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# ENGAGING THE ELECTORATE: STRATEGIES FOR EXPANDING ACCESS TO DEMOCRACY

## HEARING

BEFORE THE

## COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HELD IN WASHINGTON, DC, JULY 23, 2009

Printed for the use of the Committee on House Administration

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# ENGAGING THE ELECTORATE: STRATEGIES FOR EXPANDING ACCESS TO DEMOCRACY

**THURSDAY, JULY 23, 2009**

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

The committee met, pursuant to call, at 11:05 a.m., in room 1310, Longworth House Office Building, Hon. Robert A. Brady (chairman of the committee) presiding.

Present: Representatives Brady, Capuano, Davis of California, Davis of Alabama, Lungren, and McCarthy.

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

The CHAIRMAN. Good morning, everyone. And I would like to call the hearing of the Committee on House Administration to order. In all our rushing around, our staff forgot to give me a gavel, so I will improvise and use a water bottle.

Wait a minute. We found the gavel. Now, if I don't mix them up and drink the gavel and bang the water, I will be okay.

I call our meeting to order.

I would like to welcome members of the committee, witnesses, and guests.

And before I begin, I would like to take a minute to acknowledge a member of our staff who will be leaving us soon, Kristin McCowan, who has worked at the committee for about 3 years and is constantly on my back, right back here, with the voice that keeps me right. We will miss that tremendously. As the chief clerk, she has kept affairs of the committee organized and focused.

And in the fall, she begins coursework at the University of Southern California. Kristin has served this committee and the Congress with distinction, and I will miss her for sure. So please join me in a round of applause and wishing her well.

Also in the audience is her mom and dad, Mr. and Mrs. McCowan. I would like for you to stand up, and let you know how proud we are of your daughter. And we are going to miss her tremendously.

She promises me she will come back on my back, on my shoulder here, from time to time and whisper in my ear a few times. And

I do appreciate that. We got very close, as you can see by this wall, over the last couple of years.

Today's hearing will focus on innovative voter outreach strategies, how these strategies can help ensure our right to vote. In the 2008 election, new voters were engaged like never before. In part, this engagement was due to groundbreaking technology that allowed more and more diverse voters to become active participants in the political process.

Grassroots organizations, political parties, and election officials used the Internet to educate voters about registration rules and deadlines. Social networking sites like Facebook launched registration drives that signed up tens of thousands of new voters. Search engines like Google provided voters with polling place locations. And various political blogs provided new forums for voters to express their opinions and enthusiasm for a particular candidate or issues. These tools were not even available 4 years ago.

This technology was used to engage voters straight through Election Day. Over the course of the day, text messaging was used to inform voters of their polling places and to encourage them to vote. And as polling stations closed, e-mail networks quickly spread news about the results to people around the United States and the world.

As electrifying as the 2008 election was, it is important to note that the election was not without problems. We must ensure that voters can get to the polls, get on the rolls, and cast their votes without unnecessary impediments.

Last Congress, we heard testimony about important information voter hotlines were collecting. Throughout the election year, the MYVOTE1 and the GO-CNN–08 hotlines worked with media outlets such as NBC, CNN, and the Tom Joyner Morning Show and collected nearly 300,000 phone calls from voters across the country who encountered voting problems.

Now, a coalition of civil rights organizations—the Advancement Project, the NAACP National Voter Fund, and Voter Action—has analyzed the data and are releasing today a report of their findings and recommendations.

We also welcome the Hip Hop Caucus and Smart Girl Politics, who will share with us their thoughts on outreach to new voters and ways to keep these voters engaged.

Hearing from voters about the problems they face and discussing solutions to those problems is important to me and the members of this committee, and we look forward to all your testimony.

I would now like to proceed with opening statements of the ranking member, Mr. Lungren from California, who will have an opening statement.

[The statement of the Chairman follows:]

**Opening Statement – Chairman Brady**

**Hearing on**
**"Engaging the Electorate—Strategies for Expanding Access to Democracy"**

**Thursday, July 23, 2009**
**11am**

The hearing will come to order. Welcome Members of the Committee, witnesses and guests. Today's hearing will focus on innovative voter outreach strategies and how these strategies can help to ensure our right to vote.

In the 2008 election new voters were engaged like never before. In part, this engagement was due to ground-breaking technology that allowed more and more diverse voters to become active participants in the political process. Grassroots organizations, political parties and election officials used the Internet to educate voters about registration rules and deadlines. Social networking sites like Facebook launched registration drives that signed up tens of thousands of new voters. Search engines like Google provided voters with polling place locations. And various Political blogs provided new forums for voters to express their opinions and enthusiasm for a particular candidate or issues. These tools were not even available four years ago.

This technology was used to engage voters straight through Election Day. Over the course of the day, text-messaging was used to inform voters of their polling places and to encourage them to vote. And as polling stations closed, email networks quickly spread news about the results to people around the United States and the world.

As electrifying as the 2008 election was, it is important to note that that the election was not without problems. We must ensure that voters can get on the rolls, can get to the polls and cast their vote without unnecessary impediments. Last Congress, we heard testimony about the important information voter hotlines were collecting. Throughout the election year, the MYVOTE1 and the GO-CNN-08 hotlines worked with media outlets such as NBC, CNN and the Tom Joyner Morning Show and collected nearly 300,000 phone calls from voters across the country who encountered voting problems. Now a coalition of civil rights organizations—the Advancement Project, the NAACP National Voter Fund and Voter Action—has analyzed the data and are releasing today a report of their findings and recommendations.

We also welcome the Hip Hop Caucus and Smart Girl Politics, who will share with us their thoughts on outreach to new voters and ways to keep these new voters engaged.

Hearing from the voters about the problems they faced and discussing solutions to those problems is important to me and the Members of this Committee and I look forward to all of your testimony.

We will now proceed to Members' Opening Statements. I would like to now recognize Ranking Member Lungren for his opening statement.

***[Recognize other Members for their statements]***

I want to welcome our panel of witnesses today.

**Tom Joyner**

Mr. Joyner is the host of the popular nationally syndicated morning radio show, The *Tom Joyner Morning Show*. His program features a well known celebrities, newsmakers, and national leaders. Mr. Joyner is also a strong advocate for civil rights and has led voter registration and get-out-the-vote activities. I want to welcome Mr. Joyner back to the Committee and I look forward to your thoughts on the hotline and how your listeners experienced the 2008 election.

**Reverend Lennox Yearwood**

Reverend Yearwood currently serves as President of the Hip Hop Caucus, which is a national organization that organizes young people in urban communities to be active in elections, policymaking, and service projects. Prior to his work with the Hip Hop Caucus the Reverend was co-creator of the "Vote or Die" campaign as well as Executive Director of Hip Hop Voices, a program of Voices for Working Families at AFL-CIO. Thank you Reverend Yearwood for coming today and we look forward to your testimony.

**Elizabeth Westfall**

Ms. Westfall is the Director of the Voter Protection Program at Advancement Project, a national civil rights organization, where she manages the litigation and advocacy activities of the program's staff attorneys. Ms. Westfall will be discussing the report analyzing the voter hotline data and I look forward to her recommendations.

**Cameron Quinn**

Ms. Quinn is the former Secretary of Virginia's Board of Elections where she oversaw statewide election administration and voter registration policies. Ms Quinn has also served as Special Counsel on voting matters for the Civil Rights Division at the Department of Justice, an advisor to the 2005 Federal Commission on Election Reform, and election advisor for IFES, formerly known as the International Foundation for Election Systems. Welcome, Ms. Quinn.

**Ms. Rebecca Wales**

Ms. Wales currently serves as the Director of Communications for the conservative women's organization, Smart Girl Politics. Prior to her work with Smart Girl Politics Ms. Wales served as Deputy National Youth Director for McCain-Palin 2008 where she was responsible for the national grassroots field strategy for the youth demographic. Thank you for joining us today.

Without objection, your written statements will be made part of the record in their entirety. We ask you to summarize your testimony in five minutes or less.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

I join in the accolades that you have given our chief clerk here, and I wish her well in California. My only regret is that she decided to go to USC. She could have stopped halfway across the country at Notre Dame, but she told me it was too cold.

I would like to thank you, Mr. Chairman, for graciously allowing the inclusion of two witnesses for the minority's point of view on this panel.

And before we hear the testimony of our witnesses today, I would like to address a fundamental aspect of the concern of engaging the electorate. It seems to me that an engaged electorate must necessarily originate from a set of compelling candidates and policy offerings, not Federal mandates.

Certainly, legislative relief may enable an electorate to more easily access the voting process. However, it should not be the responsibility of, nor do I believe it can be accomplished by, legislation to enthuse the electorate.

It seems that our recent history demonstrates that the motivation behind a mobilized electorate is not the ground rules set by this or any legislative body, but rather the discussion and clash of ideas, the quality of the candidates, the impacts of their potential leadership that drives the less active voter to the polling station. I don't think that a single member of this committee would contend that the strong increases in turnout among minority and youth voting groups originated from any legislative action.

In fact, this committee and its Elections Subcommittee have dedicated several hearings to investigating challenges to voter turnout and the effective submission of ballots, particularly, I would mention, with respect to the military. If there is a compelling need to act on the Federal level, it is to ensure that those men and women in uniform around the world today who are serving this Nation not only have a chance to register, not only have a chance to vote, but to have those votes counted.

We heard testimony in previous hearings that a small percentage of those who actually cast their votes had those votes counted this last time around. That is the ultimate tragedy, it seems to me. And I hope that the Senate will act on legislation similar to that which this committee passed.

Despite the challenges, as I mentioned, that we witnessed, an increase in participation by nearly 5 million voters is what we saw. The Census Bureau concluded that the voting population included about 2 million more black voters, 2 million more Hispanic voters, and about 600,000 more Asian voters.

That discrepancy between the challenges that we identified in the process and the marked increase in traditionally underperforming voting groups cannot be explained by the sudden effectiveness of prior legislation. There must have been greater motivating factors. And I contend that those were the candidates and the issues.

Testimony received by this committee and Subcommittee on Elections in past hearings explained that the vast majority of calls to various hotlines are from voters seeking information regarding the location of polling stations or registration status. This does speak to the fact that the electorate is motivated by the substance of elec-

tions as opposed to the process itself. It also demonstrates that voter education, not additional legislation, in my judgment, will be most successful in assisting voter access in the voting process.

In election proceedings, the government's responsibility is to ensure that the process is administered transparently and impartially. Voting citizens, who by virtue of their active decision to vote demonstrate that they are personally engaged, need a system in which they can trust the legitimacy of its outcomes. To that end, we must work toward better educating the electorate and providing States with the flexibility to implement necessary safeguards that help increase voter confidence in the electoral system.

Further recognizing the seminal importance of maintaining the integrity of our elections procedures and outcomes, I hope that we wouldn't impose mandates intended to open up the process at the cost of compromising protections against fraud and manipulation. We need to encourage everyone who is eligible to vote to vote, but we also need to protect those votes by ensuring that those who are not eligible to vote don't cast ballots and have them counted.

So, Mr. Chairman, I thank you for this hearing. I look forward to the testimony of our panel of witnesses, and thank all of them for their contribution to our ongoing discussion.

The CHAIRMAN. I thank you.

Mr. Capuano.

Mr. CAPUANO. Just here to listen.

The CHAIRMAN. Just here to listen. Well, that certainly is not true. I am sure we will hear from you.

I want to thank our panel of witnesses today and introduce them.

Tom Joyner—Mr. Joyner is the host of a popular, nationally syndicated morning radio show, the "Tom Joyner Morning Show." His program features well-known celebrities, newsmakers, and national leaders. Mr. Joyner is also a strong advocate of civil rights and has led voter registration and get-out-the-vote activities.

I want to welcome Mr. Joyner back to the committee, and I look forward to your thoughts on the hotline and how your listeners experienced the 2008 election. I also, again, would personally like to thank you for spending time and taking time out of your busy schedule. I have followed you a little bit. You cover more States in 1 day than I have covered in my lifetime, a lot of us cover in our lifetime. And I do appreciate you taking the time out of your busy schedule to come back and testify in front of us.

Reverend Lennox Yearwood—Reverend Yearwood currently serves as president of the Hip Hop Caucus, which is a national organization that organizes young people in urban communities to be active in elections, policymaking, and service projects.

Prior to his work with the Hip Hop Caucus, the Reverend was co-creator of the "Vote or Die"—I have one of your T-shirts, by the way—"Vote or Die" campaign, as well as the executive director of Hip Hop Voices, a program of voices for working families at the AFL–CIO.

Thank you, Reverend Yearwood, for coming today, and we look forward to your testimony.

Elizabeth Westfall—Ms. Westfall is director of the Voter Project Program at the Advancement Project, a national civil rights organi-

zation, where she manages the litigation and advocacy activities of the program's staff attorneys.

Ms. Westfall will be discussing their report analyzing the voter hotline data, and I look forward to your recommendations.

Cameron Quinn—Ms. Quinn is the former secretary of Virginia's Board of Elections, where she oversaw statewide election administration and voter registration policies. Ms. Quinn has also served as special counsel on voting matters for the Civil Rights Division at the Department of Justice, an advisor to the 2005 Federal Commission on Election Reform, and election advisor for IFES, formerly known as the International Foundation for Election Systems.

I would like to welcome you, Ms. Quinn.

And Ms. Rebecca Wales—Ms. Wales currently serves as director of communications for the conservative women's organization Smart Girl Politics. Prior to her work with Smart Girl Politics, Ms. Wales served as deputy national youth director for McCain-Palin 2008, where she was responsible for the national grassroots field strategy for the youth demographics.

Thank you again for joining us.

And I understand that we do have an audio that we would like to listen to before we ask Mr. Joyner to testify.

[Begin audiotape.]

CALLER. —polling place in St. Louis, Missouri, in north county, voters who have been waiting since 10:00 this morning have not been able to vote. There is inadequate equipment. It is very, very poorly organized. And, as a result of that, many voters have left.

CALLER. My issue of complaint is in Philadelphia, Pennsylvania, Ward 59, Division 4. Only one of two machines working this morning at 7:00 a.m. when the polls opened, although there were already more than 200 people standing in line.

CALLER. My name is Robert. I am calling from Pensacola, Florida. I have been in the Army for several years, and I now live in Pensacola. And in order to vote here, I have to have a Florida ID. So I went to get a Florida ID, and all of a sudden on the 1st of October they have changed the rules. I have to have a birth certificate, which means I have to go back to my State and get a birth certificate, come back to Florida to get an ID, just to vote. And there won't be enough time to do that between now and when the votes actually take place.

CALLER. I am a student at the University of Miami, and I just finished voting in voting precinct 561. People were turned away. People were leaving lines. There were three lines attempting to funnel through the door. They were unable to locate my name, even though I presented my voter registration card and my ID. It is the biggest disaster that I have ever seen.

CALLER. I had trouble at the voting booth this morning. I put the access card in. It beeped. It did not advance. And I pushed it in a little further again, and then it said I voted, and I did not. I never saw the screen advance. And I approached the woman, the voting person there, and they said, "Well, sorry, you already voted." Well, I don't know who I voted for, so that was my problem.

CALLER. I am calling from Chesapeake, Virginia, in the Crestwood area. We are having problems at that location, Crestwood

Middle School. We have thousands of people in line. They only have six voting machines, and they are all down.

CALLER. I am in Douglasville, Pennsylvania. The problem I am having at the polling station was we were voting, and I don't know if there was something wrong with the polling machine, but the polling machine was voting double or triple for whatever candidate you chose.

CALLER. On Saturday, my husband and I tried to vote in Orange County, Florida, and were told that we were purged from the system. When I renewed our driver's licenses at the Division of Motor Vehicles, we were asked if we also wanted to change our voter registration address. We agreed to do that. However, we were told by the Supervisor of Elections at the polls that 90 percent of the changes made at the DMV are never passed on to the Supervisor of Elections.

[End audiotape.]

The CHAIRMAN. Thank you.

Without objection, your written statements will be made part of the record in its entirety. And we ask that you summarize your testimony in 5 minutes.

Mr. Joyner, you are the lead-off hitter.

**STATEMENTS OF THOMAS JOYNER, HOST, "TOM JOYNER MORNING SHOW"; REV. LENNOX YEARWOOD, PRESIDENT AND CEO, HIP HOP CAUCUS; ELIZABETH WESTFALL, SENIOR ATTORNEY, ADVANCEMENT PROJECT; CAMERON P. QUINN, FORMER SECRETARY, VIRGINIA BOARD OF ELECTIONS; REBECCA WALES, DIRECTOR OF COMMUNICATIONS, SMART GIRL POLITICS**

**STATEMENT OF THOMAS JOYNER**

Mr. JOYNER. Thank you. Good morning, Chairman Brady, members of the committee. Thank you for inviting me to testify before the panel today. I am Tom Joyner, host of the nationally syndicated "Tom Joyner Morning Show."

The CHAIRMAN. Excuse me, sir. Push that button. I know you are not afraid of a live mic.

Mr. JOYNER. Oh.

I am Tom Joyner, host of the nationally syndicated "Tom Joyner Morning Show." Our show is aired in 115 markets, reaching nearly 8 million African Americans. That works out to be about one in four of every African American in this country. We have a very simple philosophy on the show: It is a party with a purpose. We play good music, we laugh a lot, and we take on a lot of serious issues.

Since I testified before this committee some 18 months ago, a lot has happened. We made history, electing the Nation's first African American President. Like so many Americans, I cried on election night in Chicago. But I am here today to make sure we do an even better job at all of our elections, especially in 2012.

First, let me tell you how the 1–866–MYVOTE1 hotline made a difference last year. We received more than 300,000 calls, we helped more than 150,000 listeners to find their poll locations, and we registered more than 100,000 new voters. We were able to make

this happen thanks to my partners in the hotline, the International Brotherhood of Teamsters and the NAACP National Voter Fund.

In addition to helping people, we also captured important information that was used to determine whether some of our listeners could vote. In Pennsylvania, the MYVOTE1 hotline data provided the foundation for the NAACP's legal action that led to a Pennsylvania court requiring poll locations to have enough emergency ballots on hand if machines failed. In Virginia, callers warned of a traffic accident that blocked access to a poll location and gave alternative routes. In Florida, callers warned of bogus e-mails attempting to suppress African American votes. In Missouri, callers warned voters of last-minute changes in poll locations.

There are other examples, but we don't have time today to review all of them. The success of the MYVOTE1 hotline tells me that it is a unique and critical tool in assessing what succeeds and what fails on Election Day.

I want to make sure your committee addresses these problems now and removes all barriers to make sure all Americans can exercise their vote. As a Nation, we have to do a better job. My listeners demand it, and so do all Americans.

There are four key areas that I want you all to fix to avoid some of the confusion, frustration, and drama we faced during last year's presidential primaries and during the general election.

My first point is that we need to eliminate all voter ID requirements. We received hundreds of phone calls on the hotline during the primaries from Georgia about voters standing in long lines because of the ID requirements. In the Atlanta area, for example, callers complained about waiting in one line for their IDs to be checked, then waiting in a long line to vote. These listeners said that they waited for hours in some locations because there weren't enough machines.

What I am worried about is that several State legislatures around the country, including my home State of Texas, have been trying to push through requirements forcing registered voters to have government-issued IDs to vote. This makes it hard on potentially millions of Americans who are citizens who may be unemployed, who don't have a driver's license or any form of government identification.

Second, we need to provide better training for all precinct workers. What we learned from our calls on the hotline is that, quite often, precinct workers didn't know how to resolve problems when they occurred. Based on our hotline, we had dozens of issues involving broken machines, the lack of ballots, or simply not enough workers on hand. We should make every effort to make sure that these workers are properly trained, fully aware of all the issues, and even consider reaching out to younger adults to help with the elections, which I can help you do.

My third point is that we need to make more voting machines available. Another huge problem was the lack of machines in areas where there were huge concentrations of black listeners. We have thousands of calls from listeners who say that they waited hours in line only to find out that there were not enough machines available to handle the large crowds.

I am just a DJ, but it seems to me that, given the historic nature of this election, an African American candidate, why wouldn't you make more voting machines available? It seems to me you make sure that you have as many machines possible to guarantee we exercise our right to vote.

And my final point today is that we need to create a national standard for voting machines. What made the problem worse is that many voting precincts have different types of voting machines. You can have paper ballots in one location and electronic machines in another and the old-fashioned lever machines someplace else.

Why can't we have one type of machine everywhere? Again, I am just a DJ, but if we had the same type of voting machines everywhere, wouldn't that make it easier for us to tabulate the votes on election night?

I am glad to hear about the legislation that is currently working its way through Congress. It is the "Voter Confidence and Increased Accessibility Act." The bill would establish a national standard for voting, requiring all voting precincts to use paper ballots, and require random audits of any electronic election systems.

Why paper ballots during this electronic age? Well, what we have learned is that electronic voting machines are unreliable and unstable. We truly need a paper trail and a way to easily audit the elections. We know every vote must count.

Mr. Chairman, I love this country, and I know we can do better when it comes to our voting process. That is why I am here and why I am going to continue to fight to ensure that my listeners and certainly every American can vote freely and without barriers. That is what this country is all about. We have to do everything to protect this very basic right as Americans, the right to vote.

Thank you very much. This is Tom Joyner. Thank you again.

[The statement of Mr. Joyner follows:]

**REMARKS**
**TOM JOYNER**
**COMMITTEE ON HOUSE ADMINISTRATION**
***"ENGAGING the ELECTORATE –***
***STRATEGIES for EXPANDING ACCESS TO DEMOCRACY"***
**11:00 AM, THURSDAY, JULY 23, 2009**

GOOD MORNING, CHAIRMAN BRADY AND MEMBERS OF THE COMMITTEE. THANKS FOR INVITING ME TO TESTIFY BEFORE YOUR PANEL TODAY. I AM TOM JOYNER, HOST OF THE NATIONALLY SYNDICATED TOM JOYNER MORNING SHOW. OUR SHOW IS AIRED ON 115 MARKETS, REACHING NEARLY EIGHT MILLION AFRICAN AMERICANS. THAT WORKS OUT TO BE ABOUT ONE IN FOUR OF EVERY AFRICAN AMERICANS IN THIS COUNTRY.

WE HAVE A VERY SIMPLE PHILOSOPHY WITH OUR SHOW: IT'S A 'PARTY WITH A PURPOSE'. WE PLAY GOOD MUSIC, LAUGH A LOT AND WE TAKE ON LOTS OF SERIOUS ISSUES.

SINCE I TESTIFIED BEFORE THIS COMMITTEE -- SOME 18 MONTHS AGO — A LOT HAS HAPPENED. WE MADE HISTORY - ELECTING THE NATION'S FIRST AFRICAN AMERICAN PRESIDENT. LIKE SO MANY AMERICANS, I CRIED ON ELECTION NIGHT IN CHICAGO. BUT I'M HERE TODAY TO MAKE SURE WE DO AN EVEN BETTER JOB AT ALL OF OUR ELECTIONS, ESPECIALLY IN 2012.

FIRST, LET ME TELL YOU HOW THE 1 866 MYVOTE1 HOTLINE MADE A DIFFERENCE LAST YEAR. WE RECEIVED MORE THAN 300,000 CALLS. WE HELPED MORE THAN 150,000 LISTENERS FIND THEIR POLL LOCATIONS, AND WE REGISTERED MORE THAN 100,000 NEW VOTERS! WE WERE ABLE TO MAKE THIS HAPPEN THANKS TO MY PARTNERS IN THE HOTLINE: THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND THE NAACP NATIONAL VOTER FUND.

IN ADDITION TO HELPING PEOPLE, WE ALSO CAPTURED IMPORTANT INFORMATION THAT WAS USED TO DETERMINE WHETHER SOME OF OUR LISTENERS COULD VOTE.

- IN PENNSYLVANIA, THE MYVOTE1 HOTLINE DATA PROVIDED THE FOUNDATION FOR THE NAACP'S LEGAL ACTION THAT LED TO A PENNSYLVANIA COURT'S REQUIRING POLL LOCATIONS TO HAVE ENOUGH EMERGENCY BALLOTS ON HAND IF MACHINES FAILED.

- IN VIRGINIA, CALLERS WARNED OF A TRAFFIC ACCIDENT THAT BLOCKED ACCESS TO A POLL LOCATION AND GAVE ALTERNATE ROUTES.
- IN FLORIDA, CALLERS WARNED OF BOGUS EMAILS ATTEMPTING TO SUPPRESS AFRICAN AMERICAN VOTES.
- IN MISSOURI, CALLERS WARNED VOTERS OF LAST MINUTE CHANGES IN POLL LOCATIONS.

THERE ARE OTHER EXAMPLES, BUT WE DON'T HAVE TIME TODAY TO REVIEW ALL OF THEM. THE SUCCESS OF THE MYVOTE1 HOTLINE TELLS ME THAT IT IS A UNIQUE AND CRITICAL TOOL IN ASSESSING WHAT SUCCEEDS AND WHAT FAILS ON ELECTION DAY.

I WANT TO MAKE SURE YOUR COMMITTEE ADDRESSES THESE PROBLEMS NOW AND REMOVES ALL BARRIERS TO MAKING SURE ALL AMERICANS CAN EXERCISE THEIR VOTE. AS A NATION, WE HAVE GOT TO DO A BETTER JOB. MY LISTENERS DEMAND IT, AND SO DO ALL AMERICANS.

THERE ARE FOUR KEY AREAS I WANT YOU ALL TO FIX TO AVOID SOME OF THE CONFUSION, FRUSTRATION AND DRAMA WE FACED DURING LAST YEAR'S PRESIDENTIAL PRIMARIES AND DURING THE GENERAL ELECTION.

**1) MY FIRST POINT IS THAT WE NEED TO ELIMINATE ALL VOTER ID REQUIREMENTS.** WE RECEIVED HUNDREDS OF PHONE CALLS ON THE HOTLINE DURING THE PRIMARIES FROM GEORGIA ABOUT VOTERS STANDING IN LONG LINES BECAUSE OF THE ID REQUIREMENT. IN THE ATLANTA AREA, FOR EXAMPLE, CALLERS COMPLAINED ABOUT WAITING IN ONE LINE FOR THEIR IDS TO BE CHECKED, THEN WAITNG IN A LONG LINE TO VOTE. THESE LISTENERS SAID THEY WAITED FOR HOURS IN SOME LOCATIONS BECAUSE THERE WEREN'T ENOUGH MACHINES.

WHAT I'M WORRIED ABOUT IS THAT SEVERAL STATE LEGISLATURES AROUND THE COUNTRY – INCLUDING MY HOME STATE OF TEXAS -- HAVE BEEN TRYING TO PUSH THROUGH REQUIREMENTS FORCING REGISTERED VOTERS TO HAVE GOVERNMENT-ISSUED IDS TO VOTE. THIS MAKES IT HARD ON POTENTIALLY MILLIONS OF AMERICANS WHO ARE CITIZENS WHO MAY BE UNEMPLOYED, WHO DON'T HAVE A DRIVERS LICENSE OR ANY FORM OF GOVERNMENT IDENTIFICATION.

**2) SECONDLY, WE NEED TO PROVIDE BETTER TRAINING FOR ALL PRECINCT WORKERS.** WHAT WE LEARNED FROM OUR CALLS ON THE HOTLINE IS THAT QUITE OFTEN, PRECINCT WORKERS DIDN'T KNOW HOW TO RESOLVE PROBLEMS WHEN THEY OCCURRED. BASED ON OUR HOTLINE, WE HAD DOZENS OF ISSUES INVOLVING BROKEN MACHINES, THE LACK OF BALLOTS OR SIMPLY NOT ENOUGH WORKERS ON HAND. WE SHOULD MAKE EVERY EFFORT TO MAKE SURE THESE WORKERS ARE PROPERLY TRAINED, FULLY AWARE OF ALL THE ISSUES AND EVEN CONSIDER REACHING OUT TO YOUNGER ADULTS TO HELP WITH THE ELECTIONS, WHICH I CAN HELP DO.

**3) MY THIRD POINT IS THAT WE NEED TO MAKE MORE VOTING MACHINES AVAILABLE.** ANOTHER HUGE PROBLEM WAS THE LACK OF MACHINES IN AREAS WHERE THERE WERE HUGE CONCENTRATIONS OF BLACK LISTENERS. WE HAVE THOUSANDS OF CALLS FROM LISTENERS WHO SAY THEY WAITED HOURS IN LINE ONLY TO FIND OUT THAT THERE WERE NOT ENOUGH MACHINES AVAILABLE TO HANDLE THE LARGE CROWDS. I'M JUST A DJ, BUT ... IT SEEMS TO ME THAT GIVEN THE HISTORIC NATURE OF THIS ELECTION – AN AFRICAN-AMERICAN CANDIDATE – WHY WOULDN'T YOU MAKE MORE VOTING MACHINES AVAILABLE??? IT SEEMS TO ME YOU WOULD MAKE SURE THAT YOU HAVE AS MANY MACHINES POSSIBLE TO GUARANTEE TO EXERCISE OUR RIGHT TO VOTE.

**4) MY FINAL POINT TODAY IS THAT WE NEED TO CREATE NATIONAL STANDARDS FOR VOTING MACHINES.** WHAT MADE THE PROBLEM WORSE IS THAT MANY VOTING PRECINCTS HAVE DIFFERENT TYPES OF VOTING MACHINES. YOU COULD HAVE PAPER BALLOTS IN ONE LOCATION AND ELECTRONIC MACHINES IN ANOTHER, AND THE OLD-FASHIONED LEVER MACHINES SOMEPLACE ELSE. WHY CAN'T WE HAVE ONE TYPE OF MACHINE EVERYWHERE? AGAIN, I'M JUST A DJ, BUT ... IF WE HAD THE SAME TYPE OF VOTING MACHINES EVERYWHERE WOULDN'T THAT MAKE IT EASIER FOR US TO TABULATE THE VOTES ON ELECTION NIGHT? I'M GLAD TO HEAR ABOUT THE LEGISLATION THAT'S CURRENTLY WORKING ITS WAY THROUGH CONGRESS: IT'S THE VOTER CONFIDENCE AND INCREASED ACCESSIBILITY ACT. THE BILL WOULD ESTABLISH A NATIONAL STANDARD FOR VOTING, REQUIRING ALL VOTING PRECINCTS TO USE PAPER BALLOTS AND REQUIRE RANDOM AUDITS OF ANY ELECTRONIC ELECTION SYSTEMS. *WHY PAPER BALLOTS DURING THIS ELECTRONIC AGE?* WELL, WHAT WE'VE LEARNED IS THAT

ELECTRONIC VOTING MACHINES ARE UNRELIABLE AND UNSTABLE. WE TRULY NEED A PAPER TRAIL AND A WAY TO EASILY AUDIT THESE ELECTIONS. WE KNOW EVERY VOTE MUST COUNT.

MR. CHAIRMAN, I LOVE THIS COUNTRY, AND I KNOW, WE CAN DO BETTER WHEN IT COMES TO OUR VOTING PROCESS. THAT'S WHY I'M HERE, AND WHY I'M GOING TO CONTINUE TO FIGHT TO ENSURE THAT MY LISTENERS – AND CERTAINLY EVERY AMERICAN – CAN VOTE FREELY AND WITHOUT BARRIERS. THAT'S WHAT THIS COUNTRY IS ALL ABOUT. WE'VE GOT TO DO EVERYTHING TO PROTECT THIS VERY BASIC RIGHT AS AMERICANS: THE RIGHT TO VOTE.

I'M TOM JOYNER, AND THAT'S MY MESSAGE. THANKS FOR YOUR TIME TODAY.

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The CHAIRMAN. Thank you.
Reverend Yearwood.

**STATEMENT OF LENNOX YEARWOOD**

Reverend YEARWOOD. Chairman Brady, Ranking Member Lungren, and members of the committee, thank you for inviting me to testify today. On behalf of the Hip Hop Caucus, I am pleased to present testimony on "Engaging the Electorate: Strategies for Expanding Access to Democracy."

The Hip Hop Caucus is a national nonpartisan and nonprofit organization that was founded on September 11th, 2004, in the midst of the 2004 presidential elections. The mission of the Hip Hop Caucus is to work towards ending urban poverty for the next generation by organizing young people in urban communities to be active in elections, policymaking, and community service. Over a 4½ year period, we have built a national membership of up to 660,000 people, 71 percent of them who are under the age of 40 years old and 60 percent of whom are women.

In 2004, I helped create the "Vote or Die" campaign with Sean P. Diddy Combs, and I was the grassroots and political director for Russell Simmons.

But it was prior to these get-out-the-vote campaigns, when I was working as a minister in poor, urban communities, that I recognized that poor people, in particular, did not think that they were a part of this system. They thought that the system was against them. Their outlook on government had a profound impact on their personal lives.

Once they understood the simple fact that government works for them and was not set up to antagonize them, literally their outlook changed on everything from educational opportunities, health, economic opportunities, the environment, criminal justice, parenting, and obviously being simply engaged.

Being involved in democracy helps people control their own destinies. Our voting system, however, is not set up to engage communities of color and poor communities in our democracy. In fact, our system is set up to discourage these voters, and so our government is often not functioning as a representative democracy for these communities. It is instead functioning as a damage control mechanism.

As I will explain in this testimony, we have used culture, media, and technology to engage traditionally disenfranchised communities in elections. And I will expound on some of these strategies.

However, the message that I really want to convey is that campaigns that I have created, like "Vote or Die" and "Respect My Vote," are not the solution. They are creative attempts to fill an institutional void that our confusing and overly burdensome voter registration system has created. I will continue my calling to engage new voters in our democracy. However, I am looking to you to make the system more transparent and inclusive for all American citizens.

In 2008, the Hip Hop Caucus designed a voting campaign that targeted young voters in urban communities who did not have college experience. And it should be noted, the rates between young people with college experience and young people without college ex-

perience are very, very different. Meanwhile, most youth-oriented voter engagement campaigns are targeted at college campuses.

I just really want to give a few examples. I am so glad to be sitting next to my good friend Tom Joyner. For example, on September 30, 2008, we partnered with Radio One on an initiative called "One Vote Day." Radio One has urban stations in 16 markets around the country. Through the radio, we publicized a day of mass voter registration where, in 16 cities, people could come to community locations on that day and register to vote. In a 12-hour period, the Hip Hop Caucus, along with Radio One, registered 32,000 voters.

And another example is how we used our spokesperson, T.I. T.I. Was an individual who was a major, A-list artist. T.I. Also has a felony record. He is from the State of Georgia. And when we asked him to be our spokesperson, we all thought that, as someone with a felony record, he could not vote. Regardless, he was prepared to motivate and challenge his fans to vote even though he could not. It turned out what we learned is, in the State of Georgia, if you are not currently serving a sentence, you can vote. And on October 29th, 2008, then 28-year-old T.I., Clifford Harris, voted early and for the first time in the State of Georgia.

I bring this up to address two points. First, T.I., who has made mistakes in his life, has and deserves the credibility and respect of some of the most historically oppressed communities in this country. While many frowned on his role in the 2008 elections, the fact of the matter is that he inspired and reached a population who traditional organizations and leaders simply cannot reach.

And, second, voting laws for ex-offenders vary State by State, and they are the only set of Jim Crow laws that continue to expand. And most ex-offenders are completely unaware of the voting rights that they do have.

Let me conclude by saying this. There are two things, as I conclude: One, I would just say the Hip Hop Caucus has worked on a new piece of legislation with Congressman Cummings called the "Constitution and Citizenship Day Act," which would provide for public and charter schools to register eligible high school students to vote on Constitution Day, which is September 17th. The voter registration activity will be coupled with a rally, assembly, or whatever. But the idea behind the legislation is to reach young voters before they graduate high school.

And, finally, let me just say the United States is one of the few democracies that places the burden of registration on the voter. And because of this, voter turnout in the United States is near the bottom of the developed world. We must do better. We must work towards comprehensive solutions. And, as you all know very well as Members of Congress, elections are not games, they are not contests. Elections are for citizens first, and they point to our access to democracy and are as serious as life and death.

Thank you for the opportunity to present to you today.

[The statement of Reverend Yearwood follows:]

**TESTIMONY OF**
**Rev Lennox Yearwood, Jr.**
**President and CEO, Hip Hop Caucus**
**BEFORE THE**
**HOUSE COMMITTEE ON HOUSE ADMINISTRATION,**
**U.S. HOUSE OF REPRESENTATIVES**

July 23, 2009

Chairman Brady, Ranking Member Lungren, and Members of the Committee; thank you for inviting me to testify today. On behalf of the Hip Hop Caucus, I am pleased to present testimony on "Engaging the Electorate—Strategies for Expanding Access to Democracy". The Hip Hop Caucus is a national, non-partisan, and non-profit organization that was founded on September 11, 2004, in the midst of the 2004 Presidential Elections. The mission of the Hip Hop Caucus is to work towards ending urban poverty for the next generation by organizing young people in urban communities to be active in elections, policymaking, and community service. Over a four and a half year period, we have built a national membership of 660,000 people; 71% of whom are under the age of 40 years old, and 60% of whom are women.

In 2004 I helped to create the "Vote or Die!" campaign with Sean "Diddy" Combs, and I was the Grassroots and Political Director for Russell Simmons' Hip Hop Summit Action Network. It was prior to these Get Out the Vote campaigns, when I was working as a minister in poor urban communities, that I recognized that poor people in particular did not think that they were a part of the system, they thought that the system was against them. Their outlook on government had a profound impact on their personal lives. Once

they understood the simple fact that the government works for them, and was not set up to antagonize them, literally their outlook changed on everything from educational opportunities, health, economic opportunities, the environment, criminal justice, parenting, and civic responsibility. Being involved in democracy helps people control their own destinies.

Our voting system, however, is not set up to engage communities of color and poor communities in our democracy. In fact, our system is set up to discourage these voters, and so our government is often not functioning as a representative democracy for these communities, and is instead functioning as a damage control mechanism.

As I will explain in this testimony, we have used culture, media, and technology to engage traditionally disenfranchised communities in elections. I will expound on some of these strategies, however, the message that I really want to convey is that campaigns that I have created like "Vote or Die!" and "Respect My Vote!" are not the solution. They are creative attempts to fill an institutional void that our confusing and overly burdensome voter registration system has created. I will continue my calling to engage new voters in our democracy; however, I am looking to you to make the system more transparent and inclusive for all of America's citizens.

The Millennial Generation, those born between 1980 and 2000, will fully enter the electorate in 2018; less than nine years from now. This generation is so large and so diverse that at 90 million people, they will represent just under 40% of the American Electorate. Once more, this generation is more racially diverse than any generation before, where 40% of this age group is people of color.

While young people today have the most understanding, tolerance and personal experience with people that are different than themselves, we still face incredible disparities across race, class, gender and sexual orientation. These disparities translate into voter participation rates as well. For example, in 2008, while just 57%of U.S. citizens under 30 have ever attended college, 70 percent of all young voters had gone to college.

What I can positively say about young voter turnout in 2008, was that it was at an all time high with an estimated 23 million voters between the ages of 18 and 29 turning out at the polls (that is an 11% increase since 2000 and 3.4 million more voters than in 2004). Increases in young voter turnout rates also surpassed those of older voters in the 2008 elections. Between 2004 and 2008, turnout rates among young voters rose, while those of older age groups remained steady or decreased. There has been a growing movement over the past decade to increase voter turnout among young people, and because of this movement and the resources that have been dedicated to it, we have seen tangible increases in young voter turnout.

In 2008, the Hip Hop Caucus designed a voting campaign that targeted young voters in urban communities who did not have college experience. As I noted earlier, the voter participation rates between young people with college experience and young people without college experience are quite disparate. Meanwhile, most youth oriented voter engagement campaigns are targeted at college campuses. With young people participating less in churches, mosques, synagogues, and other places of worship, as well as labor unions, and other social organizations that encourage civic participation, there exists an *institutional void* and thus it is incredibly difficult to reach young people who are not on college campuses through traditional methods. The Hip Hop Caucus employs culture,

media and celebrities as a method to engaging young people who are outside of institutions.

For example, on September 30, 2008, we partnered with Radio-One on an initiative called "One-Vote Day". Radio-One has urban radio stations in 16 markets around the country. Through the radio we publicized a day of mass voter registration, where in 16 cities, people could come to a community location on that day and register to vote. In a 12 hour period, the Hip Hop Caucus in partnership with Radio-One registered 32,000 voters.

Here is another example: on Election Day we sent a text/voice message out to our membership, reminding them to vote and directing them to a website www.govote.org, which told voters where their polling place was and gave them a list of things to bring with them to the polls. This text message was sent by our "Respect My Vote!" spokesperson, Grammy Award Winning, Platinum Recording Artist, T.I. Our members received a message from T.I. that asked them to call a 1-800 number to hear a voice recording from him. When they called the number, they heard a 60 second message from T.I., which gave them instructions and good old fashioned encouragement about going to the polls and staying in line, no matter how long the lines were. This is an example of using the right messenger, with the right message, through the right medium to reach young voters of color. We had a 20% response rate to this tactic, which may not sound like a lot, but for those who work in this arena, you know that a 20% response rate is fantastic. It was the best response rate our text message vendor had seen all election season among all of their clients.

I will make one more important point on strategy and tactics to engage young voters and voters of color, before I address some of the things that Congress can do to make systemic change in our voting system.

T.I., our key spokesperson for the "Respect My Vote!" campaign has a felony record. He is from the state of Georgia, and when we asked him to be a spokesperson, we all thought that as someone with a felony record, he could not vote. Regardless, he was prepared to motivate and challenge his fans to vote, even though he could not. It turned out that we learned that in the State of Georgia, if you are not currently serving a sentence you can vote. And, on October 29, 2008, then 28 year-old T.I. voted early and for the first time, in the State of Georgia. I bring this up to address two points. First, T.I., who has made mistakes in his life, has and deserves the credibility and respect of some of the most historically oppressed communities in this country. While many frowned on his role in the 2008 Election, the fact of the matter is he inspired and reached a population who traditional organizations and leaders simply cannot reach. Second, the voting laws for ex-offenders vary state by state; they are the only set of Jim Crow laws that continue to expand; and, most ex-offenders are completely unaware of the voting rights that they do have.

I will conclude by addressing legislative solutions to increasing access to our democracy through voting.

The Student VOTER Act (H.R. 1729) would require all colleges and universities that receive federal funds to offer voter registration to students during the "enrollment for a course of study."

According to a 2004 study by CIRCLE (Center for Information and Research on Civic Learning and Engagement), 30% of 18-29 year olds registered to vote at the Department of Motor Vehicles, which is by far the most common source of registration. The success of

institutionalizing voter registration at state agencies should be expanded to more sources, beginning with the education system.

The Higher Education Act of 1998 requires universities to make a "good faith effort" to offer voter registration to students, but only 40% are in compliance according to a 2004 Harvard University study. The Student VOTER Act strips that provision in favor of an institutional approach to voter registration.

If you read the mission statement for any college or university, it speaks to developing and educating citizens, yet they consistently fail in the most fundamental aspect of citizenship—voting. Colleges and universities have a special obligation to equip students for a lifetime of civic participation and the Student VOTER Act will advance that responsibility.

Additionally, I will note another critical piece of legislation, H.R. 1719: To amend the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 to promote the use of the *Internet* by State and local election officials in carrying out voter registration activities, and for other purposes, introduced by Congresswoman Lofgren.

Furthermore, the Hip Hop Caucus has worked on a new piece of legislation introduced by Congressman Cummings, called the Constitution and Citizenship Day Act, which would provide for public and charter schools to register eligible High School students to vote on Constitution Day, which is September 17th. The voter registration activity would be coupled with a rally, assembly or event that further educates students on our Constitution. The idea behind this legislation is to reach young voters before they graduate High School, and as noted before become much more difficult to reach.

