide standard definitions for these reasons or ask the states to report the number of ballots rejected for each reason.

222. *Id.*

223. *Id.* at Introduction 12.

224. *Id.* at Introduction 12, Provisional Ballots 6-5.

IV.
FROM PROVISIONAL BALLOT TO ACTUAL VOTE: LESSENING THE FRICTION BETWEEN JURISDICTIONS, POLLING PLACES, AND PRECINCTS

A. *Where the Courts Went Wrong*

Given the magnitude of the out-of-precinct problem, interpretation of HAVA's provisions remains of great importance to upcoming elections. The courts' interpretations in 2004 are not definitive. Other courts likely will be called on to reexamine the problem. We believe that the restrictive rulings of *Blackwell II* and *FDP* should not mark the end of the debate. The HAVA text, the context of its enactment, and its underlying premises provide more support for counting the federal portion of out-of-precinct provisional ballots than those courts were willing to recognize. We also believe that the Senate floor statements, made after the enactment of the Conference report by the House and without consultation with other leading conferees, should not control the interpretative debate. Even if they did, a careful reading shows them not supporting states' in-precinct restrictions.

All the courts that discussed the need to resort to HAVA's legislative history began with the same analytic framework. The starting point for determining congressional intent was the plain meaning of the words of the statute. If there were ambiguities in the text, or if the text would lead to illogical results, the legislative history could be used as a supplement.[225] Yet in applying this framework, the courts came to different conclusions regarding the need to use legislative history. The *Hawkins* court found the text clear but buttressed its analysis with legislative history anyway.[226] In *Blackwell I*, the district court also found the text clear and that the legislative history supported the text.[227] In *Bay County*, the court found the statute clear and no need to resort to legislative history.[228] The *FDP* court found a reasonable reading of the text comported with a "remarkably clear and consistent" legislative history.[229] The *CCC* court and the *Blackwell II* court found the text ambiguous and thus had to resort to the legislative

225. *See* Hawkins v. Blunt, No. 04-4177-CV-C-RED, 2004 U.S. Dist. LEXIS 21512, at *15 (W.D. Mo. Oct. 12, 2004); Sandusky County Democratic Party v. Blackwell (*Blackwell I*), 339 F. Supp. 2d 975, 990 (N.D. Ohio 2004); Bay County Democratic Party v. Land, 347 F. Supp. 2d 404, 427 (E.D. Mich. 2004).

226. *See Hawkins*, 2004 U.S. Dist. LEXIS 21512, at *23–26.

227. *See Blackwell I*, 339 F. Supp. 2d at 990–91.

228. *See Bay County*, 347 F. Supp. 2d at 427.

229. Fla. Democratic Party v. Hood, 347 F. Supp. 2d 1073, 1080 & n.7 (N.D. Fla. 2004).

history.[230] These discrepancies are not unusual given that a plain-text-first approach still leaves a great deal of subjective discretion in the hands of the judges reviewing a statute. The methodology for statutory interpretation has always been an unsettled area of American law and will remain so. In the words of Justice Scalia, "[w]e American judges have no intelligible theory of what we do most."[231]

Here, a textual examination in isolation offers no definitive answer. Until the deletion of the phrase "in the jurisdiction" in the conference committee, there was no conflict between section 302(a)(4) and the earlier portions of section 302(a). Both contained "jurisdiction," and section 302(a)(4) explicitly would have required counting provisional ballots cast by persons eligible to vote in the jurisdiction.[232] With the deletion, the analysis obviously became more problematic. There is nothing in the public record to tell us specifically why the deletion occurred, let alone that it was intended to unlink section 302(a)(4) from section 302(a)(2). While a strictly textual analysis can be used to support finding that the counting provision is unlinked from the casting provision (e.g., the inclusio unius[233] implication of Congress including "jurisdiction" in the casting provision but not in the counting provision), one could make a case, albeit still subjective, for the existence of "compelling" evidence of a contrary legislative intent—that, despite the omission in section 302(a)(4), HAVA requires the counting of out-of-precinct provisional ballots confirmed to have been cast by voters eligible to vote in the jurisdiction. We, however, prefer a less formalistic and more pragmatic statutory interpretation methodology.

The various intentionalist[234] and pragmatic approaches[235] all look for independent evidence of the intent of the legislators. These approaches inevitably rely on legislative history, and questions imme-

230. *See* Colo. Common Cause v. Davidson, No. 04CV7709, 2004 WL 2360485, at *10–11 (D. Colo. Oct. 18, 2004), *available at* http://www.courts.state.co.us/exec/media/cases/04CV7709.pdf; Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 578 (6th Cir. 2004).

231. SCALIA, *supra* note 23, at 14.

232. *See supra* notes 114–19 and accompanying text.

233. *See* ESKRIDGE, FRICKEY & GARRETT, *supra* note 21, at 263–64 (describing the canon of inclusio unius as indicating that if "Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," but finding the canon unreliable).

234. *See generally id.* at 221–30 (outlining intentionalist approach to statutory interpretation).

235. *See generally id.* at 249–52 (describing pragmatic theory of statutory interpretation).

diately arise as to which parts of the legislative history are most authoritative. Eskridge, Frickey, and Garrett divide the issue of evidence of collective legislative intent into two subordinate issues: problems of aggregation (did a majority that voted on the bill agree with the individual speaker's or writer's interpretation?) and problems of attribution (identifying the pivotal legislators whose statements might disclose Congress's actual intent).[236] Tautologically, the thinnest component of legislative history is that of floor statements by the minority party in one house after the passage of the conference report in the other. Here, even if we give weight to the comments of Senator Bond, the balance of the legislative history still supports the view that the conference's deletion of "jurisdiction" was without import.

As floor leader for the majority, Senator Dodd's post-conference remarks have more weight. They also can be read as more ambiguous. His remarks still focus on eligibility in the jurisdiction, which was the counting standard as it existed when the bill passed the Senate. Given Dodd's overall pro-voter stance on election reform,[237] it is hard to believe that he would intentionally limit the counting of provisional ballots based on out-of-precinct rules through these floor statements.

As for the House's legislative history, there is no indication that the primary sponsors ever retreated from their position, stated in the Committee report accompanying the House bill, of interest in providing countable provisional ballots when a voter appears at the wrong precinct.[238]

On balance, we believe that the reasonable reading of the legislative history is that the deletion in conference was not meant to be substantive. The smattering of comments relied on by the courts with more restrictive interpretations do not overcome the problems of aggregation of the contrary evidence.

Furthermore, the logic of the 2004 rulings in favor of the defendants, especially in Ohio, collapses when considering the case of a single polling place that serves multiple precincts. While there is a one-to-one relationship between many of the estimated 185,000 polling places in the United States and precincts, this is frequently not the

---

236. *See id.* at 224–25.

237. *See, e.g.*, Senator Chris Dodd, Announcing Conference Agreement on Election Reform Legislation (Oct. 4, 2002), http://www.senate.gov/~dodd/press/Speeches/107_02/1004.htm.

238. H.R. REP. NO. 107-329, pt. 1, at 37–38 (2001); *see supra* notes 106–09 and accompanying text.

case.[239] Indeed, in some dense urban areas, a single polling place may serve as the physical voting location for voters living in two or more precincts.[240] Voters in urban areas may arrive at their assigned polling place, see that it contains multiple precinct lines, and either join, or are directed to, the wrong line.[241]

In cases where a polling place serves two or more precincts, separate registration lists corresponding to those precincts may be deployed at the polling place, and the individual precincts may even have separate voting machines, voting areas, and separate teams of election workers.[242] In a well-managed polling place, the error will likely be quickly detected, and the voter will probably find his or her way to the correct precinct line and vote a regular ballot without incident. In a poorly managed polling place, the error may not always be detected, and the voter may be informed that his or her name is not on the registration roll for that precinct. In that scenario, the voter will have no choice but to cast a provisional ballot, even though the designated precinct, and the registration roll with that voter's name, is not a few miles or even blocks away, but mere feet. A voter who ends up in the wrong precinct line at the right polling place and votes provisionally because of poorly trained poll workers unable to direct him to the right precinct line has no more chance of having his ballot counted than does a voter who happens to vote provisionally in the wrong polling place. The remedy afforded by section 302(a) as interpreted by the court rulings for the defendants (allowing voters to cast provisional ballots, but not requiring that they be counted) is of no more use to the former than it is to the latter. The Sixth Circuit ruling in *Blackwell II*—allowing voters to cast provisional ballots but not requiring that they be counted—is of no use to these voters and effectively perpetuates much of the problem section 302(a) was intended to solve. The only "benefit" remaining to wrong-line voters is that they

239. *See, e.g.*, GA. CODE ANN. § 21-2-2(28) (2006); 10 ILL. COMP. STAT. 5/1-3(13); MICH. COMP. LAWS ANN. § 168.654 (West 2005); NEB. REV. STAT. § 32-114 (2005); OHIO REV. CODE ANN. § 3501.01(Q) (West 2006); 25 PA. STAT. ANN. § 2602(g) (2006); TENN. CODE ANN. § 2-1-104(18) (2005); VA. CODE ANN. § 24.2-101 (2003).

240. *See* Stuart Pfeifer, *Multi-Precinct Polls Blamed for Mix-Up*, L.A. TIMES, Mar. 21, 2004, at B.5 (noting that "in many instances, two or more precincts had been consolidated into one polling station").

241. *See* Miles Rapoport, *Provisional Ballot Problems Loom for November 7, According to New Publication*, U.S. NEWSWIRE, Oct. 17, 2006 (describing how "something as simple as getting in line for the wrong precinct" cost citizens their votes in Lucas County, Ohio in 2004); Ford Fessenden, *A Rule to Avert Balloting Woes Adds to Them*, N.Y. TIMES, Aug. 6, 2004, at A1 (provisional ballot not counted when voter was at wrong polling place but correct one was ten feet away in high school gym).

242. *See id.*

walk away thinking they may have exercised their franchise, whereas before HAVA they walked away knowing they had not. Such short-term psychological satisfaction to the voter and the minimization of disruptions at the polling place were not what HAVA intended. HAVA's main purpose was to secure the federal portion of the franchise for people who are entitled to vote in federal elections, even if that imposed additional duties on election offices.

B. Options for Improving Efficiency at the Precinct Level

Our research leads us to conclude that there is a need for a public debate about the utility of precincts, the way in which they are defined, the legitimacy of disqualifying federal ballots cast in the correct jurisdiction but incorrect precinct, and, most fundamentally, whether precincts conceptually are obsolete and should be abolished. We do not recommend any particular outcome, but we are persuaded that there is no meaningful rationale for the rules or patterns we currently have.