Voter participation among young adults may be improving but there remains a lot to accomplish. Empirical evidence suggests that voter registration is the greatest hurdle to young voter participation. According to the same 2004 study by CIRCLE, 22% of 18-29 year olds who did not vote did so because they missed the registration deadline. An additional 10% of that age group did not know where or how to register to vote. Therefore, a combined 32% of 18-29 year olds who did not participate in the election did so because of uncertainties in the registration process.

I will conclude by saying that we must continue to find institutionalized ways to break down the barriers that impede young people and people of color from registering to vote. We must continue to develop strategies to encourage civic participation by using culture, media, and technology to encourage and educate young voters and voters of color. Finally, we must seriously modernize our voter registration system. We can truly modernize the voter registration process by upgrading to a system of universal voter registration— a system where all eligible citizens are able to vote because the government has taken the steps to make it possible for them to be on the voter rolls, permanently. Citizens must take responsibility to vote, but government should do its part by clearing away obstacles to their full participation.

The United States is one of the few industrialized democracies that places the burden of registration on the voter, and because of this, voter turnout in the United States is near the bottom of the developed world. We must do better; we must work toward comprehensive solutions. As you all know very well as Members of Congress, elections are

not games, they are not contests – elections, as citizens' first point of access to our democracy, are as serious as life and death.

Thank you for this opportunity to present to you today.

The CHAIRMAN. Thank you, Reverend.

Ms. Westfall.

**STATEMENT OF ELIZABETH WESTFALL**

Ms. WESTFALL. Thank you, Chairman Brady and members of the committee. My name is Elizabeth Westfall. I testify today in my capacity as the director of the Voter Protection Program at Advancement Project, a national civil rights organization in Washington, D.C. Thank you very much for your invitation to testify today.

After the 2008 general election, Advancement Project, the NAACP National Voter Fund, and Voter Action prepared a report, released today, entitled, "Uncovering Flaws in Election Administration: A Joint Report on the 2008 Election Based on CNN and MYVOTE1 Voter Hotline Data."

I would like to recognize my co-authors, John Bonifaz of Voter Action and Greg Moore of the NAACP National Voter Fund, who join me at this hearing.

The joint report highlights illustrative calls received by the MYVOTE1 and CNN voter hotlines from voters in Florida, Georgia, Missouri, Ohio, Pennsylvania, and Virginia, and recommends Federal reforms to protect voters in the 2010 and future Federal elections.

My remarks today will focus on several short-term recommendations set forth in the joint report. My written testimony also discusses long-term recommendations for deeper congressional review. I refer the committee to my written testimony, as to those recommendations.

The committee has asked panelists to suggest how to expand access to democracy. Looking at the 2008 election from a bird's eye view, it is clear that voter registration and administrative barriers to voting played a significant role in restricting access to the franchise.

According to Professor Stephen Ansolabehere of MIT, 2 million to 3 million eligible voters were prevented from voting and an additional 2 million to 4 million were discouraged from voting due to registration or other authentication problems. He concluded that the magnitude of these barriers has remained unchanged since the 2000 election.

The voices of voters heard in the joint report released today give testimony to the urgent need for reforms. Scores of hotline callers reported that they were registered or had attempted to register, yet, on Election Day, learned that they were not in the poll books. Circumstances varied. Some reported that they had registered through the Department of Motor Vehicles; others, that they had voted in recent elections; still others, that they had submitted an application to an election official, but were nevertheless left off the rolls.

Barriers to voter registration, administrative error, and list maintenance procedures likely contributed to these outcomes. To address these problems, Advancement Project urges Congress to enact swiftly several amendments to the "Help America Vote Act" and the "National Voter Registration Act."

First, HAVA should be amended to afford eligible voters who affirm that they are registered yet whose names do not appear on the

rolls, a meaningful Election Day safeguard. If such voters affirm their identity, residence, and that they timely submitted a registration application before the deadline, they should be issued a ballot that will be counted on Election Day.

Second, HAVA and the NVRA should be clarified to provide that neither successful database matching of an applicant's information with a record in the DMV or Social Security database, nor documentary proof of citizenship are requirements to register for Federal elections.

Finally, the NVRA should be amended to prohibit the purging of voters from the rolls whose original voter registration acknowledgment card is returned in the mail.

The hotline calls also indicate significant poll worker confusion in determining the appropriate circumstances in which to issue provisional ballots. Advancement Project's examination of provisional ballot use in the 2006 general election also unearthed troubling poll worker error and training issues, including failures to direct voters to the correct precinct or, worse yet, affirmatively directing voters to the wrong precinct.

To reduce the use and rejection of provisional ballots, Advancement Project urges Congress to amend HAVA to require provisional ballots cast by the voters in the wrong precinct to be counted for all Federal election contests in which the voters are eligible, and also to guarantee that voters who have moved intrastate be permitted to update their address on Election Day and, if they appear in their correct new precinct, to vote with a regular ballot.

Finally, the hotline callers reported long voter lines due to machine failures, insufficient voting equipment, dysfunctional polling place operations, and inadequate numbers of poll workers. Callers also noted an uneven use of backup paper ballots to reduce ensuing long lines and inadequate supplies of such ballots.

To alleviate these long voter lines that discourage or dissuade voters from participating, Advancement Project recommends that Congress enact legislation to require jurisdictions that employ DRE, or electronic voting systems, to stock backup paper ballots and to require the use of such ballots when half the voting machines are inoperable or voter lines meet or exceed 45 minutes.

Again, on behalf of Advancement Project, I thank the committee for the opportunity to testify about issues of importance to voters. Thank you.

[The statement of Ms. Westfall follows:]

**Testimony of Elizabeth S. Westfall,**
**Director of the Voter Protection Program,**
**Advancement Project**
**Hearing on "Engaging the Electorate—Strategies for Expanding Access to Democracy"**
**Before the Committee on House Administration**
**Washington, DC**
**Thursday, July 23, 2009**

Chairman Brady and Members of the Committee on House Administration, my name is Elizabeth Westfall. I submit this testimony today in my capacity as the Director of the Voter Protection Program at Advancement Project. Advancement Project is a policy, communication, and legal action civil rights organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of Advancement Project's Power and Democracy Program, which supports community-based efforts to increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income communities of color. Thank you for your invitation to testify on the urgent need to engage the electorate and expand access to democracy before the 2010 federal election.

Since the 2000 presidential election, Advancement Project and its local community partners have been monitoring the administration of registration and voting in several states, investigating inefficient and inequitable election practices, and advocating with state and local election officials where there have been legal lapses. In 2008, Advancement Project worked in ten priority states: Colorado, Florida, Georgia, Michigan, Missouri, Nevada, North Carolina, Ohio, Pennsylvania, and Virginia. As part of the Watch the Vote 2008 Project – a project co-sponsored by Voter Action and the NAACP National Voter Fund – Advancement Project helped to monitor calls from Indiana, North Carolina, and Pennsylvania voters to the MYVOTE1 voter hotline during those states' primary elections and, on November 4, 2008, it helped monitor calls to the CNN voter hotline. In response to the calls, Advancement Project and its partners provided voters with information to resolve their concerns and, in some instances, contacted election officials and requested their intervention.

Following the 2008 election, Advancement Project, NAACP National Voter Fund, and Voter Action prepared a report released today entitled *Uncovering Flaws in*

*Election Administration: A Joint Report on the 2008 Election Based on CNN and MYVOTE1 Voter Hotline Data* ("Joint Report") (attached hereto as Ex. 1) that highlights and discusses illustrative calls received by two national voter hotlines from voters in Florida, Georgia, Missouri, Ohio, Pennsylvania, and Virginia. Based on the calls, the Joint Report urges Congress to adopt immediate measures to help protect voters in the 2010 election.

My testimony today will focus on the need to establish effective Election Day safeguards to protect the voting rights of eligible voters whose registration status is uncertain and to establish uniform standards governing the administration of provisional ballots; clarify the National Voter Registration Act ("NVRA") and the Help America Vote Act ("HAVA") to prohibit needless barriers to voter registration and prevent unwarranted removal of voters from the rolls; and require states in which voters have been forced to endure long voter lines in recent elections to offer backup paper ballots. I will first discuss flaws or ambiguities in the NVRA and HAVA that should be corrected to prevent states from blocking or removing eligible voters from the voter rolls. Second, I will recommend clarifications of HAVA related to the issuance of provisional ballots to eligible, registered voters who have moved and the partial counting of provisional ballots cast in the wrong precinct. Third, I will discuss the need for uniform standards in the administration of backup paper ballots where voting machines fail and long lines develop. Finally, I will set forth other recommendations from the Joint Report pertaining to issues needing deeper congressional review.

## I. THE NVRA AND HAVA SHOULD BE AMENDED TO PROVIDE A MEANINGFUL ELECTION DAY SAFEGUARD FOR VOTERS AND ENSURE THAT ELIGIBLE VOTERS HAVE ACCESS TO, AND ARE NOT NEEDLESSLY REMOVED FROM, THE VOTER ROLLS

Congress enacted the NVRA to expand voter registration opportunities for eligible individuals in traditionally disadvantaged or underrepresented communities by mandating voter registration in motor vehicle departments and social and disabilities service agencies, as well as registration by mail and through non-governmental parties. In 2002, Congress enacted HAVA in response to various failures of election administration brought to light by the 2000 presidential election. In pertinent part, HAVA mandated the use of provisional ballots to guarantee that voters would not be turned away at the polls, required states to establish statewide voter registration databases, and provided funding to states to upgrade their voting systems. But as thousands of 2008 voter hotline calls attest, the NVRA and HAVA have not gone far enough to ensure that all eligible voters who want to vote in federal elections can do so and cast a ballot that will be counted. Ironically, many of the reforms mandated by HAVA have had unintended consequences that have restricted the franchise.

### A. Voter Registration and List Maintenance Issues Raised by Hotline Calls

The hotline calls discussed in the Joint Report reveal varied scenarios in which voters who believed they had registered to vote learned on Election Day, when they presented themselves to vote, that their names did not appear in the poll book. These errors ranged from apparent failure of government agencies to process voter registration applications, to problems in the transmittal of registration applications to election officials, to failure to process absentee ballot applications. The calls also documented inaccuracies in registration records, such as misspelling of voters' namesor incorrect addresses of voters, and incomplete registration records.

Hotline calls also suggest that some voters may have been erroneously removed from the voter rolls through list maintenance procedures. Some hotline callers who believed that they were registered and reported having voted in recent elections learned on Election Day that their names did not appear on their poll books. Other callers reported that they were registered voters, had voted in prior elections, and had not moved yet nevertheless found their names missing from the poll books on Election Day. Still other voters, who were reportedly infrequent but nevertheless registered voters, reported that their names did not appear in the poll book. While these voters may have been offered a provisional ballot, their ballots in most states would have been rejected because they were not registered.

### B. Recommended Reforms Necessary to Safeguard Eligible Voters' Access to the Voter Rolls

Advancement Project urges Congress to improve voter registration by enacting legislation that would require automatic registration of all eligible voters and permit eligible voters who do not become registered automatically to register to vote on Election Day. Legislation to automate and modernize voter registration should be crafted with particular emphasis upon ensuring the registration of eligible voters from historically disenfranchised communities, particularly low-income communities of color. It should also ensure that non-citizens who are inadvertently registered to vote due to automatic registration are not placed at risk of deportation proceedings or other adverse legal consequences.

In the short term, as referenced in our Joint Report, Advancement Project urges Congress to take immediate steps to address the registration barriers and list maintenance issues suggested by the hotline calls to prevent a reoccurrence of those problems in the 2010 federal elections. *First*, eligible voters who believe that they are registered yet whose names nevertheless do not appear on the voter rolls on Election Day should be afforded a meaningful and effective Election Day safeguard to enable them to cast a ballot that is counted. Accordingly, HAVA should be amended to allow voters who can establish their identity and current residence in the jurisdiction, either through showing a current and valid photo identification and/or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and

address of the voter, to complete a 'voter affirmation affidavit.' If the voter affirms by affidavit his or her identity and current residence and that he or she submitted a registration application prior to the registration deadline, or moved within the state from a previous registration address, the voter should be issued a ballot that will be counted on Election Day like a regular ballot. Officials should then use the information contained within the voter affirmation affidavit to update their voter database after Election Day. This procedure of a 'voter affirmation affidavit' is currently used in Michigan and Vermont.[1]

*Second*, the NVRA and HAVA should be clarified to increase access to the voter rolls by prohibiting the imposition of unnecessary and burdensome restrictions on voter registration that are unrelated to eligibility or duplicative of other evidence supplied by a voter applicant to establish his or her eligibility. Under HAVA, states must attempt to match a voter applicant's driver's license number or Social Security number, and other personal information, against the state motor vehicle or the Social Security Administration database. 42 U.S.C. § 15483(a)(5). Although most states do not deny a voter registration application based on a matching failure, some states, including Florida, deny a voter registration application for this reason. In Florida, where state law requires matching as a condition of voter registration,[2] matching errors disproportionately block Latino and African-American voter applicants from the rolls.[3] Although HAVA does not explicitly prescribe the consequences of a matching failure, Advancement Project believes that the clear intent and purpose of HAVA was not to make successful database matching a prerequisite to voter registration. This view is bolstered by evidence indicating that data mismatch errors are likely the result of administrative error, such as data-entry and database field errors, and not related to voter eligibility.[4]

*Third*, the NVRA should be clarified to prohibit requiring documentary proof of citizenship as a precondition to voter registration in any federal election. The NVRA mandates that a completed voter registration form, which includes a federally mandated affirmation of U.S. citizenship under penalty of perjury, must be accepted and processed for purposes of registering a voter. *See* 42 U.S.C. §§ 1973gg-6(a) & 1973gg-7(b)(2). Some states, however, such as Arizona and most recently Georgia, have enacted legislation to require voter applicants to supply documentary proof of citizenship.[5] In Arizona, over a two-year period, over 31,000 voter registration applications were initially

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[1] The Vermont procedure allows voters to file such affidavits either if they affirm that they moved within the state from a previous registration address or if they affirm that they attempted to register but do not appear on the voter rolls.

[2] Fla Stat. § 97.053(6).

[3] Registration data from Florida reveals that matching errors are more common among voters of color. During 2006 and 2007, the majority (65 percent) of would-be voters disenfranchised by matching problems were African American (26 percent) and Latino (39 percent), although they made up only 28 percent of the applicant pool. *See Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1176 n.4 (11th Cir. 2008) (Barkett, J., dissenting).

[4] *Id.* at 1176 n. 5 (Barkett, J., dissenting).

[5] A.R.S. § 16-166(F); O.C.G.A. § 21-2-216(g)(1)(2009). Georgia's proof-of-citizenship law has not yet been precleared by the U.S. Department of Justice or the U.S. District Court for the District of Columbia, pursuant to Section 5 of the Voting Rights Act of 1965.

rejected for failure to include documentary proof of citizenship.[6] Only 11,000, or 30%, were subsequently registered to vote.[7] Because of the excessive burden that documentary proof of citizenship requirements place on voter applicants, Congress should clarify the NVRA to prohibit states from requiring such duplicative documentation as a condition of registration.

*Finally*, the NVRA should be amended to prohibit sweeping list maintenance procedures based on purported ineligibility of the voter due to a change of residence that may result in the purging of eligible voters from the rolls. The NVRA limits the circumstances under which states may remove voters from the rolls. 42 U.S.C. § 1973gg-6. In some cases, however, states continue to purge voter rolls in ways that violate those limits.[8] In many states, such as Colorado and Michigan, voters whose original voter registration acknowledgement cards are returned in the mail are immediately removed from the rolls. The only federal appellate court that has considered the issue concluded that this practice violates the NVRA;[9] however, Congress should clarify the NVRA to that effect to avoid inconsistent court rulings and to provide a uniform standard.

## II. HAVA'S PROVISIONAL BALLOT PROVISIONS SHOULD BE AMENDED TO REDUCE THE USE AND REJECTION OF PROVISIONAL BALLOTS

Section 302(a) of the HAVA was enacted in part to provide that all voters in federal elections have access to provisional voting in cases where they do not appear on the precinct list or an election official raises some other challenge to their eligibility. 42 U.S.C. § 15482(a). But states' implementation of provisional voting has made this federal protection a mixed blessing at best. Indeed, poor interpretation or implementation of Section 302(a)'s requirements at the state level sometimes causes the very type of disqualification and disenfranchisement that the statute was created to fix.

Some states' laws result in the needless over-distribution of provisional ballots. For example, Ohio law requires voters who move prior to Election Day and have not

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[6] *Gonzalez v. Arizona*, No. CV 06-1268 (D. Ariz, filed Aug. 20, 2008) at 13-14.

[7] *Id.*

[8] Advancement Project serves as counsel in lawsuits against Colorado and Michigan election officials challenging unlawful voter purging statutes and practices. Just a month before the 2008 general election, the courts in those cases issued temporary federal injunctions against election officials in Michigan and Colorado to stop illegal purging practices. *See United States Student Ass'n Found. v. Land*, 546 F.3d 373 (6th Cir. 2008) (denying stay of injunction prohibiting rejection of voter registration when voter identification card was returned as undeliverable and reinstating all registrations canceled for that reason); *Common Cause of Colorado v. Coffman*, Civ. Act. No. 08-cv-2321-WYD, U.S. Dist. Colorado, trans. telephone conf. Oct. 31, 2008 (finding violation of federal law and ordering secretary of state to cease removing any voters from the state voter registration database prior to upcoming election).

[9] *See USSAF*, 546 F.3d at 381-84 (denying stay of injunction prohibiting rejection of voter registration when voter identification card was returned as undeliverable and reinstating all registrations canceled for that reason).

changed their address to cast a provisional ballot[10]—even if the voter provides the required identification, submits a change-of-address on Election Day or during early voting, and votes in the correct precinct. This rule disproportionately impacts low-income voters and voters of color, who move more frequently than high-income, white voters. By contrast, under Florida law, voters who move are permitted to cast a regular ballot in the precinct where they reside, provided they sign an affidavit and a poll worker confirms the voters' registration and eligibility.[11]

A whole set of problems flows from state laws that require the disqualification of provisional ballots cast in the 'wrong precinct' —i.e., at a voting location other than the one assigned to the voter's precinct of residence.[12] Advancement Project contends that such 'wrong precinct' rules misconstrue and violate HAVA's provisional ballot guarantee. Even assuming that such rules are facially legal, as some courts have held,[13] they are being applied in ways that violate voters' rights under HAVA and the due process clause of the Fourteenth Amendment. The problems center on the process encountered by voters on Election Day, which is frequently fraught with errors and lapses on the part of poll workers. Too often, if a voter's name is not on a precinct roster, poll workers issue the voter a provisional ballot without determining whether the voter is in the correct location. This problem is compounded in multi-precinct polling places. Advancement Project found that in many instances, voters whose provisional ballots were rejected as cast in the wrong precinct were actually at the right polling place, but at the wrong precinct table. If poll workers had instructed these voters to walk across the room, their votes would have counted.

Urban communities, where younger voters, voters of color, and lower-income voters tend to be concentrated, are more vulnerable to disenfranchisement by the 'wrong precinct' rule. Residents of those communities are more likely to rent and to change residences frequently, resulting in more frequent changes in precinct assignments. In addition, urban areas tend to have more multi-precinct polling places and numerous polls located within a neighborhood. When poll workers issue provisional ballots that can never be counted, they transform a tool intended to protect voters from disenfranchising administrative errors into a tool of disenfranchisement.

Advancement Project investigated provisional ballot use and misuse in the 2006 general election in Florida and Ohio and issued a report that documents a constellation of problems. For example, poll workers directed voters to the wrong voting location, or failed to direct them to the voting location assigned to their precincts, causing their

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[10] O.R.C. Ann. § 3503.16.

[11] Fla. Stat. § 101.045.

[12] By contrast, some states, including Georgia and Pennsylvania, require the partial counting of provisional ballots cast in the wrong precinct; votes for contests in which the voter is eligible to vote must be counted regardless of the precinct in which the provisional ballot is cast. 25 P.S. § 3050 (a.4)(7)(i); O.C.G.A. § 21-2-419(c)(2).

[13] *See, e.g., Sandusky County Dem. Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) (reversing the district court's holding that HAVA requires provisional ballots cast out of precinct to be counted).

provisional ballots to be rejected under state law. In addition, provisional ballots were rejected under state law because of administrative errors, such as incomplete envelopes and missing signatures. *See* Advancement Project, *Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement?* (Sept. 2008), *available at* http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf. (attached hereto as Ex. 2).

Although data on states' administration of provisional ballots in the 2008 presidential election cycle is not yet fully available, it appears that problems with administering provisional ballots persist. In Ohio, for example, voters cast 206,155 provisional ballots in 2008—a record number—of which 39,845 (or, over 19%) were rejected; of those 39,845 rejected provisional ballots, 14,335 were cast by registered voters whose ballots were rejected because they were cast in the wrong precinct or county. In Florida, nearly 1,300 registered voters cast provisional ballots that were rejected for the same reason. Advancement Project's recent review of provisional ballot envelopes from ballots cast in Duval County, Florida in the 2008 general election indicates that misdirection from poll workers caused some voters to cast a provisional ballot in the wrong precinct.

### A. Provisional Ballot Issues Raised by Hotline Calls

Election Day hotline callers raised many different provisional balloting concerns. Some callers said they had been turned away from the polls and denied the right to vote outright, including not having been offered a provisional ballot. In other cases, voters described poll worker confusion about when the ballots should be offered. Once offered a provisional ballot, many voters were concerned that the ballot would not be counted and felt slighted, as if given a 'second-class' voting option. Still other hotline callers reported that their names did not appear on polling place lists but that after pressuring poll workers for an explanation, they learned that their name was included on central or countywide voter lists. Finally, some hotline calls suggested that voters were unaware of provisional balloting altogether.

### B. Recommendations for Reforms Related to Provisional Ballots

Advancement Project recommends that Congress amend HAVA to curtail the unnecessary distribution of provisional ballots and the improper rejection of provisional ballots cast outside of the voter's home precinct.

- **Require partial counting of provisional ballots cast in the 'wrong precinct.'** HAVA should be amended to clarify that provisional ballots cast by voters who appear to vote in the wrong precinct must be counted for all federal election contests in which the voters are eligible to vote.

- **Prohibit the use of provisional ballots for voters who have moved intrastate.** HAVA should be amended to prohibit states from requiring registered voters who have moved intrastate to vote by provisional ballot. Instead, voters who update

their address up to or on Election Day, present themselves to vote in the correct precinct for their current address, and present current and valid identification in accordance with state law should be permitted to cast regular ballots.

- **Establish transparency of the provisional balloting process.** Some states, including Ohio, prohibit the release of most information pertaining to provisional voters, based on an erroneous interpretation of HAVA.[14] To promote transparency of provisional balloting and foster robust public oversight of the administration of provisional ballots, HAVA should be amended to permit the public inspection and copying of all provisional ballot envelopes with the signature of the voter, month and day of birth, and (if applicable) full Social Security number or driver's license redacted.

## III. FEDERAL STANDARDS GOVERNING THE ADMINISTRATION OF BACKUP PAPER BALLOTS SHOULD BE ENACTED TO ALLEVIATE LONG VOTER LINES

There are no federal minimum standards for the allocation of polling place resources such as voting machines, paper ballots, and poll workers, which leads to disparate Election Day experiences and the disenfranchisement of voters whose polling locations are inadequately supplied. Where resources are inadequate, voters may be forced to endure long voter lines—a 'time tax' on voting—which disproportionately burdens African-American voters. According to a report published by the CalTech/MIT Voting Technology Project on the 2008 election general, African-American voters waited, on average, twice as long to vote as white voters.[15]

On Election Day, voters at some precincts were forced to endure extremely long lines. For example, St. Louis County had at least twenty-seven polling sites where voters experienced multi-hour delays in casting their ballots,[16] including one, Velda City Hall, where the wait reached seven hours by mid-afternoon. In Pittsburgh, near the University of Pittsburgh, and in State College, near Penn State, there were reports of two to three-hour waits. At Lincoln University, a historically black college in Chester County, Pennsylvania, the waits were reported to reach six hours.

Under state law, requirements related to the voting machine to voter ratio vary widely. Whereas Virginia law only requires that each precinct have at least one voting

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[14] Ohio Sec. of State, Advisory 2008-22 (Sept. 4, 2008) ("Privacy of Provisional Voter and Provisional Ballot Information") (public disclosure of provisional ballot information, except for the voter's name and precinct, is prohibited by HAVA and state law).

[15] Charles Stewart III, *Election Technology and Voting Experiences in 2008* (Mar. 2009) at 7-8, *available at* http://vote.caltech.edu/drupal/files/working_paper/Election%20Technology%20and%20Voting%20Experiences%20in%202008.pdf.

16 *See* CNN, *Wait times reach 4 to 6 hours in St. Louis area*, Nov. 4, 2008, http://politicalticker.blogs.cnn.com/category/voter-problems/.

machine for each 750 registered voters in precincts using DRE machines,[17] Ohio law requires that each county using DRE voting systems have at least one machine for each 175 voters and in 2008, the Secretary of State of Ohio directed each county to allocate a minimum of one DRE machine for each 175 voters in each precinct.[18]

State standards pertaining to the administration of backup paper ballots likewise vary significantly. Last year, in Pennsylvania, Voter Action and co-counsel brought a federal lawsuit on behalf of the NAACP State Conference of Pennsylvania and others which resulted in a preliminary injunction ordering the distribution of backup paper ballots when 50% of a precinct's voting machines were inoperable.[19] By contrast, many other states authorize but do not require the use of backup paper ballots. *See, e.g.*, Georgia (O.C.G.A. §§ 21-2-334, 21-2-379), South Carolina (Section 7-13-1470), Indiana (IC 3-11-3-3), Delaware (Del. Code Ann. tit. 15, § 5010), and Virginia (Va. Code Ann. § 24.2-642). During the 2008 general election, while Pennsylvania was ordered to provide backup paper ballots in the event of machine failures, other jurisdictions offered backup paper ballots to voters to reduce long voter lines that were unrelated to machine failures. For example, Georgia and Ohio reportedly employed backup paper ballots in to reduce long voter lines under varying circumstances, and in Kansas, backup paper ballots were distributed when voter lines exceeded 45 minutes.

### A. Polling Place Resources Issues Raised by Hotline Calls

Hotline callers reported that voting machine breakdowns and ensuing long lines were widespread. Additionally, voters across the country experienced unduly long lines for many other reasons, including insufficient supplies of voting machines, poor polling place setup, and inadequate numbers of poll workers. Thousands of hotline calls reported failures of electronic voting systems and an uneven use of backup paper ballots to compensate for these breakdowns and accompanying delays. Some callers reported complete system failures as polls opened on Election Day. Hotline callers said some locations were particularly hard-hit, like Chesapeake, Virginia, where the resultant voter lines lasted for many hours. In Florida, some of the longest voter lines developed during that state's early voting period. Callers reported there were not enough early voting locations, a shortage of poll workers and voting booths, and not enough machinery to speed the process.

Hotline callers also reported problems with the supply and administration of backup paper ballots. Voters in several states observed that poll workers appeared to be confused about the circumstances in which to distribute backup paper ballots. For example, callers reported that poll workers in Georgia and Ohio appeared to lack sufficient training and familiarity with the use of backup paper ballots. Voters from Virginia reported that officials had not distributed adequate supplies of backup paper ballots to certain precincts.

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[17] Va. Code. Ann. § 24.2-627. The statute requires at least one voting booth for each 425 voters in precincts using optical scan.

[18] *See* Ohio Secretary of State Directive 2008-64 and R.C. § 3506.02.

[19] *See NAACP of Pennsylvania v. Cortes*, No. 08-5048 (E.D. Pa. Oct. 29, 2008).

### B. Recommendations for Reforms Related to Long Voter Lines

Advancement Project recommends that Congress enact legislation to reduce the burden that long voter lines place on voters, particularly those who reside in communities of color:

- **Require states to stock backup paper ballots in jurisdictions where officials have installed DRE or electronic voting systems.** Backup paper ballots mitigate breakdowns in electronic machinery so that voters are not disenfranchised due to technical malfunctions or poll worker error. Backup ballots also provide a means for poll workers to reduce lines or waiting times during peaks in voter traffic.

- **Establish uniform procedures related to the administration of backup paper ballots.** Backup paper ballots should be offered to voters as soon as at least half of the voting machines in a precinct are not functioning, or the wait time to vote in a precinct exceeds forty-five minutes; they should be clearly distinguished from provisional ballots, and once voted, should be deposited in a secure receptacle; and they should be treated and counted as regular (not provisional) ballots. Further, each polling place should have on site, at a minimum, backup ballots in the amount of 20 percent of its registered voters.

- **Require states in which voter lines have been long to develop remedial plans to reduce wait times.** HAVA should be amended to require states in which voter lines were longer than 45 minutes in the 2008 general election to submit a remedial plan to reduce wait times.

## IV. THE JOINT REPORT'S OTHER RECOMMENDATIONS FOR DEEPER CONGRESSIONAL REVIEW

In addition to the reforms outlined above, the Joint Report also urges Congress to engage in a deeper review of the increased and costly privatization of the election process. In many states, public officials rely on private firms and contractors to build and maintain voter databases and election systems instead of public employees. The nation's democracy infrastructure is a public trust that should be a responsibility of public agencies, officials and government information technology professionals, where institutional memory, continuity, flexibility, and responsiveness are cornerstones of the work and public service mission.

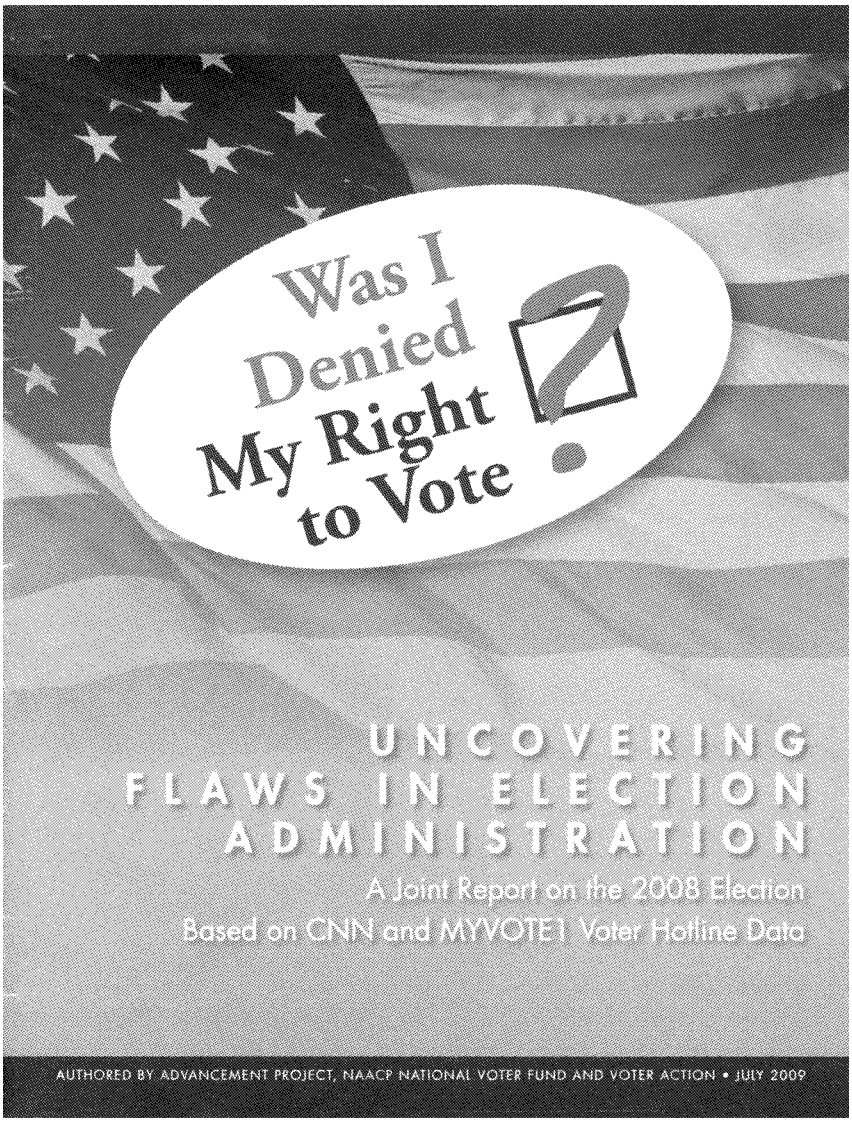
Electronic voting systems have proven to be unreliable and insecure for the counting and recording of votes. Further, where these systems are used, elections cannot be verified nor audited. Voter-marked paper ballot systems are necessary to ensure that votes will be properly counted and that the public will have confidence in the accuracy of

electoral outcomes. Mandatory election audits are also critical for protecting the integrity of our elections.

Federal funding for election improvements is not secure. Continued HAVA funding or funding for any new federal program to improve our voting process should be reliable, and should include assistance for states to develop information technology capacities to manage, update, and run election systems as an ongoing public state government function. The reliance on private vendors and its impact on election integrity should be evaluated as a new generation of improvements is adopted. Further, states using unreliable and insecure electronic voting systems need funding assistance to shift to voter-marked paper ballot systems which ensure the verifiability and accessibility of elections.

* * *

Thank you for your kind consideration of my testimony and for ensuring that all voters have the opportunity to vote, have their vote counted, and receive equal protection under the law. Advancement Project is pleased at any time to provide technical advice, assistance, and testimony to this Committee as it develops legislative reforms that will safeguard the ability of eligible voters to participate in elections.


Was I Denied My Right to Vote?
UNCOVERING FLAWS IN ELECTION ADMINISTRATION
A Joint Report on the 2008 Election
Based on CNN and MYVOTE1 Voter Hotline Data
AUTHORED BY ADVANCEMENT PROJECT, NAACP NATIONAL VOTER FUND AND VOTER ACTION • JULY 2009

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# EXECUTIVE SUMMARY

*"I am calling about a problem I had this morning for voting. I was denied my right to vote. I am a registered voter. I have proof of registration. I have my registration card along with my registration number. I had my ID with me. They said that because I am not on the list, I could not vote. I was not offered a provisional ballot. I was straight-out denied my right to vote today."*
*Voter Hotline caller, Miami-Dade County, Florida*
*November 4, 2008*

*"They are not letting me vote at the voting booth and my location because I had a different name the last voting year and have gotten married since then, even though I have identification that proves that was my previous name and this is my name now, including a marriage certificate, driver's license, social security card. They told me, 'better luck next year.'"*
- *Voter Hotline caller, Platte County, Missouri*
  *November 4, 2008*

*"I went to my polling location and they told me my registration was erased from the system because I had not voted in the last federal election and that is something I have never heard of before so I'm not able to vote because of that."*
- *Voter Hotline caller, Summit County, Ohio*
  *November 4, 2008*

*"I went over to my polling location at 7:00 because I had to drive to Delaware for work (I'm a small business owner) only to find and be told that the machine was broken. I wasn't offered any other way to vote, no back-up plan for those of us this morning. I'm now in Delaware and won't be able to get home in time to vote and that's very disappointing."*
- *Voter Hotline caller, Berks County, Pennsylvania*
  *November 4, 2008*

These are a few of the voices of Americans who were denied their right to vote this past November 4th and tried to do something about it. These citizens were registered to vote. They went to their correct polling place with identification. They followed the rules, yet they faced an unexpected array of barriers and challenges. Some were not on voter lists, or their ID was not accepted, and despite efforts to prove their eligibility, they were not allowed to vote in the 2008 presidential election.

In other instances, the voting machinery itself failed. Electronic poll books did not work or operate smoothly. Or electronic voting machines (DRE) had problems ranging from not operating at all to inaccurately recording voters' choices. Emergency back-up paper ballots, which were required to be available in many states, were not used or were ineffectively used, and as a result, many citizens left without casting a ballot.

The concerns and voices of voters who seek help on Election Day often are forgotten as winners are announced and the political process continues; however, during last year's presidential cycle 68,992 voters called two nationwide voter hotlines where their Election Day complaints, cries for help, and views of the process were recorded — both for use on Election Day to correct problems at the polls, and, more importantly, for use in the months following Election Day as the basis for instituting reforms.

InfoVoter Technologies operated the two national voter hotlines discussed in this report, in partnership with major media organizations, such as CNN and The Tom Joyner Morning Show. Civil rights advocates, including Advancement Project, NAACP National Voter Fund, and Voter Action, which are co-authors of this report, tracked these hotline calls during the 2008 presidential primary and general elections and worked to ensure the broadest voter franchise.

The hotline calls offer an unfiltered window into voters' experiences and often reveal systemic failures and limitations in the administration of elections. The first minute of each call was recorded, coded, and forwarded to local election offices with the hope of resolving the voters' problems. Today, these calls serve another purpose: they can help Congress and election professionals to improve the process for voters before the next federal election in 2010. The calls also point out election administration policies and practices that are ripe for federal review.

The broad perception among election administrators that 2008 was a 'trouble-free' year – as no state experienced a 'Florida-like' presidential recount – is belied by the voices of thousands of voters across several states who called the hotlines seeking help to vote. Even in a presidential election where 133 million people voted, the reported breakdowns in the process for thousands of voters, as reflected in the hotline calls, matter – because every vote matters. Moreover, as we know, 2008 was not without fierce federal races with margins of fewer than 500 votes, the U.S. Senate race in Minnesota being a prime example of one such close contest.

But there is a larger and even more fundamental point that Congress should heed and act on before the 2010 cycle begins. For far too many voters, as their hotline calls attest, voting is a frustration-filled, even confrontational process where well-meaning, eligible citizens are being denied the legal right to vote. Instead of being helped to navigate a process that is increasingly filled with new requirements and technologies – such as matching a voter's information with government databases or new restrictive ID requirements – voters are ever more aware that election workers in many states give the benefit of the doubt to the government's rules, information and technology instead of to eligible citizens with voting rights.

This institutional bias extends to a reluctance to provide back-up paper ballots in many jurisdictions using electronic voting systems. This trend is deeply disturbing and must be fundamentally rebalanced toward the voter, so that all eligible citizens can cast a ballot that will be properly tabulated on Election Day.

This report's authors know election administration is complex. Still, it is crucial that Congress require states to adopt simple Election Day safeguards that will help to eliminate many of the barriers to voting identified by the hotline callers in 2008. Their voices are the vanguard of 4 million Americans who were denied the right to vote last year because of election administration problems, according to the Caltech/MIT Voting Technology Project's estimates. The suggested safeguards, which are used in a handful of states but not nationwide, will remove potential voting barriers before the next federal election as Congress continues its work to improve elections.

After reviewing thousands of voter hotline calls, dozens of which are cited in this report, we urge Congress to institute these Election Day safeguards well in advance of the 2010 federal elections:

- Require states to offer eligible citizens whose names are not on polling place voter lists, including voters who have moved within a state, a 'voter affirmation affidavit,' by which they can legally swear, under penalty, that they previously registered to vote. Upon completion of the affidavit, the voter would be issued a regular ballot. Several states now use this approach, where it is seen as simpler than the provisional balloting process created by most states to comply with the Help America Vote Act of 2002 (HAVA).
- Require states whose election jurisdictions are using electronic voting systems to stock a supply of emergency paper ballots at polling places as a backup tool in the event that electronic systems fail or to help alleviate long lines due to unexpected voter turnout.

- Require states to accept as valid polling place identification, at a minimum, all forms of photo and non-photo ID currently authorized by HAVA.

These proposed remedies, as well as others discussed in this report, are based on the principle that assisting eligible voters to cast regular ballots and counting those votes are cornerstones of our democracy.

Congress enacted the National Voter Registration Act of 1993 (NVRA) to expand voter registration opportunities for eligible individuals in traditionally disadvantaged or underrepresented communities by mandating voter registration in motor vehicle departments and social and disabilities service agencies, as well as registration by mail and through non-governmental parties. In 2002, Congress enacted HAVA in response to various failures of election administration brought to light by the 2000 presidential election. In pertinent part, HAVA mandated the use of provisional ballots to ensure that voters would not be turned away at the polls, required states to establish statewide voter registration databases, and provided funding to states to upgrade their voting systems. But as thousands of 2008 voter hotline calls attest, the NVRA and HAVA have not gone far enough to ensure that all eligible voters who want to vote in federal elections can do so and cast a ballot that will be counted. Ironically, many of the reforms mandated by HAVA have had unintended consequences that have restricted the franchise.

As Congress considers the ongoing improvement of our democracy infrastructure, it is crucial it does not lose sight of the voters' experience particularly as new hurdles emerge that prevent otherwise eligible citizens from voting. We urge Congress swiftly to enact the Election Day reforms described in this report, which are intended to prevent many of the barriers identified by voters in 2008 from recurring in 2010.

# INTRODUCTION

## Sources in This Report

This report draws on the recorded calls of voters who reported that they were eligible to vote but nonetheless prevented from voting during the 2008 presidential election because of shortcomings in what is broadly known as election administration, or how our elections are run. They went to vote on November 4, 2008, during early voting in the preceding days, or during the primaries, but were thwarted by various barriers. They then called one of two nationwide voter hotlines featured in this report, either 866-MYVOTE1 or 877-GOCNN08 for help. The 866-MYVOTE1 hotline number was marketed by the NAACP National Voter Fund primarily to African-American audiences through the Tom Joyner Morning Show (TJMS),[i] BlackAmericaWeb.com, American Urban Radio Networks, and the National Coalition of Black Civic Participation. The 877-GOCNN08 hotline number was marketed primarily on CNN and its affiliated networks. Calls to either hotline were directed to a center where they were recorded, screened, coded and forwarded to officials in that caller's election jurisdiction. Callers were notified at the beginning of the call, before they were permitted to record a complaint, that the calls would be recorded and used on Election Day and potentially afterwards, for further study. In targeted states, the calls were monitored in real time by the organizations sponsoring this report, and in various instances follow-up actions were initiated to protect the callers' voting rights.

The hotlines were created and run by InfoVoter Technologies, a Philadelphia-based firm that partnered with several national media organizations, voting rights groups and labor unions to assist voters on Election Day. Voters calling the 866-MYVOTE1 hotline were provided the option of seeking a voter registration application in the mail via their local election officials, and that hotline received 119,595 calls for that purpose during the 2008 election cycle. The hotlines received a combined total of 105,720 calls seeking information on poll locations.[ii] And, the hotlines received 68,992 calls, with some overlap, involving various categories of election administration: from polling places not opening on time or operating smoothly; to the voter's registration information being omitted or incorrectly listed in polling place records; to confusion or misapplication of state or federal voter ID requirements; to machinery failures where no backup or alternative means of voting was offered. The voter hotline calls discussed in this report focus on the six 'battleground' states of Florida, Georgia, Missouri, Ohio, Pennsylvania and Virginia where voter registration and participation were high.

Given the nature of this particular hotline system and similar Election Day monitoring efforts, it is both impossible and impractical to verify each hotline call for its accuracy or completeness. It is presumed that the calls were made in good faith and reflect real concerns of potential disenfranchisement by voters who believed themselves to be eligible and registered to vote. Accordingly, the anecdotal excerpts in this report are not necessarily presented for their individual truths, but rather to show patterns that reveal potentially serious breakdowns in our nation's system of election administration.

This report's authors are voting rights advocates who work to ensure that all individuals who are eligible and wish to participate in American democracy have that opportunity. They present this report, its analysis and recommendations with the intent that voters in future elections will not experience the problems that prompted these individuals to call a voter hotline in 2008.

## Background: Election Administration Since 2000

The practice of election administration has undergone as many changes in recent years as any area of public policy and government. The catalyst for these changes, facilitated by Congress's passage in 2002 of the Help America Vote Act (HAVA), was the controversial 2000 presidential recount in Florida and the flaws in election

administration that it exposed. Through HAVA, Congress sought to overhaul American elections by introducing new technologies and practices, most notably electronic voting systems and the requirement that states compile statewide voter lists and databases. HAVA also sought to offer voters a new safeguard from administrative error by requiring states to use provisional ballots, where voters whose credentials were questioned at the polls could cast a special ballot that would be set aside and, if certified pursuant to state law, counted in the final official tally.