Two of the most obvious options for change are substantially raising or eliminating the maximum number of people assignable to a precinct and/or assigning a minimum number of people per precinct. The effect of such changes would be to reduce the total number of precincts in a jurisdiction. This in turn would simplify the bookkeeping associated with assigning voters to precincts, reduce errors in registration rolls, and minimize the likelihood that a voter will go to the wrong voting place on election day. But any proposal to remove the constraints that result in unduly small precincts must also provide direction to jurisdictions to ensure that reconfigured precincts actually aid voters. The overriding public policy interest must always be to benefit the eligible voter and minimize the chances that he or she will be forced to cast a provisional ballot. Another option is to have the EAC, with the help of the U.S. Census Bureau (or any other agency whose work involves social science analysis) make recommendations as to the logical area footprints for precincts. Additionally, responsibility for defining precincts could be moved from the counties to the state in order to assure uniformity within a state.

While these changes may initially impose additional burdens on already overworked election administrators, they will, in the long run, benefit voters and election administrators alike. After all, provisional ballots are a response to the confusion that arises from imperfections in how precinct boundaries are drawn, how voter registrations are processed and maintained, and how poll workers are trained. To the degree that these imperfections are minimized, recourse to provisional

ballots will decline, sparing election officials the considerable task of qualifying and counting provisional ballots in the days following the election.

C. *Vote Centers: A Possible Solution to the Problem of Precincts*

So far, we have been discussing voting constrained by requirements to vote in one's precinct. As noted in the EAC survey data, a number of states avoid the conflict between provisional balloting and precinct structure by allowing the counting of provisional ballots cast anywhere within the jurisdiction,[243] and one state, Washington, permitted casting provisional ballots anywhere within the state even before HAVA's enactment.[244] But there is an alternative experiment, led by Colorado, to overcome the rigidities of precincts altogether.

1. *The Success of Vote Centers in Larimer County*

In 2003 and 2004, Larimer County became the first of Colorado's counties to shift, on an experimental basis, to a different model—vote centers.[245] Larimer County, like other jurisdictions, was faced with the prospect of implementing HAVA's accessibility requirements. Recognizing the costs of such implementation, the county came up with the idea of expanding the concept of early voting centers, in which voters can cast their vote in-person at certain locations prior to election day,[246] to election day itself.[247] Larimer County consolidated more than 140 existing precincts into twenty-two vote centers where all voters in the jurisdiction could cast their votes at any one of the vote centers anywhere in the county—wherever was most convenient, near home, near work or somewhere else.[248] This model, like voting at the county board of election's central office or at an early voting center, is without precinct constraints.

In May 2004, based on the success of the experiment, the Colorado Legislature enacted a statute permitting any of Colorado's coun-

---

243. *See* EAC SURVEY, *supra* note 17, at Provisional Ballots 6-2, 6-12.

244. *See* FORD-CARTER, *supra* note 88, at 35–36 (discussing Washington's provisional ballot program and recommending that every state adopt a similar program).

245. *See* ELECTIONLINE.ORG, ELECTION REFORM: WHAT'S CHANGED, WHAT HASN'T AND WHY, 2000–2006, at 42 (2006), http://electionline.org/Portals/1/Publications/2006.annual.report.Final.pdf.

246. *See* Nat'l Conference of State Legislatures, Absentee and Early Voting, http://www.ncsl.org/programs/legismgt/elect/absentearly.htm (last visited Feb. 7, 2007).

247. *See* Welcome to the Virtual Courthouse of Larimer County Colorado, Elections: Vote Centers History, http://www.co.larimer.co.us/elections/votecenters_history.htm (last visited Dec. 4, 2006) [hereinafter Larimer County Vote Centers History].

248. *Id.*

ties to create its own vote centers.[249] The statute defines a vote center as "a polling place at which any registered elector in the political subdivision holding the election may vote, regardless of the precinct in which the elector resides."[250] In order to ensure an adequate number of vote centers, the statute required that counties with populations of twenty-five thousand or more active registered voters create at least one vote center for every ten thousand active registered voters.[251] Equally as important, the statute required that each vote center had to have a secure electronic connection to the county-wide computerized registration book so that all voting information processed by any vote center computer was immediately accessible to every other county vote center.[252] The goal was to prevent any voter from voting more than once by traveling from one vote center to another.[253] Finally, the statute limited the use of vote centers to counties that first used them in an off-year election or in a primary election.[254]

After Larimer County's experimental use of vote centers in 2003, it used them again in the 2004 general election, again with great success.[255] The county again combined its 143 precincts, this time into 31 vote centers.[256] The county required each center to have 1,500 to 2,500 square feet of internal space, have adequate parking (eighty spaces), and be compliant with disabilities accessibility laws.[257] The vote centers created additional economies of scale by greatly reducing the number of necessary election judges, allowing the county to select the most effective poll workers,[258] and increasing poll watcher effi-

---

249. 2004 Colo. Sess. Laws 1104 (codified as amended at COLO. REV. STAT. § 1-5-102.7 (2005)).

250. COLO. REV. STAT. § 1-1-104(49.8) (2005).

251. § 1-5-102.7(3).

252. § 1-5-102.7(4).

253. *See id.*

254. § 1-5-102.7(7).

255. *See* Kay J. Maxwell, President, League of Women Voters, Statement Before the Commission on Federal Election Reform 2–3 (Apr. 18, 2005), *available at* http://www.co.larimer.co.us/elections/Kay_Maxwell_LWV.pdf.

256. *See* Welcome to the Virtual Courthouse of Larimer County Colorado, Elections: Vote Center Statistics, http://www.co.larimer.co.us/elections/votecenters_statistics.htm (last visited Oct. 25, 2006); Larimer County Vote Centers History, *supra* note 247.

257. *See* Welcome to the Virtual Courthouse of Larimer County Colorado, Elections: Criteria for Selecting a Vote Center Site, http://www.co.larimer.co.us/elections/votecenters_criteria.htm (last visited Oct. 25, 2006); Scott Doyle, Larimer County Clerk & Recorder, Vote Centers Help America Vote, Report to the AEI-Brookings Election Reform Project (Apr. 12, 2006), *available at* http://www.brookings.edu/gs/projects/electionreform/20060418Doyle.pdf [hereinafter Doyle Report].

258. *See id.*; NAT'L TASK FORCE ON ELECTION REFORM, NAT'L ASS'N OF ELECTION OFFICIALS, ELECTION 2004: REVIEW & RECOMMENDATIONS BY THE NATION'S ELEC-

ciency.[259] In the 2004 general election, the vote centers handled a remarkable turnout of 95%, with voting finished by 7 p.m. and no end-of-day lines.[260] Of the 147,112 votes cast in the county, 2,636 provisional ballots were cast (1.8% of votes cast).[261] Of the 2,636 provisional ballots cast, 1,798 (68%) were counted.[262] None of the rejected provisional ballots were rejected for being cast out-of-precinct because that possibility had been eliminated by the county-wide voting possibility within each center.[263]

Critical to the success of the Larimer County vote centers was their placement. Almost half of Larimer County's 275,000 residents live in and around the city of Fort Collins, and the city borders Interstate 25, which bisects the county.[264] A great many voters use I-25 to get to work in Denver, so the county placed most of the vote centers in Fort Collins and all but four of the centers within close proximity of an I-25 exit.[265]

Support for vote centers is spreading. Based on the apparent success of vote centers in Larimer County, a number of Colorado counties used vote centers in the 2006 election.[266] The new counties faced some administrative difficulties,[267] but despite this setback vote cen-

---

TIONS ADMINISTRATORS 33 (2005), *available at* http://www.electioncenter.org/documents/Task%20Force%20Final%20PDF.pdf [hereinafter NAT'L TASK FORCE ON ELECTION REFORM 2004].

259. NAT'L TASK FORCE ON ELECTION REFORM 2004, *supra* note 258, at 34.

260. *See* Doyle Report, *supra* note 257.

261. *See* Welcome to the Virtual Courthouse of Larimer County Colorado, Elections: Larimer County Clerk & Recorder Election Years Totals, http://www.co.larimer.co.us/elections/election_stats.htm (last visited Jan. 29, 2007).

262. *See id.*; Scott Doyle, Larimer County's Clerk & Recorder, noted that 2,636 provisional ballots were cast and 1,796 were counted. Email from Scott Doyle, Larimer County Clerk & Recorder, to Leonard Shambon (June 26, 2006) (on file with the *New York University Journal of Legislation and Public Policy*) [hereinafter Doyle Email].

263. Doyle Email, *supra* note 262.

264. *See* Doyle Report, supra note 257; Doyle Email, *supra* note 262.

265. *See* Welcome to the Virtual Courthouse of Larimer County Colorado, Elections: Vote Centers Map—Entire County, http://www.larimer.org/maps/vote_centers.cfm?city=ALL (last visited Oct. 25, 2006); Doyle Email, *supra* note 262.

266. *See* Interview with Dana Williams, Public Information Officer, Elections Division, Office of the Secretary of State of Colorado (Oct. 6, 2006) (noting that 20 counties planned to use vote centers for the 2006 election) (on file with the *New York University Journal of Legislation and Public Policy*). *See also* Monte Whaley & Joey Bunch, *Vote Centers a "Total Fiasco"*, DENVER POST, Nov. 9, 2006, at B.1.

267. *See id.* (noting that the use of vote centers in Larimer County in 2003 had been a "huge success" but that there were numerous problems with vote centers across Colorado in the 2006 election); Susan Barnes-Gelt, *What Went Wrong in Denver*, DENVER POST, Nov. 12, 2006, at E.04 (noting that moving to vote centers "required technological adaptations that Denver was unprepared to handle").

ters still show promise. In a May 2005 report, the Election Center's National Task Force on Election Reform recommended that the states amend their election laws to permit the creation of vote centers within jurisdictions.[268] The Task Force concluded that vote centers should be one option available for making election day voting as efficient, economical, and voter-friendly as possible.[269] In July 2005, the report of a forum sponsored by the League of Women Voters Education Fund and the McCormick Tribune Foundation noted vote centers as one way of " 'think[ing] outside the box' about ways to streamline the voting process."[270] Indiana sent a delegation to Larimer County to observe an election and produced a detailed report in December 2005 advocating that Indiana consider the viability of voting centers.[271] One Indiana county will serve as a vote center pilot county in 2007.[272] And in Missouri, one county already uses vote centers (called "central polls" in that county) to supplement its existing precinct structure.[273]

2. *Cost Concerns*

There has been criticism of vote centers, especially of using them in rural areas,[274] based on the possibility of increased travel distances, which have been shown to negatively impact turnout.[275] The political

---

268. *See* NAT'L TASK FORCE ON ELECTION REFORM 2004, *supra* note 258, at 9, 33–35. The Task Force was composed of current and former state and local election administrators, and the Election Center is also known as the National Association of Election Officials. *See id.* at iii–iv; Election Center, About the Election Center, http://www.electioncenter.org/about.html (last visited Feb. 2, 2007).