There is no doubt election administration has evolved significantly since HAVA. However, despite efficiencies achieved in many states, where disparate voting systems and practices often were replaced by new and more uniform systems, American elections are not error-free. In fact, the national percentage of voters who were denied the right to vote in 2008 was almost identical to 2000, according to the CalTech/MIT Voting Technology Project, which is one of the nation's foremost surveys of voter-centered election trends.

Stephen Ansolabehere, the Project's co-director, testified about these findings before the Senate Rules Committee on March 11, 2009. He reported there were an estimated 168 million registered voters in November 2008. By Election Day, 133 million people had voted when all methods of casting a ballot were added up, he said. Yet an estimated 4 million people were barred from voting due to numerous problems falling under the broad umbrella of 'election administration' issues.

"This is approximately the same number we saw in 2000," the Harvard University/MIT professor testified, concluding that "improving registration and authentication systems ought to remain a high priority." In other words, despite HAVA – or because of new issues created by HAVA or tied to its implementation – there is an ongoing pattern of millions of voters who face participation barriers in presidential cycles when voter turnout historically peaks.

This report draws on the actual words of voters who were unable to vote in 2008, as well as people who witnessed others who gave up on the process – and left their polling place without voting. Their problems are as varied as the election process is complex. There were failures of public officials to process voter registration forms before Election Day. There were poll workers who blocked voters as they interpreted new and complex laws, such as those concerning ID requirements and provisional ballots. There also were breakdowns in electronic voting machines due to their design, operation or poll worker error. And there were mistakes by voters themselves, such as not being aware of legal requirements to reregister when moving to a new jurisdiction or to update their registration information after moving within the same town or changing a last name after marriage.

## Grading the 2008 Election

Most election officials view the 2008 cycle as a success. They accommodated record voter turnout. They did not see major technical breakdowns that cast doubt on final results. When faced with anecdotal evidence of electoral problems, such as those identified by the hotline calls, election officials counter that no voting system is without flaws, but that they are continuing to improve the system to the greatest extent possible given their limited budgets and staffs.

While these assertions are largely true, they do not acknowledge the continuing potential for a major election disaster on the scale of the 2000 presidential election. Unlike 2000, the 2008 election of Barack Obama as the nation's 44th President was decisive in the sense that no series of election administration failures in any state had the potential for altering the result in that state's election, nor did the result of the presidential election depend on the resolution of an election contest in a lone swing state. One need only look at other close races in the 2008 general election, however, such as Minnesota's U.S. Senate

race between Al Franken and Norm Coleman, to see how even modest problems in election administration can have major electoral consequences. The nation should consider itself fortunate – or perhaps lucky – that the ballot-by-ballot recount in Minnesota's U.S. Senate race did not occur in a single presidential 'swing' state, such as Florida in 2000.

## Common Threads

Some of the solutions promoted by HAVA itself, such as the creation and reliance on statewide voter databases, new data-matching procedures to screen information on the voter's registration form, the "upgrading" of voting systems, and the use of provisional ballots have had unintended adverse consequences for both voters and administrators. This report cites dozens of scenarios that voters faced last fall involving these very issues and systems.

There were common threads behind the details of what happened to 2008's thwarted voters, as revealed by the calls. The first is the election process itself is often biased in favor of the state and against the voter. In many states, if election administration errors occur – for whatever reason – the voter is blamed and loses their right to participate. The benefit of the doubt is given to the government: to its voter lists, databases and election practices, and not to the people it is intended to serve: eligible voters. Our system accepts disenfranchisement caused by election official error all too readily, such as individuals who registered at a state motor vehicle agency but whose application was not sent to the appropriate local election office and thus was barred from voting. The operating assumption that the state is error-free in administering elections, or that even if the state errs, the voter must bear the penalty, is deeply flawed. Voting rights are core civil rights and the legitimacy of our democracy hinges upon voter participation. Therefore, the imbalance between the state and voters must be acknowledged by policymakers and recast in favor of eligible voters.

## Immediate Reforms Necessary to Safeguard Voters

As the 111th Congress revisits election administration issues, it should take immediate steps to address the barriers identified in the 2008 and previous federal elections to prevent a reoccurrence of those problems in the 2010 federal elections. We urge Congress to enact the following immediate reforms in time for the 2010 elections:

- **Amend HAVA to guarantee that eligible citizens who affirm that they attempted to register to vote but whose names do not appear on the voter rolls, or who affirm that they moved within a state, can cast ballots that are counted on Election Day.** HAVA should be amended to allow voters who can establish their identity and current residence in the jurisdiction, either through showing a current and valid photo identification and/or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter, to complete a 'voter affirmation affidavit.' If the voter affirms by affidavit his or her identity and current residence and that he or she submitted a registration application prior to the registration deadline, or moved within the state from a previous registration address, the voter should be issued a ballot that will be counted on Election Day like a regular ballot. Officials should then use the information contained within the voter affirmation affidavit to update their voter database after Election Day. This procedure of a 'voter affirmation affidavit' is currently used in Michigan and Vermont.[iii]

  Requiring a uniform voter affidavit would be simpler than the hodgepodge of state law that governs the administration of provisional ballots. Moreover, by relying on a voter's signature and sworn oath under penalty of law, this approach refocuses a voter's entitlement to vote on eligibility requirements – citizenship, age, residency – and realigns the balance between state and voter to ensure that eligible voters whose name

does not appear on the voter rolls due to errors caused by the state will not be disenfranchised.

- **Require states to stock back-up paper ballots in jurisdictions where officials have installed DRE or electronic voting systems.** Backup paper ballots mitigate breakdowns in electronic machinery so voters are not disenfranchised due to technical malfunctions or poll worker error. The backup ballots also provide a means for poll workers to reduce lines or waiting times during peaks in voter traffic.

- **Amend HAVA to require states to accept as valid polling place identification, at a minimum, all forms of photo and non-photo ID currently authorized by Section 303(b) of HAVA.** In many states, new voter ID laws are unnecessarily restrictive and force poll workers to bar eligible, registered voters from voting with a regular ballot. For example, hotline callers reported that active-duty military ID cards (which lack a signature because information is digitally encoded) were rejected in Florida, just as elderly voters who lacked a current and valid state drivers license were barred from voting in several states. At a minimum, Congress should clarify that the following forms of ID must be accepted as valid polling place identification for any voter in a federal election: a current and valid photo identification and/or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.[iv]

## Deeper Congressional Review

In addition to the short-term reforms outlined above, this report's authors also urge Congress to improve voter registration by enacting legislation that would require automatic registration of all eligible voters and permit eligible voters who do not become registered automatically to register to vote on Election Day.

Another issue needing congressional review is the increased and costly privatization of the election process. In many states, public officials rely on private firms and contractors to build and maintain voter databases and election systems instead of public employees. The nation's democracy infrastructure is a public trust that should be a responsibility of public agencies, officials and government information technology professionals, where institutional memory, continuity, flexibility and responsiveness are cornerstones of the work and public service mission.

Electronic voting systems have proven to be unreliable and insecure for the counting and recording of votes. Further, where these systems are used, elections cannot be verified nor audited. Voter-marked paper ballot systems are necessary to ensure that votes will be properly counted and that the public will have confidence in the accuracy of electoral outcomes. Mandatory election audits are also critical for protecting the integrity of our elections.

Federal funding for election improvements is not secure. Continued HAVA funding or funding for any new federal program to improve our voting process should be reliable, and should include assistance for states to develop information technology capacities to manage, update and run election systems as an ongoing public state government function. The reliance on private vendors and its impact on election integrity should be evaluated as a new generation of improvements is adopted. And, states using unreliable and insecure electronic voting systems need funding assistance to shift to voter-marked paper ballot systems which ensure the verifiability and accessibility of elections.

## Conclusion

As Congress revisits election administration issues in 2009, it should consider near-term steps and longer-term responses. In the short-term, it should enact simple Election Day safeguards before the 2010 cycle begins to remove barriers cited by voters during last year's presidential election cycle. In the long term, it should review federal election laws that may be outdated or not achieving desired goals of expanding the voter franchise.

Above all, Congress needs to think anew about the voting process from the perspective of well-meaning citizens like Rich B. of Hillsborough County, Florida. He was barred from voting last fall but believed he was following the law. His November 4th hotline call revealed a regrettable situation that could have been resolved if the process placed more value on enabling voters like him to participate and offered a simple means to do so:

> *"Yes, my name is Rich [B.]. I am in my voter precinct.... I have my voter ID, my registration, my drivers' license, everything – and they do not even have me in the books, man. I pleaded with them this time... I'm not going to vote this time... Please send somebody out here to help, man."*

Similarly, administrators should stock polling places with back-up paper ballots, so voters like this Missouri resident would not have made this voter hotline call:

> *"Presently at Velda City polling place in St. Louis, Missouri, in North County, voters who have been waiting since 10:00 this morning have not been able to vote. There is inadequate equipment. It is very poorly organized. And as a result of that, many voters have left. It's a nearly 100% African-American precinct. And that's what's happening."*

Compare the Velda City report with another hotline call from St. Louis. Both polls were chaotic on Election Day this past November, but this caller noted a crucial difference: the caller did not give up and eventually voted because back-up paper ballots were issued.

> *"I would like to report that the voting procedures at Jennings School district in St. Louis, Missouri, were just awesomely terrible. I waited in line for over 3 hours, my daughter for over 4 hours. They didn't have any working booths. We had to vote by paper. I have never seen anything like it."*

# 2008 VOTER HOTLINE CALLS AND ANALYSIS

## Disenfranchised Voters in 2008

This report looks at the 2008 election's voting barriers and solutions from a voter's perspective.

In a country with an estimated 168 million registered voters and thousands of election jurisdictions, each with its own rules, political traditions and voting machinery, there are surprisingly few occasions where policy makers hear directly from voters about their experiences on Election Day. Unlike the technical and legal debates that often confront public officials on election issues, the everyday experience of voting and the election process is fairly simple. Voters want to show up, vote without unreasonable delay or complexity, and have confidence their vote will be counted.

Most voters do not know the mechanics of election administration, such as the difference between a provisional and a regular ballot, as well as election officials, poll workers or legislators. They do not think about voting most days of the year. On Election Day or during early voting, most look for their voting materials in desks, grab their wallet or ID if one is needed, look up their polling place location, and allocate a short window to vote.

What many voters find, particularly in states that do not have Election Day registration, or same-day registration with early voting opportunities, is a process that often does not allow a 'margin of error' for mistakes by election officials, poll workers, or first-time voters who are unfamiliar with the voting process. Consider this African-American hotline caller from Kansas City, Missouri, who moved before the election but did not reregister in time.

> *"My name is Sherry [P.], calling on behalf of my son, Marcus [L.]. We are both African Americans. My son went to vote in the area in which we live. His driver's license states the area in which we live and they proceeded to tell him that he could not vote. He needed to go down to old address where we used to live and vote in our old voter poll. He went down there. They told him that he needed to go back out to the right town area in which we live to cast his vote. According to the Kansas City Board of Election Commissioners, we needed to reregister because we moved to a different jurisdiction. However, we are all still living in the Jackson County area and I just think this sucks. So there go two votes out the window. And my son is a young black male, age 25, trying to exercise his right to vote. And I just think this is a sad situation, that today comes about and he cannot exercise his right to vote. And he was never once informed that he needed to reregister." Jackson County, Missouri*

Why, after the creation of statewide databases under HAVA, did this voter even have to reregister? Are the newest voter lists only used to remove voters, not keep them in the system as they go about their lives? It is an open question if HAVA's intended remedy, provisional balloting, would have permitted the voter to cast a ballot that would have counted, which is determined by state, not federal, law. Although the voter did not reregister in time for the election, his eligibility to vote – his age, residency and citizenship – was not in doubt.

Other obstacles to voting also affect other categories of voters who move – such as active-duty members of the military.

> *"My name is Robert. I am calling from Pensacola, Florida, and I have been in the Army for several years and I now live in Florida near Pensacola, and in order to vote here I have to have a Florida ID. So I went to get a Florida ID and all of a sudden on the first of October, they changed the rules, where I have to have a birth certificate, which means I have to go back to my state and get a birth certificate, to come back to Florida to get an ID just to vote, and there won't be enough time to do that between now and when the vote actually takes place. So, I was just wondering if you guys heard of anything of that nature?" Escambia County, Florida*

This call reveals that Florida's onerous voter ID requirements serve as a powerful deterrent to voting that may dissuade eligible voters from participating in elections.

These complex and cascading explanations raise more basic questions: why isn't voting simpler? And what is a fair way to assist well-intentioned and otherwise eligible citizens in a process that may be error-prone? Another way of posing this question is, 'Do policy makers, election administrators and poll workers assume that most voters' intentions are honorable, or do they assume that mistakes will lead to illegal voting?'

Virtually all of the callers to the Election Day hotlines sought simple solutions to errors that seemed to accompany a complex election administration process, regardless of the cause and without casting blame. They just wanted to exercise their right to vote. Among the most troubling calls were those from voters who reported that they were registered voters, had voted in prior elections, and had not moved yet nevertheless found their names missing from the poll books on Election Day.

> *"Yes, my name is Clinton [J.], and my wife, Madelyn [J.], here in Royersford, Pennsylvania is not registered. Now, she voted in the last presidential election in 2004 and, for some reason, her name did not appear on this list here in Royersford. So I'm just wondering exactly what the deal is. We did check online before the end of voter registration and she was registered, but now she's not registered." Montgomery County, Pennsylvania*

> *"I am calling on behalf of my daughter... She's a professional educator. She was turned away from her polling place this morning before she went into school, told she was not on the voting ranks... When she went to the polling place, they said that she had been removed from the voter ranks and they did not offer her an opportunity to use a provisional ballot. They said they did not know what provisional ballot to give her, so they denied her the opportunity to vote." St. Louis County, Missouri*

> *"I was directed to 5 separate precincts and then told that my information was not in the ballot book. So I was only able to do a provisional vote when I know in fact that I am a registered voter." Escambia County, Florida*

When academics, such as the authors of the CalTech/MIT report discuss situations like these last few examples, they often refer to 'false positives' and 'false negatives' in the verification stage of the voter registration process. They break registration into several stages, ending with verifying the voter's identity at the polls before receiving a ballot. The rationale given in states that have adopted stricter voter registration and voter ID standards following HAVA has been to prevent voters from impersonating other voters and casting more than one ballot.

But what if, as many of the hotline calls suggest, the reason a voter's name is missing from his or her polling place list is not an attempt to game election results but instead is the result of an error that occurred somewhere along the chain of events in the processing of voter applications en route to Election Day? What if new administrative practices that have accompanied the most recent federal and state election law changes are actually disenfranchising voters?

What was notable in the March 11 testimony before the Senate Rules Committee by Stephen Ansolabehere – co-director of the CalTech/MIT survey that surveyed 50 states and estimated 4 million registered voters were prevented from casting ballots in 2008 – was their survey found "no such instances" of individuals intentionally impersonating other voters for partisan gain. Instead, they found many instances where voters "names are not on the rolls but should be or are incorrectly recorded by the election office."

In other words, voter impersonation is not a national issue or threat to the integrity of the system, but there is much evidence that systemic voter disenfranchisement is, according to one of the most extensive and credible 2008 post-election surveys undertaken.

# FOCUS: VOTER REGISTRATION ISSUES

The voting rights advocates who authored this report reviewed thousands of 2008 voter hotline calls in six states: Florida, Georgia, Missouri, Ohio, Pennsylvania and Virginia. They found broad categories of problems involving many scenarios where the bottom-line result was citizens lost their right to vote. This report divides its discussion of the hotline calls and related issues into two sections: those involving voter registration and authentication before and on Election Day; and voting machine failures that disrupted the process to the extent that people were unable to vote or lost confidence that their votes were being properly recorded.

As readers consider the hotline calls and the substance of the issues posed, they should ask, 'What real-time solution could have helped this person to vote in 2008?' and 'What systemic reforms would be needed to ensure this scenario does not recur?' The answer to these two questions will be different and require different responses, as helping voters on Election Day and fixing the underlying voting process issues are different tasks.

First we turn to voter registration issues. The Election Day hotline calls reveal dozens of scenarios where information errors concerning registration – whether the fault of local election officials, government databases, state agencies, or voters themselves – prevented eligible citizens from voting in 2008.

The first of these scenarios involves voters who believed they were registered to vote but discovered they were missing from polling place voter lists for various reasons, starting with a failure of government agencies to process their registration applications.

> *"On Saturday, my husband and I tried to vote in Orange County, Florida, and were told that we were purged from the system. The last time we voted was 2002. When we renewed our drivers' licenses at the Department of Motor Vehicles, we were asked if we want to change our voter registration address. We agreed to do that, however we were told by the Supervisor of Elections at the poll that 90% of the changes made at the DMV are never passed on to the Supervisor of Elections." Orange County, Florida.*

This Jefferson County, Missouri voter, in similar circumstances, was told it was common knowledge among officials that many voter applications are not processed by the state.

> *"We tried to vote today. We were told that when we got our drivers' license renewed that they would register us to vote. And if it didn't get done in time, we could get a provisional ballot. And when we got to the polls today to vote, they didn't show us registered. They said that the Department of Revenue does this all the time. They say that they are going to register you and they don't. And we asked for the provisional ballot and they said it wouldn't count, and we couldn't get it." Jefferson County, Missouri*

In many of the calls it was difficult to identify precisely where the process broke down. For instance, this Georgia caller said she received a registration application in the mail and submitted it. Yet she discovered on Election Day that she was not on the voter rolls.

> *"My concern is that I was sent a registration form to vote here in Macon, at the Macon mall and when I got there they didn't have my name on the list." Bibb County, Georgia*

Likewise, this other Georgia caller believed that she had registered to vote but her name did not appear on the voter rolls.

> *"I am a first time voter, a virgin voter, and I was so anxious and happy to vote this morning and when I got to the poll I found out I couldn't vote because I wasn't registered. My name didn't show up on the register. I'm just really bummed about it because I know I registered to vote for this historical election, and I just wish there was something I could do." Clayton County, Georgia*

This Ohio voter also discovered on Election Day that his voter record contained errors, perhaps due to mistakes on the part of the postal system or election officials who mistakenly recorded that the voter's registration card was undeliverable.

> *"I was then confronted with having to place a provisional ballot because they said my voter registration card was undeliverable. However, I had my voter registration card with me so it could not be undeliverable. But, I had to vote on a provisional ballot and I'm not even sure that counts." Franklin County, Ohio*

Likewise, this Georgia voter learned on Election Day that his voter registration application had not been processed, apparently because county election officials erroneously concluded that the voter's street address was not legitimate.

> *"I live in Lithonia, Georgia... I've been there for 5 years. I went to go vote. They told me my address does not exist. They do not have a record of it in Lithonia... I paid the taxes for the last 5 years. They have no record of this and I'm not allowed to vote... Me and my wife, neither one, can vote. That means no one at Leslie Ridge can vote." DeKalb County, Georgia*

Errors in the transmittal of registration applications to election officials also arose in the administration of absentee ballots. This Pennsylvania voter called the hotline because her daughter, a college student, applied for an absentee ballot but did not receive it in time.

> *"I'm calling in reference to my daughter... We sent in her absentee ballot the first week of October - for her absentee ballot to be sent back to the home. The absentee application I was told was never received and I know that that's not true because I sent it in myself. I took it to the Post Office as I sent her a care package to college... How is it that a lot of college students I'm finding who wanted their vote to be counted in Pennsylvania all of a sudden their absentee ballot applications, you can't find them?" Philadelphia County, Pennsylvania*

These calls were indicative of issues involving unprocessed registration and absentee ballot applications, or registration records containing inaccurate information.

Many other hotline callers simply discovered on Election Day that they were not on their polling place voter list, apparently because election offices had removed, or purged, them from the rolls through list maintenance procedures. While the NVRA requires officials to attempt to contact voters who have moved by mail and await two federal election cycles before removing their registration, these callers did not learn that their voter registration had been cancelled until they appeared at the polls to vote.

> *"I'm calling from Philadelphia, Pennsylvania. Several of my friends and family have told me that when they got to the polls, they were told that they can't vote because their names weren't on the list. However, they've been registered for several years and someone needs to investigate why they are turning people away at the polls." Philadelphia County, Pennsylvania.*

> *"I was trying to vote and find out that I do not exist in the database. I had registered in 2005, 2006 and 2007 by mail, which was mailed to my apartment complex to me. Like I said, I just found out that I don't exist as a registered voter, so at this point I want to know what can I do because I would like to register, well not register, but I would like to vote because I did register three times and that was 2005, 2006 and 2007." Summit County, Ohio*

> *"I did not vote in the last presidential election and they said that was the reason why and that I would have to reregister. I thought once you registered to vote, you could vote." Cherokee County, Georgia*

Another dimension of registration issues surfaced in hotline calls where individuals discovered that their voter information either was incomplete or contained specific errors. For example, voter information sometimes erroneously indicated that the voter was a member of another political party or had already voted in the general election.

*"I've been a Democrat all my life. Now all of a sudden, I went to the voters' booth and I'm a Republican." Philadephia County, Pennsylvania*

*"I am here at the precinct trying to vote and they're saying that I already early voted, which I did not. I asked to do a provisional vote and they are saying that because it's in the system that I voted, that I cannot even do a provisional to dispute this vote. And I did not vote on the 28th of October." Broward County, Florida*

Intriguingly, some of the voter hotline callers were poll workers who noted the extent of errors they found in voter rolls and public records while working on Election Day.

*"I was one of the poll workers, and in these communities where I was working, we experienced an unheard amount of errors which were on the part of, I believe, the elections board. We had some 20-, 30-year residents who were unable to vote as normal. We were told that, according to the roster, they weren't on there. Their names were misspelled. The addresses were incorrect, which was inaccurate with the mail that they had received." St. Louis County, Missouri*

## Provisional Ballots

Under HAVA, voters whose names are not found on polling place voter lists must be offered a provisional ballot, which will be set aside and counted pursuant to state law. HAVA specifies particular circumstances under which this intended safeguard must be issued but allows states to set the rules for counting provisional ballots. As a result, there are wide variations among states affecting the standards when to accept or reject these ballots. For example, some states will partially count a provisional ballot if it is cast with the voter's county but outside of the voter's precinct (as to all contests for which the voter is eligible), while others will only count it if it is cast in a specific precinct.

Election Day hotline callers cited provisional balloting in various ways. In the first instance, some callers said they were denied the right to vote outright, including not being offered a provisional ballot. In other cases, voters described poll worker confusion about when the ballots should be offered – an issue that was compounded by increasingly restrictive new voter ID requirements in some states.

Once offered a provisional ballot, many voters said they did not feel that ballot would be counted and felt slighted as if given a 'second-class' voting option. Finally, some hotline callers noticed that their names were not listed on polling place lists but after pressuring poll workers for explanations, discovered that they were on central or countywide voter lists. Those callers said that bureaucratic inconsistency should not have been a reason to require that they vote by provisional ballot.

This hotline caller from Virginia said the local voter rolls contained his wife's maiden, not married, name, but gave no indication that poll workers offered his wife a provisional ballot.

*"My wife, recently married a year and a half ago, was turned away at the polling place today. She carried with her, her voter registration card, which had her maiden name on it. She carried also her driver's license; she carried both social security cards that had her maiden and her married name on it with corresponding social security numbers and she also carried her marriage certificate up there. And, she was refused at the polls because they said she wasn't registered to vote and I cannot see how this is within the limits of the law being as it there was all the supporting paperwork to prove who she was. They had her on the rolls registered at our common address under her maiden name, but since she wasn't registered technically under the married last name, she was turned away even though she had plenty of supporting evidence to prove who she was. She was not even offered the opportunity to speak to an election official." Prince William County, Virginia*

In other cases, callers knew about provisional balloting but were nevertheless denied a provisional ballot. This Floridian, a military veteran and federal law enforcement officer, was one such hotline caller:

> *"I am a registered voter in Miami-Dade. I am an Army veteran. I am also a federal law enforcement officer. I've served my country and continue to do so. I was also denied my right to a provisional ballot, as well. I was told just recently from the elections board, somebody from the elections board, that I had absolutely no rights at all to voting in the state of Florida. They say, 'Absolutely not, if you do not meet every single one of their criteria, you will be denied your right to vote.'" Miami-Dade County, Florida*

Some callers also noticed poll workers were confused over when to issue the ballots.

> *"The problem I've been having with my voting, was that the person that took my name down did not really understand the difference between a provisional ballot and a regular ballot, so she is giving away to all the folks in front and in behind me any of the cards that indicate either position whether your provision[al ballot] or whether you are actually been voting there at the same precinct all the time. So, we need to educate the individuals a little better on that mechanism in which we are all trying to vote with." Prince William County, Virginia*

> *"I went into my polling location with my registered voter card. It confirmed my name and address that matched exactly what was on my driver's license. I even confirmed with the Franklin County Board of Elections the day before that everything was correct. I was at my correct voting location, but they made me file a provisional ballot, they couldn't tell me why, we called and they still couldn't give us an answer." Franklin County, Ohio*

Calls from other voters strongly suggested that the voters were not offered a provisional ballot because they did not have the correct form of voter ID.

> *"I am 82 years old. I stood in line for three hours to vote yesterday. And when I got there, I had my voting card and driver's license. But the driver's license was from New York. So it wasn't acceptable and I couldn't vote." Pinellas County, Florida*

> *"We are being refused the ability to vote because our address does not match the address that's on our license, even though the correct address is on the polling sheet. Again, not being able to vote due to the fact your address does not match that of the address on your license. That is in the city of Overland. People are being turned away." St. Louis County, Missouri*

In other instances, hotline callers reported that their names were not on their polling place list. After they pressed poll workers and other officials to make inquiries on their behalf, they learned they in fact were listed on that jurisdiction's 'central list' or in the statewide databases. In some cases, these voters were turned away from the polls. In other cases, they were given a provisional ballot.

> *"Just went to my local polling station and tried to vote. I was told by them that my name was in the computer but they did not have it on the [polling place] list so I couldn't vote." Palm Beach County, Florida*

> *"I had called this morning... the Fulton County elections office, just to make sure I was registered, because I am a first time voter, and I just wasn't sure if they got my registration or not. They did, they looked me up and they said I could vote and they gave me the location and then when I got there I was not in the system, for whatever reason, they looked me up under lists and they didn't have me and then I was forced to do a provisional ballot. So, I was not very happy with my first voting experience." Fulton County, Georgia*

Finally, among the hotline callers who received provisional ballots were people who felt this means of voting was a slight or had little confidence their vote would count. These calls illustrate how interruptions in the voting process – or confusion over procedures – can undermine

public confidence in our democratic system. In one case, poll workers appear to have wrongfully issued a provisional ballot, rather than an emergency paper ballot, in a precinct with a machine breakdown.

*"I had to cast a provisional ballot… because the only machine that was taking the punched ballots had malfunctioned... My basic complaint is months and months of preparation should have been done to get the machine, or a machine operational rather than going with a provisional ballot, because from what I understand, rumor or not, that these ballots are placed underneath this machine may not be counted unless it is a real close election such as the 2004 election. So it would be a shame to not have these ballots counted." Jackson County, Missouri*

In another case, a Georgia voter appears to have been unlawfully purged from the rolls because he had not voted in recent elections and was issued a provisional ballot.

*"My husband … a disabled Vietnam vet went to vote this morning. He's 67 years old and he was told he did no longer appear on the books; he's been removed. He was devastated. He was not able, he put in a, I think it's called a provisional paper, but he was not able to vote. I'd like to know why don't they notify people if they are going to be removed. I know he should have been voting, but he elected not to. Sometimes he goes through a depressed mode and he just doesn't want to get out, but this time he really wanted to vote." Gwinnett County, Georgia*

The voter hotlines also received many calls from students facing barriers at the polls. After enduring long lines and entering polling places, many students told the voter hotlines that they were barred from voting by seemingly arbitrary interpretations of their state voter registration requirements.

*"I'm a student at the University of Miami Law School and submitted the last four of my Social Security for my voter registration that was completed on time. However, I've now received notification that they must have further verification of my full Social Security and other information that is extremely difficult for me to obtain. I believe that my vote is being suppressed. On the website for voting as a student, they state that all they needed was the last four of my Social, however they are making, as I said, this more difficult. And I believe that this is affecting all out of state students in the law school at the University of Miami." Miami-Dade County, Florida*

*"Hi, I am a student at Virginia Commonwealth University in Richmond, Virginia… I believe it is unfair that students are told they can only have their student IDs and then they get to the polls and they are turned away. Again, I am a student here at Richmond, Virginia." Richmond City, Virginia*

*"We are having voters being turned away from the polls. They're having problems with provisional ballots and we are having college students who have registered their new addresses on campus being turned away from the polls and not being able to vote. This is a huge problem seeing as that the precinct 224 is located right next to a major university around the Dayton area." Montgomery County, Ohio*

These multiple barriers faced by student voters underscore the rationale for having the opportunity to sign Election Day affidavits affirming that they registered to vote and then receiving a ballot that can be counted on Election Day.

## Better Election Day Safeguards

The experiences described by the voters in the above-cited hotline calls pose the question of what could have been done on Election Day to ensure that the voters, if they are eligible and affirm that they had attempted to register, could vote a ballot that would count. From all appearances, these individuals were eligible voters who had in some cases been registered for many years and wanted to vote in a historic presidential election.

This report and its analysis seek to focus Congress on the need for short-term solutions that can be implemented before the next federal election cycle begins in 2010, as well as to pinpoint issues in election administration, federal policy and law that should be part of an ongoing and deeper election reform discussion.

Congress, in HAVA, intended that provisional ballots would be the safety net to prevent eligible voters from falling through cracks in the process of maintaining voter records and registration lists. However, there have been unintended consequences that have had exactly the opposite effect as many states have implemented this requirement. As many hotline calls reveal, voters whose registration information is not accurate or current in state and federal databases are losing their right to vote. What is most important in this trend is that inconsistent voter data – regardless of its source – has supplanted in many states other means by which voters can demonstrate their eligibility. The legal basis of eligibility in most states has to do with age, citizenship, residency, mental fitness, and in some cases felony convictions – which is altogether different from passing a government database matching test.

Rejecting voter applications on the basis of failures to match is only one issue cited by 2008's voter hotline callers. Others involve voters who were removed from voter rolls without their knowledge. Others involve not presenting specific forms of approved ID before voting. Others involve poll workers who were confused by state or federal law requirements. Stepping back from these specific issues, one sees a cascading effect if voters, poll workers and administrators fail to dot every 'i' and cross every 't.' But if mistakes are made, it is the voter – not the state – who loses his or her legal right to vote.

This analysis, raised by voters themselves who called Election Day hotlines in 2008, suggests that Congress must act to improve Election Day safeguards before the next federal election in 2010, while at the same time adding specific post-HAVA election administration issues to its ongoing deliberations on improving elections.

## Recommendations

Under HAVA, many states are rejecting large percentages of provisional ballots. Missouri, for example, rejected nearly 75% of the provisional ballots cast in the November 2008 election, according to state records. In Florida, 51% of these ballots were rejected in last fall. In Pennsylvania, the figure was 44%. While election officials work hard to verify provisional ballots, a handful of states have taken a slightly different approach to fulfill HAVA's provisional ballot requirement. These states offer voters a far simpler alternative, which streamlines the process for election officials, and realigns the balance in favor of voters who would otherwise be disenfranchised by administrative or poll worker error.

That alternative combines a short 'voter affirmation affidavit' and voting with a ballot that is tabulated on Election Day like a regular ballot. In Michigan and Vermont, voters whose names are not in polling place lists may complete and sign an affidavit swearing, under penalty of perjury, that they are duly registered and then cast a ballot that is counted on Election Day. These affidavits are only available to voters who are willing to legally swear that they already registered to vote and who can establish their identity and current residence in the jurisdiction by showing an appropriate form of current identification.[v]

Election officials use the affidavit to update lists with current information provided by the voter. If a voter has intentionally cast more than one ballot, officials may readily pursue criminal charges.

In Michigan, 3,797 voters cast provisional ballots of which 1,319 (34.74%) were the 'affidavit ballot' type that were counted on Election Day. The remaining 2,478 provisional ballots cast were the 'envelope ballot' type, which are reviewed by local officials in the six days immediately after the election. Of those envelope ballots, only 655 (26.43%), or 17.25% of the total provisional ballots cast, were ultimately counted. In other words, Michigan's affidavit provisional ballots were counted at twice the rate of Michigan's envelope provisional ballots. In Vermont, election officials said about 2,200 voters used the state's one-page 'voter affirmation form' and then voted using regular ballots.

Relying on a voter's signature and sworn affidavit stating the voter complied with registration requirements or moved within a state from a previous registration address is far simpler for voters, poll workers and election administrators than the provisional ballot procedures that have followed HAVA. The use of a voter's signature and oath attesting to their eligibility refocuses the authentication stage of the registration process to the criteria in state law itself.

Additionally, there are other important steps that Congress should take to assist eligible voters while election administrators continue to improve the voting process under HAVA. These steps are intended to restore the benefit of the doubt to voters in various stages of the registration and authentication process, as well as during ongoing voter list maintenance procedures.

- HAVA should be amended to clarify that a failure to match information on a voter's registration application with a record in the Social Security or state motor vehicles database is not sufficient reason to reject that voter's application.[vi]
- HAVA's provisional ballot language should be clarified to require that provisional ballots cast by voters who appear to vote in the 'wrong precinct' be counted for all federal elections in which the voters are eligible to vote.
- HAVA's provisions concerning voter ID should also be clarified that states cannot abridge or narrow the forms of ID listed in HAVA.

Congress should also enact technical amendments to the National Voter Registration Act's provisions related to voter registration and list maintenance.

- The NVRA has not prevented states from adding unnecessary requirements to register to vote that are unrelated to a voter's eligibility. The law's requirement that states accept the federal voter registration form and accept complete applications submitted 30 days before an election has not prevented states from imposing onerous requirements, such as Arizona's proof of citizenship requirement. The NVRA should be clarified to prohibit states from requiring voter applicants to supply documentary proof of citizenship as a precondition to voter registration in any federal election.
- The NVRA also has not stopped states from engaging in unauthorized list maintenance practices that remove eligible voters from the rolls. In many states, it appears officials are purging eligible voters based on matches with other databases—e.g. from neighboring states and national change of address records— that may indicate that the voter has moved, without giving notice to the voter as specified by the NVRA's provisions. The NVRA should be clarified to prohibit the cancelation of a voter's registration solely on the basis of a match with another database that may suggest that the voter has moved, unless and until the voter has been given notice of the removal and an opportunity to reverse it if it is erroneous.

# FOCUS: VOTING MACHINERY AND RESOURCE ALLOCATION ISSUES

There was another series of hotline calls that underscored a different set of Election Day issues facing voters in 2008 – where operational problems with various electronic voting systems stopped or delayed voting, particularly in conjunction with polling locations that did not use back-up paper ballots following the machine failures.

While election officials say 2008 was a successful federal election that demonstrated how HAVA has helped the nation move forward with improving election systems – from voter databases, to provisional balloting, to voting machinery – the experience of voters in various states suggests there are still significant and outstanding problems with many HAVA-adopted systems that not only prevented voters from casting ballots, but created lengthy delays at the polls and prompted voters to question whether their votes would be accurately counted.

This next section enumerates many of these concerns as they were experienced by voters who called the hotlines in six states: Florida, Georgia, Missouri, Ohio, Pennsylvania and Virginia. These calls suggest that voter registration-related concerns, the focus of the first half of this report, are not the only outstanding issues for Congress to review when it considers federal election reform. While this report will describe various voting machinery issues that could arise from a variety of factors, as well as the public reaction, the authors believe the best short-term solution would be a new federal requirement that jurisdictions using electronic voting systems stock their polling places with back-up paper ballots.

Such an Election Day safeguard would enable polling places to keep operating and also give poll workers a tool to accommodate votes during peaks in voter traffic or turnout. This contingency would ease the process while deeper issues associated with the voting system failures – whether design flaws, programming mistakes, calibration issues or poll worker error – are parsed by policymakers and longer-term solutions are implemented.

The use of back-up paper ballots was uneven at best in 2008, including in Pennsylvania despite a pre-election federal court order requiring their use in that state when voters faced 50% or more of the voting machines breaking down in their precincts. However, this option is a simple solution that, if employed in other states, would have enabled poll workers and administrators to sidestep technical breakdowns and accommodate voters on Election Day – the focus of this report.

## Voters Experiences

Thousands of hotline calls reported failures of electronic voting systems and an uneven use of back-up measures to compensate for these breakdowns and accompanying delays. We begin with reports that noted complete system failures as polls opened on November 4, 2008. Hotline callers said some locations were particularly hard-hit, like Chesapeake, Virginia, where the ensuing lines lasted for many hours. These first calls are notable for their specific descriptions of machinery issues and a larger frustration with the process.

> *"Yes, I am calling from Chesapeake, Virginia, in the Crestwood area, we are having problems at that location, Crestwood Middle School, we have thousands of people in line, they only have six voting machines and they're all down. It's pouring rain, we'd like to have someone get over there if possible and see what's going on. Thank you." Chesapeake City, Virginia*

> *"It took me three and a half hours to vote. They normally would have a book with information on each voter. This year they had electronic systems that did not work for the first hour of my standing in line. I was there at 6 a.m. I'm just getting home at 9:30 or so. I really have an issue with the way things were done. People were in the rain. People were getting ahead of line. There was no organization and things need to change when it comes to our voting and our voting rights. I believe officials have not considered that we employ them basically." Chesapeake City, Virginia*

In Florida, some of the longest lines were during that state's early voting period before November 4. Hotline callers said the machinery issues were heightened by an apparent lack of pre-election planning to anticipate high turnout. Callers noted there were not enough early voting locations, a shortage of poll workers and voting booths, and not enough machinery to speed the process.

> *"Yes, I just think that in a country that we are so advanced with technology, we can't get our voting systems correct. We spent 8 hours on Sunday voting. It's unbelievable that they have to wait until we actually show our driver's license to print out the ballot, and then they don't have enough stations ready for the actual voting." Broward County, Florida*

> *"Yes. I live in West Palm Beach and I have tried for two days in a row now to vote early, but the lines are so long. Yesterday, it looked like the line was probably 4 hours long, in the pouring rain, and I finally gave up and thought I'd do it today. And drove to a different early voter registration place which was supposed to have a shorter wait and sat there for over two hours, and hadn't even made it halfway though the line. So I finally gave up, because I thought I'd be there for another two or three hours. It was hot. They had limited water. It was just exhausting [sigh] and I finally gave up." Palm Beach County, Florida*

In other states, the situation was not quite as dire but still unacceptable to hotline callers.

> *"I've been in line for over an hour and I will be here for at least another hour, perhaps another two. They're experiencing voting problems in challenging voters who are first-time registers. There's also problems with inefficiencies at the polling place. The Chester County Board of Elections only sent voting books where they split the alphabet in half, and not in quarters or in eighths." Chester County, Pennsylvania*

Hotline callers also described specific failures with electronic poll books, which are a different part of the voting system than DRE or 'direct recording electronic' machinery used to record votes. Electronic poll books are used to check in voters by verifying they are registered and in the correct precinct. During Georgia's presidential primary, there were many calls about electronic poll book issues, starting with inoperable machines.

> *"Hi, the voting machines are down at Beecher Hill polling station in Atlanta, Georgia, and people are sitting there waiting and the machines have been down for about 20 to 30 minutes, and so people are not able to vote at all." Fulton County, Georgia*

> *"Hi, I'm from Morrow, Georgia, Clayton County. It's not the ID, it's the two computers that after you show your ID that they use to give you your card. There's only two computers. You get through the ID line with no problem. It's that the next line, you have two computers and people waiting in a second line to get to those two computers that give you that yellow card. So it's not the ID, it's that yellow card. You get to the two computers and you can't use that yellow card." Clayton County, Georgia*

Additionally, callers noted there were not enough poll book computers or poll workers to accommodate the turnout. As voters waited to sign in, the voting booths sat empty.

> *"I just voted, I stood in line for over an hour. They have two little computers, two people checking your ID. We need more people, more computers to check the ID. It's ridiculous to stand in line for an hour and it takes two seconds to vote." (GA-primary-16) Henry County, Georgia*

What became clear from many of the hotline calls was once there were voter machinery breakdowns, poll workers often were unaware that they had alternative means of voting at their disposal. This is notable in Virginia and Pennsylvania because before Election Day both states were sued by voting rights advocates and represented, respectively, by Advancement Project and Voter Action over providing back-up paper ballots. In Pennsylvania, Voter Action obtained a federal court order to implement

this safeguard. However, it appears many Pennsylvania jurisdictions did not heed the court's order.

*"I went over to my polling location at 7:00 because I had to drive to Delaware for work (I'm a small business owner) only to find and be told that the machine was broken. I wasn't offered any other way to vote, no back-up plan for those of us this morning. I'm now in Delaware and won't be able to get home in time to vote and that's very disappointing." Berks County, Pennsylvania*

*"My issue and complaint is in the Philadelphia, Pennsylvania Ward 59, Division 4, only one of two machines working this morning at 7 a.m. when the polls open, although there were already more than 200 people standing in line and no indication that that situation would be rectified any time soon. This is really, really horrible, given the fact that some people are going to have to get out of line eventually to go to jobs where they don't have bosses who are sympathetic to this plight. More distressing, is the fact that this has never been a problem at this particular ward before and if the machines had been checked ahead of time, there's no way possible it should be completely out at 7 a.m. as soon as it opened up. Again, Philadelphia, Pennsylvania, Ward 59, Division 4, not all of the machines open and a horrific, horrific display in terms of the record turnout we have and apparent apathy on the part of the individuals responsible." Philadelphia County, Pennsylvania.*

*"We've been in line here at our voting place since 5:30. There's probably 600 people here. And within the first hour 5 of our 7 voting machines have already broken, the line is at a standstill. We were told that they did not have paper ballots on hand to switch to. We've been promised that we were going to get a technician and paper ballots, but they've been a long time coming. People are starting to get a little antsy here. Very disappointed." Richmond City, Virginia*

In contrast, Ohio sought to make back-up paper ballots available, under directives from its Secretary of State. Although Ohio's 2008 record on using this measure is not spotless, Ohio election officials said after Election Day that the back-up ballots were not just an alternative when DREs failed, but also helped to alleviate long lines because the ballots allowed poll workers to add additional tables to check in voters who then were given a paper ballot to vote. Ohio officials said the paper ballots generally kept waiting times to under two hours, which they called an accomplishment. In some instances, voter hotline callers who cited the equipment failures noted – usually in passing – that they voted by back-up ballot.

*"The voting precinct at 10 Wilmington Place, zip code 45420, there were 5 automatic voting machines, none of them was working since the polls opened at 6 a.m. Paper ballots were being done and the average wait was 45 minutes to one hour." Montgomery County, Ohio*

*"I went to vote at 6:30 a.m. this morning. However, someone was there working on the voter machines. Only one of the three machines were working. So I had to use a paper ballot, most of the people had to use a paper ballot. When I left at 7:30, two of the machines still were not working." Stark County, Ohio*

Georgia also employed back-up paper ballots to reduce voter lines.

*"When we arrived at the polling location, none of the cards that you insert into the voting machine worked. So we were allowed to do an emergency vote, which of course is a vote that you manually do on paper, but I wasn't quite comfortable with that but I did vote nonetheless." Fulton County, Georgia*

While these ballots did provide a safeguard, their use was uneven at best, and some callers said officials had not distributed enough back-up ballots to their polls.