269. *See id.* at 35.

270. LEAGUE OF WOMEN VOTERS, NEXT STEPS ON ELECTION REFORM 10 (2005), *available at* http://www.lwv.org/Content/ContentGroups/Publications/VoterInformation/voting_nextsteps_bw.pdf.

271. *See* OFFICE OF IND. SEC'Y OF STATE, A STUDY OF VOTE CENTERS & THEIR APPLICABILITY TO THE HOOSIER ELECTION PROCESS 9 (2005), *available at* http://www.ai.org/sos/elections/hava/pdf/VoteCenters.pdf, at 3, 9–12.

272. Todd Rokita, Indiana Secretary of State, Rokita Announces Tippecanoe County as Vote Center Pilot (Sept. 25, 2006), *available at* http://www.in.gov/sos/press/2006/09252006.html.

273. *See* William H. Woodwell, Jr., *Thinking Outside the Ballot Box*, NAT'L VOTER, June 2006, at 4, 5 (describing Boone County's system and noting its usefulness for students at the University of Missouri and others who are new to the county or have changed their address).

274. *See, e.g.*, M. Mindy Moretti, *Bigger Is Not Always Better: Vote Centers, Consolidation Draw Complaints*, ELECTIONLINE WEEKLY, Jan. 26, 2006, http://electionline.org/Newsletters/tabid/87/ctl/Detail/mid/643/xmid/172/xmfid/3/Default.aspx (noting "push back" from some rural areas and quoting Wayne Pruett, former administrator of elections for Sumner County, Tennessee, who believed that vote centers "discriminate[ ] against the smaller rural community precincts").

275. *See id. See also* Robert M. Stein & Greg Vonnahme, Election Day Vote Centers 6 (Apr. 2006) (prepared for presentation at the Annual Meeting of the Midwest

science literature, beginning with the work of Anthony Downs in 1957, has tied the cost of voting largely to the time and inconvenience of the act of voting.[276] The "obstacles or nuisances" to voting include waiting in long lines to vote as well as relatively inaccessible voting places because of the distance to travel, limited parking, etc.[277]

Despite the possibility of increased travel, one of the few studies of the effect of election day vote centers shows that vote centers may actually encourage turnout.[278] Robert Stein and Greg Vonnahme compared the 1992–2004 voting histories of a random sample of voters in Larimer County and neighboring Weld County, which did not employ vote centers during the relevant period, matched for age, gender, and voting history.[279] They found a non-negligible increase (a 95% probability of a 2.5–7.1%) in turnout from the use of vote centers.[280] This positive effect on turnout from vote centers may stem from the net reduction in time and inconvenience. Recent studies have examined the impact of moving polling places farther from voters' homes,[281] but vote centers, by contrast, allow the voter to use a polling site close to work or school or shopping or other activities. The net commute to the polling center from one of those destinations, a destination the voter would have gone to in any event, could easily be shorter than the distance from home to the old precinct-based polling place. The positive effect for the voter is further enhanced by the economies-of-scale efficiencies within the vote center itself.[282]

There is little additional academic literature studying the impact of polling place distance on turnout rates, and the studies that do exist consider only distance from a voter's residence. In 2003, James Gimpel and Jason Schuknecht published a study that first reviewed past literature suggesting that a non-trivial portion of voters, those with the least interest in the outcomes, did see a time opportunity cost

---

Political Science Association, on file with the *New York University Journal of Legislation and Public Policy*) (noting that inaccessible polling places are an obstacle to voting generally).

276. *See, e.g.*, ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 265 (1957) (arguing that "time is the principal cost of voting"); Bruce E. Cain, *The Internet in the (Dis)service of Democracy?*, 34 LOY. L.A. L. REV. 1005, 1010 & n.15 (2001) (attributing to Downs the "original idea" that "the costs of voting will usually swamp the perceived likelihood of casting the decisive vote"); Richard L. Hasen, *Voting Without Law?*, 144 U. PA. L. REV. 2135, 2139 (1996) (noting that Downs "is credited with first recognizing the paradox" of voting).

277. *See* Stein & Vonnahme, *supra* note 275, at 6.

278. *See id.* at 15.

279. *Id.* at 10–11.

280. *Id.* at 13.

281. *See infra* notes 286–90 and accompanying text.

282. *See supra* notes 258–59 and accompanying text.

to participating.[283] Gimpel and Schuknecht then examined data for three Maryland suburban counties near Washington, D.C. to determine the effect of distance and "impedance" on turnout. Relying on the literature of transportation planners, Gimpel and Schuknecht defined polling place "accessibility" as a function of distance and impedance, with impedance defined as:

> [W]hatever stands in the way of getting from point A to point B, and can be measured in a variety of ways, such as speed limits, residential density and accompanying traffic congestion, number of major intersections one must traverse on the way, or topographical barriers such as rivers or steep terrain. Distance is not necessarily a problem. . . if there is no impedance. A polling location may be six miles away, but if there is no traffic congestion or other barriers between one's home and the precinct place, distance may not stand as a significant barrier. On the other hand, impedance might not matter much if the distance is so short that overcoming barriers between two points is a relatively costless effort.[284]

Gimpel and Schuknecht found that (1) turnout rates were highest where the distance to the polling place was very short or very long and (2) impedance, particularly residential density, acted as a barrier to turnout.[285] Because of voters' continuing social preference for low density, single family housing, Gimpel and Schuknecht concluded that encouraging turnout would require moving polling sites closer to housing and multiplying the number of sites and precincts.[286] Because their paper analyzes traditional precinct data based on residence, it does not necessarily contradict either the early data in favor of vote centers (allowing voting near places of work, errands, etc.) or the interim prescription we focus on: honoring out-of-precinct provisional ballots. Their conclusions may run counter to our suggestion that precinct area footprints be increased to lower the friction of out-of-precinct provisional ballots, but they are consistent with our underlying point that current precinct structure likely is not supported by careful analysis by the governmental entities creating those boundaries.

Building on the Gimpel and Schuknecht work, Moshe Haspel and H. Gibbs Knotts analyzed data for turnout and distance from residence

---

283. *See* J.G. Gimpel & J.E. Schuknecht, *Political Participation and the Accessibility of the Ballot Box*, 22 POL. GEOGRAPHY 471, 474–75 (2003).
284. *Id.* at 476.
285. *Id.* at 481, 484. *See also* Joshua J. Dyck & James G. Gimpel, *Distance, Turnout, and the Convenience of Voting*, 86 SOC. SCI. Q. 531, 535, 539–42 (2005) (finding similar patterns in Clark County, Nevada).
286. Gimpel & Schuknecht, *supra* note 283, at 485.

to polling place for a mayoral race in Atlanta.[287] Haspel and Knotts also sought to differentiate distance into walking distance for those voters close enough to walk to the polls, driving distance for those beyond walking distance, and vehicle availability for those needing to drive.[288] Controlling for other variables, Haspel and Knotts found that distance had a significant effect on turnout, with a predictably higher sensitivity to distance when cars are not available to voters.[289] They also found that, in certain areas, splitting precincts had a positive effect on voter turnout, despite any confusion that might arise from changing a voter's previous polling location.[290] Like the Gimpel and Schuknecht studies, they address our propositions only to the extent that they concern increasing precinct footprints.

Henry Brady and John McNulty have analyzed the consolidation of polling places in Los Angeles County that occurred for the 2003 gubernatorial recall in California.[291] The election's abrupt scheduling meant that the county did not have a lot of time to prepare for the recall.[292] One of its shortcuts was to consolidate precincts from 5,231 precincts in the 2002 general election down to 1,885 for the recall, with the average voter distance to the poll rising from 0.348 miles to 0.502 miles.[293] Brady and McNulty found that consolidation reduced polling place turnout substantially in the precincts where the polling place was changed.[294] However, the reduction was partially offset by absentee voting, primarily by middle-aged and older voters.[295] They also tested two possible causes for the reduced turnout: a transportation effect (distance from the polling place) and a disruption effect (composed of information needed to learn the new location and risk aversion to traveling to a new neighborhood). They found that the

287. M. Haspel & H. Gibbs Knotts, *Location, Location, Location: Precinct Placement and the Costs of Voting*, 67 J. POL. 560 (2005).

288. *See id.* at 565. The authors did not consider poll accessibility to public transportation on the ground that most Atlantans lived within one mile of the polling place and that buses ran infrequently. *Id.* at 565 n.6.

289. *See id.* at 567.

290. *See id.* at 569.

291. *See* H.E. Brady & J.E. McNulty, The Costs of Voting: Evidence from a Natural Experiment 2–3 (2006) (unpublished manuscript, on file with the *New York University Journal of Legislation and Public Policy*).

292. The announcement for the October 7 recall election was made on July 24, 2003. *See Rene Sanchez & William Booth, Vote on Calif. Governor's Recall to Be Oct. 7*, WASH. POST., July 25, 2003, at A.04; Bob Egelko & Zachary Coile, *Difficult Questions Remain on Recall: U.S. Review, Pending Federal Cases Could Alter Election Timing*, S.F. CHRON., Aug. 20, 2003, at A11.

293. *See* Brady & McNulty, *supra* note 291, at 3, 8.

294. *Id.* at 22.

295. *See id.* at 3, 19, 22.

disruption effect was much larger than the transportation effect until the increase in distance reached one mile; at that point, the effects were equal.[296] Interestingly, they noted that the consolidation actually shortened the distance to the polls for those who had to travel more than 0.65 miles to the polling place in 2002.[297]

As is the case in other studies of polling place location, Brady & McNulty's analysis is based on residence. We can see the type of sophisticated study that is needed not only to support effective consolidation but also to support the existing precinct structures. The fact that no academic literature existed until these recent efforts is likely indicative of the lack of analytical underpinnings for the design of existing precinct structures.

While the movement toward vote centers offers a permanent solution to the artificial frictions caused by precincts, the slow pace of the adoption of vote centers does not guarantee any short-term or medium-term relief. The inertia of the status quo will leave most of us in the anachronistic world of precincts for the foreseeable future. Consolidation, whether in the form of increasing the area footprint of precincts or through replacing precincts with jurisdiction-wide vote centers, immediately creates the anxiety that voting will be less convenient and therefore a further suppressant to turnout.