*"I am just calling to report that this morning I was voting and the machines, we had three machines and they were down, one went down and then all three went down and they were going to paper ballots and the folks at the polls at the*

*management station said they only had 150 paper ballots and they could copy them but they didn't have a copy machine and they couldn't leave the polls." Louisa County, Virginia*

*"I am in Amelia Courthouse, Virginia, and all of the computers are down, they only have a hundred ballots left and they went to print more. That's what they told us. And there is nowhere that is secret anymore, because they were not set up for the paper ballots." Amelia County, Virginia*

Moreover, hotline callers also noticed in several states that there was some confusion among poll workers as to when to use the back-up ballots. It appears that poll workers were not sufficiently trained or familiar with this contingency.

*"I'm calling to report an irregularity at my polling place, which is Church of the [unclear]. The machines that issue the ballots were down. There was only one working. A lot of voters had to leave because the problem wasn't rectified right away. Finally they got a second computer to work, but they told us that they could not use paper ballots as long as one of the computers was working. So there was just huge delays." Fulton County, Georgia*

*"I just returned from the polls. There was a lot of confusion at the polls amongst election officials. They weren't quite sure what to do with the paper ballots, where they were supposed to go. There was only one electronic voting machine out of 6 or 8 that was actually working. They weren't sure how to get them working. They were calling troubleshooters." Montgomery County, Ohio*

There is another dimension to this discussion concerning the allocation of polling place resources. Election officials have increasingly turned to paperless technologies as a way to increase efficiencies – speeding the process of voting, enabling jurisdictions to consolidate precincts into 'vote centers,' reducing the need to recruit poll workers, and enabling faster tallies of the vote count. However, when these technologies fail, there is a corresponding greater impact on voters because the affected vote centers or polls are often processing large numbers of voters and ballots. Hotline callers noted this very trend, which they characterized as "too many people" and "not enough machines."

*"Hi, I went down to vote today with a whole lot of other people at City Hall in Richmond, Virginia. And we ended up waiting five and a half hours — and you heard me right — to vote. Five and a half hours to vote on those machines that we don't know if they are going to work properly for us or not. There were four machines for thousands of people... And it wasn't fun and the news is trying to make it seem like oh everybody loved to be there. It was hard. It was very, very hard. And it was unnecessary." Richmond City, Virginia*

These resource allocation issues raise additional concerns. Shortly before the 2008 general election, the Virginia State Conference of the NAACP, represented by Advancement Project, filed a lawsuit in which it claimed that state and county election officials had inequitably and inadequately distributed polling place resources on the basis of race, to the disadvantage of African-American voters.

Whether election officials in some jurisdictions are committed to accommodating student voters is another dimension of this issue. Many university students called the voter hotlines reporting shortages in staffing and machinery at their polls when compared with the voter turnout.

*"Yes, calling from Orlando, Florida. The precinct out in U.C.F., University of Central Florida, the wait in line is still four hours long with probably over 2,000 people yet to vote. The polls closed over a half-hour ago. So obviously not enough equipment or manpower there to help." Orange County, Florida*

*"I'm a student at the University of Miami, and I just finished voting in precinct 561. I'm calling to complain because of the disaster that occurred today when I attempted to vote. People were turned away. People were leaving lines. Three lines [were] attempting to funnel through the door. They were unable to locate my name, even though I presented my voter registration card and my ID. By the time they finally did so, three or four people had already given up. It was the biggest disaster that I have ever seen." Miami-Dade County, Florida*

## Electronic Voting Failures Described

This section of the report describes how voters experienced electronic voting machinery failures. While there have been many academic studies and state task force reports that have discussed electronic voting technology issues in scientific and engineering terms, policy makers have heard far less frequently from voters who have experienced these problems. What is most notable in these hotline calls are not specific malfunctions, per se, but the accompanying dilution of public trust that occurs as voters see systems fail.

The first of the hotline calls describe various malfunctions with electronic voting systems where a voter's choices apparently were not recorded by a touch-screen computer voting machine. This is a different part of the overall voting system than the voter registration database. This is where ballots are created, and votes are cast and recorded. Tabulating overall election totals involves yet other machinery, usually in a centralized location. The hotline calls start with reports of votes being cast but not counted.

*"I was the first voter at the fire house in New Town Borough this morning at 7a.m. I voted and after getting to my office in Manhattan several hours later, I received a phone call telling me the machine had not been working, my vote had not been counted and they wanted me to come back in to revote. Unfortunately, I can not get home before the polls close, which means my vote is not counted." Bucks County, Pennsylvania*

*"I had trouble at the voting booth this morning. I put the access card in, it beeped, it did not advance. And I pushed it in a little further again, and then it said I voted. And I did not; I never saw the screen advance. And I approached the woman, the voting person there and they said, 'well, sorry. You already voted.' Well, I don't know who I voted for, so that was my problem." Lehigh County, Pennsylvania*

*"We have electronic machines. I went completely through the process from page to page. And when I went to cast my ballot, it went back to the first page and I did not get to cast my ballot. The person who was attending the voting booth was helping somebody, and I left and then I called the election board at the courthouse and they told me, 'It's too bad.' I didn't get to vote." Blair County, Pennsylvania*

In some cases, hotline callers reported that malfunctioning DREs were kept in use by poll workers – not pulled from use and replaced by offering back-up ballots.

*"I voted at Ward 56 - Division 56 in Philadelphia this morning and the machine I tried voting on wasn't working, so I used a different one. However, they kept ushering people into the broken machine and they would have thought that their vote was counting, being counted, but it wasn't. So someone might want to check into that." Philadelphia County, Pennsylvania*

Another series of hotline calls concerned whether or not DREs were accurately recording voters' choices. In many cases, the machinery appeared to be improperly 'programmed' or 'calibrated' such that a voter's selection did not register but instead was reset to select another candidate or political party.

*"My wife voted for a certain candidate, the democratic candidate. But, when she left the booth she noticed that it registered the republican candidate… My wife actually didn't realize what had happened until she had exited the booth and by that time was too late." Prince William County, Virginia*

*"I voted in Northern Virginia this morning and when I went to put my finger on the circle of the Republican candidate I was voting for, it automatically checked the box above for the Democrat candidate who I did not vote for. It was not on the line or anywhere, but inside the circle. And I was told, I called an attendant over and he told me I was the third person that happened to." Prince William County, Virginia*

*"The problem, today, I encountered was when pushing the Republican button, the light automatically jumped to the Democrat choice. This happened multiple times; I tried to correct it. I think the voting booths were calibrated – something – but it jumped to the Democratic ticket every time I pressed the Republican ticket." Dauphin County, Pennsylvania*

*"I'm trying to use the new computer voting machines, and whenever I click on Obama because he's the best president and I've been watching his campaign very closely, it selected McCain. I don't want to vote for McCain but that's how it recorded my vote." Warren County, Ohio*

A final series of issues noted by hotline callers was when DRE software did not present a complete slate of candidates or political parties on the computer terminal. One possible consequence of this programming error, if not caught and corrected before Election Day, could be to unduly advantage one candidate or political party.

*"We had seven machines and five were broke. Also, it did not give me the option to vote for the Congress, for Mark Warner. I only could vote for the presidential candidates and there was nothing else. We didn't even have paper ballots for back up. You know, it was just ridiculous. No technician out there or anything, and I want someone to get out there and see if they could fix the machine or hand out paper ballots." Henrico County, Virginia*

*"I went to vote this morning at our assigned 2nd Ward voting spot and the machine had a touch-screen on it. You're allowed to vote straight ticket. I tried to vote straight ticket, and when I came to the end at the summary, the vote that I registered – it didn't register for president and I had to go manually and do every single straight ticket vote. So people that think they're voting straight ticket here in Northumberland, Pennsylvania aren't voting for president and this could affect Democrats and Republicans." Northumberland County, Pennsylvania*

*"I'm in Douglasville, Pennsylvania… The problem I'm having at our polling station was we were voting and I don't know if there was something wrong with the polling machine but the polling machine was voting double or triple for whatever candidate you chose." Chester County, Pennsylvania[iii]*

# CONCLUSION

The perception among election administrators that 2008 was a 'trouble-free' year is challenged by the voices of voters who called Election Day hotlines seeking help to vote and to ensure that their ballot would count. The callers cited in this report are not just a subset of the tens of thousands of Americans who sought help on Election Day by calling voter hotlines. They are the most vocal vanguard of an estimated 4 million citizens who lost their right to vote last year due to election administration issues, according to the highly respected CalTech/MIT Voting Project. Yet their calls are more than a tool for policy makers and election administrators who want to improve the process. While their complaints and frustrations offer insights about specific election administration problems that compliment large studies such as CalTech/MIT's report on 2008, these callers were also seeking help to vote on Election Day – which is why this report has urged that Congress, above all, ask what should have been done to help these citizens last year, and act to ensure that these barriers do not recur in 2010.

All elected officials know that the public's perception of elections and governing greatly matter. The ability to govern with public consent depends on voters' belief the process is reasonable and fair. When well-intentioned eligible citizens are barred from voting, that erodes public trust. The same is true of voters who encounter malfunctioning machinery and alternatives are not available so the process can continue without undue interruption.

Election administration has evolved significantly since HAVA and administrators have welcomed many new practices and efficiencies. However, the new sophistication in the profession of election administration has not always served voters – even though Congress' intentions in HAVA, and the NVRA a decade earlier, was to help improve the process of elections for all involved, voters and officials.

Many of the voter hotline calls in this report come from voters who have fallen on the deficiency side of this ledger. Many callers reported that their information was lost or mangled by government agencies or vetting procedures – and as a result they lost their right to vote. Other callers reported failures with the machinery intended to record their votes. As jurisdictions struggle to improve elections, one unanticipated consequence of HAVA's reforms is that an increasing number of states are giving greater deference to the newest technologies and voter databases than to individual voters who are legally eligible but somehow have fallen through the cracks in these new systems. Database matching and onerous voter ID requirements are not supposed to supplant a voter's demonstrating his or her legal eligibility – by virtue of age, citizenship and residency. However, that is what is happening in a post-HAVA world.

There is a balance that needs to be restored in favor of the individual right to vote that, in turn, also will help elevate the public's perception of the voting process. In a post-HAVA world, where election administrators not only have struggled to implement new federal mandates but also must enforce increasingly restrictive state voter ID laws, Congress has a responsibility to side with voters against systemic disfranchisement. Congress also should welcome suggested solutions that are simple and inexpensive to implement, as another dimension to hotline calls is that poll workers are already doing too much.

This report's recommendations that Congress require states to use voter-affirmation affidavits and back-up paper ballots are simple, confidence-inspiring, Election Day safeguards that will help protect the public's right to vote and ensure its votes are counted. These steps, and the other modest reforms of HAVA and NVRA described in this report, if enacted before 2010, will give Congress the breathing room to evaluate what is needed next in improving elections.

This first immediate step does not preclude Congress from taking a deeper look at the landscape of election administration law and practices. In fact, the voices of voters who called Election Day hotlines in 2008 have helped focus that task – as they reveal new shortcomings in the systems and practices upon which American democracy is based. These calls from polling locations throughout the country make clear that the work of protecting the right to vote – the bedrock of our democracy – remains unfinished.

## ACCESSING THE VOTER HOTLINE CALLS CITED IN THIS REPORT

In preparing this report, we listened to a total of 16,922 calls to the MYVOTE1 and CNN hotlines from voters in Florida, Georgia, Missouri, Ohio, Pennsylvania, and Virginia. We have highlighted more than 900 of these calls which cover the range of issues discussed here. You can access these highlighted calls via problem type and state to hear the voters' voices by visiting: http://www.voteraction.org/electionreport.

To learn more about this report and the organizations which have authored it, see: www.voteraction.org; www.advancementproject.org; and www.naacpnvf.net.

# ENDNOTES

i. The Tom Joyner Morning Show is the nation's most popular syndicated urban morning show in the country. It airs in 120 markets and reaches nearly eight million listeners every week. The show was the main promotional thrust behind marketing the 866-MYVOTE1 toll-free number through radio advertising.

ii. The significance of the requests for poll location information cannot be overstated as a related election administration concern. These requests reveal that many voters need assistance in determining where they vote and those who do not obtain such information from resources such as voter hotlines often face difficulty accessing a regular ballot on Election Day.

iii. The Vermont procedure allows voters to file such affidavits either if they affirm that they moved within the state from a previous registration address or if they affirm that they attempted to register but do not appear on the voter rolls.

iv. Other immediate reforms needed in time for the 2010 election include:

- **Require states in which voter lines have been lengthy to develop remedial plans to reduce wait times.** Several of the hotline reports complain of excessively long lines in predominately minority or low-income precincts. Advancement Project examined the distribution of polling place resources—voting equipment and poll workers—by precinct in several of the states under review in this report and concluded that absent additional resources and reallocation of existing resources, voters in certain counties would be forced to endure crushing lines. *End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election* (Advancement Project, Oct. 2008) available at www.advancementproject.org/ourwork/power-and-democracy/voter-protection/view.php?content_vp_id=71 HAVA should be amended to require states in which voter lines were longer than 45 minutes in the 2004 or 2008 general election to submit a remedial plan to reduce wait times.
- **Amend HAVA to clarify that HAVA-mandated matching processes may not be used to substantially delay or deny a voter applicant's registration.** There is much evidence that data mismatch errors have more to do with administrative issues, such as data-entry and database field errors, than with a voter's legal eligibility – particularly with Social Security Administration records. 'No-match, no-vote' errors unduly penalize voters, especially minorities and women. At most, voters whose registration information cannot be matched with a record in a database should be required to produce one of the forms of ID required by Section 303(b) of HAVA. Congress should also direct the Social Security Administration to clean up its data, which has been shown to have error rates approaching 30% when used to verify voter registrations in 2008.
- **Amend the NVRA to clarify that documentary proof of citizenship may not be required as a precondition to voter registration in any federal election.** The NVRA mandates that a completed voter registration form, which includes a federally mandated affirmation of U.S. citizenship under penalty of perjury, must be accepted and processed for purposes of registering a voter. Some states, however, such as Arizona and most recently Georgia, have enacted legislation to require voter applicants to supply documentary proof of citizenship. In Arizona, over a two-year period, 31,000 voter registration applications were rejected for failure to include documentary proof of citizenship. Congress should clarify the NVRA to prohibit states from requiring such documentation as a condition of registration.
- **Amend the NVRA to clarify that a voter's registration may not be canceled solely on the basis that his or her original disposition notice or voter registration card is returned by the post office as undeliverable.** In many states, such as Colorado and Michigan, voters whose original voter registration acknowledgement cards are returned in the mail are immediately removed from the rolls. Several federal courts have concluded that this practice violates the NVRA; however, Congress should clarify the NVRA to that effect to avoid inconsistent court rulings and to provide a uniform standard.
- **Amend HAVA to require states to count provisional ballots cast by voters who appear to vote in the 'wrong' precinct for all federal elections in which the voters are eligible to vote.** In many states, provisional ballots are rejected if they have been cast in a precinct where the voter is not registered, even if the voter would have been eligible to vote for certain 'top-ticket' offices (such as President, U.S. Senator, or U.S. Representative) in that precinct. In the 2008 general election, 14,335 registered Ohio voters cast provisional ballots that were rejected because they were cast in the wrong precinct or county, and in Florida, nearly 1,300 registered voters cast provisional ballots that were rejected for the same reason. Provisional ballots cast in the wrong precinct should be counted for contests in which the voter is eligible. As discussed in Advancement Project's report on provisional ballots cast in the 2006 general election, poll worker error in failing to direct voters to their correct precinct frequently results in voters voting in the wrong precinct. *Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement?* (Advancement Project, 2008) available at http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-8.pdf. Congress should adopt the rule employed in Georgia, Pennsylvania,

and other states that mandates that votes for all eligible races be counted regardless of the precinct in which they are cast.

v. As stated earlier, the Vermont procedure also allows voters who affirm that they have moved within the state from a previous registration address to cast a ballot that will be counted on Election Day like a regular ballot. A federal requirement that all states provide voters with such a procedure should include both voters who attempted to register but do not appear on the voter rolls and voters who moved within a given state from a previous registration address.

vi. The Social Security Administration should be directed to improve the accuracy of the information in its records that are used for validating voter registration forms. Last year, the agency reported that 2.3 million data match requests from states in September and October 2008, or 30.76% of all voter registration inquiries at that time, resulted in 'non-matches.' HAVA requires states to use Social Security Administration data, but it is error-laden.

vii. These calls from voters regarding electronic voting machine problems echo calls received during the 2006 mid-term election. Following that election, Voter Action, along with VotersUnite.org, Pollworkers for Democracy, and the former VoteTrustUSA, issued a report on such problems, entitled *E-Voting Failures in the 2006 Mid-Term Elections* (available here: http://voteraction.org/files/E-VotingIn2006Mid-Term.pdf). The calls from voters in 2008 demonstrate that these problems persist with the continued use of electronic voting machines.

## CNN Hotline Calls as Coded by Problem Type

### Florida (FL): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 343 | 14.6% |
| Registration | 534 | 22.8% |
| Identification | 99 | 4.2% |
| Mechanical | 270 | 11.5% |
| Paper Voting Ballots | 144 | 6.1% |
| Provisional Ballots | 24 | 1.0% |
| Coercion/Intimidation | 173 | 7.4% |
| Poll Access | 354 | 15.1% |
| Election Staff | 75 | 3.2% |
| Integrity | 330 | 14.1% |
| Total | 2,346 | |

### Georgia (GA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 196 | 13.8% |
| Registration | 465 | 32.7% |
| Identification | 72 | 5.1% |
| Mechanical | 127 | 8.9% |
| Paper Voting Ballots | 21 | 1.5% |
| Provisional Ballots | 15 | 1.1% |
| Coercion/Intimidation | 91 | 6.4% |
| Poll Access | 236 | 16.6% |
| Election Staff | 28 | 2.0% |
| Integrity | 170 | 12.0% |
| Total | 1,421 | |

### Missouri (MO): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 50 | 6.8% |
| Registration | 212 | 28.8% |
| Identification | 29 | 3.9% |
| Mechanical | 99 | 13.4% |
| Paper Voting Ballots | 56 | 7.6% |
| Provisional Ballots | 4 | 0.5% |
| Coercion/Intimidation | 59 | 8.0% |
| Poll Access | 131 | 17.8% |
| Election Staff | 30 | 4.1% |
| Integrity | 67 | 9.1% |
| Total | 737 | |

## Ohio (OH): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 103 | 8.2% |
| Registration | 279 | 22.3% |
| Identification | 94 | 7.5% |
| Mechanical | 173 | 13.8% |
| Paper Voting Ballots | 88 | 7.0% |
| Provisional Ballots | 69 | 5.5% |
| Coercion/Intimidation | 98 | 7.8% |
| Poll Access | 123 | 9.8% |
| Election Staff | 52 | 4.2% |
| Integrity | 171 | 13.7% |
| Total | 1,250 | |

## Pennsylvania (PA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 85 | 6.5% |
| Registration | 386 | 29.4% |
| Identification | 50 | 3.8% |
| Mechanical | 229 | 17.4% |
| Paper Voting Ballots | 23 | 1.7% |
| Provisional Ballots | 28 | 2.1% |
| Coercion/Intimidation | 171 | 13.0% |
| Poll Access | 176 | 13.4% |
| Election Staff | 30 | 2.3% |
| Integrity | 137 | 10.4% |
| Total | 1,315 | |

## Virginia (VA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 146 | 9.1% |
| Registration | 310 | 19.4% |
| Identification | 53 | 3.3% |
| Mechanical | 363 | 22.7% |
| Paper Voting Ballots | 98 | 6.1% |
| Provisional Ballots | 9 | 0.6% |
| Coercion/Intimidation | 151 | 9.5% |
| Poll Access | 236 | 14.8% |
| Election Staff | 56 | 3.5% |
| Integrity | 174 | 10.9% |
| Total | 1,596 | |

## MYVOTE1 Hotline Calls as Coded by Problem Type

### Florida (FL): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 129 | 14.9% |
| Registration | 379 | 43.9% |
| Identification | 51 | 5.9% |
| Mechanical | 79 | 9.2% |
| Paper Voting Ballots | 29 | 3.4% |
| Provisional Ballots | 8 | 0.9% |
| Coercion/Intimidation | 26 | 3.0% |
| Poll Access | 90 | 10.4% |
| Election Staff | 10 | 1.2% |
| Integrity | 62 | 7.2% |
| Total | 863 | |

### Georgia (GA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 93 | 14.8% |
| Registration | 276 | 44.0% |
| Identification | 37 | 5.9% |
| Mechanical | 37 | 5.9% |
| Paper Voting Ballots | 14 | 2.2% |
| Provisional Ballots | 12 | 1.9% |
| Coercion/Intimidation | 29 | 4.6% |
| Poll Access | 76 | 12.1% |
| Election Staff | 11 | 1.8% |
| Integrity | 42 | 6.7% |
| Total | 627 | |

### Missouri (MO): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 25 | 11.4% |
| Registration | 96 | 43.8% |
| Identification | 15 | 6.8% |
| Mechanical | 25 | 11.4% |
| Paper Voting Ballots | 13 | 5.9% |
| Provisional Ballots | 3 | 1.4% |
| Coercion/Intimidation | 3 | 1.4% |
| Poll Access | 27 | 12.3% |
| Election Staff | 5 | 2.3% |
| Integrity | 7 | 3.2% |
| Total | 219 | |

## Ohio (OH): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 45 | 7.7% |
| Registration | 221 | 37.9% |
| Identification | 33 | 5.7% |
| Mechanical | 70 | 12.0% |
| Paper Voting Ballots | 41 | 7.0% |
| Provisional Ballots | 27 | 4.6% |
| Coercion/Intimidation | 20 | 3.4% |
| Poll Access | 57 | 9.8% |
| Election Staff | 17 | 3.9% |
| Integrity | 52 | 8.9% |
| Total | 583 | |

## Pennsylvania (PA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 33 | 8.9% |
| Registration | 181 | 48.9% |
| Identification | 12 | 3.2% |
| Mechanical | 38 | 10.3% |
| Paper Voting Ballots | 4 | 1.1% |
| Provisional Ballots | 6 | 1.6% |
| Coercion/Intimidation | 17 | 4.6% |
| Poll Access | 46 | 12.4% |
| Election Staff | 12 | 3.2% |
| Integrity | 21 | 5.7% |
| Total | 370 | |

## Virginia (VA): Coded Complaints by Problem Type

| | | |
|---|---|---|
| Absentee | 79 | 12.0% |
| Registration | 218 | 33.1% |
| Identification | 29 | 4.4% |
| Mechanical | 148 | 22.5% |
| Paper Voting Ballots | 23 | 3.5% |
| Provisional Ballots | 4 | 0.6% |
| Coercion/Intimidation | 20 | 3.0% |
| Poll Access | 75 | 11.4% |
| Election Staff | 18 | 2.7% |
| Integrity | 44 | 6.7% |
| Total | 658 | |

# ABOUT THE AUTHORS

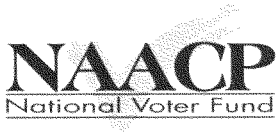
Founded in 1999 by veteran civil rights attorneys, Advancement Project is an innovative civil rights law, policy and communications 'action tank' that advances universal opportunity and a just democracy for those left behind in America. Its mission is to develop, encourage and widely disseminate innovative ideas and pioneer models that inspire and mobilize a broad, national racial justice movement to dismantle structural barriers to inclusion, secure racial equity and expand opportunity for all.

The Voter Protection Program, Advancement Project's hallmark Power and Democracy program, was established in response to the 2000 presidential election, which brought to light widespread barriers to voting. Advancement Project's seasoned voting-rights attorneys served as counsel against the state of Florida, challenging policies and practices that led to systemic disfranchisement of African-American voters in 2000. One of the lessons from that election cycle was that systemic breakdowns in our electoral system cannot easily be fixed on Election Day. Advocates must work throughout the year, and in 'off' years, to troubleshoot and correct problems. Thus, since 2001, Advancement Project's Voter Protection Program has worked with local civic engagement groups to solve problems in advance of elections through investigation, monitoring, advocacy, strategic communications and litigation, where necessary.

In 2008, Advancement Project worked in 10 priority states: Colorado, Florida, Georgia, Michigan, Missouri, Nevada, North Carolina, Ohio, Pennsylvania and Virginia. As part of the Watch the Vote 2008 Project – a project co-sponsored by Voter Action and the NAACP National Voter Fund – Advancement Project helped to monitor calls from Pennsylvania, Indiana and North Carolina voters to the MYVOTE1 voter hotline during those states' primary elections and, on November 4, 2008, it helped monitor calls to the CNN hotline. In response to the calls, Advancement Project and its partners provided voters with information to resolve their concerns and, in some instances, contacted election officials and requested their intervention.

Among its other accomplishments in 2008, Advancement Project:

- Developed 20 state-specific poll worker palm cards to serve as quick reference guides for thousands of poll workers on how to resolve common problems faced on Election Day.
- Obtained a federal court injunction requiring the state of Michigan to restore thousands of wrongfully purged voters to the rolls. Similar purging efforts were thwarted by the filing of litigation in Colorado.
- Published *Provisional Voting: Fail-Safe Voting or Trapdoor to Disenfranchisement*, a report examining the administration of provisional ballots in Florida and Ohio.
- Released a report entitled *End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election*, which highlighted the need to allocate sufficient voting machines, privacy booths and/or poll workers in precincts where registration activity and prior turnout histories indicated a likelihood of historic voter turnout.




The NAACP National Voter Fund is a 501(c)(4) nonpartisan social welfare organization that was formed in 2000 by the NAACP, the Nation's oldest and largest civil rights organization, which in February of 2009 celebrated its 100th anniversary of civil rights advocacy.

The NAACP National Voter Fund (NVF) is recognized as one of the most effective African American-led organizations in the country for delivering result oriented and cost efficient voter registration and mobilization programs. NVF's proven track record demonstrates that the organization has conducted successful African American turnout campaigns at the federal, state and local levels from 2000 through 2008. NVF's voter outreach efforts utilized NVF's standard direct voter contact method: community and precinct-based outreach through issue-oriented mail, phone, neighborhood canvassing and election protection.

The NAACP National Voter Fund's sole purpose is to help promote and expand voter registration, education and voter participation in the democratic process and to protect the rights of voters seeking to exercise their right at the voting booth.

The NAACP NVF Empowerment 2008 Voter Registration and Civic Participation Campaign was a nonpartisan, program designed to empower the African American community by (a) targeting areas where NVF and its affiliate organizations were working to maximize impact in electing a pro-civil rights President, Senate and Congress; (b) targeting infrequent African American voters for special attention; (c) providing repeated contact with identified voters; and creating impacted messages delivered in a personal manner. The overall goal of Empowerment 2008 campaign was to strengthen African American participation in the primary and general election process.

As the 2008 state presidential primaries approached, the NAACP National Voter Fund (NVF) geared up for one of the most historic election cycles in recent years. The organization strategically utilized communication tools and tactics to enhance our voter mobilization efforts to combine field organizing and outreach to African American media work with Voter Registration, Education, Get-Out-the-Vote and Election Protection efforts.

On November 19, 2007 in collaboration with The Tom Joyner Morning Show and InfoVoter Technologies Inc., REACH Media, Inc., NVF launched the MYVOTE1 Voter Registration Hotline Program, an African American media-driven, non-partisan voter registration drive that promoted a toll-free voter registration hotline, targeting new and infrequent eligible African American voters.

The program also triggered a voter registration chase program utilizing direct mail, telephone and door-to-door canvases in twelve (12) states, including Ohio, Michigan, Florida, Virginia, Nevada, Louisiana, North Carolina, Pennsylvania, Maryland, New Jersey, California and South Carolina to increase voter turnout among African Americans during the 2008 primary and general election.

# VoterAction

Voter Action is a national, non-profit organization at the forefront of the election integrity movement in the United States. Founded in 2005, Voter Action engages in legal advocacy, research and public education to protect our right to vote and to reclaim public control of our public election process.

Voter Action served as the co-sponsor with the NAACP National Voter Fund of the Watch the Vote 2008 Project, a non-partisan comprehensive election monitoring and election protection effort for the November 2008 election. In collaboration with InfoVoter Technologies, the project monitored calls to the CNN and MYVOTE1 voter hotlines and, in targeted states, initiated follow-up actions to protect the rights of voters. Further, the project partnered with on-the-ground citizen networks in seven states (Colorado, Florida, Indiana, Maryland, New Mexico, North Carolina and Pennsylvania) to assist in verifying election problems as they emerged via the hotlines and to help address such problems on Election Day. The Watch the Vote 2008 Project also conducted pilot monitoring programs for the Pennsylvania, North Carolina and Indiana 2008 primaries.

Since its founding, Voter Action has filed lawsuits or complaints in nine states (New Mexico, New York, California, Arizona, Colorado, Pennsylvania, Ohio, Wisconsin and Florida), challenging the continued use of electronic voting machines as unreliable and insecure for the counting and recording of votes. These legal actions have played a critical role in the shift by several states (including California, Colorado and New Mexico) to voter-marked paper ballot systems which allow for verifiable elections through meaningful audits and recounts.

In recent years, Voter Action's work has extended its focus beyond electronic voting machine concerns to incorporate other emerging threats to our democratic process, including Internet voting systems, electronic poll books and privatized voter registration databases.

Voter Action won its most recent court victory on the eve of 2008 general election when a federal judge in Philadelphia ruled in favor of its clients (NAACP State Conference of Pennsylvania, Election Reform Network and individual voters) and required Pennsylvania to distribute emergency paper ballots when 50% or more of voting machines break down in any precinct in the state. The ruling serves as important court precedent for the constitutional principle that the burden of long lines in an election can amount to a deprivation of the fundamental right to vote. The New York law firm of Emery Celli Brinckerhoff & Abady and the Public Interest Law Center of Philadelphia served as co-counsel with Voter Action in the case, which has since resulted in a permanent injunction protecting Pennsylvania voters in future elections.

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National Voter Fund

VoterAction

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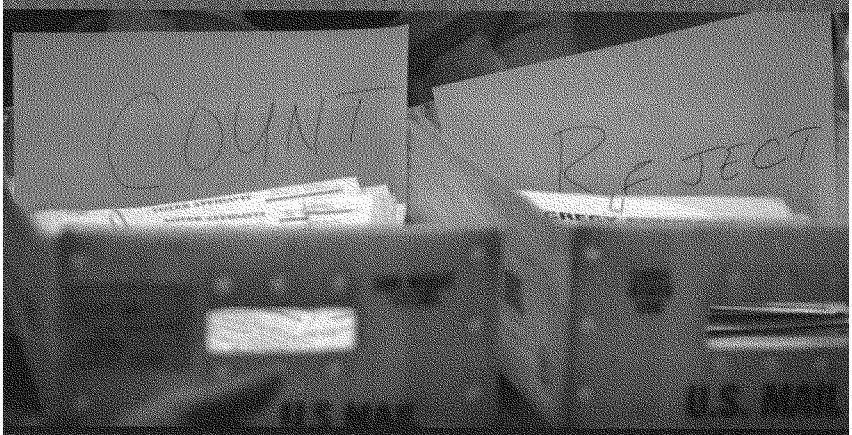
# Provisional Voting:

## Fail-Safe Voting or Trapdoor to Disenfranchisement?

September 2008




ADVANCEMENT PROJECT

just democracy

**This report explores the issue of whether the administration of elections-specifically in the area of provisional voting-has improved since the 2000 presidential election, when scores of eligible voters were turned away from the polls because their names did not appear on voter registration rolls, resulting in the disenfranchisement of a significant number of American voters. Advancement Project's investigation, research, and analysis of provisional voting in select counties in Ohio and Florida during the 2006 general elections reveal a wide array of serious problems that, if widespread and not corrected, could affect voters' rights in the upcoming elections and the election results themselves.**

# Executive Summary

Data from the 2000 elections shows that between four and six million presidential votes were lost because of numerous flaws in the administration of elections.[1] Eligible voters were turned away at the polls based on misinformation and errors, and valid ballots were rejected. Some experts believe that this may have caused as many as 3 million votes to be lost simply because of registration issues, including problems associated with provisional ballots.[2]

In response, in 2002, Congress passed and the President signed into law the Help America Vote Act ("HAVA"). HAVA was intended to protect voting rights by permitting voters to cast ballots even if their names did not appear on the voter registration rolls or if their eligibility was challenged. Specifically, under HAVA, any voter who claims to be registered, but whose eligibility cannot be established at the polling site, is entitled to vote through a provisional ballot. Proponents of provisional voting believed that this law would ensure that "no voter will be disenfranchised."[3] But it is clear that HAVA is not working as Congress intended or as the proponents had hoped.

In the 2006 general election, the second general election since the passage of HAVA, the nationwide rejection rate was over 20%. The majority of those rejected ballots may have been cast by registered voters, and the rejection rate varied widely from state to state. Specifically, in 2006, almost 800,000 votes were cast provisionally, approximately 171,000 (about 21%) of which were rejected. While almost 44% of the ballots rejected were cast by individuals not registered to vote, a large percentage of the rejections were due to preventable errors, such as "wrong" precincts, incomplete ballot forms, and missing signatures.

Moreover, the rejection rates varied greatly across the country. While some states reported low rejection rates (none in the District of Columbia, Maine, and Vermont, and less than 2% in Oregon), several had rejection rates of over 50% (Alabama, Arkansas, Delaware, Hawaii, Illinois, Indiana, Kentucky, Michigan, Missouri, Oklahoma, South Dakota, and Virginia), with some over 80% (Delaware at 84%, Michigan at 80.9%, and Kentucky at 92%). Indeed, two states reported rejecting more provisional ballots than were actually cast! New Mexico had a rejection rate of 107.2%, and Texas had a rejection rate at 101%. This data-which establishes the use of provisional voting and the high rates of rejection-illustrate the issues raised by the provisional voting system, nationwide, in the 2006 election.

Advancement Project went behind these numbers and analyzed the problems of provisional voting in the states of Ohio and Florida in the 2006 election. This research revealed some disturbing data:

- Eligible, registered voters were erroneously issued provisional ballots, only to have those provisional ballots rejected.
- Voters were directed by poll workers to the wrong precincts, where they were forced to vote by provisional ballots that were eventually rejected.
- Provisional ballots were rejected because of administrative errors, such as incomplete envelopes and missing signatures.

The issues that existed across the country in 2006 and the specific problems that confronted voters in Ohio and Florida in 2006 make clear that HAVA was not the panacea for the ills confronting the voting process; but, more importantly, they provide a useful road map for improvement.

To protect voters' rights in the November 2008 election-which will likely include a record number of voters[5] and many very close races-against the problems that existed in the past with provisional voting, Advancement Project recommends the following changes and improvements:

- Eliminate barriers to voter registration so as to reduce the use of provisional voting.

1 *See Voting – What Is, What Could Be, Caltech-MIT Voting Technology Project*, July 2001, at 8.
2 See *id.*
3 *Conference Report on H.R.3295, Help America Vote Act of 2002 Before House*, 107th Cong. 133 (2002), 148 Cong. Rec. H7837 (daily ed. Oct. 10, 2002) (statement of Rep. Ney).
4 There is no clear explanation as to why "total rejected" exceeds "total cast" for any of these states, although record-keeping and/or survey reporting may account for the discrepancy. See *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 45.
5 Report after report shows that voter registration and voter turnout may be at record levels by the time of the November 2008 election. In 2008, almost 60 million Americans nationwide-more than one in four of all eligible voters-participated in a primary or caucus, shattering the previous record of 35 million in 1988 and well above the 33 million voters who participate in the 2000 primaries. See *America Goes to the Polls -A Report on Voter Turnout in the 2008 Presidential Primary*, Nonprofit Voter Engagement Network, July 2008, at 1. Voter registration has continued to increase at a brisk pace since March 2008, and many experts predict that first-time voters will participate at unprecedented levels in the November 2008 election. *Heavy November turnout could pose problems*, UPI, Jul. 21, 2008, *available at* http://www.upi.com/Top_News/2008/07/21/Heavy_November_turnout_could_pose_problems/UPI-66041216617564/.

- Eliminate the "wrong" precinct rule.
- Improve poll worker training by, among other things, making clear that provisional ballots should be issued as a last resort and only in limited circumstances, providing instruction on assessing precincts, and requiring examination of provisional ballots for completeness.
- Improve the administration of provisional voting on Election Day.
- Increase the scrutiny and transparency of the provisional voting process.

While these measures will not prevent all errors that might disenfranchise voters in the November 2008 election, they will reduce them dramatically to help assure that the ballot cast by every American who votes will be counted, protecting that voter's right to participate in this country's democratic process, and ensuring fair and accurate election results.

# About the Study

In this report, Advancement Project presents its findings and analysis of how provisional ballots were administered and counted in the states of Ohio and Florida in the 2006 general election and recommends steps to minimize the unnecessary use and rejection of provisional ballots. Advancement Project selected these two states because of the problems that voters encountered there in recent presidential elections and the prominent roles that the states played in those elections. Advancement Project selected 15 counties from those states to research for this project based on, among other factors, population size and make-up and documented evidence of voting problems in the past.

Advancement Project then requested, and to varying degrees received, specific data on the provisional ballots cast in particular jurisdictions, including the names of voters who cast provisional ballots, the reasons such ballots were cast, whether they were counted, and, if not counted, the reasons for their rejection.[6] Advancement Project also requested copies of the provisional ballot envelopes in these jurisdictions, which provided additional details from poll workers and voters as to the circumstances under which individual provisional ballots were cast.[7]

6 Advancement Project obtained these public records directly from election authorities in the specified jurisdictions.
7 Because elections are still administered primarily at the local level, the data obtained from each jurisdiction varies as a result of different record keeping, its specific disclosure rules and policies, and/or different interpretations of those rules and policies by the relevant custodians of records.

every
vote
counts

# Summary of Findings

This investigation, research, and analysis revealed numerous barriers to voter participation stemming from flaws in the voter registration process, failures in the administration of provisional voting, and restrictions on the counting of provisional ballots.

I. FLAWS IN THE VOTER REGISTRATION PROCESS AND VOTER REGISTRATION RECORDS RESULTED IN THE OVERUSE OF PROVISIONAL VOTING AND THE REJECTION OF BALLOTS CAST BY ELIGIBLE VOTERS.

The sheer number of provisional ballots cast in the counties selected warrants a thorough review of barriers to voter registration and the processing of voter registration applications. Moreover, many unregistered individuals appeared at the polls on Election Day seemingly unaware that they were not registered, suggesting potential problems with the sufficiency of the notice to voters about their registration status. Additionally, a number of voters noted on their provisional ballot envelopes that they had registered to vote at state motor vehicle offices but were not, according to election officials, "registered voters," demonstrating a possible failure in the registration process that merits further investigation.

II. MISINTERPRETATION AND MISAPPLICATION OF THE "WRONG" PRECINCT RULE RESULTED IN THE DISENFRANCHISEMENT OF VOTERS.

Although Advancement Project and other voting rights experts agree that HAVA allows the counting of provisional ballots cast in the "wrong" precincts, at least with respect to races that are not precinct-specific, some states have interpreted HAVA differently, leading to the arguably unlawful rejection of provisional ballots and inconsistent rules across the country. As the U.S. Election Assistance Commission found, in 2006, 15 states counted provisional ballots cast outside an individual's home precinct, while 30 states rejected them out of hand. See generally *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 18. This misinterpretation of the law has led to the disenfranchisement of voters for races that are not precinct-specific (e.g., the presidency and Senate seats).

III. THE PROVISIONAL VOTING PROCESS IS FRAUGHT WITH CONFUSION, ERRORS, AND MISINFORMATION.

The principal problem regarding provisional voting centers is the actual process encountered by voters on Election Day, which is fraught with errors and lapses on the part of poll workers. Across jurisdictions, poll workers were confused or uncertain as to the appropriate circumstances under which to administer provisional ballots. They simply did not know the rules. For example, at one precinct in Ohio, poll workers distributed provisional ballots in an attempt to reduce the long lines of voters. In Franklin County, Ohio, poll workers distributed provisional ballots at a staggering rate: In 35 precincts, one out of every five ballots cast was a provisional ballot, and in 11 precincts, one out of every two ballots cast was a provisional ballot. In Florida, poll workers may have issued provisional ballots solely because a voter indicated that s/he had requested an absentee ballot, without first confirming whether an absentee ballot request had been received.

Poll workers in both Ohio and Florida also failed to ascertain whether voters were in their correct polling places and, if they were not, did not or could not direct them to their correct polling places.

The investigation also revealed that when voters were permitted to vote provisionally, most poll workers did not assist voters in ensuring that their ballots were complete and properly submitted. For example, in Ohio, poll workers repeatedly failed to provide adequate instructions to voters on how to complete their provisional

ballots, and, in both states, many poll workers did not check ballot envelopes for completeness before they were submitted.[8] As a result, many ballots of eligible voters were rejected simply because their envelopes were incomplete.

## IV. The Provisional Voting Process Is Not Scrutinized or Transparent, Resulting in Continued Problems.

This project also revealed that the provisional process is not as scrutinized or transparent as it needs to be to ensure its effectiveness. For the 2006 survey conducted by the U.S. Election Assistance Commission, at least four states failed to provide the data requested by this governmental entity. Advancement Project encountered similar resistance or poor record keeping from several counties for this project. Indeed, county election officials in several Ohio counties refused to produce provisional ballot envelopes or the information contained therein on the ground that HAVA prohibited such disclosure. Advancement Project also faced challenges in interpreting and analyzing counties' documents that listed the reported reasons for rejection of provisional ballots.

This lack of scrutiny and transparency thwarts efforts to assess or improve the process, prevents or limits challenges to the process, and undermines the public's confidence and trust in the process.

8 In Florida and Ohio, a voter who casts a provisional ballot must complete an affirmation on the provisional ballot envelope. See FLA. STAT. § 101.048 (2007); OHIO REV. CODE ANN. § 3505.183 (LexisNexis 2007). In Maryland, the voter must sign an oath on the provisional ballot application. See MD. CODE ANN., [Elec. Law] § 11-303(a)(2)(ii) (LexisNexis 2007).

# General Recommendations

This investigation reveals that instead of functioning as a fail-safe means of voting, provisional voting often creates a serious risk of disenfranchisement. As the country approaches the second presidential election with a federally mandated provisional balloting system in place,[9] government officials and election administrators should make certain changes and improvements to ensure that provisional ballots are used and are recognized in a manner that achieves their original intent. To that end, in addition to the specific recommendations offered below to the states of Ohio and Florida, Advancement Project suggests the following measures to reverse the disturbing provisional voting problems encountered in prior elections.[10]

I. Reduce the Use of Provisional Voting, in the First Instance, by Eliminating Barriers to Voter Registration.

While provisional voting does allow a person who claims to be registered to vote on Election Day, the use of provisional voting and the rates and reasons for rejection evidence problems and issues with voter knowledge about both the registration process and the election process. Because this country's democratic process depends on voter participation, each state should conduct a voter education campaign at the start of each election year, which should include the following:

- Educate voters on how and when to register, how and when to vote, and when to vote provisionally.
- Encourage voters to call their local elections office or have the ability to check an official Web site a week before Election Day to confirm the location of their precinct and polling location.
- Instruct voters to cast a provisional ballot only as a last resort. If a poll worker issues a provisional ballot to a voter, the voter should confirm that s/he is in the correct precinct.

In addition, each state should ensure that its registration outlets, including, specifically, its departments of motor vehicles, are trained and equipped to register voters. Finally, election officials should be more flexible in establishing the registration status of voters who present to vote on Election Day and in allowing would-be voters to register up to Election Day. For example, if a person claims to have filed with the state motor vehicle office, the motor vehicle office and election official should bear the burden of showing that the person failed to register to vote.