V.
CONCLUSION

The HAVA motives to increase the centralized control of registration and elections are not novel. Joseph Harris wrote in 1929 that "[c]entral administrative supervision in the place of legislative enactments would go far toward improving and toning up the conduct of elections and registrations."[298]

The 2000 election meltdown in Florida that spurred Congress into action clearly demonstrated that poorly maintained registration records, overworked and under-financed local election offices, and frequent relocations of precinct boundaries and polling places—which often occur right before the election—conspire to create confusion on

296. *See id.* at 3–4, 22.

297. *See id.* at 12–13. Brady and McNulty also suggested some factors to consider when consolidating precincts: (1) changing the polling place for precincts with higher fractions of absentee voters, who would not be affected by consolidation; (2) avoiding changing the polling place for precincts with more elderly voters; (3) changing the polling place for smaller precincts, so that fewer voters would have to go to a new location; and (4) taking into account the preexisting distance to the polling place. *See id.* at 15.

298. HARRIS, REGISTRATION OF VOTERS, *supra* note 50, at 24.

election day. Specifically, these factors combine to: (1) direct some portion of the voters to the wrong polling location, where of course their names will not appear on the registration rolls thereby denying these voters their right to vote (absent provisional ballots); or (2) furnish outdated or incomplete registration lists to polling places on election day, potentially excluding from voting some who registered to vote on or near the registration deadline.[299] Congress clearly had the 2000 election in mind when it created legislation requiring that provisional ballots be made available to all voters whose registration is challenged.[300] Before HAVA, an estimated two to four million eligible voters did not have their votes counted as a result of errors attributable to registration and polling place errors.[301]

HAVA's objective was simple: to guarantee that otherwise eligible voters would never again be deprived of their right to cast their votes *and* their right to have them counted. Put another way, if the office charged with processing registration application forms, updating registration information when people move, notifying people of where to vote, designating polling places, training poll workers, and ensuring that polling places have the most up-to-date registration rolls failed in any of these critical tasks, thereby triggering on election day the question of a voter's eligibility, the eligible voter should not be penalized by losing his or her right to vote for federal candidates in that election.

We are well aware of the various ambiguities in the wording of HAVA, having been involved in its passage.[302] We are acutely familiar with the compromises that were necessary for its enactment. We believe the better reading of the ambiguities surrounding section 302(a)(4) is that Congress intended that state law eligibility to vote in the jurisdiction, not the precinct, should be the standard for counting HAVA provisional ballots.

---

299. *See supra* note 108 and accompanying text.

300. Congress expressly relied on the 2001 Ford-Carter Commission, which recommended provisional balloting as a way to prevent future disenfranchisement of the type that occurred in 2000. *See supra* notes 92–94 and accompanying text; N.Y. State Citizens' Coalition on HAVA Implementation, Position Paper on Voter Registration and Statewide Database 3 (Mar. 15, 2005) (on file with the *New York University Journal of Legislation and Public Policy*).

301. *See* CALTECH/MIT VOTING TECH. PROJECT, VOTING: WHAT IS, WHAT COULD BE 9 (2001), *available at* http://www.vote.caltech.edu/media/documents/july01/july01_VTP_Voting_Report_Entire.pdf (counting a total of four to six million lost votes overall in the 2000 election, including a loss of 1.5 to two million votes from faulty equipment and confusing ballots

302. *See* authors' biographies in introductory footnotes.

Information errors at the polling place can be expected to decline sharply in the next few years as states create cleaner state-wide computerized registration rolls and improve training for poll workers. But such errors will never completely disappear; provisional ballots will continue to be an important fail-safe option for eligible voters whose registration has been called into question. Thus, the importance of forgiving and lenient treatment of provisional ballots cast by otherwise eligible voters cannot be overstated. Clean statewide lists (only achievable through the strong state control mandated by HAVA), liberal provisional ballot counting rules (so that voters are not penalized for the faults of election administrators), and rational and uniform definitions of precincts will do much to reduce the disharmony experienced in 2000 and again in 2004.

TABLE 4: STATUTORY PRECINCT REQUIREMENTS: MAXIMUM PEOPLE PER PRECINCT

Alabama	None
Alaska	None
Arizona	None. A county's board of supervisors must establish a "convenient number of election precincts" in the year before a general election. ARIZ. REV. STAT. ANN. § 16-411(A) (2005).
Arkansas	None
California	Maximum of 1,000 voters per precinct. CAL. ELEC. CODE § 12223(a) (West 2006) ("The precinct boundary shall be fixed in a manner so that the number of voters in the precinct does not exceed 1,000 on the 88th day prior to the day of election.").
Colorado	1,500 active eligible electors if the county uses an electronic or electromechanical voting system. COLO. REV. STAT. § 1-5-101(3) (2005).
Connecticut	None
Delaware	500 to 3,000 registered voters per election district "except where such composition would cause a conflict with representative, senatorial or councilmemberic boundary lines." DEL. CODE ANN. tit. 15, § 4105(a) (2004)
District of Columbia	None
Florida	None
Georgia	Maximum of 2,000 electors if there is a line of more than 1 hour at poll closing in the previous election. GA. CODE ANN. § 21-2-263 (2006).
Hawaii	None
Idaho	None
Illinois	In counties with a population greater than 3 million, ideal precinct size of 500 with maximum of 800. 10 ILL. COMP. STAT. ANN. 5/11-2 (West 2003).
Indiana	General rule: precincts should have no more than 1,200 active voters. IND. CODE ANN. § 3-11-1.5-3(a) (LexisNexis 2006).