In short, improving the registration process will contribute greatly to achieving full participation and election results that reflect the desire and will of voting Americans.

II. Eliminate the "Wrong" Precinct Rule.

One of the most significant drawbacks to provisional ballots is that many states do not count provisional ballots cast in the wrong polling place. In 2006, only 15 states counted provisional ballots cast outside the individual's home precinct; 30 states rejected them out-of-hand. The seven states with Election Day registration are not required to offer provisional ballots, but three of these (Maine, Wisconsin, and Wyoming) offered some type of provisional balloting, as did North Dakota, which does not have voter registration.

Advancement Project and many other voting rights advocates interpret HAVA to prohibit the rejection of a provisional ballot because the voter cast the ballot in the "wrong" precinct. Further, Advancement Project contends that in states where the voter eligibility requirements do not include voting in the precinct in which one resides, election officials should accept and count, from each ballot cast, the votes for all non-precinct-specific offices (i.e., votes for president, governor, senator). Therefore, Advancement

9 HAVA required states to comply with its statewide database requirements by January 1, 2004, or to certify by that date that they would not meet the deadline for good cause, in which case the deadline for compliance was extended to January 1, 2006. 42 U.S.C. § 15483(d).

10 For more information about provisional ballot usage in the 2004 elections, see WENDY R. WEISER & BRENNAN CENTER FOR JUSTICE AT N.Y.U. SCHOOL OF LAW, *ARE HAVA'S PROVISIONAL BALLOTS WORKING?* (2006), http://www.american.edu/ia/cdem/usp/hava_papers/Weiser.pdf.

Project recommends that states that now reject provisional ballots cast in the "wrong" precinct should amend the election code to:

- Require that provisional ballots cast by voters at any precinct in the registrar's jurisdiction (i.e., county, city, town) be counted for all elections in which the voter is eligible to vote, and/or
- Define the term "jurisdiction" to include the largest geographic region covered by each election authority (typically county) and require the counting of provisional ballots cast for non-precinct specific offices.

III. Improve Poll Worker Training.

While the shortage of poll workers has received extensive public attention, the training and support for poll workers are rarely scrutinized. Yet, as elections have become technologically and procedurally more complex, the training and support offered to poll workers have not kept pace. New federal and state laws have created a slew of new procedures for voting. For example, first-time voters who register by mail must show proper identification, and people who claim to be registered but do not appear on the voter rolls must be issued a provisional ballot. These new procedures, coupled with the advent in many areas of new electronic voting machines, leave little room for error.

Given the importance of a poll worker's work, which involves determining whether a person can vote and how and, in many instances, whether the ballot cast will count, it is critical that poll workers be properly trained and that poll worker training emphasize:

- The limited circumstances under which it is appropriate and lawful to use provisional ballots;
- The procedures for identifying a voter's correct precinct and directing the voter to that precinct prior to issuing the voter a provisional ballot;
- The procedures for examining each provisional ballot envelope or application, in the presence of the voter before s/he leaves the polling place, to determine whether the voter has fully completed all required portions of the envelope or application; and
- The rules pertaining to voters who have requested an absentee ballot, have moved, or have changed their name to ensure that poll workers do not improperly issue provisional ballots to these voters or neglect to instruct them on all necessary steps that they should take to guarantee that their provisional ballot will be counted.

In addition, Advancement Project recommends that poll workers assist any voter whose eligibility is in question to complete a voter registration application at the polling place to guarantee that s/he will become registered to vote in future elections.

IV. Improve the Administration of Provisional Voting on Election Day.

In addition to the recommended improvements to poll worker training described above, Advancement Project recommends that election officials adopt the following procedures to reduce poll worker confusion and error on Election Day:

- **Print and Distribute Multi-Precinct Poll Books:** In multi-precinct polling places, where electronic poll books are unavailable, election officials should print and distribute poll books that list all registered voters assigned to the polling place and indicate each voter's correct precinct within the polling place.
- **Establish a Provisional Ballot Station:** Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure voters are in the correct

precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify voters' correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, a street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of elections. No provisional ballots should be issued by poll workers at any other station.

V. INCREASE THE SCRUTINY AND TRANSPARENCY OF THE PROVISIONAL VOTING PROCESS.

In order to ascertain whether the provisional voting process is working and to be able to identify any gaps in the process, Advancement Project urges local officials to scrutinize the process before and after every election:

- Following each election, local election officials should analyze provisional ballot usage in their jurisdiction by tracking all provisional votes cast and counted, by precinct, including the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, their notices to provisional voters, and their community education efforts.
- Each secretary of state should collect this data from local election officials to assess variances in the casting, counting, and administration of provisional ballots. The secretary should publicize this information on his/her Web site and further analyze the need for statewide regulations or directives.

In addition, secretaries of state must enhance their accountability, and the accountability of local election officials, to the public and the transparency and credibility of the process by, among other things, issuing the following directives:

- A directive that orders local election officials to provide public access to the name, address, and birth date of each voter who casts a provisional ballot, and the basis for issuing each ballot, within the canvassing period after the election; and
- A directive to local election officials that requires the use of specific and narrow categories to describe reasons for the issuance and/or rejection of provisional ballots. The "not registered" rejection category, in particular, should be more specific and indicate (i) whether the voter at issue has ever been registered anywhere in the state, (ii) whether any previous registration had been cancelled, and (iii) the date and reason for any previous cancellation.

* * *

As noted above, Advancement Project offers these general recommendations for consideration by all states as they prepare for the November 2008 election. The specific findings and recommendations for the two states studied for this project (Ohio and Florida) are set forth below.

every
vote
counts

# Ohio

In the November 2006 general election, Ohio voters cast 4,186,206 ballots, 127,758 of which were provisional.[11] Approximately 104,696 of these provisional ballots were counted, and 23,062 (about 18%) were rejected.[12] Over half of the provisional ballots cast (65,239), and 65% of the rejected ballots (15,000[13]), were cast in Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit counties, counties with substantial populations of voters of color. The use of provisional ballots in Ohio, as measured by the percentage of ballots cast, appears to be increasing. In 2004, provisional ballots made up 2.7% of the total ballots cast during the general election. In the 2006 general election, it was up almost a full percentage point, to 3.6%.[14] This trend may portend an increase in the use of provisional ballots in the 2008 general election unless state and local election officials institute measures to combat the overuse of provisional ballots.

Advancement Project analyzed thousands of provisional ballot envelopes from the 2006 general election in Ohio's largest county, Cuyahoga. Advancement Project also reviewed hundreds of written comments from poll workers in Franklin, Hamilton, Lucas, and Summit counties in the 2006 general election. This analysis reveals a staggering overuse of provisional ballots. For example, out of 35 Franklin County precincts, one out of every five ballots cast was a provisional ballot, and in 11 precincts, one out of every two ballots cast was a provisional ballot.

The analysis also shows that Ohio's "wrong" precinct rule, coupled with apparently ineffective directions by poll workers to voters, resulted in the disenfranchisement of thousands of eligible voters. As discussed below, the envelopes show that the ballots of hundreds of voters were rejected because the voters were in the "wrong" precinct but the correct polling place, or because they cast their provisional ballots at a polling location that was less than 2 miles from their correct polling place. If poll workers had properly instructed these voters to move over one table, to the other side of the room, or to travel a short distance to another precinct, their provisional ballots would have been counted. These findings suggest that Ohio's statutory requirement that poll workers direct voters to the correct precinct is not being enforced, leading to distortion and overuse of Ohio's wrong precinct rule.

This research also reveals that poll workers were uncertain about when to issue a provisional ballot. Many did not determine whether voters were in the correct polling place and did not advise voters on where or how they could cast a regular ballot. In addition, poll workers often did not provide sufficient instruction to voters about how to ensure that their provisional ballot would be counted. In at least one instance, poll workers used provisional ballots in an unauthorized way, issuing them to shorten long lines at the polls. The problems were worsened by the fact that poll workers were forced to work with inaccurate poll registers. For example, in Cuyahoga County, several hundred registered voters reportedly were improperly dropped from the statewide voter registration database.

As Ohio prepares for a huge surge in voter turnout in the 2008 general election, it is crucial that its state and county election officials take immediate steps to minimize unnecessary distribution and rejection of provisional ballots.

## I. Provisional Voting Under Ohio Law

Ohio law requires the use of a provisional ballot when (1) a voter declares s/he is registered, but his/her name does not appear on the voter roll; (2) an election official "asserts that the individual is not eligible to vote,"[15] (3) a voter does not have or does not provide proper identification; (4) a voter voted by absentee ballot; (5) a voter's registration notification was returned as undeliverable; (6) a voter changed his/her address; (7) a voter changed his/ her

11 See http://www.sos.state.oh.us/SOS/elections/electResultsMain/2006ElectionsResults/06-1107turnout.aspx (citing the *Official Results of Voter Turnout in the November 7, 2006, General Election*); U.S. Election Administration Commission, *The 2006 Election Administration and Voting Survey* 18 (Dec. 2007).

12 *Id.*

13 There are variances in the numbers of rejected provisional ballots reported by the Ohio Secretary of State in its 2007 report to the Election Administration Commission and those that Summit and Montgomery counties reported to the Secretary of State. This report relies upon the counties' numbers.

14 Provisional ballots made up 2.7% of the total votes cast in the November 2004 general election. http://www.sos.state.oh.us/sos/ElectionsVoter/results2004.aspx?Section=134 (2008). In 2004, approximately 158,642 provisional ballots were cast and approximately 123,548 (77.9%) were counted.

15 42 U.S.C. § 15482 (a)(2002). See also OHIO REV. CODE ANN. § 3505.18 (LexisNexis 2007).

name; (8) a voter was challenged without resolution; or (9) a challenged voter's registration status hearing was postponed.[16]

In addition, under Ohio law, each county board of elections determines whether to count or reject a provisional ballot cast in its county.[17] To determine the validity of a provisional ballot, the board examines its records to determine whether the individual who cast the provisional ballot is registered and eligible to vote in the election.[18] The board also examines the information provided by the voter on his/her provisional ballot affirmation statement.[19]

## II. Advancement Project's Public Records Requests in Ohio

Advancement Project submitted public records requests to Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit counties for the following information: (1) the names of voters who cast provisional ballots in the 2006 general election; (2) for each voter, whether his/her ballot was counted; and (3) if the ballot was rejected, the basis for rejecting the provisional ballot.

In response, Cuyahoga County provided all of the requested information, and Montgomery County provided the name and address of each voter who cast a provisional ballot, the reason(s) for issuance of the provisional ballot, and, if the ballot was rejected, the basis for the rejection. Summit County provided the name, but not the address, of each voter who cast a provisional ballot and the reasons for rejection of each provisional ballot rejected. Three counties, Franklin, Hamilton, and Lucas, refused to provide this information, interpreting HAVA to preclude public access to the names of provisional voters, the outcome of provisional ballots cast, and the basis for rejection.[20]

## III. Ohio's Provisional Ballots in the 2006 General Election

Table 1.1 lists the most prevalent reasons for the rejection of provisional ballots in Ohio's 2006 general election.

**TABLE 1.1 OHIO'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Provisional Ballots |
|---|---|---|
| Wrong Precinct | 10,610 | 46% |
| Not Registered | 7,384 | 32% |
| No ID Provided | 2,726 | 11.8% |
| Other Reasons | 1,249 | 5.4% |
| Ineligible to Vote | 459[21] | 2% |
| No Signature | 290 | 1.25% |
| Missing Ballot | 181 | .8% |
| Already Voted | 163 | .7% |
| **Total Rejected** | **23,062** | **100%** |

16 OHIO REV. CODE ANN. § 3505.181 (LexisNexis 2007).
17 § 3505.183(D) (requiring "individual's name and signature," but not date of birth, to be included in the written affirmation in order to validate ballot).
18 *Id.* at (B)(1).
19 *Id.*
20 42 U.S.C. § 15482 (2002). Contrary to this interpretation, HAVA's legislative history makes clear that the intent of HAVA's "free access" provision is to maintain privacy of voters' identification numbers, not the names and addresses of voters who cast provisional ballots. Interpreting HAVA to permit election officials to withhold the names, addresses, and/or phone numbers of voters who cast provisional ballots frustrates an important objective of HAVA, which is to ensure that provisional ballots are properly handled. Such an interpretation also denies voters and voter protection advocates the ability to investigate the administration of provisional ballots, including whether election officials wrongfully issued or rejected certain provisional ballots.
21 This category of rejected provisional ballots, labeled "Ineligible to Vote," accounted for 459 provisional ballots rejected. Some of these ineligible voters may have been previously incarcerated for felony convictions and subsequently released. Ohio law requires the cancellation of felons' registrations, and such voters must re-register upon their release. OHIO REV. CODE ANN. § 3503.18 (LexisNexis 2007). Absent public education for these voters, many ex-offenders may have been unaware that they were required to re-register. As a result, these individuals would likely be deemed ineligible to vote, and their provisional ballots rejected.

Under Ohio law, provisional ballots must be cast in the precinct in which the voter resides.[22] A provisional ballot cast in the "wrong" precinct will be rejected.[23] In the 2006 general election, Ohio rejected approximately 10,610 provisional ballots because they were cast in the "wrong" precinct.[24] Advancement Project and many other voting rights advocates interpret HAVA to prohibit the rejection of a provisional ballot solely on the ground that the voter cast the ballot in the "wrong" precinct. Unfortunately, litigation brought in 2004 challenging Ohio's wrong precinct law under HAVA was ultimately unsuccessful.[25] If Ohio had adopted Advancement Project's position on provisional ballots cast in the "wrong" precinct, more than 10,000 additional votes would have been counted in the 2006 general election for these non-precinct-specific offices.

IV. COUNTY-BY-COUNTY DATA AND ANALYSIS

## A. CUYAHOGA COUNTY

Cuyahoga County is Ohio's largest county and includes the state's most populous city, Cleveland. Cuyahoga County has a large African American population, representing 28.9% of the county's residents.[26]

Advancement Project obtained and analyzed 7,100 electronic copies of envelopes from the 11,749 provisional ballots cast in the 2006 general election that were counted and envelopes from 965 of the 4,168 provisional ballots cast in that election that were rejected.[27] Each envelope listed the voter's name, address, and the reason(s) the voter was required to cast a provisional ballot. If the ballot was rejected, a Provisional Ballot Rejection Form was attached to the provisional ballot envelope that indicated the reason for rejection.

Advancement Projected also obtained and reviewed (1) Cuyahoga County's Provisional Ballot summary report, which included numbers of provisional ballots cast and each voter's name, address, party affiliation, precinct, and the disposition of each provisional ballot cast; and (2) the electronic Master Survey List provided by the Ohio Secretary of State's office to the U.S. Election Assistance Commission ("EAC") in 2007, which included statistics on the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties.

In the 2006 general election, Cuyahoga County voters cast 15,917 provisional ballots, the second largest number of provisional ballots cast among the state's 88 counties. Ohio's law requiring voters who have moved within a county to vote by provisional ballot may partially explain the county's high usage of provisional ballots. A total of 108 of the 11,749 envelopes of provisional ballots that were counted by Cuyahoga County indicate that at least 2,062 (approximately 30%) were cast because the voter had changed his/her address.[28]

### 1. The Issuance of Provisional Ballots

For this study, Advancement Project reviewed 7,100 of the 11,749 envelopes of provisional ballots counted by Cuyahoga County. This review revealed that 2,180 (30%) of these provisional ballots were issued because the voter had moved. A total of 791 (11%) of the accepted provisional ballots were distributed because the voter's name did not appear on the precinct list at the voter's precinct. But election officials subsequently concluded that these voters were registered and had cast their ballots in the correct precincts and, accordingly, counted their provisional ballots. This data suggests that the precinct voter lists may be inaccurate. Finally, at least 160

22 See § 3503.01 (listing qualifications required to register to vote; a voter may vote in all elections in the precinct where the voter resides); see also § 3505.181 (providing eligibility for casting provisional ballots, including when a voter's name does not appear on the precinct list or the election official asserts the voter is not eligible to vote); see also § 3505.183 (voter must be a registered voter in the jurisdiction in which s/he casts a provisional ballot).

23 *Id.*

24 42 U.S.C. § 15482 (2002). HAVA requires merely that votes cast in the correct "jurisdiction" be counted. Ohio law narrowly interprets correct "jurisdiction" to mean precinct. This narrow interpretation was codified in 2005 under House Bill 3. Am. Sub. H.B.3 (2005).

25 *Sandusky County Dem. Party v. Blackwell*, 387 F.3d 565, 578 (6th Cir. 2004) (reversing District Court's holding that HAVA requires provisional ballots cast out of precinct to be counted). The case challenged, in part, an Ohio directive that prohibited the counting of provisional ballots cast outside of the voter's precinct. In *Sandusky*, the court enjoined the Secretary from enforcing the directive, but on appeal, the Sixth Circuit reversed that ruling. *Sandusky*, 387 F.3d at 578.

26 www.factfinder.census.gov. Source: 2005 American Community Survey Data Highlights.

27 In response to Advancement Project's public records request, Cuyahoga County reported that it had misplaced provisional ballot envelopes for 3,100 of its 4,168 provisional ballots.

28 Under Ohio law, a voter who has moved to a new precinct and has not submitted a change of address form to the election board before Election Day must complete a change of address form at his/her new precinct and vote by provisional ballot. OHIO REV. CODE ANN. § 3503.16 (LexisNexis 2007). The voter must also provide identification "in the form of a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document," and complete an affirmation. *Id.* at § 3503.14. Voters without the proper identification are permitted to sign a 10-T form attesting that they do not have proper identification. *Id.* at § 3503.16 (B)(1)(2)(b-d). The voter may provide additional supporting documentation for review during the 10-day period following the election, during which time the board of elections attempts to verify the information. If the information can be verified, barring any other deficiency with the ballot, the board will count the provisional ballot if the voter cast the ballot in the correct precinct. See § 3505.181(B)(8)(a)(i-iii)(b) (procedures for voters who cast provisional ballots to cure their ballots during the 10-day period after the election).

of the provisional ballot envelopes were not marked with any reason as to why poll workers had issued the ballot. Without this information, it is impossible for voter advocates to evaluate whether issuance of those provisional ballots was lawful.

**2. Provisional Ballots Rejected**

Of the 11,749 provisional ballots submitted, almost half (4,168) were rejected. As reflected in Table 1.2, the top two reasons for the rejection of provisional ballots were that the voter cast the ballot in "wrong" precinct (2,541) or was not registered (1,282).

***a. "Wrong" Precinct Errors***

Provisional ballots cast by voters in the "wrong" precinct account for 2,541 (61%) of the rejected provisional ballots in Cuyahoga County. Cuyahoga County provided Advancement Project with copies of the envelopes for 985 of the 4,168 provisional ballots rejected. Advancement Project's review of those envelopes reveals that of the 204 provisional ballots rejected for "wrong" precinct, 70 were cast by voters who were actually in the correct polling place but the "wrong" precinct, and 62 were cast by voters who were less than 2 miles from their correct precinct. In many instances, if poll workers had properly instructed these voters to move over one table or to the other side of the room, or to travel a short distance to another precinct, the voters' provisional ballots would have been counted. For example:

- A voter in Cleveland voted at precinct 5M, but the voter's correct precinct was 5L, which was less than 2 minutes (.84 miles) away.
- A voter in Beechwood voted at precinct 00L, but her correct precinct was 00M, which was in the same building, Hampton Recreation Center.
- A voter in Lakewood voted at precinct 4F, but his correct precinct was 3L, which was less than 2 minutes (.55 miles) away.
- A voter in Strongsville voted in precinct 2N, but the voter's correct precinct was 2M, which was in the same building, Olive Bedford Allen Elementary School.

***b. Software Glitches in the Voter Registration Database***

According to the county's data, 1,282 (31%) of all rejected ballots were rejected because the voter was deemed "not registered." Of the 985 envelopes produced, approximately 600 (more than 60%) were rejected because the voter was "not registered."[29] Of those 600 envelopes, 185 envelopes indicated that the voter was issued a

**TABLE 1.2 CUYAHOGA COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTIONS)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of Ohio's Rejected Provisional Ballots |
|---|---|---|---|
| Wrong Precinct | 2,541 | 61% | 11.1% |
| Not Registered | 1,282 | 30.7% | 5.5% |
| Missing ID | 189 | 4.3% | .82% |
| Missing Information | 103 | 2.5% | .45% |
| No Signature | 44 | 1% | .19% |
| Voted Other Means | 9 | .21% | .04% |
| **Total Rejected** | **4,168** | **100%** | **18.1%** |

29 Because 61% of the ballots corresponding with the envelopes Advancement Project received were rejected because the voter was "not registered"-while only 31% of Cuyahoga's rejected provisional ballots overall were in that category-it appears that the envelopes Advancement Project received do not represent a random sample of the rejected provisional ballots.

provisional ballot because of a change of address, while the remaining 415 were issued because the voter's "name should appear on the official precinct list but does not."

Unfortunately, the envelopes shed no additional light on why so many voters who believed they were registered did not appear on the voter rolls. After one voter in Lyndhurst, Ohio, learned that his name did not appear on the precinct list, the voter wrote on his provisional, "I want this explained!" This voter went to the polls expecting to vote, only to learn that his name did not appear on the rolls.[30]

After the May 2006 primary election, the Cuyahoga County Board of Elections formed an independent panel to conduct a comprehensive review of the county's election systems and to make recommendations for improvements.[31] In July 2006, this three-person panel, the Cuyahoga County Election Review Panel ("CERP"), produced a report that identified problems in the 2006 election. The report identifies software problems with the county voter registration database. The Review Panel concluded: "The DIMSnet voter registration system has dropped or displaced several hundred registered voters."[32] Consequently, any of these individuals who tried to vote in 2006 did not appear on the precinct rolls and would have been issued provisional ballots that were not counted because election officials could not confirm their registration.[33] There is no indication that this database problem has been corrected.

*c. Incomplete Provisional Ballot Envelopes*

A third reason for rejection of provisional ballots in Cuyahoga County was incomplete information on the provisional ballot envelope. In the sampling of provisional ballot envelopes reviewed, at least ten provisional ballots were rejected due to missing birth dates and/or signatures. Review by a poll worker to ensure that the envelopes were complete would have avoided the rejection of these ballots.[34]

**B. FRANKLIN COUNTY**

Franklin is Ohio's second largest county and includes the state's capitol and the state's second largest city, Columbus. Franklin County has a large African American population, representing 19.8% of the county's population.[35]

Advancement Project obtained and analyzed an Excel spreadsheet from the Franklin County Board of Elections for the 2006 general election that includes the number of provisional ballots cast in each precinct in the county and the percentage of provisional ballots cast in each precinct as a percentage of all ballots cast. Additionally, Advancement Project obtained and analyzed approximately 542 pages of poll worker comments from Franklin County. Further, in conjunction with the data provided by the Board of Elections, Advancement Project reviewed the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties. Finally, Advancement Project reviewed a report of calls from voters to an election protection hotline called the Electronic Incident Reporting Service ("EIRS").

**1. The Issuance of Provision Ballots**

Voters in Franklin County cast more provisional ballots in the 2006 general election than any county in Ohio: Of the 385,863 votes cast, 20,322 (over 5%) were provisional ballots. In other words, nearly one of every nineteen votes cast in the county was a provisional ballot.

30 Professor Candice Hoke, Director of the Center for Election Integrity at Cleveland State University, reports that a Cuyahoga County election official who handles voter registrations stated that "a major, if not exclusive reason for the lost voter records lies in the 'merge records' function of the DIMS registration software." Candice Hoke, *Erroneous Voter Registration Deletions* (Jan. 2007); Candice Hoke, *Monitor Report: Possible Legal Noncompliance in the November 2006 Election*, 2 (Jan. 8, 2007) (a lost voter registration record "not only means that the voter is not permitted to vote but also that the recorded voting history is deleted and unrecoverable").

31 See www.cuyahogavoting.org for background on the panel.

32 Cuyahoga County Election Review Panel, Final Report, July 30, 2006. http://www.cuyahogavoting.org/CERP_Final_Report_20060720.pdf.

33 *Id.* at 30-34.

34 Under Ohio law, election officials must reject a provisional ballot if its envelope is incomplete. See OHIO REV. CODE ANN. § 3505.183 (LexisNexis 2007) (sets forth information required to be completed on an affirmation statement on a provisional ballot if the ballot is to be considered valid and counted, including the voter's name and signature, an affirmation that that voter is registered to vote in the jurisdiction where the provisional ballot is cast and is an eligible voter, and any additional information provided by the voter to the board of elections during the 10 days after the election in which the ballot was cast).

35 www.factfinder.census.gov. Source: 2005 American Community Survey Data Highlights.

The county's spreadsheet, entitled "2006 General Election Provisional Ballot Applications by Precinct,"[36] shows that in thirty-five precincts in Franklin County, 20% of the total ballots cast were provisional ballots. In eleven other precincts, provisional ballots were 50% of the total ballots cast.

**2. Provisional Ballots Rejected**

As reflected in Table 1.3, the most common reasons provisional ballots were rejected in Franklin County were that voters cast ballots in the "wrong" precincts (1,801) or that voters were purportedly not registered (684).

***a. "Wrong" Precinct Errors***

Poll worker comments reveal that poll workers may have contributed to voters' casting provisional ballots in the "wrong" precincts. In at least three separate instances, poll workers sent a voter to several different precincts before the voter insisted on casting a provisional ballot. For example, poll workers directed two Columbus voters, whose addresses were located in Ward 34, Precinct C, to Ward 68, Precinct C (68-C), after other poll workers had directed them to three different precincts. In the report, a poll worker wrote: "They [the voters] said, 'they weren't going any further.'" The poll worker contacted the Board of Elections and was told "to vote them provisionally in 68-C." The poll worker noted the voter was "adamant about getting her vote counted." This ballot must have been rejected since it was cast in the "wrong" precinct; however, without access to the names of provisional voters and their provisional ballot envelopes, Advancement Project was unable to ascertain the disposition of ballots.

The plight of Tracy Banner, a Franklin County voter who had moved shortly before Election Day, further illustrates how poll worker error contributed to the casting of provisional ballots in the "wrong" precinct.[37] On Election Day, Ms. Banner appeared at her polling place at the Innis Elementary School in Columbus, Ohio. After Ms. Banner waited in line for over one hour, a poll worker told her that she would be required to cast a provisional ballot. When Ms. Banner asked for an explanation, the poll worker attempted to call the Franklin County Board of Elections for 45 minutes. Finally, the poll worker told Ms. Banner that since she had moved, she should vote at her new polling place. In response, Ms. Banner explained that she had completed a "change of address" at a public library in September 2006, but had not received any notification of a new polling place, so she had returned to her former polling place.

**TABLE 1.3 FRANKLIN COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of Ohio's Rejected Provisional Ballots |
|---|---|---|---|
| Not Registered | 684 | 26% | 3% |
| Voted Other Means | 63 | 2.4% | .27% |
| Wrong Precinct | 1,801 | 69% | 8% |
| Missing Information | 55 | 2% | .24% |
| No Signature | 9 | .34% | .04% |
| **Total Rejected** | **2,612** | **100%** | **11%** |

36 This document is located at http://www.co.franklin.oh.us/boe (2007).
37 Advancement Project learned about Ms. Banner's experience during a conversation with Ms. Banner after the election.

At the poll worker's direction, Ms. Banner drove to her new polling place in Blacklick, Ohio. There, she provided as identification her Ohio driver's license with her former address.[38] Ms. Banner was not offered a change of address form by the poll workers.[39] Instead, poll workers instructed Ms. Banner to cast a provisional ballot. Ms. Banner provided her new and former address on the provisional ballot envelope. After Election Day, Ms. Banner called the Board of Elections to determine whether her provisional ballot had been counted. She learned that it had not.[40]

*b. Incomplete/Inaccurate Voter Rolls*

Franklin County voters cast 684 provisional ballots that were rejected because the voter was "not registered," which accounts for 26% of the provisional ballots that the county rejected in the 2006 general election. In light of the limited data Franklin County produced, it is difficult to ascertain whether these voters were in fact unregistered. Limited anecdotal evidence suggests that some voters who had participated in elections for many years were dropped off the voter rolls without explanation. In at least one instance, an experienced poll worker recognized voters in her precinct who had voted for many years but did not appear on the voter rolls and were forced to cast provisional ballots that were not counted.[41]

*c. Incomplete Provisional Ballot Envelopes*

Franklin County poll worker comments suggest that poll workers did not take adequate steps to ensure that voters clearly printed and signed their names on their provisional ballot envelopes. Poll workers cited at least 45 instances of voters having failed to complete a provisional ballot envelope or to complete it legibly.[42] As a result, poll workers were often unable to discern the name of the voter who cast the provisional ballot from the voter's signature, likely resulting in the rejection of those ballots.

*d. Other Flaws in Election Administration*

Data revealed other flaws in the administration of the 2006 election in these counties that may have resulted in the rejection of otherwise valid provisional ballots.

Precinct registers may have been inaccurate. In at least one instance, a long-time voter whose precinct had been moved was issued a provisional ballot because his name did not appear on the new precinct's register. Ed Willis, a retired principal of Columbus' East High School, had voted with his wife in the same precinct in Franklin County for over 20 years. Prior to the 2006 general election, the Willises' precinct was moved. On Election Day, Mr. Willis's name did not appear on the voter rolls at his new polling place. As a result, poll workers concluded that he was "not registered" and required him to vote by provisional ballot. Mr. Willis's provisional ballot was counted, thereby demonstrating that he voted in the correct precinct and that his name was erroneously omitted from the precinct register.

In addition, poll worker comments[43] concerning provisional ballots cast in Franklin County show that many poll workers did not provide voters with instructions on how to cure problems with their provisional ballots to guarantee that their ballots would count[44] or how to determine whether their ballots were counted.[45] After Franklin County refused to provide Advancement Project with the names and addresses of voters who cast provisional ballots in the 2006 general election, Advancement Project attempted to identify such voters on its own. These names were compiled by obtaining a list of voters who cast ballots in precincts

38 OHIO REV. CODE ANN. § 3503.16(B)(1) (LexisNexis 2007). An Ohio driver's license with a former address is considered a current and valid form of photo identification for voting purposes.

39 See *id.* (indicating a voter may file a change of address form on the day of the election, at the precinct in which the voter resides).

40 In the summer of 2007, Ms. Banner contacted the Franklin County Board of Elections to ask whether her provisional ballot cast in 2006 had been counted; she was informed that it was not counted. Ms. Banner subsequently received correspondence from the Board that confirmed her change of address and identified her new polling location. In the 2007 election, Ms. Banner appeared at her new polling location, as instructed, but was again required without explanation to cast a provisional ballot. This provisional ballot was reportedly counted.

41 2006 Electronic Incident Reporting Service (unpublished report of phone calls on Election Day to an election protection hotline).

42 For example, in Dublin, Ohio, Ward 64 - Precinct B, a poll worker noted that a voter "did not print his name on the prov[isional] ballot - cannot read his written signature."

43 Poll workers in Franklin County record problems on the "Record Precinct Problems & Corrections Below" forms.

44 § 3505.181. During the 10-day period after an election, provisional voters who did not provide identification, did not provide the last four digits of their social security numbers, did not complete the affirmation statement, or were not challenged at the polls are required to provide additional information to the board of elections to enable the board to determine the voter's eligibility to vote.

45 In a precinct in Columbus, Ward 11, poll workers noted that they were confused about the "yellow copy" and did not give the copy to five provisional voters. The "yellow copy" provides information to voters on how to cure their provisional ballot to ensure that it will be counted. It also helps voters determine whether the ballot was counted or rejected, and if rejected, the reason for the rejection. See Record Precinct Problems & Corrections Below, Columbus, Ward 11; see also Record Precinct Problems & Corrections Below, Columbus, Precinct 13B (poll worker noted she had inadvertently placed the "yellow copy" in the folder rather than giving it to the voter); Record Precinct Problems & Corrections Below, Columbus, Ward 17, Precinct E (poll workers retained the "yellow copy" rather than giving it to voters)

wherein provisional ballots comprised 50% or more of all ballots cast. From that list of voters, Advancement Project reviewed the county voter rolls, which include a voter's voting history, to identify voters who cast provisional ballots. After identifying these voters, Advancement Project sent letters to over 380 voters and, to date, has received 38 responses. Of these 38 responses, 23 voters reported they had not received information on how to "cure" their provisional ballot to guarantee that it would be counted or how to determine whether their provisional ballot was counted. For example, Franklin County voters Ariel King and Meesha Sparrow both reported that when they appeared at the polls on Election Day, their names did not appear on the voter rolls. Poll workers required them to vote by provisional ballots, but failed to provide them with information about how to cure their ballots or determine whether their ballots were counted.

## C. LUCAS COUNTY

Lucas County is the least populous of the four Ohio counties in this report. Its largest city is Toledo. The county's African American community is the largest minority group and represents 17.7% of the county's population.[46]

In response to Advancement Project's public records request, the Lucas County Board of Elections produced two pages of poll worker logs of Election Day complaints and a total of five pages of poll worker comments from four precincts in Toledo and one precinct in Ottawa Hills. Advancement Project reviewed and analyzed those documents, as well as the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the numbers of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties. Lucas County did not produce a spreadsheet of provisional ballots cast by precinct or copies of provisional ballot envelopes.

### 1. The Issuance of Provisional Ballots

Lucas County poll worker comments reveal that poll workers inappropriately issued provisional ballots to several voters in response to generic Election Day problems. In at least one instance, election officials directed poll workers to issue provisional ballots to help alleviate long lines at the polls. At Toledo Precinct 6P, Friendship Baptist Church, there were long lines of voters from approximately 2:30 p.m. until the polls closed at 7:30 p.m. Poll workers received authorization from an unknown official to issue provisional ballots to reduce the long lines and subsequently issued provisional ballots to several voters. Nothing in the Ohio election code permits issuance of provisional ballots under such circumstances.[47]

### 2. Provisional Ballots Rejected

Lucas County voters cast 4,910 provisional ballots, of which 3,531 were counted. As reflected in Table 1.4, the two primary reasons for rejecting provisional ballots in Lucas County were that voters cast the ballot in the "wrong" precinct (489) or were not registered (475).

## D. SUMMIT COUNTY

Summit County's largest city is Akron. Summit County's African American community is the county's largest minority population, representing 13.9% of the county's population. Although Summit County voters cast the fewest provisional ballots (4,891) of the four Ohio counties in this report, it had the highest rejection rate, 1,523 (31%) provisional ballots.

The Summit County Board of Elections provided Advancement Project with a report and addendum that included the name of each voter who cast a provisional ballot, the precinct in which the ballot was cast, and the disposition of the ballot. The report did not include

46 *Id.*
47 See OHIO REV. CODE ANN. § 3505.181 (LexisNexis 2007) (identifying circumstances under which a voter must cast a provisional ballot, i.e., name does not appear on the voter rolls, does not have or fails to provide proper identification, voted by absentee ballot, registration notification returned undeliverable, change of address, change of name, challenged voter, or challenged voter whose hearing has been postponed).

the addresses of voters who cast a provisional ballot. Additionally, Advancement Project received and reviewed 315 Booth Worker Memo Sheets from the Summit County Board. Booth Worker Memo Sheets are forms that poll workers use to report their complaints or concerns on Election Day. Finally, Advancement Project reviewed the electronic Master Survey List that the Ohio Secretary of State submitted to the EAC in 2007, which included the number of provisional ballots cast and counted in the 2006 general election in each of Ohio's counties.

As Table 1.5 reflects, and consistent with the other three counties identified in this report, the top two reasons for rejecting provisional ballots in Summit County were that the voter cast the ballot in the "wrong" precinct (601) or was "not registered" (278). Additionally, Summit County rejected 128 provisional ballots on the ground that the voter was "ineligible to vote." Summit County was the only county of the four Ohio counties profiled in this report that employed this basis for rejection of a provisional ballot.

The Summit County Booth Worker Memo shows that in 29 precincts, most of which are in Akron, poll workers failed to administer provisional ballots properly.[48] For example, one poll worker reportedly directed voters to the wrong precinct: A poll worker wrote that in Akron Precinct 3B, "three voters were told to vote provisional in 5A but should have voted in precinct 3B.

**TABLE 1.4 LUCAS COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of Ohio's Rejected Provisional Ballots |
|---|---|---|---|
| Wrong Precinct | 489 | 35% | 2.1% |
| Not Registered | 475 | 34% | 2% |
| Missing ID | 330 | 24% | 1.4% |
| Missing Information | 58 | 4% | .25% |
| Voted Other Means | 21 | 1.5% | .1% |
| No Signature | 6 | .43% | .02% |
| **Total Rejected** | **1,379** | **100%** | **6%** |

**TABLE 1.5 SUMMIT COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of Ohio's Rejected Provisional Ballots |
|---|---|---|---|
| Wrong Precinct | 601 | 39% | 2.6% |
| Not Registered | 278 | 18% | .01% |
| Missing ID | 349 | 23% | .5% |
| Voted Other Means | 151 | 10% | .65% |
| Ineligible to Vote | 128 | 8% | .55% |
| No Signature | 16 | 1% | .06% |
| **Total Rejected** | **1,523** | **100%** | **5.37%** |

48 A poll worker in Akron Precinct 5B reported, "too many provisional ballots, too many voids, too many voters and ballots all messed up."

The provisional envelopes were placed in 5A." Assuming that the poll worker was correct that these voters should have cast their ballots in Precinct 3B, rather than 5A, their ballots would have been rejected for having been cast in the "wrong" precinct.

In other instances, workers neglected to provide voters who cast provisional ballots with information on how to cure the problems with their provisional ballots in order to guarantee that their ballots would count, or how to determine whether their ballots were counted. For example, one poll worker reportedly failed to provide a voter who was given a provisional ballot because of a lack of identification a notice explaining that the voter should return to the Board of Elections with identification within 10 days to ensure that her provisional ballot would be counted.

Finally, at least one comment suggests that poll workers mismanaged provisional ballots. In Cuyahoga Falls, Precinct 3G, a poll worker reported that a provisional ballot might have been lost because the precinct was very busy and the voter may not have placed the provisional ballot in the ballot box.

## V. Recommendations for Ohio

Based on the data on and analysis of the use of provisional ballots in Ohio in the 2006 general election, Advancement Project recommends that Ohio elected officials, county election officials, poll workers, voter protection advocates, and voters take the following steps to minimize the unnecessary use and rejection of provisional ballots.

### A. ELIMINATE THE "WRONG" PRECINCT RULE.

- The state legislature should amend the election code to require that provisional ballots cast by voters at any precinct in the county be counted for all elections in which the voter is eligible to vote.
- The Ohio Secretary of State should issue a statewide directive clarifying that current Ohio law creates an affirmative duty binding election officials to direct voters to the correct precinct and ordering county boards of election to count provisional ballots that are cast in the "wrong" precinct unless the voter was directed by election workers to the correct precinct and refused to go.

### B. IMPROVE THE FORMAT OF THE PROVISIONAL BALLOT ENVELOPE AND REQUIRE POLL WORKERS TO REVIEW PROVISIONAL BALLOT ENVELOPES FOR COMPLETENESS BEFORE THE VOTER LEAVES THE POLLING LOCATION.

- The Secretary of State should redesign the provisional ballot envelope to place a burden on poll workers to direct voters to the correct precinct, in compliance with state law.[49] In particular, both the voter and the poll worker should be required to initial the ballot to indicate that a poll worker informed the voter of his/her correct precinct. Absent both sets of initials, county election officials should count the ballot.
- Poll workers should check each provisional ballot envelope, especially for signature and date of birth, to ensure that it is complete, prior to the voter's leaving the polls.
- The Secretary of State should issue a directive to all county boards of election that they should not reject a provisional ballot solely because the voter has not included his/her birth date on the provisional ballot envelope. Ohio law does not require the rejection of a provisional ballot for lack of the voter's birth date on the ballot envelope.[50]

49 § 3505.181(C)(1).
50 § 3505.183.

### C. EMPHASIZE THAT PROVISIONAL BALLOTS SHOULD BE USED AS A LAST RESORT.

- Election officials should train poll workers on the limited circumstances under which it is appropriate and lawful under state law to distribute provisional ballots.
- Election officials should train poll workers on their duty to direct voters to the correct precinct.
- Election officials should take steps to ensure that voters who cast provisional ballots receive information from poll workers on how to cure deficiencies with their provisional ballot during the 10-day period after the election to guarantee that their ballot will count. They should also be informed about how to contact local boards of elections to determine whether their ballot was counted or rejected, and, if rejected, the reason(s) for the rejection.

### D. ESTABLISH A PROVISIONAL VOTING STATION IN EACH POLLING PLACE.

- Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure voters are in the correct precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify voters' correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, a street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of elections. No provisional ballots should be issued by poll workers at any other station.

### E. DISTRIBUTE AN ADEQUATE SUPPLY OF "CHANGE OF ADDRESS" AND "CHANGE OF NAME" FORMS AND VOTER REGISTRATION APPLICATIONS TO POLLING LOCATIONS.

- Election officials should ensure that all polling places have adequate quantities of "change of address" and "change of name" forms available on Election Day. Election officials should train poll workers to offer the forms to voters whose names do not appear on the precinct list and who indicate that they have moved or changed their name.
- Poll workers should be trained to instruct any voter whose eligibility is in question to complete a voter registration application at the polling place to guarantee that s/he will become registered to vote for future elections.

### F. PRINT AND DISTRIBUTE MULTI-PRECINCT POLL BOOKS.

- In multi-precinct polling places, where electronic poll books are unavailable, election officials should print and distribute poll books to each polling place that list all registered voters assigned to that polling place and indicate each voter's correct precinct.

### G. IMPROVE VOTER EDUCATION CONCERNING PROVISIONAL BALLOTS.

- **Urge Voters to Confirm Their Precinct and Polling Location Before Election Day:** Voters should be encouraged to call their county elections office or check the county board of elections' or

Secretary of State's Web site a week before Election Day to confirm the location of their precinct.

- **Educate Voters that Provisional Ballots Should Be Used Only As a Last Resort:** Voters should be instructed to cast a provisional ballot only as a last resort and, where such voting is necessary, to confirm that s/he is in the correct precinct.
- **Educate Voters about Their Right to Request a Change of Address/Change of Name Form:** Voters should be informed about their right to request a "change of address" or "change of name" form at their precinct on Election Day. Voters who have moved to an address that is served by a new precinct without having updated their registration must vote in their new precinct, submit a change of address form, and cast a provisional ballot.
- **Instruct Voters to Provide Missing Information within 10 Days:** Voters who cast a provisional ballot should be given written and oral notice at the polls advising them to provide any missing information necessary to cure their ballot to their board of elections within the 10-day period after the election in order to guarantee that the ballot will be counted. On and immediately after Election Day, election officials should issue public service announcements with these instructions.
- **Notify by Mail Voters Whose Provisional Ballot Was Rejected:** Election officials should mail all voters whose provisional ballots are rejected a letter stating the reason for rejection and steps the voter should take to ensure that s/he will be permitted to vote by regular ballot in subsequent elections.
- **Inform Individuals with Felony Convictions that they Must Re-Register to Vote upon Release from Incarceration:** Election officials and the Department of Probation and Parole should inform individuals with felony convictions that they must re-register to vote upon release from incarceration. The Department of Probation and Parole should provide voter registration applications to these individuals upon their release.

## H. INCREASE THE TRANSPARENCY OF THE ADMINISTRATION OF PROVISIONAL BALLOTS.

- The Secretary of State should issue a statewide directive ordering county boards of election to provide public access to the name, address, and birth date of each voter who casts a provisional ballot, and the basis for issuing those ballots, within the 10-day period after the election, to promote transparency and advocacy on behalf of voters who cast provisional ballots.
- Election officials should require poll workers to complete comment sheets or otherwise communicate their comments about problems and concerns on Election Day in written form. Election officials should use these comments to revise policies and poll worker training and should produce them in response to public records requests.

## I. CONDUCT RIGOROUS ANALYSIS OF THE PROVISIONAL BALLOT USAGE.

- Following each election, local election officials should analyze provisional ballot usage in their jurisdiction by tracking all provisional votes cast and counted, by precinct, with the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, their notices to provisional voters, and their community education efforts.
- The Secretary of State should collect this data from local election officials to assess variances in the administration and counting of provisional ballots. The Secretary of State should publicize this information on his/her website and further analyze the need for statewide regulations or directives.

# Florida

In Florida's 2006 general election, 14,550 provisional ballots were cast, 3,857 (almost 27%) of which were rejected.[51] Advancement Project reviewed the rejection numbers for each county, as set forth below in Table 2.1.[52]

Advancement Project also reviewed and analyzed copies of thousands of envelopes of provisional ballots cast in that election in several of Florida's largest counties. The envelopes include a list of possible reasons for issuing the provisional ballot, the voter's affirmation, and the information that the supervisor is to verify. The analysis reveals both an overuse of provisional ballots and the imposition of rigid rules unconnected to a voter's eligibility. This data highlights not only the obstacles to becoming registered to vote in Florida,[53] but also the fact that those who manage to become registered may be disenfranchised by complex rules related to provisional ballots that often seem to confuse poll workers.[54]

Under Florida law, a provisional ballot cast in the "wrong" precinct must be rejected. The ballot envelopes that Advancement Project examined show that this law is misguided and fundamentally unfair, disenfranchising voters through no fault of their own. As discussed below, election officials or poll workers often did not provide voters with accurate information, or any information whatsoever, about the location of the voter's precinct. Poll workers appeared ill equipped-lacking in training, resources, and an understanding of the rules related to voters who move-to provide voters with accurate information about their correct precincts.

Another major reason for the rejection of provisional ballots was that the voters were purportedly "unregistered." Though the records on the whole do not shed light on whether these voters had unsuccessfully attempted to register, or had been purged from the rolls, the records show that some voters were prevented from registering due to Florida's onerous "no match, no vote" statute. Additionally, a number of voters noted on their provisional ballot envelopes that they had registered to vote at a state motor vehicles office but were not, according to election officials, "registered voters," demonstrating a possible failure in the registration process that merits further investigation.

Finally, the envelopes suggest overuse of provisional ballots. In particular, poll workers may have issued provisional ballots based on an indication that the voter had requested an absentee ballot without attempting to determine whether the voter had voted by absentee ballot.

**TABLE 2.1 FLORIDA'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Location | Total Provisional Ballots Cast | Provisional Ballots Counted | Percent Counted | Provisional Ballots Rejected | Percent Rejected |
|---|---|---|---|---|---|
| Statewide | 14,550 | 10,693 | 73.5% | 3,857 | 26.5% |
| Broward | 1,533 | 958 | 62% | 575 | 38% |
| Duval | 1,176 | 861 | 73% | 316 | 27% |
| Hillsborough | 1,671 | 1,337 | 80% | 334 | 20% |
| Miami Dade | 329 | 170 | 51.7% | 159 | 48.3% |
| Orange | 623 | 361 | 58% | 262 | 42% |
| Palm Beach | 1,805 | 1,425 | 79% | 380 | 21% |

51 *The 2006 Election Administration and Voting Survey*, U.S. Election Administration Commission, Dec. 2007, at 43.

52 Table 2.1 reflects the number of voters who cast provisional ballots in the 2006 general election, and the number of counted and rejected provisional ballots statewide and in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Palm Beach counties, as reported by the Secretary of State and those counties. When a county produced more than one set of records and those records contained inconsistent data, Advancement Project relied upon the more detailed records.

53 A federal district court recently rejected Advancement Project's challenge to a Florida statute that prohibits the processing of corrections to voter registration applications submitted within the specified deadline after the registrar closed the books. See *Diaz v. Cobb*, 475 F. Supp. 2d 1270 (S.D. Fla. 2007). Advancement Project, the Brennan Center for Justice at NYU School of Law, and Project Vote are currently challenging a Florida statute that requires the last four digits of a social security number or a driver's license number, or that the nonexistence of these numbers, be verified by the state as a precondition to registration. *Fla. State Conference, NAACP v. Browning*, No. 07-402 (N.D. Fla. 2007).

54 For example, a voter's provisional ballot cast in a precinct in which s/he does not reside will not be counted. FLA. STAT. § 101.048(2) (2007). A voter who moves after s/he has registered may cast a regular ballot in the precinct in which s/he resides provided the voter completes an affirmation and the poll worker verifies his/her registration and eligibility. § 101.045. A voter who requests an absentee ballot but then wishes to vote in person may cast a regular ballot if s/he either returns the ballot or if the poll worker confirms that the absentee ballot has not been received by the supervisor. A provisional ballot should only be issued if the poll worker cannot determine whether the supervisor has received the voter's absentee ballot or if the poll worker confirms that the supervisor has received it but the voter maintains that s/he did not return the absentee ballot. § 101.69(1)-(3).

As Florida prepares for a surge in voter registrations and voter turnout this year, state and county election officials should take immediate steps to ensure that all eligible applicants who submit complete registration applications are promptly added to the rolls. As to applicants whose applications are incomplete, officials should timely notify the applicants of the deficiency, as required under state and federal law. In preparation for Election Day, officials should provide comprehensive training to poll workers on the appropriate circumstances under which to distribute provisional ballots to voters, the procedures for determining a voter's correct precinct, and the procedures to be followed for voters who have requested an absentee ballot or have moved.

## I. Provisional Voting under Florida Law

Under Florida law, a voter who asserts that s/he is registered and eligible to vote but whose eligibility cannot be determined, or a voter who an election official asserts is not eligible to vote, may cast a provisional ballot.[55]

The county canvassing board[56] determines whether a provisional ballot should be counted or rejected. The board counts a provisional ballot if it determines that the voter was entitled to vote at the precinct in which s/he cast a provisional ballot and did not already cast a ballot in the election.[57] In making this determination, the canvassing board reviews the information provided in the provisional ballot voter's certificate and affirmation,[58] written evidence provided by the voter, other evidence that the supervisor of elections presents, and, in the case of a challenge, evidence presented by the challenger.[59] If the canvassing board determines that the voter was registered and eligible to vote in that precinct, the board compares the signature on the certificate and affirmation with the signature on the voter's registration, and, if it matches, counts the ballot.[60]

Florida law requires that a voter must cast a ballot in the precinct in which s/he resides and is registered. It also permits a voter who moves from the precinct in which s/he is registered to cast a regular ballot in the precinct of his/her new residence, provided that s/he completes an affirmation and his/her registration and eligibility are verified.[61]

## II. County-By-County Analysis

### A. DUVAL COUNTY

The Supervisor of Elections for Duval County reported that 1,776 provisional ballots were cast in the 2006 general election. Advancement Project obtained copies of the ballot envelopes, which include the voter's name and address, the reason the voter was required to cast a provisional ballot, whether the ballot was accepted or rejected, any investigative findings, and the voter's certificate and affirmation, which includes a space for voter comments. In addition to the envelopes, for each prior voter, Advancement Project obtained a "voter registration receipt," which includes the voter's name, voter status, and voter registration date, and, for many voters, their most recent voter registration application. Advancement Project reviewed data from the Election Incident Reporting System ("EIRS"), a compilation of information gathered from calls made to an Election Day hotline. Advancement Project also obtained a spreadsheet created by Duval County that sets forth the reasons for issuance and rejection of provisional ballots in the 2006 general election, and a copy of the Duval County poll worker manual (June 2006).

#### 1. The Issuance of Provisional Ballots

Table 2.2 reflects the number of voters who cast provisional ballots in the 2006 general election that were counted and the reasons for issuance of the provisional ballot in the first instance.

55 § 101.048. Additionally, if a court or other order extends the polling place hours, and a person votes in an election after the regular poll-closing time, the voter must cast a provisional ballot. § 101.049.

56 Under most circumstances, the county canvassing board consists of the county supervisor of elections, a county judge, and the chair of the board of county commissioners. § 102.141.

57 § 101.048(2)(a).

58 On the certificate and affirmation, the voter must swear or affirm his/her name, date of birth, political party, that s/he has not already voted and is registered and eligible to vote in the county. The voter must also swear or affirm an understanding that s/he can be convicted of a felony and imprisoned up to 5 years if s/he commits a fraud in connection with voting. See § 101.048(2)(a).

59 § 101.048(2)(a)-(b). The county canvassing board reviews a provisional ballot to determine by a preponderance of evidence if the voter is "entitled to vote in the precinct where the person cast a vote in the election and the person had not already cast a ballot in the election." *Id.* If the board determines that the voter is registered and eligible to vote in that precinct, the board then compares the signature on the provisional ballot envelope with the signature on the registration records and, if they match, counts the ballot. *Id.*

60 § 101.048(2)(b).

61 § 101.045.

**TABLE 2.2 DUVAL COUNTY'S USE OF PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Issuance | Number of Ballots Accepted | Percentage of Accepted Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| Out of County / Not in Register | 310 | 36.00% | 26.33% |
| Requested Absentee Ballot | 416 | 48.32% | 35.34% |
| No Photo/Signature ID | 70 | 8.13% | 5.94% |
| Other/No Reason | 30 | 3.48% | 2.54% |
| Refutes Ineligibility | 20 | 2.32% | 1.69% |
| Duplicate/File Corrected | 14 | 1.62% | 1.18% |
| Out of County and No ID | 1 | .12% | .08% |
| **Total Accepted** | **861** | **100%** | **73%** |

According to Duval County's records, provisional ballots were issued most frequently because the voter did not appear in the precinct register, the voter had requested an absentee ballot, or the voter had not produced photo identification with a signature at the polls.

*a. Errors Regarding Voters Who Had Requested Absentee Ballots*

Data suggests that poll workers may have improperly issued provisional ballots to voters who had requested absentee ballots but appeared at the polls on Election Day. If a voter who has received an absentee ballot later decides to vote in person, Florida law requires the voter to return the absentee ballot to the supervisor of elections, the election board in the voter's precinct, or an early voting site.[62] If the precinct register indicates that the voter had requested an absentee ballot, and the voter appears at the polls without his/her absentee ballot, a poll worker should issue the voter a regular ballot if the poll worker confirms that the supervisor of elections has not received the absentee ballot.[63]

Poll workers issued a provisional ballot to 416 voters because of an indication in the register that the voter did not surrender an absentee ballot and because the poll worker was not able to ascertain whether the supervisor's office had received the ballot. It seems unlikely that poll workers would not be able to confirm whether the supervisor's office received the voter's absentee ballot for such a large number of voters. The large number of these voters seems to suggest a number of possible problems:

- Poll workers were not adequately trained,
- Poll workers were acting contrary to their training to contact the supervisor's office,
- Poll workers had difficulty reaching the supervisor's office on Election Day, and/or
- The supervisor's staff was unable to provide poll workers with accurate information about the voter's absentee ballot.

Additionally, one voter who specifically noted in her affirmation that she was returning her (unused) absentee ballot was nevertheless erroneously issued a provisional ballot.[64]

*b. Errors in Precinct Registers and Records*

The provisional ballot envelopes also reveal errors in state or county registration records[65] and errors related to the issuance of absentee ballots:

62 § 101.69.
63 *Id.* If the voter's absentee ballot is subsequently received, it remains in its envelope and is marked "rejected as illegal."
64 Although the voter's provisional ballot was counted, poll workers should not have required her to cast a provisional ballot. When a voter returns an absentee ballot, it should be marked as cancelled, and the voter should vote by regular ballot. § 101.69.
65 The EIRS data includes reports from several voters that they did not appear on the voter rolls in their correct precincts.

- A voter was issued a provisional ballot because county records mistakenly indicated that she had already voted. She insisted that she had not voted and her provisional ballot was subsequently counted, which suggests that the information on the poll register was incorrect or misread by the poll worker.
- A voter noted that his wife's gender was incorrect in the register.
- A voter's affirmation notes that a father and son's records had been combined.
- One investigative finding noted that a ballot should be counted because the voter had been inaccurately identified as being deceased.
- Several voters noted that they had requested an absentee ballot but had not received it, while others indicated that their records erroneously indicated that they had requested an absentee ballot.

2. **Provisional Ballots Rejected**

As reflected in Table 2.3, Duval County counted 860 (about 73%) of the provisional ballots cast and rejected 316 (about 27%) of those ballots.

The county reported that the top two reasons for its rejection of provisional ballots were that the voter's eligibility could not be established or the voter cast the ballot in the "wrong" precinct.

***a. Problems with Voter Registration***

A major reason cited for the rejection of provisional ballots in Duval County was that voters were not registered to vote. The ballot envelopes reveal that in some instances officials may have wrongfully failed to process those voters' registration applications. For example, some voters were not registered to vote because state election officials were unable to "match" the information on their application with a record in the state driver's license or Social Security Administration's database.[66] But lack of a "match" could be the result of a typographical error by a clerk, the applicant's having a hyphenated name or nontraditional spelling of a common name, or other factors wholly unrelated to the applicant's eligibility. Florida's "matching" requirement, in effect, disproportionately prevented African American and Latino applicants from becoming registered to vote.[67]

**TABLE 2.3 DUVAL COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| Eligibility Unable to Be Established | 198 | 62.7% | 16.8% |
| Wrong Precinct | 100 | 31.6% | 8.5% |
| Signature of Voter Did Not Match | 6 | 1.9% | .51% |
| Other/Voter Not in Register | 6 | 1.9% | .51% |
| Already Voted Early/Absentee | 3 | .95% | .26% |
| Absentee Ballot Not Brought to Polls | 2 | .63% | .17% |
| Other/Refutes Ineligibility | 1 | .32% | .09% |
| **Total Rejected** | **316** | **100%** | **27%** |

66 See § 97.053(6).

67 In 2007, Advancement Project, the Brennan Center for Justice at NYU School of Law, and Project Vote successfully challenged Florida's refusal to register voters for lack of a "match," but an appellate court reversed that ruling. See *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008). On remand, the trial court recently rejected plaintiffs' renewed request for a preliminary injunction of the statute. *Fla. State Conference, NAACP v. Browning*, No. 07-402 (N.D. Fla. June 24, 2008).

Other envelopes suggest flaws with the administration of the National Voter Registration Act's ("NVRA") requirement that state motor vehicles offices distribute voter registration applications to persons who use their services.[68] For example, 11 individuals wrote on their provisional ballot affirmation that they had registered to vote while obtaining a driver's license at the Florida Department of Highway Safety and Motor Vehicles ("DHSMV").

Finally, at least one envelope reveals that errors in the administration of the state's voter registration deadline may have disenfranchised voters. One voter whose provisional ballot was rejected because she "registered after book closing" appears to have registered before the October 10, 2006, book closing. Her registration application was signed October 3, 2006, and stamped October 4, 2006. Moreover, a "voter registration receipt" indicated that this voter was deemed registered as of October 4, 2006.

*b. Errors Regarding Precincts*

Other provisional ballot envelopes show that voters who cast provisional ballots in the "wrong" precincts were actually directed there by poll workers. Subsequently, the votes were not counted because they were cast in the "wrong" precinct.

- On one envelope, a voter wrote that he had been "sent all around" to different precincts.
- On an affirmation, a voter stated that he had attempted to vote at four different precincts.
- On her envelope, a voter recorded that a poll worker had instructed her to go to a different precinct at 6:45 p.m. When the voter arrived at the second precinct, she was told that she needed to cast her ballot at the first precinct, but she did not have time to return to the first precinct before the polls closed. As a result, she was required to cast a provisional ballot in the wrong precinct.

As a result of poll workers' misdirection of voters to incorrect precincts, the provisional ballots cast by these voters were rejected.

In other instances, poll workers appear to have misunderstood that Florida law allows a registered voter who moves to a new precinct to cast a regular ballot in that precinct, provided the voter completes an affirmation.[69]

- Numerous voters who had moved cast ballots in the precinct that served their previous residence, instead of the precinct that served their current address.
- One note indicates that a precinct worker told a voter to vote at the location listed on his "[voter information] card," and not in the precinct in which he currently resided, contrary to Florida law. As a result, the voter's provisional ballot was rejected.

The ballot envelopes of five other voters, whose provisional ballots were rejected for having been cast in the wrong precinct, noted that they had not received a voter information card. Such a card would have informed each of these voters of his/her correct precinct location.[70]

B. PALM BEACH COUNTY

In the 2006 general election, 1,805 provisional ballots were cast in Palm Beach County. Advancement Project obtained copies of the envelopes of those ballots, which include the voter's name and address, the reason the voter was required to cast a provisional ballot, whether the ballot was accepted or rejected, and, if rejected, the reason for rejection. Advancement Project also obtained a spreadsheet created by Palm Beach County that sets forth the reasons for issuance and rejection of provisional ballots in that election and Election Day phone logs from the supervisor's office that included the name of the caller, the precinct at issue, a brief description of the

68 See National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg – 3; § 97.057 (2002).

69 The affirmation includes the voter's new address, old address, and registration status; that the voter has not yet voted in the election; and that the voter is entitled to vote. FLA. STAT. § 101.45(2)(a) (2007). A poll worker should only issue a provisional ballot if the poll worker cannot determine a voter's eligibility. *Id.*

70 These findings are consistent with data from an Election Day hotline compiled on the "Election Incident Reporting System." Calls from Duval County to the hotline included a report from a voter that a poll worker had sent from one precinct to another, only to be told by another poll worker to return to the first precinct. Another voter told the hotline that a poll worker erroneously required the voter, who had moved within the same precinct, to vote by provisional ballot.

problem, and the action taken. Additionally, Advancement Project reviewed Election Day phone logs from the supervisor's office and EIRS data.

### 1. The Issuance of Provisional Ballots

As Table 2.4 shows, as to the provisional ballots it counted, the county most frequently issued provisional ballots because the voter had requested an absentee ballot or the voter's name did not appear on the precinct register.

#### *a. Errors Regarding Voters Who Had Requested Absentee Ballots*

Palm Beach County's records indicate that 545 people, nearly one-third of all voters who cast provisional ballots, were issued provisional ballots because the register indicated that each of these voters had requested an absentee ballot. Several of the voter affirmations reveal that voters were unaware that if they requested an absentee ballot for a given election, they would in most cases receive absentee ballots for future elections as well.[71] For example, some voters wrote on their envelopes that they requested an absentee ballot for the primary election only, suggesting that they did not want or intend to vote by absentee ballot in the general election.

While these provisional ballots were counted, under Florida law, these voters should have been permitted to vote by regular ballot if the poll worker confirmed that the supervisor had not received an absentee ballot from the voter.[72] The large number of provisional ballots issued because of an indication that a voter requested an absentee ballot suggests that poll workers may not have been trained to contact the supervisor's office under these circumstances or were unable to reach the supervisor's office,[73] or that the supervisor's office was unable to respond accurately to the poll worker's inquiry.[74]

**TABLE 2.4 PALM BEACH COUNTY'S USE OF PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason Voter for Issuance | Number of Ballots | Percentage of Accepted Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| Absentee Ballot Issued | 545 | 38.2% | 30.2% |
| Not on Precinct Register | 342 | 24% | 18.9% |
| No ID | 314 | 22% | 17.4% |
| No Reason Indicated | 105 | 7.4% | 5.8% |
| Voter Moved | 65 | 4.6% | 3.6% |
| Inactive Status | 19 | 1.3% | 1.1% |
| Unable to Determine Eligibility | 12 | .84% | .66% |
| Other | 10 | .70% | .17% |
| No Signature/Signature Differs | 6 | .42% | .33% |
| Name Change | 4 | .28% | .22% |
| Suspended Voter Status | 3 | .21% | 1.7% |
| **Total Accepted** | **1,425** | **100%** | **79%** |

71 § 101.62(1).
72 § 101.69.
73 Comments in Election Day phone logs received from the supervisor's office, many of which appear to be from poll workers, confirm that it was difficult to contact the supervisor's office by phone.
74 The EIRS data also indicates that poll workers did not correctly administer Florida's absentee ballot rules. One voter called to report that although she had not requested an absentee ballot, a poll worker told her that she had requested an absentee ballot and instructed her to retrieve it and return to the polls with it. But under Florida law, even if the voter had requested an absentee ballot, the poll worker should not have sent the voter away from the polls because she did not have an absentee ballot in her possession. See FLA. STAT. § 101.69 (2007).

*b. Errors Regarding Voters Who Had Moved*

Palm Beach County's provisional ballot envelopes show that dozens of voters were issued provisional ballots for reasons such as "moved," "new address," and "change of address - voted provisional in new and correct precinct." By the county's own admission, poll workers required 65 voters to vote by provisional ballot because they had moved. The county ultimately counted these 65 ballots, thereby confirming that the voters were registered and eligible and had cast their ballots in the proper precinct. But poll workers should never have required those voters to vote by provisional ballot. Under Florida law, voters who move are permitted to cast a regular ballot in the precinct where they reside, provided they sign an affidavit and the poll worker confirms the voter's registration and eligibility.[75] Instead, poll workers required these voters to vote by provisional ballot, the counting of which is not guaranteed.

In addition, Palm Beach County reported that it issued provisional ballots to an additional 342 voters because their names did not appear on the poll register, yet the canvassing board subsequently counted those ballots. This suggests that poll registers may have been inaccurate or not updated with change-of-address information. Some of these ballots may have been cast by voters who did not appear on the register because they had moved after they registered to vote but nevertheless voted in the correct precinct serving their new address. Under Florida law, if these voters affirmed their new address and poll workers confirmed their registration, they should have been permitted to vote by regular ballot.

*c. Errors Regarding Voters Who Had Changed Their Name*

Voters who change their name after they registered to vote are entitled to cast a regular ballot on Election Day if they complete an affidavit.[76] Poll workers should issue a provisional ballot to those voters only if their eligibility, registration, or precinct is in question.[77] According to Palm Beach County records, four voters were issued provisional ballots, which were counted, because they had changed their names.

*d. Possible Errors in Precinct Registers and Communication Problems*

Palm Beach County's records show that 342 voters, whose provisional ballots were counted, had to cast provisional ballots because they did not appear on the precinct register. The sheer volume of voters in this category could indicate that the precinct registers and registration rolls are inaccurate or out-of-date.

In addition, comments on provisional ballot processing forms, presumably made by poll workers, indicate that it was difficult to reach the Palm Beach supervisor's office on Election Day.[78] Impediments to communication could interfere with, among other things, a poll worker's ability to verify a voter's eligibility, which could result in the improper distribution of provisional ballots to qualified voters.

**2. Provisional Ballots Rejected**

As Table 2.5 reflects, of the 1,805 provisional ballots cast in Palm Beach County, 1,425 (about 79%) were counted and 380 (about 21%) were rejected.

75 § 101.045 (2007).
76 § 101.045.
77 *Id.*
78 Comments in Election Day phone logs received from the supervisor's office, many of which appear from poll workers, confirm the difficulty that poll workers had in contacting the supervisor's office by telephone on Election Day.

**TABLE 2.5 PALM BEACH COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots | Percentage of Rejected Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| Not Registered | 125 | 32.9% | 6.9% |
| Wrong Precinct | 92 | 24.2% | 5.1% |
| Deleted Voter Status | 46 | 12.1% | 2.5% |
| Registered after Books Closed | 40 | 10.5% | 2.2% |
| Signature Missing | 25 | 6.6% | 1.4% |
| No Voter Information Provided on Ballot | 24 | 6.3% | 1.3% |
| Other | 12 | 3.21% | .69% |
| Incomplete Voter Status | 9 | 2.4% | .5% |
| Voided Provisional | 4 | 1.1% | .2% |
| Early Voted | 3 | .79% | .17% |
| **Total Rejected** | **380** | **100%** | **21%** |

As noted above, the top two reasons for Palm Beach County's rejection of provisional ballots were that the voter appeared not to be registered or that the voter cast his/her ballot in the "wrong" precinct.

*a. Registration Problems*

The most common reason for rejection of a provisional ballot was that the voter did not appear to be a registered voter. While the envelopes do not explain why so many voters were unregistered, they do suggest-as in Duval and Orange counties-that DHSMV may not be fulfilling its legal requirements under the NVRA to provide Floridians who use its services with an opportunity to register to vote. Several voters in Palm Beach indicated on their provisional ballot envelopes that they had registered to vote while obtaining a driver's license at the DHSMV.

*b. Precinct Errors*

Ninety-two provisional ballots were rejected because the voter cast the ballot in the "wrong" precinct. The envelopes of those provisional ballots show that, in many instances, voters cast provisional ballots in the "wrong" precinct at the direction of a poll worker.

- Forty-three voters who were registered to vote, but did not appear on the precinct register, cast provisional ballots that were rejected because they were cast in the "wrong" precinct. If not for poll worker error, none of these voters would have been disenfranchised. Poll workers should have directed each of those voters to his/her correct precinct. Of the provisional ballots cast by these 43 voters, the envelopes on 18 ballots indicated that the voter had changed addresses. Under Florida law, poll workers should have directed those voters to the polling place serving their

new address so they could cast a regular ballot and an affirmation with their new address.[79] The fact that poll workers did not prevent these voters from casting a provisional ballot in the "wrong" precinct suggests that poll workers did not have adequate information to direct voters to their correct precinct, were not properly trained, and/or disregarded the training.

- One voter whose provisional ballot was rejected because he voted in the "wrong" precinct stated on his envelope that poll workers from a different precinct had directed him to that precinct, which according to the investigative findings was not his correct precinct.
- Another voter, who was registered, was issued a provisional ballot because he was "not in the system," according to a poll worker, which suggests that the poll worker could not, or did not, attempt to access information from the statewide voter registration database. As a result, the voter cast a provisional ballot in the "wrong" precinct, and it was rejected.

#### *c. Incomplete Envelope Certificates and Affirmations*

Twenty-five provisional ballots in Palm Beach County were rejected because the voter did not sign the certificate and affirmation on the provisional ballot envelope. Florida law requires the canvassing board to compare a voter's signature on his/her certificate and affirmation with the signature on the voter's registration prior to counting a provisional ballot.[80] Thus, a provisional ballot cast by a registered, eligible voter must be rejected if the voter did not sign the provisional ballot affirmation, an omission that poll workers could readily help to avoid.

In one disturbing example, a voter who was issued a provisional ballot refuted the claim that he was ineligible. Investigative findings indicate that the voter was indeed registered, and election officials had confused the voter with someone else who had a similar name and had cast a ballot earlier in the day. Even though this registered and eligible voter should never have been forced to vote by provisional ballot, his provisional ballot was not counted because he did not sign the ballot's certificate and affirmation.

### C. ORANGE COUNTY

The Supervisor of Elections for Orange County reported that 623 provisional ballots were cast in the 2006 general elections. Advancement Project obtained copies of the provisional ballot envelopes, which include the voter's name and address, the reason for the issuance of the provisional ballot, whether the ballot was accepted or rejected, and the reasons for rejection. Advancement Project also obtained a spreadsheet produced by Orange County containing this information and reviewed EIRS data from Orange County.

#### 1. The Issuance of Provisional Ballots

As Table 2.6 indicates, for almost 60% of the provisional ballots that were actually counted, the county was unable to provide Advancement Project with the reason or reasons for issuance of the provisional ballot instead of a regular ballot in the first instance.

79 § 101.045. Provided that the voter completed an affirmation and the poll worker verified the voter's registration and eligibility, the voter should have been permitted to cast a regular ballot in the precinct of her legal residence. *Id.*
80 § 101.048(2)(b)(1).

**TABLE 2.6 ORANGE COUNTY'S USE OF PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Issuance | Number of Ballots Accepted | Percentage of Accepted Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| No Reason Listed on Public Records Chart | 212 | 58.7% | 34% |
| Moved | 65 | 18% | 10.4% |
| Absentee Issues | 46 | 12.7% | 7.4% |
| No ID | 26 | 7.2% | 4.2% |
| Other | 12 | 3.3% | 1.2% |
| **Total Accepted** | **361** | **100%** | **58%** |

Of the remaining provisional ballots that were counted (almost 40%), the county reported that most had been issued because the voter had moved into the county,[81] had requested an absentee ballot, or did not produce ID at the polls.

2. **Provisional Ballots Rejected**

As Table 2.7 indicates, of the 623 provisional ballots cast in the county, 262 (about 42%) of which were rejected because, among other reasons, (1) the voter was not registered, (2) the voter's information could not be matched with a record in the state's motor vehicles database or the Social Security Administration database, or (3) the voter cast the ballot in the "wrong" precinct.

***a. Problems with Registration***

The most common reason for rejecting a provisional ballot was that the voter was not registered to vote. While the provisional ballot envelopes do not provide much guidance or explanation of the voters' registration status, the envelopes from Orange County, as in Duval and Palm Beach counties, indicate possible failures by the DHSMV to fulfill its duties under state and federal law to assist voters in registering to vote.[82] In Orange County, at least four voters or poll workers recorded on a provisional ballot envelope that the voter believed s/he had registered while obtaining his/her driver's license.

The second most common reason for rejecting a provisional ballot was that the voter's registration application had been denied because information on the application could not be matched with a record in the DHSMV or Social Security database. As discussed above, following the 2006 general election, Advancement Project and other voting rights advocates challenged Florida's refusal to register voters for lack of a "match."[83]

***b. Precinct Errors***

The third most common reason for rejecting a provisional ballot was that the voter cast the ballot in the "wrong" precinct. As in Duval County, voter comments indicate that poll workers may not have provided voters with adequate or accurate information about their correct polling locations. For example, one voter whose provisional ballot was rejected noted on his envelope that when he appeared at one polling place, a poll worker directed him to a different polling place without having searched for his registration. The second polling place, after searching for his records, referred him to a third location, which was his correct precinct; however, because he arrived

81 Registered voters who moved into the county should have been allowed to vote by regular ballot if they completed an affidavit with their new address and the poll worker verified that they were registered, eligible, and entitled to vote in that precinct. FLA. STAT. § 101.045 (2007).
82 See National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg; FLA. STAT. § 97.057 (2002).
83 See *supra* note 67 and accompanying text.

**TABLE 2.7 ORANGE COUNTY'S REJECTED PROVISIONAL BALLOTS (2006 GENERAL ELECTION)**

| Reason for Rejection | Number of Ballots Rejected | Percentage of Rejected Ballots | Percentage of All Provisional Ballots Cast |
|---|---|---|---|
| Not Registered | 50 | 19.1% | 8% |
| Didn't Match State Database | 48 | 18.3% | 7.7% |
| Wrong Precinct | 46 | 17.6% | 7.4% |
| Registered after Book Closing | 34 | 13% | 5.5% |
| Moved Out of State/County | 24 | 9.2% | 3.9% |
| Incomplete | 19 | 7.3% | 3% |
| Ineligible | 16 | 6.1% | 2.6% |
| Removed from Voting Rolls | 12 | 4.6% | 1.9% |
| Registration Cancel | 11 | 4.2% | 1.8% |
| Other | 3 | 1.14% | .46% |
| **Total Rejected** | **262** | **100** | **42%** |

at the third precinct after 7:00 p.m., his provisional ballot was not counted. Had the poll worker at the first location provided him with accurate information about his correct precinct, he would not have been disenfranchised.

*c. Unexplained Rejections*

The investigative findings of the supervisor of elections, set forth on the envelopes of four provisional ballots, concluded that those voters were registered or should have been permitted to cast a regular ballot, but those ballots were nevertheless rejected. It is unclear from these comments why there was a change in course. The provisional ballot envelopes do not indicate the facts that support the canvassing board's decisions to reject these ballots. Without such information, it is impossible to determine whether the board acted properly.

III. RECOMMENDATIONS FOR FLORIDA

Advancement Project recommends that Florida elected officials, county election officials, poll workers, voter protection advocates, and voters take the following steps to minimize the unnecessary use and rejection of provisional ballots.

A. ELIMINATE UNNECESSARY BARRIERS TO REGISTRATION.

- The Florida legislature should amend its election code to eliminate the requirement to "match" a voter applicant's information with data in the Florida DHSMV or Social Security database as a precondition to voter registration.
- The Florida legislature should amend its election code to allow applicants who submitted incomplete or incorrect registration applications to correct their applications, within a reasonable

amount of time from filing, so their names can be added to the voter rolls before an upcoming election.

- The Secretary of State should provide online, public access to the statewide voter registration database. The Secretary should also provide online access to information related to incomplete and/or incorrect applications. The Secretary should post the names and addresses of applicants and any deficiencies associated with any of the pending applications. Providing online access to the database would enable an applicant to determine whether s/he is registered, and, if not, to take the necessary steps to correct his/her application.
- County election officials should adopt Duval County's procedure that instructs any voter whose eligibility is in question to complete a voter registration application at the polling place.

B. ELIMINATE "WRONG" PRECINCT RULE.

- The Florida legislature should amend the election code to require that provisional ballots cast by voters at any precinct in the county be counted for all elections in which the voter is eligible to vote.

C. IMPROVE POLL WORKER TRAINING.

- Poll workers must be trained to understand that provisional ballots should be used as a last resort, and training must include detailed explanations as to the circumstances under which a voter should vote provisionally.
- Poll workers must be trained on the proper rules and procedures pertaining to voters who requested an absentee ballot or had a change of address or name.

D. ENHANCE ASSISTANCE AND INFORMATION AT POLLING SITES.

- [County election officials should staff each precinct with an additional poll worker devoted solely to assisting voters in identifying their correct polling place. This poll worker should have access to the statewide database and the ability to identify the proper precinct for any given address. This poll worker should also have access to up-to-date precinct and address information. This extra worker should be stationed in front of and apart from the "check-in" location so voters who are unsure of their precincts can obtain assistance prior to waiting in line to vote.
- Election officials should establish a provisional ballot station in each polling place that is situated away from the "check-in" location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure that voters are in the correct precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify a voter's correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of elections. No provisional ballots should be issued by poll workers at any other stations.
- All poll workers should have quick and easy access to the statewide voter registration database to guarantee that they will be able to verify the registration status of a voter who has moved.

- If a voter is uncertain of his/her precinct, poll workers should ask for the voter's current address to identify the voter's proper precinct and then direct the voter there. Poll workers should instruct any voter whose eligibility is in question to complete a voter registration application at the polling site to guarantee that s/he will become registered to vote in future elections.
- County election officials should have current maps so they can provide accurate and current precinct information to poll workers and voters.
- The supervisors of elections should ensure that a poll worker can easily contact the supervisor's office on Election Day, if the poll worker has questions. Supervisors should also create an easily accessible and searchable list of voters who have cast an absentee ballot.

### E. IMPROVE PROVISIONAL BALLOT ENVELOPES AND REQUIRE POLL WORKERS TO CHECK THESE BALLOTS FOR COMPLETENESS.

- The Secretary of State should reformat the signature block on provisional ballot envelopes to make it larger and more prominent.
- The envelope should include a reminder to voters in large, bold letters that failure to sign the envelope will result in a rejected ballot.
- Poll workers should be required to examine each provisional ballot envelope for completeness and determine whether the voter has signed the envelope before the voter leaves the polling place.

### F. INCREASE TRANSPARENCY OF THE ADMINISTRATION OF PROVISIONAL BALLOTS.

- Poll workers should provide each voter who cast a provisional ballot with written notification at the polls describing why s/he was issued a provisional ballot and explaining what steps the voter can take to ensure that his/her ballot will be counted. Also, voters should be told what they must do to vote by regular ballot in the next election.

### G. IMPROVE VOTER EDUCATION.

- Improve education and information for voters on how and when to register, how to locate precincts, and how and when to vote provisionally.
- Improve education and information for voters on how to change addresses and names and the rules and procedures for voting absentee, including the fact that requesting an absentee ballot in one election will result in receiving absentee ballots in future elections.
- Conduct specific outreach and education for person with felony conviction on the rules and procedures for re-registering and voting.

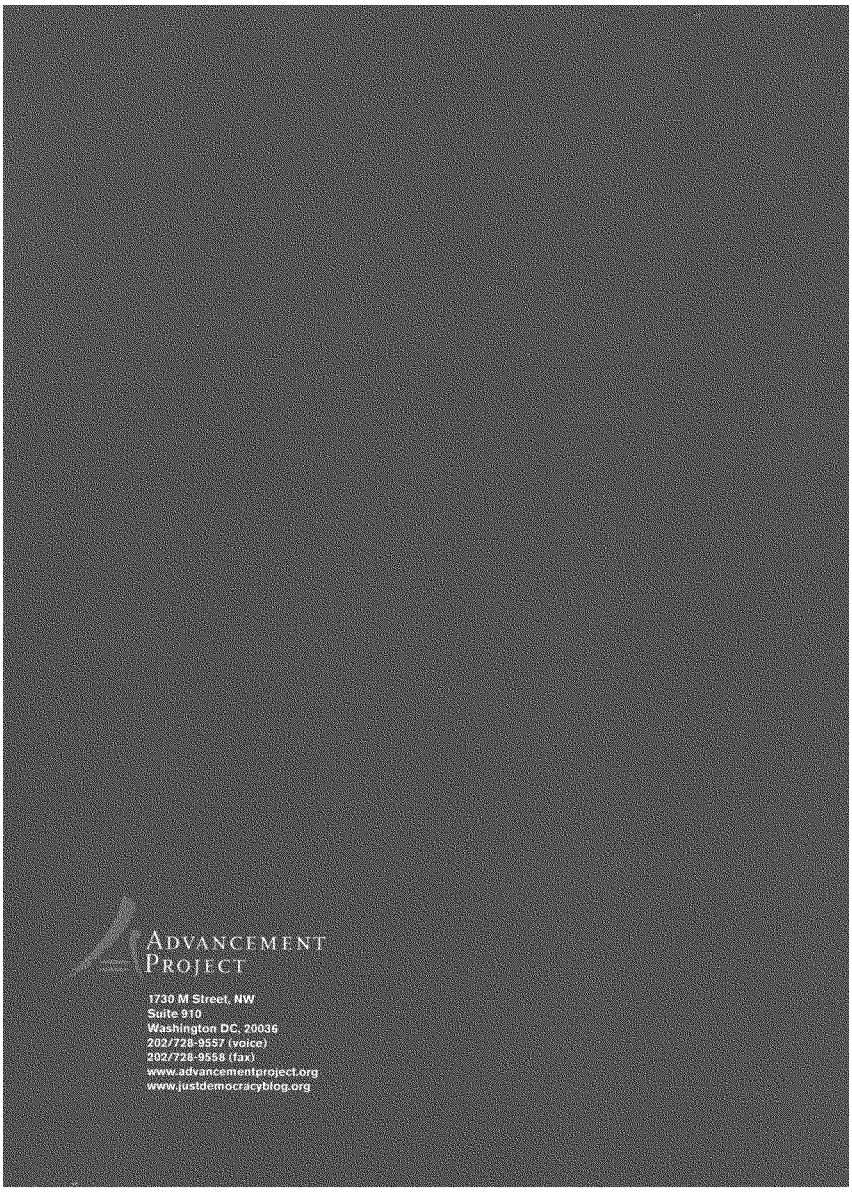
### H. CONDUCT RIGOROUS ANALYSIS OF THE USE OF PROVISIONAL BALLOTS AND THE COMPLIANCE WITH OTHER LAWS AFFECTING THE ADMINISTRATION OF ELECTIONS.

- Following each election, county supervisors of elections should analyze provisional ballot usage in their county by tracking all provisional votes cast and counted, by precinct, with the reasons such ballots were cast and counted or rejected. They should identify potential problem areas and use this analysis to improve their poll worker training, notices to provisional voters, and community education efforts, where necessary.
- The Secretary of State should collect this data from Florida counties to assess differences in the casting, counting, and administration of provisional ballots. The Secretary should publicize this information on a state website and analyze the need for additional regulations or directives where necessary.
- The Secretary of State should audit the Florida DHSMV to determine whether it is, and has been, fully compliant with the NVRA.

# Conclusion

Advancement Project's analysis of public records related to provisional ballots cast in the 2006 general election in Ohio and Florida evidences significant overuse and misuse of provisional ballots. The types of problems and failures identified in this report appear to have existed, to some degree, nationwide in the 2006 election and are likely to exist in elections in the future-disenfranchising even more voters than in past elections-unless changes and improvements are made to limit the unnecessary use and rejection of provisional ballots. If steps are not taken in this regard, voters across the country may be wrongfully disenfranchised in November, and the country may be left with election results that are inaccurate or tainted.

every
vote
counts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The CHAIRMAN. Thank you.
Ms. Quinn.

**STATEMENT OF CAMERON P. QUINN**

Ms. QUINN. Mr. Chairman and members of the committee, thank you very much for this opportunity to appear before you today to talk about innovative voter strategies.

I am focused on the role of election officials, having served as an election official, and having served in the capacity of trying to litigate against election officials who were not complying with Federal law.

And I want to note that election officials want to do a good job. I have not met election officials that did not sincerely want to do the right thing and to follow the law. The challenge for election officials is that they are trying to operate in a situation involving partisanship and usually with very insufficient resources to do the jobs they are being asked to do. And I think it is important to keep that in mind as we try and think about solutions.

One of the biggest challenges in the last 8 years is the fact that election officials have been trying to comply with significant change, again, with insufficient resources. Congress did, for the first time ever, put into place tremendous resources from the Federal fisc for the first time. But those resources were completely inadequate for the changes that were actually being mandated. The estimate is that it was probably about three times, four times as much as what was provided by Congress that it cost these election officials to make the changes necessary.

So keeping in mind, change is challenging always, and change is more challenging with insufficient resources, I would urge you to remember that as you move forward with any thoughts as to what else needs to be done.

I want to talk mostly about the kinds of things that we were doing when I was at the Virginia State Board of Elections. Keep in mind, as I have now been out for over 5 years, technology was not at the same place. There is some really interesting new technology. I would love to be an election official again and have the chance to try and use some of the new technology to really reach voters.

But while I was there, because Virginia had a statewide database already in place, we were able to do things like a universal polling place lookup online. And it was available not just to voters, but to people trying to assist voters. We know that people were using that once we put it in place, and it really did help us reduce the number of calls coming into elections offices so that we could more effectively handle problems that were coming in on Election Day.

In addition, we were doing things securely. And I know Virginia was the first in the nation trying to do secure voter registration confirmation for voters. They could go through DMV and get a PIN and then be able, online, to make sure the information was correct. And be able to then, if it was incorrect, to make changes to it. Those kinds of technologies are so much more accessible now. And with the HAVA requirement for statewide database, the States are

now getting in positions where they can be looking at trying to do these things, and there is some real opportunity there.

In addition, things like ballot tracking for absentee ballots can make a huge difference. If people are overseas and they can not easily make a phone call because they are 12 hours on the other side of the world, they are able to see if the ballot request has been received, if the ballot has been mailed, and if the ballot has been received back by the elections office.

And e-ballots are one of those things that can make a huge difference in the transmission time, for example, in-theater operations for the military in Iraq and Afghanistan. The military postal service is now finding round-trip takes up to 60 days. And yet, at best, elections offices typically are providing 45 days for transmission of the ballot to the voter and transmission back.

So the more we can do to electronically transmit ballots securely, while making sure that the receipt of the ballot back is also secure, the better we are going to be able to provide that kind of innovative strategy to allow participation.

When I was at the State Board of Elections, I felt it was important, as Congressman Lungren said, for both transparency and integrity. And part of transparency is involving everyone collaboratively in trying to come up with solutions for problems. We did this effectively in a number of ways, but I think the one I was most pleased with was when we did our recount and ballot counting provisions, which we did in a collaborative, bipartisan way, with a lot of attorneys. Many of them had litigated recounts across the State and, in some cases, across the country. And then when we had a recount in 2005, having those in place meant that we did not end up being one of the front-page newspaper stories across the Nation.