	Exceptions: where precincts include entire townships, city legislative bodies, or single residential structures with more than 1,200 active voters, the maximum is 1,500 active voters, IND. CODE ANN. § 3-11-1.5-3(b) (LexisNexis 2006); if a precinct was established with 1,200 active voters within the last 4 years and the population has grown, then the number of active voters may exceed the 1,200 limitation as long as the precinct does not have more than 1,400 voters. IND. CODE ANN. § 3-11-1.5-3(c) (LexisNexis 2006).
Iowa	Maximum of 3,500 total population. IOWA CODE ANN. § 49.3(1) (West 2006).
Kansas	None
Kentucky	Maximum of 1,500 registered voters (State Board of Elections may choose to withhold expenses from precincts that exceed the 1,500 limit, except for precincts that use optical scan voting machines and periods of time in which precinct boundaries are frozen under § 117.056; State Board may also review of boundaries of precincts with more than 700 votes cast. KY. REV. STAT. ANN. § 117.055(2) (LexisNexis 2004).
Louisiana	Maximum of 2,200 registered voters; minimum of 300 registered voters (with some exceptions). LA. REV. STAT. ANN. § 18:532B.(3), (4)(a) (2004).
Maine	None
Maryland	None
Massachusetts	Maximum of 4,000 inhabitants. MASS. GEN. LAWS ANN. ch. 54, § 2, 6 (West 1991).
Michigan	Maximum of 2,999 registered voters. MICH. COMP. LAWS ANN. § 168.661 (West 2005).
Minnesota	None
Mississippi	None in practice; maximum of 500 qualified electors. Limitation does not apply if voting machines are used in all elections in that precinct. MISS. CODE ANN. § 23-15-285 (West 2003).
Missouri	None
Montana	None. MONT. CODE ANN. § 13-3-101(2) (2005) ("The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.").
Nebraska	Maximum of 1,000 registered voters based on number of voters voting in last statewide general election; minimum of 75. NEB. REV. STAT. § 32-903(1) (2005).
Nevada	If a precinct uses paper ballots, maximum of 600 registered voters; if a precinct uses a mechanical voting system, maximum of 1,500 registered voters not designated inactive. NEV. REV. STAT. § 293.207(1) (2005).
New Hampshire	None
New Jersey	None. Election districts have a maximum based on use of voting machines but no maximum for precincts. N.J. STAT. ANN. § 19:4-11(a) (West 1999) ("Each election district in which only one voting machine or four electronic system voting devices are used shall contain no more than 750 voters, except an election district in which there is located a public or private institution where persons entitled to vote may reside, and in such district the number of voters shall be as near to 750 as is practicable.").
New Mexico	Maximum of 800 votes cast in person in last general election. N.M. STAT. ANN. § 1-3-1.B. (LexisNexis 2003).

New York	Maximum 950 registrants (excluding inactive registrants) but with permission of county Board of elections maximum can be increased to 1,150 (excluding inactive registrants). N.Y. ELEC. LAW § 4-100 (3)(a) (McKinney 1998).
North Carolina	None
North Dakota	None
Ohio	Maximum of 1,400 electors. OHIO REV. CODE ANN. § 3501.18 (West 2006).
Oklahoma	None
Oregon	Maximum of 5,000 electors. OR. REV. STAT. § 246.410 (2006).
Pennsylvania	Maximum of 1,200 registered electors, absent good cause for more. 25 PA. STAT. ANN. § 2702 (2006).
Rhode Island	"Substantially not more" than 1,900 voters per polling place, and not less than 150 voters per polling place. R.I. GEN. LAWS § 17-11-1 (2003).
South Carolina	Maximum of 1,500 qualified electors. S.C. CODE ANN. § 7-7-710 (2005).
South Dakota	None
Tennessee	Maximum of 5,000 registered voters, whenever practicable and where the precinct uses voting machines. TENN. CODE ANN. § 2-3-103 (2005).
Texas	"A county election precinct must contain at least 100 but not more than 5,000 registered voters." In some cases, the minimum may be less than 100. TEX. ELEC. CODE ANN. § 42.006 (Vernon 2006).
Utah	Maximum of 1,250 active voters. UTAH CODE ANN. § 20A-5-303(2)(a) (2006).
Vermont	None
Virginia	Maximum of 5,000 registered voters; minimum of 100 registered voters in a county precinct, 500 registered voters in a city precinct. VA. CODE ANN. § 24.2-307 (2003).
Washington	If the precinct uses voting machines or electronic voting devices, maximum of 900 active registered voters. WASH. REV. CODE ANN. § 29A.16.040(3) (West 2005).
West Virginia	Urban center precincts: maximum of 1,500 registered voters; minimum of 300 registered voters. Rural precincts: maximum of 700 registered voters; minimum of 200 registered voters. W. VA. CODE ANN. § 3-1-5(a) (LexisNexis 2005).
Wisconsin	Cities of at least 150,000: maximum of 4,000 inhabitants per ward (minimum of 1,000). Cities of 39,000 to 150,000: maximum of 3,200 inhabitants per ward (minimum of 800). Cities of 10,000 - 39,000: maximum of 2,100 inhabitants per ward (minimum of 600). WIS. STAT. § 5.15(2) (2004).
Wyoming	Not more than 30 election districts per county. WYO. STAT. ANN. § 22-7-101 (2005).