There are also specific populations with problems that need assistance. While I was there, the Virginia State Board of Elections, we were dealing with a lot of the accessibility problems for disabled voters. We also tried, as I mentioned, to do things for military and overseas voters.

There are statistics about to come out, in a study coming out within the week from the Heritage Foundation, talking about the fact that, basically, nationwide, 85 percent of those eligible VOCAVA voters do not manage to cast and have a ballot counted. The Overseas Vote Foundation has mentioned the fact, in their study after the 2008 elections, their survey indicated that, 22 percent asked for a ballot and never received it at all. And another 11 percent received that ballot within a week of the election, or in fact after Election Day, so they clearly could not return it in time.

There clearly are still pockets that do need some assistance. And I commend the committee, because I know you all have been doing some things to try and help solve some of these problems.

I do want to note that access, as well as integrity, are very important to the system. We need both. And they should not be seen as mutually exclusive. There are always ways for people to work together collaboratively to provide both access and integrity. But integrity is an important component. And voter confidence is very important to voter turnout and voter participation.

I mentioned in my written testimony the election system in Puerto Rico; it is an extraordinary system. The candidates for office are

treated like rock stars. It really is just the most fascinating social phenomenon. They only have the polling places open for 7 hours. They have no early voting, they have little absentee voting, they have very strict ID requirements, and people enthusiastically participate in the system.

And, in fact, it seems to add to the collective social culture there, that everybody is going out and this is what they are doing that day, just as if there had been a huge rock concert on the island.

This is important—Mr. Joyner said earlier we can do better, and I agree entirely. But we need to be sitting down together, trying to figure out how we can do better that we all can agree on. And we need to find the resources to make sure the elections offices can implement the changes that we ask them to implement.

I encourage you all to not foreclose possibilities for States to experiment. We have a Federal system, and it really has worked well. We were very pleased with all the things that we were able to accomplish in Virginia.

Mr. Chairman, thank you so much for the opportunity to speak today.

[The statement of Ms. Quinn follows:]

**Testimony of Cameron P. Quinn**
**Before the House Administration Committee**
**Hearing on**
**Engaging the Electorate –**
**Strategies for Expanding Access to Democracy**
**July 23, 2009**

Thank you for the opportunity today to testify about voter participation and to share with the Committee some of the things Virginia implemented related to increasing voter participation during the time I served as Secretary of the Virginia State Board of Elections, as well as some of the things I have learned since then in my experiences beyond Virginia.

**I. My Background**

I am a former Secretary of the Virginia State Board of Elections, the Commonwealth's Chief Election Official (1999-2003). As Secretary, I oversaw statewide election administration, voter registration and campaign finance policy and process with a staff of 27 and a $10 million budget, and was responsible for uniform elections policy for 134 local jurisdictions.

In 2002 the agency was awarded a Grace Hopper Government Technology Leadership Award for its online voter services, including statewide election night results, through Internet or PDA, secure voter registration and absentee ballot confirmation processes, and universal polling place look-up. Some of these services were "first-in-nation." The agency also received a 1999 Digital Sunlight Award for its campaign finance webpages.

After my service as state Chief Elections Official I have continued to serve in various capacities related to elections and continue to follow elections administration and law. I teach election law at George Mason University School of Law, and have for several years. I served as Special Counsel for Voting Matters at the U.S. Department of Justice, Civil Rights Division where I was the senior elections advisor to the Assistant Attorney General for Civil Rights on all matters nationwide pertaining to voting and elections. During my time at DOJ the Civil Rights Division initiated compliance litigation for the first cases brought under the new Help America Vote Act (HAVA), as well as cases brought under UOCAVA, NVRA & the Voting Rights Act. During this time the Voting Section of the Civil Rights Division was setting new litigation enforcement records in a number of areas, including enforcement of language accessibility under the Voting Rights Act. I also served for three years as the U.S. Elections Advisor for IFES, formerly known as the International Foundation for Election Systems, and while I was there IFES worked with several states, US territories and localities to help them with transitional compliance with the new Help America Vote Act. And during the 2004 election I worked on Election Day on behalf of the Reform Institute, with a coalition that supported a voter hotline number advertised by one of the major national news organizations.

I am the chapter author of "Conduct on Election Day" in the American Bar Association's 2008 publication "International Election Principles: Democracy and the Rule of Law." This looked at Election Day procedures worldwide and highlighted variations and similarities. I also served as an academic advisor to the Federal Commission on Election Reform in 2005 (sometimes called the Carter-Baker Commission). Between the times I left the State Board of Elections and I joined the federal government, I also worked on elections administration issues for other countries

around the globe, and I served on advisory boards of several national elections related organizations, including the Reform Institute, U.S. PIRG's New Voter's Project, Freedom's Answer, and the Overseas Vote Foundation. I received my B.S.B.A. at the University of Florida. In addition to my law degree, I received a master's degree from the University of Virginia.

**II. The Role of Elections Officials Regarding Voter Participation**

While there is not universal agreement that elections officials' roles should include addressing all the reasons voters do not participate – for example one huge factor in voter turnout is the strength of the competing candidates, and that selection is appropriately left to the political parties or independent candidates who chose to enter a race - election officials do have a role, in my opinion. And that role is to ensure that within the authority they are provided by law, and the resources they are provided, election officials should ensure that the system has fair rules that are equally applied so that the results reflect the will of the voters who participate. The boundaries of that role vary from state to state, but generally, I would suggest that the role of election officials, whether elected or appointed to office, is to ensure voter confidence in the system as designed by the state policymakers.

Because elections officials "run" the system, they need to pro-actively try to demonstrate the system is fair and has integrity. This means addressing perceived issues of voter access and perceived issues of voting integrity, or lack thereof. This means being accessible to voters and to those who participate as candidates and activists and to work with them to find solutions to problems. And this means pro-actively leading efforts to bring all sides together around a table when there are actual or perceived elections problems, whether involving access or integrity, to discuss the problems and to work to find mutually agreed upon solutions. Working on elections problems occurs in an environment in which partisanship is often an issue, and cost is *always* a relevant consideration. I have found, as a result, that the transparency of invited participation in a task force, whose meetings are open to public participation, is often the best way to lead efforts towards a solution.

**III. Strategies Implemented in Virginia for Expanding Access to Democracy**

**A. Improved Access to Elections Information**

The question of confidence in the voting system is significantly addressed when election officials look to ways to improve voter and activists' access to information, so that if someone goes looking for information, it is available when they try to find it. In this era of 24/7 news and technology that is available to provide information 24/7, elections offices should ensure that most information people might seek about elections is readily accessible through the web in a timely fashion. As someone who regularly goes to elections websites, I am often frustrated with the lack of timely, basic information.

One of the most challenging public problems faced by elections offices at the time I served in Virginia was that despite voter registration cards with all relevant information being mailed to voters when they registered, and any time information changed, voters would inevitably want to call to confirm their voter registration, or to find out where they were supposed to vote, all in the last few days before the elections. Phone lines were jammed and voters could not get through to either the SBE or local offices - one spectacular example involved Fairfax County in 1996 when the telephone system for the *entire* county had crashed on Election Day due to the volume of calls to the county elections offices!

To address this problem, the need for last minute polling place information, that could negatively affect voters' participation, we created a public, statewide polling place look-up so that anyone, be it a voter, a candidate's operation or the League of Women Voters, was able to provide correct polling place information to those looking for it on Election Day. By providing the information in this manner, we were able to multiply the number of places any voter, or those assisting them, could go to find it, and reduce the volume of phone calls that came into elections offices on and before Election Day trying to get an answer to this question, and consequently increased the likelihood of both a prompt answer for this question and for calls on more urgent matters also getting through.

When I was involved with the Reform Institute in the voter hotline in 2004, I was not surprised by the fact that the overwhelming number of calls were trying to get voter registration confirmation or polling place locations – several years in an elections office had already made me aware of that. What I was astonished by, however, was how many elections offices in the days leading up to and on Election Day were either constantly busy or never answered when these hotline calls were transferred through to the correct elections offices for answers! If phone line capacities are insufficient, then localities need to work with telephone companies to fix the problem, and need to have sufficient help available at election time to answer the phones.

We also were among the first to provide statewide, online election night results. And we were the first to provide such results accessible on PDAs and other hand-held devices. We were very pleased, I have to admit, when ABC news recognized the SBE's website as the "best they had seen" during their national broadcast regarding presidential primary information availability.

In addition to dealing with public data in a public fashion, however, Virginia also provided secure online, 24/7 customer service regarding sensitive voter information, such as confirmation of an individual voter's registration and updating of the current registration address, as well as the ability of all voters to check, without needing to make a long distance or overseas call, the status of their request for an absentee ballot, when the ballot was mailed, and when the returned ballot had been received by the elections office. This last feature was intended to assist overseas and military voters, specifically, but once development started and we realized it could easily be provided to all voters we expanded it to allow all absentee voters to use this feature. I understand two members of this Committee have introduced legislation to give all states incentives to create similar programs, and I strongly endorse the idea.

As I mentioned earlier, as a result of its online voter services, SBE was awarded a 2002 Grace Hopper Government Technology Leadership Award for this suite of online voter services. And as a result of these new online services we were also able to significantly reduce the calls to SBE and local elections offices on, and leading up to, Election Day, which then allowed elections officials to focus on other pressing problems that needed attention before the elections. Because of the new requirements in HAVA, all states now have the technology in place to do these same things, and I assure you these are not expensive fixes, though they do require some additional staff, technology and cost resources.

Similarly, SBE improved confidence in the voting system when we improved access to information regarding campaign finance and compliance, and received a 1999 Digital Sunlight Award for these efforts. Because there was already a non-profit involved in Virginia in publishing candidate contributions, we did not try to duplicate efforts, but worked with them to improve their timely access to the information, as well as to improve information for those who might be

interested in the requirements through what was available on SBE's website and through increased training availability for those required to file.

**B. Improved Transparency in Addressing Perceived Problems, Including Efforts to Encourage Participation of Both Those Most Directly Concerned About the Problems and Those Already Engaged in the System**

Another way the question of confidence in the voting system is significantly addressed is when election systems use a model of partisan participation in elections – particularly in bi-partisan, collaborative setting of the rules ahead of the elections. This allows all the foxes to guard the henhouse, as it were. This model is the one both Virginia and Puerto Rico, another system I worked very closely with, rely upon. One of the reasons it works well, if implemented properly, is because if processes are transparent and partisans are all participating equally in setting rules ahead of the election, and they feel things are handled correctly during the election, the supporters of those partisans have more confidence in the results whether the candidates they prefer win or lose. While both places have had very close elections in recent years, neither hit the national news as an elections meltdown the way some other states have done with recent, close statewide elections.

One of my rules when the State Board of Elections was trying to address problems was that all those with an interest in a problem and potential solutions must be a part of any attempts to resolve the problem. As a result, SBE had a number of state task forces during my time that were used to solve problems then perceived to be an issue.

This meant that when Virginia reconsidered its rules for recounts and contests after the 2000 elections, I went to the Democrat and Republican parties, and to lawyers identified with both parties, such as George Terwilliger and Ron Klain, and others less well known here, but prominent in Virginia elections, to request that they review, provide comments, and get together to talk about the drafts. The net result of this was tweaks to the statute and development of the first ballot-counting guidelines in Virginia for all paper-based voting systems, including "true" paper ballots, and all versions of optical scan ballots in use at that time in Virginia. Four years later, when Virginia had a statewide recount in 2005 that was decided by 323 votes out of approximately 2 million voters, it did not hit the national news as another state with a failed election system as a result of its close election in large part due to the bi-partisan involvement in the rules *set out in advance and to which all had agreed.*

And when I was looking to secure funding for a new voter registration database, I recruited the executive directors of the two major political parties to accompany me, and the three of us together visited all the key legislators on both sides of the aisle to make the case for funding. The buzz that accompanied us through the legislators' office building was audible! But we were successful in getting funding for a new database my first year, in large part because the legislators were convince that *both* political parties believed it was needed.

It is important to note that those who are the administrators of elections need be seen as non-partisan in carrying out their official duties. One of my former deputies at the State Board of Elections, a Democrat who later succeeded me as Secretary, had a wonderful phrase that I often quote – she would say "I park my donkeys at the door." I knew I was developing a good reputation for professional, non-partisan work at SBE when I asked a key Senator of the opposing party to sign four elections bills, and, without reading them, he signed two of the bills before

stopping to ask me to confirm that there was nothing in any of them that was going to get him in trouble with his party!

One challenge at a state level, where uniformity is important and resources are few, is figuring out how to reach not only the public, but also the frontline polling place officials to make sure *everyone* is aware of at least a few key points. In 2001 as we were coming up on what would be the first statewide elections in the nation, along with New Jersey, since the problems in the 2000 presidential elections. SBE had no authority or ability to directly train local polling place officials, who are the front line for voters' experiences. SBE created a document, with public input and active participation on the language by partisans, which we turned into a poster for every polling place entitled "Voters' Bill of Rights and Responsibilities." This set out the things voters could expect, such as a provisional ballot if they were not on the voter rolls, appropriate courtesy from polling place officials, and also what was expected of voters, such as the state law requirement for identification. Since we were implementing this before passage of HAVA, we then mandated that these be posted in every polling place for voters to see, which had the additional benefit from our perspective of also reminding polling place officials what the state's expectations were in how they interacted with voters, and helped to reinforce training they would have received from local elections offices.

Also in 2001, since we could not afford to reach out individually to voters, we decided to see if we could get the press to help us send a message to encourage voter confidence in the system. A couple weeks before Election Day 2001, I was able to get the state chairs of the Democratic and Republican parties, the state president of the NAACP, and state leaders of the League of Women Voters and Common Cause to join me and the other two members of the Virginia State Board of Elections for a press conference designed to reassure Virginia voters. Particularly because it was a divisive fall campaign, and against the backdrop of the first statewide elections after the 2000 election, having that group altogether to say to the voters, through the press, that we all had confidence in the system sent a very strong signal to reassure voters. The fact that I was able to bring this group together to deliver this important message and re-set voter expectations was, candidly, one of the proudest moments of my tenure at SBE.

**C. Improved Accessibility for Voter Groups with Unique Participation Problems**

**1. Disabled Voters**

Soon after I started in Virginia there was significant national effort to address the challenges of disabled voters. After I got involved in one of the national efforts to improve disabled voter accessibility, I recruited an elections accessibility task force to see how we could improve the challenges for disabled Virginia voters. Membership included representation from state agencies that dealt with the needs of disabled Virginians, local elections officials, representatives of disabled advocacy groups, such as the National Federal for the Blind, VA chapter, and other representatives of general elections advocacy groups in the Commonwealth.

Additionally, because there is significant diversity among the jurisdictions in Virginia that impact how problems can be addressed locally, there was participation by varied local elections offices across the Commonwealth. The Fairfax County elections office with its dozens of staff and large budget has different issues and perspectives on solving problems than does a small, rural county with a general registrar who only works full time half the year and has one part-time back-up employee. There was intentional diversity, as well, among the disabled voter population, as the

challenges of blind or deaf voters are significantly different from each other, or from those who have trouble with stairs as they are wheelchair bound.

At first, meetings of this task force were frustrating, and I did not see any progress being made towards improving processes and procedures - only griping and rehashing of prior problems. I began to realize, however, that both disabled advocates and elections officials each needed to be able to express their frustrations on their challenges and feel that the "other side" understood why they were frustrated. Disabled voters, particularly those physically disabled who had trouble getting into polling places and the blind who were unable, at the time, to vote privately and independently, felt no one cared about their challenges and barriers. And, they felt they were being denied the same rights others took for granted. Local elections officials were sympathetic, but also frustrated, as some of them had proactively worked to find solutions with little appreciation for the significant work to try a potential solution. And many typically could not get resources or assistance from local governments to address these problems. And regarding polling place accessibility, in many cases elections officials had tried, but had trouble locating accessible buildings, particularly in some of the rural counties. And nationwide challenges in recruiting polling place officials sometimes resulted in local elections officials having to rely on polling place officials who were insufficiently sensitive or trained to attend to individual voter problems, whether disabled or abled voters, when there was heavy turnout in a major election.

After a couple of meetings, however, this new "team" began to develop ideas and suggestions on ways the process could be improved for little or no additional financial resources. Both "sides" began to realize that the others were there in good faith to try to improve things. They began to tackle the mutual goal of elections accessibility together. With locality encouragement and participation, SBE was able to develop training for the trainers of polling place officials on elections accessibility and developed materials to assist with sensitivity training to deal with disabled voters. Due to these efforts, local elections officials were able to get local disabled advocates' assistance to work to get the necessary resources. And through our collaborative efforts we were able to successfully revise state laws to improve elections accessibility. And then we were able to persuade the state's Secretary for Health and Human Resources to provide additional resources to amplify SBE efforts to assist local elections officials in surveying polling places for accessibility and suggesting low cost solutions, as well as in ensuring accessibility compliance.

**2. Military and Overseas Voters**

After the 2000 presidential elections, Virginia initiated several efforts to reconsider how to improve elections. Among those efforts was a task force of election officials, partisan activists, representatives of military and overseas voters and other non-profit voter advocates to address military, overseas and other absentee voter problems.

In the course of the task force's efforts, we all became convinced that anything that could be done to shorten the transmission time a) of the request for an absentee ballot, b) of the ballot being sent to the voters, and c) of the return of the ballot, was the single most important improvement we could make. Since Virginia state government was already embracing the use of technology, I started discussions about how that might be used to improve this process. Virginia's legislature was less enthusiastic about efforts that would compromise the security of ballots, however, and this had to be taken into account. Moreover, the Virginia Election Code already allowed SBE to designate alternative measures to allow voters to vote absentee in emergency situations, which

had been inserted in 1994 subsequent to the Gulf War, to allow for such future measures as the faxing of blank ballots to military voters.

In light of all this, procedures allowing application for absentee ballots by UOCAVA voters by facsimile was expanded to allow for electronic submission, so long as the application was made on the official state form and was scanned and attached to an email in a manner that showed the applicant's signature. This expanded the voters' options to reduce transit time for the application for an absentee ballot.

In addition, to deal with the transmission time of the actual ballot from the election office to the voter, SBE began a pilot program allowing electronic transmission of blank ballots to military voters overseas, which was expanded the following year to include all UOCAVA voters. At the time, we were aware of only one other jurisdiction, the city of Chicago, which was also providing electronic transmission of the blank ballot. While these efforts could not help all UOCAVA voters, they did allow some UOCAVA voters to be able to reduce the challenges of transit time by two-thirds.

These three changes, including, as I explained above, SBE's secure absentee ballot tracking option for voters, while not solving all the challenges, did much to expand access for UOCAVA voters.

Frankly, regarding military and overseas voters, there is still much that needs to be done. A study soon to be released from the Heritage Foundation does a terrific job highlighting the abysmal voter participation of our military and other UOCAVA voters, explaining why and proposing solutions. In it they find, for example, using data provided by the states that Minnesota last fall had a 78.2% participation rate, yet only 14.4% of Minnesota's 23,000 military and other UOCAVA voters successfully cast a vote that was counted! This low participation rate was on par with national numbers, and the report notes that this low participation rate is as severe as any in US history over the past fifty years! And a recent Overseas Vote Foundation survey found among military and overseas voters who responded that 22% of respondents never received their requested ballots, and another 11% either received the ballot within a week of the election or after it – too late to return it and be sure it would count![i]

**IV. Some Relevant Considerations Regarding Voter Participation and Turnout**

There are numerous theories and studies on voter participation and turnout, but generally, there seems to be agreement that, as Professor Paul Gronke, Chair of the Political Science Department at Reed College and the Director of the Early Voting Information Center has stated, the primary "barriers to turnout are voter interest and motivation. . . ."[ii]

I would add that voters need to have confidence that the system is fair and honest. By statute, the role and goal of the Virginia State Board of Elections is to "supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices

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[i] Overseas Vote Foundation, *2008 OVF Post Election UOCAVA Survey Report and Analysis*, at 19-20. Accessed and available at https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf

[ii] "Election Day Registration: A Case Study," *electionline.org*, 2, February 2007 available and viewed March 19, 2009 at http://www.pewcenteronthestates.org/uploadedFiles/Election%20Reform%20Briefing%2016;%20Election-Day%20Registration%20A%20Case%20Study.pdf.

and proceedings and legality and purity in all elections."[iii] If voters do not feel the system has fair rules that are equally applied so that the results reflect the will of the voters, participation is discouraged.

There is significant evidence that improved voter turnout results from voter motivation and interest rather than from legislative changes to make voting "easier" and "less restrictive."

For example, there is a place in the US that regularly gets approximately 80% voter turnout, one of the highest voter participation rates in the country, though it only opens its polling places for 7 hours on Election Day, from 8AM to 3PM. This place also has no early voting and virtually no absentee voting, with a very few exceptions for UOCAVA voters, disabled and incarcerated voters and election officials and police working officially on Election Day. Moreover, the voter identification requirement, which pre-dates HAVA, is so strict that voters must provide an officially issued voter registration identification card, which includes a picture, in order to vote – those voters who do not have it must go to the local office to get a new one and return to the polling place to vote before the polls close, or they do not get to vote. Nonetheless, as I mentioned at the beginning, Puerto Rico regularly has about an 80% voter turnout in general elections.

This notion that administrative election practices, such as voter registration and identification requirements, that are in place to ensure the fundamental integrity of elections should be reduced or eliminated because they supposedly discourage turnout ignores a fundamental truth about elections. As Wisconsin's Attorney General, J.B. Van Hollen stated when the Milwaukee Police released their investigation in the breakdown of the 2004 elections in Milwaukee:

> [I]t isn't simply the right to vote that protects our democracy; it is the right to vote in fair elections, untainted by election fraud. Make no mistake. The dilution of one's lawful vote through the unlawful casting of ballots is a dilution of the most fundamental of our political freedoms. . . . Law should make voting easy. But laws should not make illegal voting easy.[iv]

This notion that easing voter registration requirements, making voting more convenient, and preventing efforts to improve the perception of voting integrity, such as voter identification requirements, will improve turnout is also contrary to work done by a number of academics.

Dr. Robert Pastor and others with the American University's Center for Democracy and Election Management found in a recent study that voter identification requirements instill public confidence in elections, without significant barriers to participation.[v] In this survey of three states, Indiana, Mississippi and Maryland, 17% of those surveyed indicated they had seen or heard of fraud occurring at their own polling place, and 60% percent had seen or heard of fraud occurring at

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[iii] Code of Virginia, Section 24.2-103A.

[iv] Attorney General Van Hollen's Statement on Milwaukee Police Department's Report on 2004 Election, February 26, 2008. [Official report title is "Special Investigation Unit, Milwaukee Police Department, *Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee.*" Accessed July 20, 2009 and available at http://www.doj.state.wi.us/absolutenm/anmviewer.asp?a=60&z=4 .

[v] Pastor, et al., Voter IDs are not the Problem: A Survey of Three States." Accessed July 20, 2009 and available at http://www.american.edu/ia/cdem/csae/pdfs/csae080109.pdf . This survey also looked at who had voter identification and found that across the three states surveyed, which included Mississippi, Maryland and Indiana, less than 1% of all voters did not have the required ID, and the number was even smaller, .3%, in Indiana, the state with the strictest photo ID rules. Id. at pp. 9 & 15.

other polling places![vi] These are stunning statistics! When asked about confidence in their vote being accurately counted, however, Indiana voters were significantly more confident than voters in the other two states, which did not have in place voter identification requirements as strong as those in Indiana.[vii] Of further relevance to the issue of voter confidence, nearly two-thirds of those surveyed thought that requiring photo identification would improve trust in the US electoral system.[viii]

I am sure this Committee has heard before from Professor Curtis Gans, whose work on voter turnout goes back for decades. As a relatively new election official in Virginia, who was looking to improve elections practices and procedures I became aware of Texas' efforts to institute early voting, which sounded like a great concept. The more I looked into the implementation details, however, including the enormous cost in terms of more election officials' time, and the pay-off in terms of voter turnout, I realized as a result of Professor Gans' work that increased convenience did not always mean turnout would increase.[ix]

I mentioned Professor Gronke earlier. He and others have also done some work regarding convenience voting, including early voting.[x] The following quote from a 2007 paper on "Early Voting and Turnout" I think well-summarizes the research on increased convenience and the effects on voter turnout.

> In conclusion, we remain skeptical of those who advocate in favor of early voting reforms primarily on the basis of increased turnout. Both these results, and prior work in political science, simply do not support these claims. There may be good reasons to adopt early voting. . . . But if jurisdictions choose to adopt early voting in the hopes of boosting turnout, it is likely they will be disappointed.[xi]

I mention the work of these three academics and the example of Puerto Rico turnout not to assert any of these are *more* valid that other available studies or situations, but to suggest that there is, at best, mixed results to support the notion that increasing voter convenience in elections procedures, or sacrificing integrity for convenience in making elections administration choices, will increase participation and turnout.

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[vi] Id. at pp. 10 & 32-33.

[vii] Id. at 29-30.

[viii] Id. at 29-30.

[ix] For the most recent work by Professor Gans that indicates convenience voting does not result in increased turnout, see the 2008 election results data released November 6, 2008, entitled "Much-hyped Turnout Record Fails to Materialize; Convenience Voting Fails to Boost Balloting" accessed July 20, 2009 and available at http://www1.american.edu/ia/cdem/csae/pdfs/csae2008gpprfull.pdf. For access to Professor Gans' work, see generally, the website for the Center for the Study of the American Electorate, which is directed by Professor Gans, and which is available at http://www1.american.edu/ia/cdem/csae/

[x] The Early Voting Information Center maintains a website at: http://www.earlyvoting.net/blog/

[xi] Gronke, Paul, Eva Galanes-Rosenbaum, and Peter Miller. 2007. "Early Voting and Turnout" accessed July 20, 2009 and available at http://earlyvoting.net/resources/ohio07.pdf

**CONCLUSION**

Election officials have a role in expanding access to democracy - that role is that election officials, within their legal authority and the resources they are provided, should ensure that the system has fair rules that are equally applied so that an election's results reflect the will of the eligible voters who participate.

The boundaries of the role of election officials may vary, but generally they all should strive to ensure voter confidence in the state's election system. Because of their role in running the election system, they need to pro-actively try to demonstrate the system is fair and has integrity through their administration of elections and through their dealings with the public, particularly when there are voters or candidates who feel there are problems.

Improved outreach, transparency and collaboration are key strategies for engaging the electorate that elections officials can use, and while not costless, are usually low cost. Often, just making voters feel their problems are acknowledged and that sincere efforts are underway to forestall similar problems in the future is sufficient to improve voter confidence and expand future participation.

Voter confidence is a key ingredient in voter participation.

I encourage our federal policymakers to be cautious in making changes that would limit the ability of states to experiment under our federal system with issues of voter access and voting integrity. While there are pockets of voters, such as the military and overseas voters, where there is arguably a significant problem that truly needs a national solution, such pockets with significant, national problems are rare today.

With elections officials still working through the changes wrought by HAVA, many of the state level pockets of problem voters are likely to be addressed soon, if they have not been already. Further major, national change in elections before the next presidential election is likely to mean further problems for voters, and a decrease in voter confidence due to the problems, merely due to the challenges of change management on such a scale.

Examples, such as that of Puerto Rico and the studies cited, indicate that perhaps a case can be made that having procedures in place that safeguard the integrity of elections helps keep voter turnout and participation higher than might otherwise result.

My thanks, again, to the Committee, for this opportunity to share my experiences and my views.

The CHAIRMAN. Thank you.
Ms. Wales.

**STATEMENT OF REBECCA WALES**

Ms. WALES. Good morning, Chairman Brady, Congressman Lungren, and members of the Committee for House Administration. Thank you for the opportunity to address the committee, to share my experiences and insight regarding the previously unengaged electorate.

My name is Rebecca Wales, and I am the national director of communications for the conservative women's organization Smart Girl Politics. My experiences during the 2008 campaign cycle, where I was the deputy national youth director for McCain-Palin and also the deputy national coalitions director for the Rudy Giuliani Presidential Committee, provides me with a unique perspective into where we were and where we need to be, moving into the next election cycle.

Using tools like social media and other forms of instantaneous communications, Smart Girl Politics and other organizations have successfully tapped into a previously unengaged population of voters. The incredible response of the Tea Party movement shows that voters are now seeking to become more actively engaged with their government. They want to voice their discontent with policy or their elected officials now, and not wait for the next election.

We are in a unique political climate, one in which historic candidates are broadening the scope of the potential electorate. We have seen a revitalized interest in government from many demographics, including, as Mr. Joyner and Reverend Yearwood have noted, youth voters, minorities, and women.

Smart Girl Politics was founded by two stay-at-home moms who had limited experience in national politics but now have a platform to make their voices heard on that level. Our mandate is not women-specific. We are merely reaching a targeted portion of a much broader audience. In 7 months, we have amassed over 15,000 members. This is a group that wants to be heard.

To accomplish this, Smart Girl Politics sponsored a nationwide voter registration drive during the Tax Day Tea Party rallies. Recognizing that many of the attendees were new to activism, our members organized in each city to provide an opportunity for Tea Party attendees to register to vote. This is the most basic component of political involvement, and we aim to inspire those who have never taken the time to cast a ballot to take part in upcoming elections.

The Tea Parties movement was spawned by the rant of a cable news correspondent on the floor of the Chicago Commodities Exchange this past February. People of all stripes across the country were stirred by references to the Boston Tea Party in 1773. Facing new and previously unheard of spending deficits that would affect generations to come, people across America began to say we need another Tea Party. Soon, groups were popping up throughout the United States.

The first small rallies were held February 27th, 8 days after Santelli's rant, in about 30 cities. Those first spontaneous demonstrations motivated a corps of Americans and began to build mo-

mentum. This momentum led to the April 15th Tax Day Tea Party protest. Held in 900 cities, with almost a million participants, it was one of the largest grassroots protests in a single day in history, even after the Department of Homeland Security labeled us "right-wing extremists."

What is the purpose of the Tea Party movement? It is a viral grassroots movement propelled by activists, voters, the electorate. It is people who are passionate about something being driven to give up their time and their resources to talk to others about their issues and then engaging those people.

Many have misunderstood the nature of this movement and were under the impression that it was affiliated with the Republican Party. There was talk about some overarching organization or media outlet sponsoring the events. In fact, the events were organized locally and paid for through pass-the-hat-style donations. There is no umbrella Tea Party organization. Every group organizes their own events.

As the lead organizer for the D.C. Tea Party, where I stood in the freezing rain with 3,000 activists, I know firsthand that these were done entirely with donations from local businesses and money from our own pockets. This is not a highly calculated and well-funded campaign, but a true conservative grassroots effort that can be done over and over again.

The success of the Tea Party movement has come largely through the use of social media. We have quickly and inexpensively been able to reach hundreds of thousands of Tea Party activists using Twitter and Facebook, Web sites, and SMS text messaging. Most importantly, for use in campaign cycles, we have been collecting this information so that we can continue to mobilize in the future.

The Obama campaign leveraged youth presence on the Web to increase funds in ways never seen before. Using its massive grassroots brand recognition, they successfully outraised the Republicans by tens of millions of dollars. Campaigning in America has moved from "We Like Ike" buttons for our coat lapels and bumper stickers for our cars to wikis, widgets, and Facebook fan pages.

With the youth vote having been lost by the Republicans by 34 percent in the 2008 presidential election, even though overall voter turnout was unchanged from the two previous election cycles, new techniques must be used to engage this demographic in the future. Social media practitioners are beginning to understand that they need to reach out to the wired voter, a new demographic.

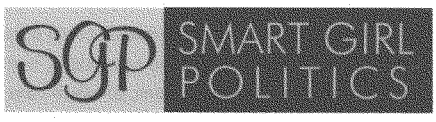
The Tea Party movement is evidence that reaching out across new mediums is working in engaging the electorate early in the cycle. The goal now is to make the transfer from online momentum to boots-on-the-ground action. Going forward, we need to continue to think of new ways to keep them activated and have these activists engage new voters.

Thank you, Chairman Brady and committee members, for the opportunity to testify before you today. I would be happy to answer any further questions.

[The statement of Ms. Wales follows:]

**Testimony of Rebecca Wales**

**Smart Girl Politics**




**Committee on House Administration Hearing on**

**"Engaging the Electorate—Strategies for Expanding Access to Democracy"**

**July 23, 2009**

Good morning, Chairman Robert Brady, Congressman Lungren and members of the Committee for House Administration.

Thank you for the opportunity to address the Committee to share my experiences and insight regarding the previously unengaged electorate. I am honored to address such a distinguished group on such an important topic.

I currently serve as the National Director of Communications for the conservative women's organization, Smart Girl Politics. I am employed as the Production Director for Sandler-Innocenzi, a Republican advertising firm. My experiences during the 2008 campaign cycle where I served as Deputy National Youth Director for McCain-Palin 2008 and also the Deputy National Coalitions Director and Manager of Administration for the Rudy Giuliani Presidential Committee provides me with a unique perspective into where we were and where we need to be moving into the next election cycle.

I am here today to offer a perspective on what is being done and what could potentially be done to further engage an electorate that, due to historic candidates and campaigns, is growing and changing in ways not previously seen. The conservative grassroots movement, of which I am a part, is focused on harnessing that energy. The twenty-four hour news cycle, instantaneous communication via cell phones and email, as well as the evolving relationship between social media and politics, point to a future which is not only about increasing the number of voters, but about seeing a fully engaged electorate driving the campaign discussion.

**Smart Girl Politics**

We are in a unique political climate, one in which historic candidates are broadening the scope of the potential electorate. We have seen a revitalized interest in government from many demographics, including youth voters, minorities and women. People who were previously apolitical, with little interest beyond their own families and communities, are now more involved in the process. Smart Girl Politics, for example, was founded by two stay-at-home moms who had limited experience in national politics, but now have a platform to make their voices heard on a national level. Our mission is to reach out into the community to engage, educate, and empower women to take a more active role in politics, as well as strengthening support for political candidates. Our mandate is not women-specific; we are merely reaching a targeted portion of a much broader audience. Each individual grassroots movement is a piece of a much larger pie, and collectively they represent the electorate in its entirety. By creating small regional groups that communicate with each other, Smart Girl Politics can create change nationally. And in seven (7) months, we have amassed over 15,000 members. This is a group that wants to be heard.

We are in search of more than votes. As a movement, we want to engage and raise political awareness. It is one thing to show up on Election Day and cast a vote - it is another thing entirely to bring twenty-five people to the polls with you. We are much more interested in providing our members with the resources they need to make informed decisions. We have fulfilled the commitment to the ongoing education of our members through strong initiatives regarding fiscal responsibility, health care and cap

and trade. We offer classes to give them the tools to run voter registration drives and get out the vote efforts. Grassroots organizations, paired with new technology, have the ability to create a large active demographic. It is not just a new voter bloc, but also a fresh, energized electorate that is involved in the political process more than once every four years.

To accomplish this, Smart Girl Politics sponsored a nationwide voter registration drive during the Tax Day Tea Party rallies. Recognizing that many of the attendees were new to activism, our members organized in each city to provide an opportunity for Tea Party attendees to register to vote. This is the most basic component of political involvement, and we aim to inspire those who have never taken the time to cast a ballot to take part in upcoming elections.

The goal is to promote organized grassroots activism. The organization is a vehicle for members to come together in their own cities, forming groups that affect change locally. Using Ning as a hub, and branching out into Facebook, Twitter, and other social mediums, members can connect, exchange ideas, and generate excitement, eventually taking that momentum and converting it to offline action within their communities.

**Technology**

The aforementioned technology has also led to sweeping changes in the reach of politics across the country. No longer must people write letters to the editor, hoping to be published and their opinions read. Now anyone with an internet connection and a fire in their heart can start a blog and join the discussion. Mainstream media like the *New York Times*, *Washington Post* and many major news networks have embraced the conversational tone of today's political landscape and opened comment sections beneath the stories and editorials on their websites, just as the blogs do. Fox News has developed "web only" streaming content for their website to reach a wired generation. YouTube has replaced cable access as a way for enterprising and opinionated people to be seen and heard. Videos go "viral" in that they are seen by hundreds of thousands and shared amongst friends and colleagues. The opinions expressed often mirror the thoughts and passions of others, and the political establishment has taken note of this reality.

While professional polling firms are still the go-to resource for public opinion on key issues and elected officials, many organizations are now implementing social media practices to understand the thoughts and feelings of the wired voter. Republican social media gurus understand that with the youth vote having been lost by 34 percent in the 2008 Presidential election, even though overall voter turnout was unchanged from the two previous cycles, new techniques must be used to engage this demographic in the future. Practitioners are beginning to understand that older Americans are utilizing technology more and more, joining Facebook, Twitter and other social media applications, and carrying mobile devices to keep in touch with family members worldwide.

In the 2004 presidential campaign, bloggers on both sides of the political spectrum used the Internet to advance their causes. The most famous case was that of two bloggers debunking the validity of documents produced by CBS News to discredit President Bush. Blogging and Internet news sites have

been involved in the spread of political information from as far back as the Clinton/Lewinsky scandal, which was first reported on and covered extensively on Matt Drudge's *The Drudge Report.*

The Democrats successfully utilized technology during the 2008 presidential campaign to increase their fundraising efforts, communicate with volunteers nationwide, and announce their official candidate for the vice-presidency via text message. They have since expanded their use of new media into the previously stodgy and traditional White House environment by adding YouTube addresses from the President.

Barack Obama and the Democrat Party leveraged youth presence on the web to increase funds for the campaign in ways never seen. The main campaign website, which collected donations, was actually a very small part of the larger Obama web juggernaut. Fans from rapper Ludacris to web sensation "Obama Girl" were creating viral YouTube videos that were seen by millions and eventually reported on extensively, creating free media exposure for the campaign. At one point during the campaign, a high school in Kansas City, Missouri got involved by having a class of 14 and 15 year old boys create an Obama Youth video where students chanted "Alpha, Omega" and then pledged the goals they could achieve with an Obama presidency. While opinions regarding the true "grassroots" nature of some of these well orchestrated tactics differ, the shear magnitude of the support the received showed that the perception of a true on-the-ground grassroots effort can be very powerful. By having such massive grassroots brand recognition, the Obama campaign successfully out-raised the Republican campaign by tens of millions of dollars. Campaigning in America has moved from "We Like Ike" buttons for our coat lapels and bumper stickers for our cars, to wikis, widgets, and Facebook fan pages. There are currently hundreds of elected officials with Twitter accounts, including governors, House members and Senators. Some are the actual practitioners of the technology, while others have a staffer maintain it. In either case, comments from the public are fed back to decision-makers with the goal of actually helping to influence policy.

Twitter is a fast and easy way to get one message out to hundreds of thousands - if not millions - of people, instantly. Excellent examples of this include the wildfire and instantaneous use of the service during the Mumbai attacks in November 2008, and more recently during the Iranian protests and strikes against the sitting regime. A message goes out from an involved party - a witness, a victim - and is soon "retweeted" over and over again until a large portion of users have read it. During the post-election revolt in Iran, Twitter was used not only to get messages out through the regime's news blockade, but also to send back messages of support, as well as medical information (lemon juice in the eyes to clean away tear gas, how to stitch wounds using rudimentary tools) and the addresses of safe houses and open embassies. Iran was proof that a 15-year-old armed with a cell phone on the streets of Tehran had more power to deliver the news than CNN, Fox News and MSNBC combined.

On the micro level, individuals and smaller grassroots organizations are using the power of Twitter to spread messages quickly and widely. Upcoming events are announced using the tool, and soon the information is being repeated thousands of times over by others interested in the event. The recent Tea Parties, for example, would not have received the attention they did without the viral capacity of

Twitter. In the end, even the major media networks realized this and jumped on board and reported the Twitter trends.

Used in conjunction with political activism or to send timely messages to or from our legislators, tools like Twitter can get information to the people quickly, efficiently and cost-effectively.

**Tea Parties**

The Tea Parties were inspired by the rant of a cable news correspondent on the floor of the Chicago Exchange in February of this year. People of all ages and political stripes across the country were stirred by references to the Boston Tea Party, a historic protest against heavy taxation by the British Crown. That tax revolt in Boston was a catalyst for the uprising that resulted in the American Revolution. Facing new and previously unheard of spending and deficits that would affect generations to come, people across America began to say "We need another Tea Party." Soon groups were popping up in cities and towns in almost every state.

The first, small rallies were held February 27, 2009. Those early rumblings motivated a core group of Americans and began to build momentum. On April 7th, just a week before the major April 15th Tax Day Tea Party protest, the Department of Homeland Security released a report profiling "right wing extremists." The language in the report served as a shot in the arm for protesters, and ammunition for counter-protesters. Accusations of a fringe movement began to circulate. In reality, participants were every day Americans exercising their right to become a part of the political process.

Those events were covered extensively on the Internet and by some mainstream media outlets and news organizations. The movement against high taxation continued to grow and by the Fourth of July of this year, hundreds of thousands of Americans were attending Tea Parties in their towns. This time, though, the spirit was largely one of celebration.

Many have misunderstood the nature of this movement, and were under the impression that it was affiliated with the Republican Party. There was talk that some overarching organization or media outlet, be it the Republican National Committee or Fox News, was sponsoring the events. In fact, the events were organized locally and paid for through "pass-the-hat"-style donations. There is no umbrella Tea Party organization -– though the idea has become national, every group organizes their own events, from park permits to celebrity speakers. I was the lead organizer for the DC Tea Party. I fought with Metro police and the US Secret Service over a permit. I had one  million tea bags delivered and no place to put them. I stood outside in the freezing rain in my blue jacket and was told that nobody in the White House knew 3,000 of us were there. It was done entirely with donations from local businesses and money from our own pockets.  I can speak from experience: this was not a highly calculated and well funded campaign, but a true conservative grassroots effort by hundreds of thousands of concerned Americans.

What began as a protest has coalesced into a full-fledged grassroots movement. Many cities have formed political action committees (PACs) and nonprofit organizations, and are starting to affect change

within city councils, state legislatures, and on Capitol Hill. Formerly uninvolved Americans are becoming activists, getting out from behind their computers to participate in the political process.

**Conclusion**

Grassroots groups across the country are finding new and innovative ways to reach voters who previously had little or no interest in the democratic process. Technological advancements via the web and SMS (text) messaging are making this easier than ever. The goal now is to make the transfer from online momentum to "boots on the ground" action. People are beginning to take an interest offline, volunteering and organizing locally, but we are only at the beginning.

Thank you, Chairman Brady and Committee members, for the opportunity to testify before you today. I would be happy to answer any further questions.

The CHAIRMAN. Thank you.

And we will now open it up for questions.

I would like to ask Mr. Joyner, that this committee has taken testimony from some witnesses who believe the stories from voters are not reliable, that voters cannot distinguish between problems that are real, that are isolated, or, in fact, may be their own fault.

You have received many callers on your show. Could you characterize that? How would you respond to that?

And I understand you talked about the ID issue. We happen to agree with you. We are trying to do what we can to make that an easier process. Instead of taking so many IDs, maybe one valid ID or whatever we could do to speed that process up.

Voting machines and the amount of voting machines and the standard that we use is purely financial. You know, if we mandate to a State, then we have to fund it. And right now we have a few problems with the finances of our country and of our States.

But you are right, they are the major problems that we have.

But how would you categorize people that come in front of us and say that voters are saying there is a problem that really don't exist or the problem may be their fault? I am sure you have many calls, you know, related toward that.

Mr. JOYNER. That the problems were the voters' fault?

The CHAIRMAN. Well, that the problems may not be real, they may just be isolated, or they may be the fault of the voter themselves for not going to the proper place, not having their proper ID.

I mean, you do a tremendous amount of advertising. And I have listened to you and watched you. And a lot of people are paying attention, when they come to the polls they need to bring what they need to bring, State by State, whatever they need to bring to be able to vote.

And a lot of people that testify in front of us tell us that, you know, that they are making a lot of these things up, that they are really not true. And I know through your documentation and just through your listeners and people responding to you that I believe that they are true.

Mr. JOYNER. And I believe that they are true, too. I mean, based on the number of calls that we have gotten. I gave you examples of areas where we had a number of calls, where we had hundreds of calls, where people were standing in lines for up to 4 hours trying to vote. And the holdup was, one, the ID requirements; two, not enough machines, and paper ballots when the machines failed; and the poll workers not being informed on how to deal with issues when there were problems at the polls.

So these weren't isolated instances that we got. I mean, we had over 300,000 calls. And most of those were for poll locations. They couldn't find the poll locations; the poll locations were changed. But then after that, we got hundreds, thousands of calls in certain areas where they were in line—long, long, long, long lines in order to try to vote because of ID requirements, not enough machines, not enough poll workers who were informed. They were not isolated.

The CHAIRMAN. I agree with you, and I appreciate it. And I thank you for all you do, for taking time to allow people to call in and to have a dialogue and to be able to let us know what all the

problems are State by State. You are not just one State. So I appreciate all that you do to bring that visibility to us and to the American people. Thank you for that.

Mr. JOYNER. Thank you.

The CHAIRMAN. Ms. Westfall, based on your extensive experience, do you know of any other national archive of audio files contemporaneously recorded by voters during the election cycle other than what we have?

Ms. WESTFALL. No, I do not.

The CHAIRMAN. Do you know of any other database of such audio files that is housed on online search engines, such as the one that you used to develop this report?

Ms. WESTFALL. None that I am aware of.

The CHAIRMAN. None at all? Do you believe the EAC should use these tools?

Ms. WESTFALL. Certainly. I think they provide a very important picture of what voters are experiencing on Election Day. And, increasingly, the information about voters' experience is being collected in advance of Election Day.

So I think it is important data, along with academic studies, like the one that I mentioned from MIT, the Cal Tech-MIT Voting Project. If you look at public records and records from election officials themselves, voting records, which are what Advancement Project seeks after the election, I think when you put all these pieces together, they create a very important picture of how voters are experiencing voter registration and voting on Election Day and during early voting and suggest areas for reform.

So I think the MYVOTE1 hotline is essential, provides essential data, and I think the EAC should consider employing a similar type of data collection device, yes.

The CHAIRMAN. I thank you for that.

Real quickly, just Reverend Yearwood and Ms. Wales, you talk about the young voters, who are so near and dear to us. How do we keep them? I am sure they had major enthusiasm this last presidential election, but what happens is that dissipates through other elections. And they may come back again because presidential elections naturally have much more visibility and advertisement. But we need to keep them.

Is there anything we need to be doing to keep our new young voters enthused and keep them on the rolls and keep them coming back and voting instead of going down to a 13, 14 percent voting turnout again?

Ms. WALES. Well, the Republican Party, we had a problem in the first place because we lost them. We lost them long before the fiscal crash. We lost them during the war. So we have catch-up to do.

We are having the problem—we have great strides to take at the beginning, and we are taking them through social media. We get to engage them. We have to empower them. We have to empower them to vote. And that is a big thing for us.

The Republican Party didn't have the money to engage them. We had to teach them. And that is what we were trying to do on the McCain campaign. We were trying to empower them with the message.

So we are playing a lot of catch-up right now with the Republican Party. Keeping them is always a problem, because we have 4 long years. We have to show them throughout, both the Republicans and the Democrats, to show them that we are doing something, that what they are inheriting from their parents is something that they want to do.

I think with what we are going through fiscally, Democrats have a long way to go, because what they are seeing is they are getting out of college or they are in college and they are not seeing jobs. What we need to do is show them that either there is something to—they have a reason to vote.

And I think that is always going to be the problem, is that there is a reason to vote. With Republicans, we get to say that their reason to vote is to—I am going to use the "change" word; the Republicans never like to use the word "change"—that there is reason to make change. And Democrats get to say that we want to keep this going, we want to keep what the change is going.

It is always a struggle. Being the deputy youth director for McCain, I saw that firsthand. It is always a struggle to keep people moving.

The CHAIRMAN. How about the "hope" word? You don't use that either, right?

Ms. WALES. I am sorry?

The CHAIRMAN. You don't use the "hope" word either, right?

Ms. WALES. That is worse than "change."

The CHAIRMAN. Reverend, the hip hops—I am missing hip hop. I am too old, my kids are too old, my granddaughters are too young. But tell me about the hip hoppers. How do we keep them?

How do we keep them not only around for—I heard somebody mention rock stars. I don't know, that doesn't certainly qualify for me. I won't speak for the rest of my colleagues. I mean, I am from Philadelphia. The only rocks I get is thrown at me, not stars.

But how do you keep our hip hoppers?

Reverend YEARWOOD. I will say this in regards—and I definitely appreciate Mrs. Wales's perspective, but I would say that, from the generation, the millennium generation, it is important to note that that generation that was born between 1980 and 2000, by the time they all fully come aboard in 2018, there will be about 90 million. They will be about 40 percent of the electorate.

And I would just say that one of the most important things about that generation is that they, I think, are, to me, one of the most powerful generations. I think they see what is happening. I don't think it is a question of keeping them involved. I think they want to be involved.

I think that where they are now, the most powerful thing about my generation and that generation is that you do have the first generation where you have the sons and daughters of former slaves working side by side with the sons and daughters of former slave owners, and we are literally working together. It is not about black or white, but it is black, it is white, it is brown, it is yellow, it is red, male, female.

And I think that generation recognizes now that, 9 years into the 21st century, they have to be involved. They have critical decisions. Obviously, we are dealing with the economy. Obviously, we are

dealing with other issues, from the climate. And I think that they recognize now that if they don't get involved now, 9 years into the 21st century, it will have less of an effect later on.

And so I don't think it is a question of them not getting involved. They want to get involved. I think it is what Mr. Joyner and others are saying, that we have to make this system as accessible and transparent as possible. Nothing to keep them away. We moved a long way from poll tax types of elections. We are now moving to a whole new type of generation and a whole new process.

The CHAIRMAN. Thank you, sir.

Mr. Lungren, any questions?

Mr. LUNGREN. Yes. Thank you very much, Mr. Chairman.

Mr. Joyner and Reverend Yearwood, what can we do to do a better job of making sure those young men and women that are in uniform today are motivated to vote and that their votes count?

The figures we have had is a huge number of men and women in uniform were unable to vote, and a large number that did vote didn't have their votes counted. Do you think that ought to be a priority, too?

Mr. JOYNER. Yes, of course I think it ought to be a priority.

Mr. LUNGREN. Is there anything you can do to help us in that regard, getting the word out and so forth?

Mr. JOYNER. Our mission is to inform. And with information comes—after we inform with information, you empower. And that is what we do every day on the show. We do that with our American audience. We are on the Armed Forces Network.

So the same things that we want for our citizens in the United States is the same thing we want for our service men and women for the United States.

Mr. LUNGREN. It is a bugaboo of mine that we don't seem to see that as a priority. I am not saying you don't see it, but we, as a Congress, have not. We finally acted here; the chairman worked with Mr. McCarthy and others to make sure we had something. We passed something. The Senate is now working on it.

I just hope that we can take the message that you presented here and firmly plant that with respect to our desire and our obligation to make sure men and women in uniform, who are serving us all over the world, don't get, you know, last in line. They ought to at least be in line; I would even say first in line. They are out making the sacrifice.

And so, I am happy to hear that, because I just don't think we are doing what we need to do there. Anything that you could do to help us to raise that word, I think we would all appreciate.

Reverend YEARWOOD. I would add to that, as somebody who was a former Air Force officer myself, that I know what it means to be in the uniform, stationed right here at Andrews Air Force Base and around this country.

One of the things that we did with T.I. Was actually sent him to a number of bases. As you know, for people in the military, we have families, we have obligations. And so, sometimes the election—the process sometimes just kind of comes in our day-to-day lives, and so you need to be reminded about it the same way wherever you are, if you are in Iraq or Afghanistan or——

Mr. LUNGREN. Good. I am glad you do that.

And, Ms. Quinn, you were talking about the fact that there were some statistics that showed that we don't do a very good job there.

Ms. QUINN. Yes.

Mr. LUNGREN. Or it hasn't been a very good job done. Do you see that as a priority? Is that something we need to do now rather than later?

Ms. QUINN. Yes, sir, I really do.

I am the daughter of a former naval officer. We lived overseas. I know how hard it is. I worked at Peace Corps, and we had thousands of volunteers in very remote communities. It is incredibly challenging.

And particularly for those that are serving our country and putting their lives on the line, we need to be doing everything we can to make sure they have the right to vote.

Mr. LUNGREN. See, one of the saddest things, as far as I am concerned, is a number of contested elections, Minnesota and some others. A controversy was, should we count the military ballots, and when did they come in, and did they come in the right way? I mean, there ought not to be any question whatsoever that we have a process that counts those and counts those well.

Mr. Joyner, at 5 o'clock on Election Day I received a call at my home. I was on the ballot. And the call went like this: "This is a news alert. News alert. According to the figures that are in from the East Coast and the Midwest, Barack Obama is going to win this election overwhelmingly. The John McCain campaign has said there is no way that they can win. It looks as though that the Democrats are not only going to continue with their leadership in the House and Senate, but are going to expand their numbers. And it appears that nothing that happens in California, Washington, Arizona, Nevada will change the outcome. This has been a news alert."

How would you describe that phone call?

Mr. JOYNER. Propaganda?

Mr. LUNGREN. Would it sound like a suppression call?

Mr. JOYNER. Yes. Suppression. Who was the author of the call?

Mr. LUNGREN. Well, actually, it happened to be connected with some parts of the Democratic Party and some major labor unions.

The problem is, you can't go after the fact at them because they didn't say "don't vote." Understand? So if you tried to prosecute it later on, to say that they were violating civil rights, you couldn't do it successfully because they didn't say "don't vote."

What they said was accurate, and was partly opinion. But there is no doubt what they intended to do. And, by the way, the only recipients of those were Republican voters.

What I am pointing out is that this opportunity—by the way, I had a close election, too—this precious gift we have and obligation we have to vote crosses all party lines, crosses all races, genders. And we ought to all work together on this.

But I would say this in response to the implicit suggestion that somehow requiring some form of identification is necessarily an attempt to suppress the vote or is the last vestiges of Jim Crow legislation. If someone votes in an election who does not have a right to vote, aren't they essentially canceling my vote out?

Mr. JOYNER. Well, if you had paper ballots, there is a way to audit that.

Mr. LUNGREN. Well, a paper ballot has nothing to do with the identification of the person who is there to vote.

Mr. JOYNER. Well, sure it does. If someone votes who is not eligible to vote, then if you have an audit that should come up, shouldn't it?

Mr. LUNGREN. But how do you prove whether one is the person who is eligible to vote if that person doesn't show some identification?

Mr. JOYNER. I am not saying don't show identification, but the requirement to show certain forms of identification doesn't cross all lines. If you are unemployed, if you are a citizen and you don't have a driver's license, then you should be able to vote, because you are a citizen and you are registered to vote.

Mr. LUNGREN. Well, in California, I don't know about other States, but in California you can go to the DMV and get a—it is not a driver's license, but an identification, basically, to be able to use.

So your objection is the type of identification, not that we shouldn't have some identification?

Mr. JOYNER. Yes. We should have some identification. But it should be across the board.

Mr. LUNGREN. Okay.

Reverend Yearwood, I don't want to misstate what you said, but it sounded to me as though you said requiring identification, in and of itself, is improper, in your view, and would be viewed as trying to suppress the vote. And I thought you said it was a vestige of Jim Crow legislation.

Reverend YEARWOOD. Yes. And I do believe that there are opportunities—and you are right. To me, it is actually a little different. Jim Crow, to me, in the 21st century is a little different. It isn't, to me, Jim Crow. I think my generation, with certain photo IDs, is not Jim Crow, but I like to say maybe it is the children of Jim Crow: James Crow, Jr., Esq. So it is a little more sophisticated.

Mr. LUNGREN. Well, my question is, would you object to any type of identification? And if you don't, what type of identification could we rely on?

Reverend YEARWOOD. Well, I would say this. I would object to, obviously, photo identification from the standpoint that what it does is obviously it disenfranchises communities.

Mr. LUNGREN. How do you say that?

Reverend YEARWOOD. I am sorry. Say it again?

Mr. LUNGREN. How is requiring——

Mr. DAVIS OF ALABAMA. Mr. Chairman, can we have regular order so Mrs. Davis and I can get in and go cast our votes?

Mr. LUNGREN. Okay.

The CHAIRMAN. If you could sum up.

Mr. LUNGREN. Could I ask unanimous consent to enter four items into the record: a University of Missouri article on public attitudes towards State elections; an account of possible vote fraud in New Mexico; an article of vote fraud convictions in Ohio; and an article discussing voter ID laws in Georgia?

The CHAIRMAN. Without objection.

[The information follows:]

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THE WALL STREET JOURNAL.

**Voter ID Was a Success in November**

By Hans Von **Spakovsky**
919 words
30 January 2009
The Wall Street Journal
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English
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Remember the storm that arose on the political left after the U.S. Supreme Court upheld the constitutionality of Indiana's voter ID law last April? According to the left, voter ID was a dastardly Republican plot to prevent Democrats from winning elections by suppressing the votes of minorities, particularly African-Americans.

Since the election of Barack Obama, we haven't heard a word about such claims. On Jan. 14, the federal appeals court in Atlanta upheld Georgia's voter ID law.

The reasons for the silence about alleged voter suppression is plain. In the first place, numerous academic studies show that voter ID had no effect on the turnout of voters in prior elections. The plaintiffs in every unsuccessful lawsuit filed against such state requirements could not produce a single individual who didn't either already have an ID or couldn't easily get one.

Second are the figures emerging from the November election. If what liberals claimed was true, Democratic voters in states with strict photo ID requirements would presumably have had a much more difficult time voting, and their turnout dampened in comparison to other states. Well, that myth can finally be laid to rest.

The two states with the strictest voter ID requirements are Indiana and Georgia. Both require a government-issued photo ID. According to figures released by Prof. Michael McDonald of George Mason University, the overall national turnout of eligible voters was 61.6%, the highest turnout since the 1964 election.

The Joint Center for Political and Economic Studies (JCPES) found that black turnout in the 2008 election was at a historic high, having increased substantially from 2004. The total share of black voters in the national vote increased from 11% to 13% according to exit polls, with 95% of blacks voting for Mr. Obama.

So what happened in Georgia where the ACLU, the NAACP and other such groups claimed the state's photo ID law was intended to depress black turnout? According to figures released by Curtis Gans at American University, Georgia had the largest turnout in its history, with nearly four million voters. The Republican turnout was up only 0.22 percentage points; the Democratic turnout was up an astonishing 6.1 percentage points, rising from 22.66% of the eligible voting population to 28.74% of the eligible population.

The overall turnout in Georgia increased 6.7 percentage points from the 2004 election -- the second highest increase in turnout of any state in the country. According to the JCPES, the black share of the statewide vote increased in Georgia from 25% in the 2004 election, when the photo ID law was not in effect, to 30% in the 2008 election, when the photo ID law was in effect.

By contrast, the Democratic turnout in the neighboring state of Mississippi -- which has no voter ID requirement but also has a large black population similar to Georgia's -- increased by only 2.35 percentage points.

In Indiana, which the Supreme Court said had the strictest voter ID law in the country, the turnout of Democratic voters in the November election increased by 8.32 percentage points. That was the largest increase in Democratic turnout of any state in the country. The increase in overall turnout in Indiana was the fifth highest in the country, but only because the turnout of Republican voters actually went down 3.57 percentage points. The nearby state of Illinois (no photo ID requirement) had an increase in Democratic turnout of only 4.4 percentage points -- nearly half Indiana's increase.

Of course, the decline in Republican turnout and huge increase in Democratic turnout in Indiana matched what happened elsewhere, and explains why Mr. Obama won. Republican turnout nationwide declined 1.3 percentage points from the 2004 election, while Democratic turnout increased 2.6 percentage points.

The JCPES predicts that when the final turnout numbers are in for the 2008 election, black turnout will probably reach a historic high of almost 67% and likely surpass white turnout for the first time. All at a time when about half of the states have passed various forms of voter ID requirements, including two states with strict photo ID laws.

The claim that Republican legislatures in Georgia and Indiana passed voter ID to depress Democratic turnout is demonstrably false. But even if it were true, they obviously failed miserably to achieve that objective given the huge increases in Democratic and minority turnout in both states.

I guess liberals will now claim that their historic increases in turnout would have been even higher if not for voter ID laws. But that would be an absurd argument, given the states' performance in comparison to other states without voter ID laws.

With every election that has occurred since states have begun to implement voter ID, the evidence is overwhelming that it does not depress the turnout of voters. Indeed, it may actually increase the public's confidence that their votes will count.

That won't stop the ACLU or the League of Women Voters from filing more frivolous lawsuits against such state laws and continuing to waste taxpayer money. But ultimately they will lose, and our ability to protect the security and integrity of our elections will be preserved.

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Mr. von **Spakovsky**, a visiting legal scholar at The Heritage Foundation, is a former commissioner on the Federal Election Commission and a former Justice Department official.

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**Filed under Politics (National) New Mexico, We Have A Problem**

***Shelby Holliday*** **reporting from New Mexico (2008-10-31 19:41:24)**

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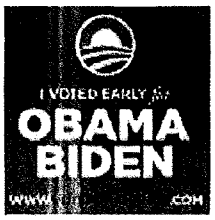


Name: **Shayne Adamski**
Networks: Los Angeles, CA
Fox
Obama for America

New Mexico, we have a problem.

(Click video "source" at top to see the story.)

As part of our ongoing investigation into issues surrounding voter fraud, we have discovered a VERY disconcerting situation. And this time, it's not in Ohio...

It looks like out-of-state volunteers and staffers are registering and casting ballots in the battleground state of New Mexico, too.

One example is Shayne Adamski. He lives and works in Los Angeles, CA, is actively involved in politics and was a California delegate at the Democratic National Convention just 2 short months ago. Adamski is also a paid employee on the Obama campaign, and he traveled to New Mexico to help get out the vote in this swing state. All of this is quite admirable.

However, according to the Bernalillo County Clerk, Adamski registered to vote as a resident of Albuquerque on October 5. That's just 38 days after he was representing the state of California as a delegate on the final day of the Democratic National Convention. He also requested an absentee ballot. (We do not yet know if he cast a ballot, we are waiting to hear from the County Clerk.)

Tiffany Wilson and I traveled to New Mexico with photojournalist Gary Orr to check things out.

We were able to speak with Carlos Sanchez, a spokesperson for the Obama campaign, but he declined to comment on Adamski's specific situation. Unfortunately, we were unable to speak with Adamski himself due to campaign policy.

Since we can't talk to Adamski directly or get information about him from the campaign, we don't know whether or not he moved to Albuquerque and/or intends to reside here, but we were curious: are out-of-state campaign workers eligible to claim residency in New Mexico and cast a ballot?

We realize that New Mexico does not abide by the Ohio Revised Code, something we have become very familiar with in the past few weeks. In Ohio, you must be a resident of the state 30 days prior to the election AND have the intention of residing there permanently. Was this the case in New Mexico?

We asked the Bernalillo County Clerk Maggie Toulouse Oliver this very question. Contrary to what we have discovered in Ohio, she said that out-of-state volunteers WERE in fact able to register and to vote in New Mexico.

When we asked how this was allowed, she replied: "It's not that it's allowed so much as that it's not enforced. There is really no enforcement mechanism in place to evaluate whether someone's submitting a registration based on a temporary address."

Concerning? Yes.

But that's not the end of the story:

Tiffany and I made our way from Albuquerque to Santa Fe and paid a visit to the New Mexico Secretary of State Mary Herrera, a Democrat, to pose the same question. How can it be possible for out-of-staters to just come into New Mexico and cast a vote?

The Secretary of State had a VERY different response. According to Herrera, voters MUST intend to make New Mexico their home. Much like Ohio, they can NOT come into the state for temporary purposes and claim residency in order to cast a ballot.

When we shared what we had uncovered and gave her names of some out-of-state volunteers we had come across, she seemed very concerned.

New Mexico has already begun opening and counting absentee ballots. If you check out Adamski's Facebook profile picture above, it looks like his ballot may have already been filled out and perhaps even counted.

Adamski is not the only out-of-state voter we have encountered. In addition to others from California, we've done some preliminary research that indicates that Texans have been coming into New Mexico by the bus load... have they been voting here too?

For the latest updates, go here: http://www.palestra.net/blogs/browse/214

read Shelby Holliday's blog | view Shelby Holliday's profile

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The Columbus Dispatch

News

**Campaigners fined for illegal '08 votes**

Barbara Carmen
559 words
29 April 2009
The Columbus Dispatch
Home Final
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English
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A Franklin County judge told three out-of-state campaigners for Barack Obama who voted here illegally that they should have known better.

The three chose Ohio over their home states -- where Obama was likely to win -- because they wanted to swing the Electoral College vote toward their candidate, Common Pleas Judge Charles A. Schneider said.

He ordered a year's probation, a $1,000 fine and a 60-day suspended jail sentence for Daniel "Tate" Hausman, 32, and Amy Little, 50, both of New York, and Yolanda **Hippensteele**, 30, of California.

All were paid staff members for Vote Today Ohio, an independent get-out-the-vote organization supporting the Democratic presidential candidate.

The three, who all pleaded guilty yesterday, said they had good intentions when they registered to vote and cast ballots the same day in early voting at Veterans Memorial. They pointed to instructions on the voter-registration form and on a county Web site stating a 30-day residency requirement.

"I was paying rent and living full time in Ohio," **Hippensteele** told the judge. "I didn't attempt to vote in another state. ... I think it's all a misunderstanding. I have a profound respect for the voting process."

However, Franklin County Prosecutor Ron O'Brien had warned visiting campaigners on Oct. 21 not to vote here if they didn't plan to stay after the election. The three said they saw the prosecutor's letter around Oct. 28 -- three days past a deadline to withdraw improper registrations and be forgiven.

"We felt the pits of our stomachs drop," Hausman said.

Because the three cast paper ballots, the county Board of Elections was able to find the ballots of the two women, using identifying information on the envelopes that had not yet been separated from the ballots, and cancel their votes. But Hausman's could not be located and was counted.

Schneider told the three that "rescinding your request is like giving back the money once you've been caught."

"We all know the elections are driven by the Electoral College," he said, "and casting a vote in an unknown state instead of one where it is all but certain ... excuse me if I remain skeptical."

Even if they didn't know Ohio's residency requirements, he said the organizations they worked for "knew damn well."

Little is a former campaign manager for a New York congressman. Hausman is an organizational development consultant, and **Hippensteele** is an event planner.

Assistant County Prosecutor Brian Simms told the court that all three have families or other jobs or own homes in other states.

The charge of improper voting, though a misdemeanor, is life-changing, **Hippensteele** said. "As a person who wants to be involved in political campaigns in the future, I have some fear this will impact my reputation."

The elections board has sent the prosecutor the names of 55 other voters suspected of fraud in the November 2008 election. A Gahanna woman pleaded guilty in March to voting twice and was fined $1,000 and put on probation.

bcarmen@dispatch.com

FRED SQUILLANTE / DISPATCH \ Vote Today Ohio campaigners, from left, Yolanda **Hippensteele**, 30; Amy Little, 50; and Daniel "Tate" Hausman, 32, voted here instead of their home states to help Barack Obama in the fall election.;Photo

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Institute of Public Policy
Truman Policy Research
Harry S Truman School of Public Affairs
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# Public Attitudes on State Election Administration, Goals, and Reforms*

David Konisky** and Michael A. Powell

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## Introduction

While few would disagree that elections serve a fundamental role in democracy, there is considerable debate regarding the rules by which elections should be conducted. State and local officials responsible for carrying out elections face difficult challenges, and often must work to achieve what many view are two competing aims: increasing voter turnout and minimizing voter fraud.

In recent years, election officials, politicians, and scholars alike have given considerable attention to a variety of election reforms intended to either improve voter participation or reduce voter fraud (real or perceived). Many of these reforms have now been adopted, some widely, at the state level. For example, in part to boost voter turnout, thirty-two states allow early voting, nine states permit election day registration (EDR), and 6 states allow vote by mail (VBM) or permanent absentee voting. To address concerns about voter fraud, 7 states have put in place some form of photo identification requirement.[1]

As more states around the country consider adopting these election reforms, it is an opportune time to evaluate public attitudes on these measures. Researchers at the University of Missouri recently completed a national survey as part of the 2008 Cooperative Congressional Election Study (CCES). The 2008 CCES is a nationally-representative survey of 32,800 respondents conducted through the collaborative efforts of a consortium of universities.[2] The 2008 CCES was administered in two waves during the fall of 2008 by Polimetrix.[3] Here, we discuss the responses to two sets of questions asked of a subset of the 2008 CCES participants (n = 780). First, we asked respondents two questions about the potentially competing goals of increasing turnout and minimizing fraud. Second, we examined four types of election reforms: EDR, VBM, early voting, and photo identification. The survey asked respondents to characterize their approval of each reform and their beliefs about its effect on turnout, fraud, and partisan advantage.

## General Attitudes about State Elections

We asked respondents two questions about the general role of government in increasing turnout and reducing voter fraud. The first question asked: "Should your state government do more to increase the number of people that vote, or is it already easy for people to vote if they really want to do so?" Respondents were asked to place themselves on a seven-point scale. The top panel of

* For a more detailed analysis of the survey responses discussed in this report, please see, Jeffry Milyo, David M. Konisky, and Lilliard E. Richardson, Jr. "On the Determinants of Public Approval for State Voting Reforms: The Importance of Beliefs about Voter Turnout and Voter Fraud," Working Paper.

**Konisky acknowledges financial support for this project from the University of Missouri Research Board and the University of Missouri Institute of Public Policy.

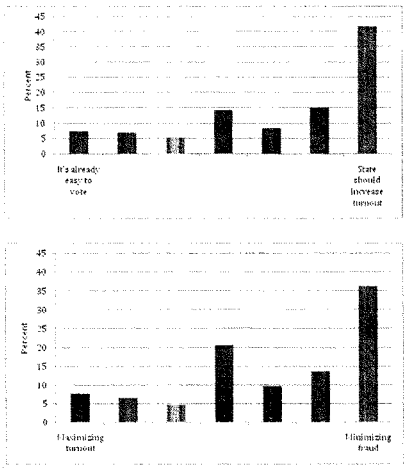
[1] These data are from the Pew Center on the States (http://electionline.org) and the National Conference of State Legislatures (http://www.ncsl.org).

[2] More information about the CCES project can be found at http://web.mit.edu/polisci/portfolio/cces/index.html.

[3] The first wave of the survey was administered in October 2008, timed for before the November 4, 2008 general election. The second wave of the survey consists of re-interviews of participants in the first wave, and was administered two weeks after the November election. The questions reported in this report were all included in the second wave of the survey.

Figure 1 displays the distribution of responses. Nearly two-thirds of the respondents thought that state government should do more to increase voter participation, while about 20% did not think that the state needed to do more. The balance of the public placed themselves at the midpoint on the scale, suggesting an opinion that existing state efforts are sufficient.

Figure 1 Attitudes about Voter Turnout and Fraud




The second question asked a more direct question about the dual aims of increasing turnout and reducing fraud: "In your opinion, what is a more important priority for your state government in conducting elections, maximizing turnout even if some voter fraud occurs, or minimizing voter fraud even if it reduces turnout?" Respondents were again asked to place themselves on a seven-point scale. The bottom panel of Figure 1 presents the responses. A strong majority of the U.S. public (60%) indicated that limiting fraud was the more important goal, with 36% of the respondents placing themselves at the far end of the scale. Less than 20% indicated that maximizing turnout was preferable, with another 20% placing themselves at the midpoint of the scale.

In sum, while the U.S. public clearly expresses a desire for state election administrators to take actions to increase voter turnout, they also want state officials to minimize fraud. This is a challenging task, since many election reforms commonly thought to make voting easier, are also commonly perceived to increase the possibility of voter fraud. To better understand how citizens think about this potential tradeoff, we asked them to consider these issues in the context of four specific election reforms. We turn to these results in the next section.

**Attitudes about State Election Reforms**

The 2008 CCES asked respondents about their attitudes toward four election reforms: EDR, VBM, early voting, and photo identification. The first three reforms are all conventionally thought to facilitate voter turnout by reducing the inconvenience of voting, while photo identification requirements are thought to reduce voter fraud by providing an assurance that voters are who they say they are. With regard to each reform, respondents were asked to indicate their level of approval, whether the reform increased turnout, whether the reform led to more fraud, and whether the reform benefitted one of the major political parties more than the other.

*Election Day Registration*

EDR, or same day registration, allows people to register to vote and cast a regular ballot at the polls on election day. The public's approval for EDR is split. As presented in Table 1, about 40% of the respondents expressed approval for this reform while 44% expressed disapproval; about 16% were undecided. The perceived effects displayed a much greater consensus, with 64% agreeing that it would increase turnout. About 47% also agreed that EDR would increase fraud, with 21% disagreeing, and 32% neither agreeing nor disagreeing. The public did not display strong views on the partisan effect, with 34% believing it would help Democrats more than Republicans, 19% believing it would not, and 48% indicating that EDR would not advantage Democratic candidates more than Republican candidates.

Table 1 Attitudes about Election Day Registration

| | Strongly Agree | Agree | Undecided | Disagree | Strongly Disagree |
|---|---|---|---|---|---|
| I approve of EDR | 22% | 18% | 16% | 16% | 28% |
| EDR probably increases turnout | 24% | 40% | 25% | 6% | 4% |
| EDR probably leads to more fraud | 27% | 20% | 32% | 15% | 6% |
| EDR probably helps Democratic candidates more than Republicans | 20% | 14% | 48% | 11% | 8% |

*Vote by Mail*

Some states have VBM which permits voters to cast their ballot through the mail before Election Day. Public approval

of VBM is also split relatively evenly among the public (see Table 2). Approximately 43% of respondents approve, 33% do not, and 23% are undecided. A strong majority of the public (58%) believe that such a policy would increase turnout, with only 14% disagreeing, and 27% unsure. Slightly less than half of the respondents (47%) agreed that it would increase fraud, while 22% disagreed and 32% neither agreed nor disagreed. Finally, 55% of responses were undecided as to whether vote by mail would benefit Democrats, with 18% agreeing and 27% disagreeing.

Table 2 Attitudes about Vote by Mail

| | Strongly Agree | Agree | Undecided | Disagree | Strongly Disagree |
|---|---|---|---|---|---|
| I approve of VBM | 21% | 22% | 23% | 15% | 18% |
| VBM probably increases turnout | 21% | 36% | 27% | 9% | 5% |
| VBM probably leads to more fraud | 21% | 25% | 32% | 15% | 7% |
| VBM probably helps Democratic candidates more than Republicans | 13% | 8% | 55% | 18% | 9% |

*Early Voting*

Many states also have early voting, which allows registered voters to cast a regular ballot at a designated polling place at anytime during several days leading up to election day. As shown in Table 3, the responses to the 2008 CCES indicated that early voting has more support than either EDR or vote by mail, with 68% of the public expressing approval of this reform. Only 17% disapproved of early voting, while the remaining 15% were undecided. About three-fourths of the public agreed that it would increase voter turnout, while 19% were undecided, and only 6% disagreed. Only 20% believe that early voting would increase voter fraud, with 38% undecided and 42% disagreeing. A majority of the public (53%) was unsure as to its partisan effects, with 19% agreeing that it would aid Democrats and 27% disagreeing.

Table 3 Attitudes about Early Voting

| | Strongly Agree | Agree | Undecided | Disagree | Strongly Disagree |
|---|---|---|---|---|---|
| I approve of early voting | 42% | 26% | 15% | 8% | 9% |
| Early voting probably increases turnout | 41% | 16% | 19% | 4% | 2% |
| Early voting probably leads to more fraud | 11% | 9% | 38% | 27% | 15% |
| Early voting probably helps Democratic candidates more than Republicans | 11% | 9% | 53% | 14% | 13% |

*Photo Identification*

Several states require voters to show a photographic identification before casting their ballot at the election polls. Of the four election reforms asked about in the survey, photo identification requirements had the highest approval rating. As presented in Table 4, 77% of the public expresses approval with only 9% disapproving. Beliefs regarding the effects of photo identification requirements on turnout were evenly distributed across the respondents, with a slight tilt toward reducing turnout. Respondents felt much more strongly that it would reduce fraud, with 78% agreeing, only 6% disagreeing, and 16% undecided, but were mostly undecided on its partisan effects, with 53% neither agreeing nor disagreeing that a photo identification requirement would advantage one party over the other.

Table 4 Attitudes about Photo Identification

| | Strongly Agree | Agree | Undecided | Disagree | Strongly Disagree |
|---|---|---|---|---|---|
| I approve of photo ID | 55% | 22% | 14% | 7% | 2% |
| Photo ID probably lowers turnout | 10% | 24% | 13% | 24% | 8% |
| Photo ID probably leads to less fraud | 42% | 36% | 16% | 4% | 2% |
| Photo ID probably helps Republicans candidates more than Democrats | 10% | 10% | 53% | 15% | 12% |

**Discussion and Conclusion**

As states around the country continue to consider state election reforms to make voting easier and minimize the incidence of fraud, it is useful to take stock of public opinion. The responses to the survey questions reported here indicate that the public views increasing turnout as a laudable goal, but they do not support efforts to increase voter participation if they also will increase fraud.

As for specific reforms, the public expresses strong approval for early voting and photo identification requirements, and somewhat weaker support for EDR and VBM. While strong majorities of the public believe that EDR, VBM, and early voting will increase levels of voter participation, there is a notable difference in perceptions about the implications for fraud across the reforms. While only about 20% of the U.S. public believes that early voting probably leads to more fraud, 47% of citizens believe that EDR and VBM will lead to more fraud. There is also one important commonality in opinion across the four reforms – a majority of the public does not believe that any of them advantage one party over the other in elections. This is a noteworthy finding, given that debates over state election reforms tend to be particularly politicized. Analysis at the individual-level is necessary to understand the determinants of these attitudes, but at the aggregate level, it appears that many in the public view these reforms less politically than some serving in office.

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Mr. LUNGREN. Thank you.

The CHAIRMAN. Mrs. Davis.

Mrs. DAVIS of California. Thank you, Mr. Chairman.

And thank you to all of you for being here.

The CHAIRMAN. Excuse me. The reason, we do have a vote coming on, and we would hate to make you come back. So maybe we could get through and go vote.

Mrs. DAVIS of California. Okay. I will try and be very quick.

You have all addressed student voting. And I know that student voters often have difficulty meeting registration deadlines. Arrived in school, whatever, and they don't really know the different laws of all the different States that they are either coming from or that they are in. And I would like to discuss that for a second in a minute.

But what do you think we should be doing that we could do, that schools should be doing, to assist students so that they get the right information in the schools? Have you seen some good models? And what is your experience on the radio, as well?

Mr. JOYNER. Well, like I said earlier, one thing that we can do is get some younger people to—some younger eyes. You know, invariably, a lot of the problems that we have on Election Day is, God bless them, the older citizens that are there to help you get through the process. And——

Mrs. DAVIS of California. Uh-huh. I am wondering about registration, particularly, though, to encourage voter registration.

Yes?

Reverend YEARWOOD. Yes, I mean, obviously, I would think that right now there is legislation being put forth. There is H.R. 1729, which is the "Student Voter Act," which would require all colleges and universities that receive Federal funds to offer voter registration to students during the enrollment for a course of study. I think that would obviously boost during that timeframe.

Mrs. DAVIS of California. Okay.

Ms. WALES. Rock the Vote has been doing it for years. And Rock the Vote has not only by State on their Web site, but will also help students with not just on their State, but will help the schools. They have been doing it for cycles.

Ms. QUINN. Ma'am, I would tell you that I think there is already a requirement on the schools to provide a voter registration application to all students. Because I know there was discussion, even when I was in Virginia, about providing it by e-mail versus providing it by paper.

Ms. WALES. It is not currently a school requirement, but most schools will help. But Rock the Vote works with almost every single university nationwide.

Mrs. DAVIS of California. Okay. And, just quickly following up again, because you have talked a little bit about some standardization. And we know that, throughout the country, we have about 26 States that allow people to vote by mail without excuses, and yet we have other States that require a notary.

And I am just wondering, looking at that issue and perhaps others, where do you think there should be some standardization? Clearly, not to preempt creativity in States, but where should there be—should people have an equal chance to vote throughout the

country, when it comes to their ability to access voting, if they are choosing to do it in, you know, other than just going to the polls?

Ms. WESTFALL. I think that is an excellent question. Certainly, having a no-excuse absentee, mail-in ballot opportunity is something that should be provided to all voters.

We also strongly encourage the establishment of early voting. We are working on that right now in Pennsylvania and Missouri. And, of course, it has been used so successfully in many other States, like Florida, Nevada, Colorado, and North Carolina.

Mrs. DAVIS of California. Okay. Thank you. I appreciate that.

Mr. Davis, go ahead.

The CHAIRMAN. Mr. Davis.

Mr. DAVIS of Alabama. Thank you, Mr. Chairman. I will try to slip in a number of observations in my 5 minutes.

First one, one of the things that is interesting to me is we still have some forms of disenfranchisement that do go on, and they ought to be obvious to everyone in the room.

I will give you one example. In one county in Virginia last September, September 2008, the head of the Board of Registrars in that county sent out a notice to college students that, if they voted in the State of Virginia, that it could result in their parents losing the right to claim them as a deduction on their tax returns if they were from out of State. That is a flatly inaccurate misrepresentation/lie about the state of the law. And one would think someone who is running an election board would have known better.

When that kind of thing happens, there is usually a flurry of news stories about it. It is never prosecuted. It is often never investigated. And if it goes on in that community, I wonder how many other communities it goes on in.

And I suspect that that may get at Mrs. Davis's question. One of the reasons, I suspect, that voter participation among young people stays so low may be because of confusion over where they can vote and their status.

One thing that jumps out at me, in 2008, 18- to 24-year-olds—and let's really narrow in—African American 18- to 24-year-olds did have a big increase. The biggest age jump in the country, I think, happened in that cohort. But it still peaked out at 55 percent.

Now, mind you, this is not 18- to 24-year-olds, period; this is 18- to 24-year-olds who have registered to vote. Okay. Or at least who were eligible to vote, I should say.

Now, if 18- to 24-year-olds who were eligible to vote, who are African American, did not turn out for Barack Obama, then God save someone running for water commissioner or city council or the United States Congress.

This seems to be something that we have to get at. How do we get past this hurdle of African Americans not voting and not participating? Even when they had every reason in the world to be energized, even when they had a massive registration campaign, the number still peaked out at 55.

Why, Mr. Joyner and Mr. Yearwood, do you think the number peaked out at 55 given the history at stake in the election?

Mr. JOYNER. I don't think there is anything wrong with 55. But, you know, again, if you want more voter participation, you have to inform and you have to make the system easier.

Reverend YEARWOOD. I think that your point is correct, we should be alarmed by that. But I think one of the things there that we have to make sure that—and this goes to Congresswoman Davis's point—that we have to make sure that we have voter registration, but we must continue the process after Election Day. We must get back to teaching civic engagement, teaching the process.

A lot of young people who we came across, you are right, when they were very excited about the President, for instance, they were in a position where they didn't know the difference between, sometimes, the city council person and a Member of Congress to the mayor. They didn't quite know what they did.

Mr. DAVIS of Alabama. They just know who they see on TV.

Reverend YEARWOOD. Exactly. So when we began to inform them of the process, get them more engaged, then they are hanging around now.

Now, I will say this, though. Since this historic election that we did have, I now go into barbershops, and I see you on CNN, I see you on C–SPAN, definitely I see this process being much more—they now know Mr. Brady from Compton to New York to wherever. They see this process. They are getting more engaged. We must catch this moment now. This moment is now; we must use it.

Mr. DAVIS of Alabama. Ms. Wales, you were trying to jump in.

Ms. WALES. Thank you.

Barack Obama had more money than any candidate in history. He was able—the campaign was able to saturate every single media market more than any campaign in history, be it TV, radio, print, and social media, because of the amount of money that he had.

If this generation didn't know who this candidate was, there will never be a candidate in history that will know a candidate. If it is tapped out at 55 percent, then they weren't behind the issues enough.

I mean, if you look at things like the Tea Parties, for instance—and we need to engage around issues more. They need to believe in an issue more.

Mr. DAVIS of Alabama. Well, let me just end on this observation, since my time is nearly up.

The CHAIRMAN. Excuse me. If you could sum up, we have 4 minutes left on a vote.

And I would ask unanimous consent the record stay open for 5 legislative days to allow further questions.

Mr. DAVIS of Alabama. Yeah. This is the last observation I would make, Ms. Wales. Information is also an important part of this equation. And my only pet peeve with the Tea Parties—I am happy to see people left or right get energized, but I remember turning on my television and watching two people at two Tea Parties around the country on April 15th who were lamenting their taxes and who were blaming Barack Obama and the Congress for their taxes.

Maybe I missed something, but I thought the taxes you paid in April were based on the tax year that ended December 31st. So if

you didn't like your taxes, those Tea Parties, to me, should have happened probably last April 15th, when George Bush was in the White House.

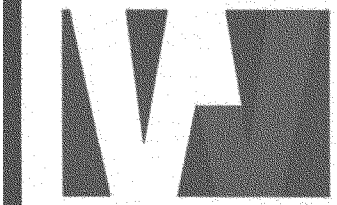
So there is just one minor little factual point there.

The CHAIRMAN. We all agree with that.

Again, thank you all for coming here. We do appreciate your time and your effort. And, most importantly, we appreciate your interest. Thank you for being here today.

This hearing is now adjourned.

[Whereupon, at 12:18 p.m., the committee was adjourned.]



Women's Voices. Women Vote.

# Access to Democracy: Identifying Obstacles Hindering the Right to Vote

# Women's Voices. Women Vote.

Prepared by DICKSTEINSHAPIROLLP

Scott E. Thomas, Former Chairman, Federal Election Commission

Alicia C. Insley

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**Women's Voices. Women Vote**

**Access to Democracy:**
**Identifying Obstacles Hindering the Right to Vote**

April 15, 2009

Numerous advocacy and educational groups have made and continue to make important contributions in the election reform arena. For instance, the Brennan Center for Justice and the New America Foundation have provided a comprehensive assessment of universal voter registration proposals and are advocating for needed reform. Additionally, groups such as the Pew Center on the States, Common Cause, Demos, Fair Elections Legal Network, Leadership Conference on Civil Rights, and the League of Women Voters are pushing for various reform efforts to ensure that more and more Americans have a chance to participate more easily in our democracy.

In this report, Women's Voices. Women Vote ("WVWV") adds its voice to the election reform movement by creating a repository of research showing the confusing array of state election laws. This area of the law is rapidly evolving with states passing new laws and legislators introducing new bills on an almost daily basis. WVWV's report is designed to illustrate the key issues, rather than provide a compendium of current election laws in all 50 states. While this work draws on the many substantial research efforts that other election reform groups have undertaken, it is a new look at the problems and shines a new light on the disproportionate impact that this country's opaque laws have on many underrepresented groups. Young voters, African Americans, Latinos, and unmarried women are now the majority of the population, but they are not yet the majority of the electorate. According to the latest U.S. Census Bureau data on the 2008 general election, these groups represented 46.6% of the 2008 electorate.[1] One of the reasons for this underrepresentation is the way in which this country and each individual state governs and administers elections.

WVWV has compiled the existing research on a wide range of election reform topics in one comprehensive report for distribution to election officials throughout the country, as well as

to other groups that may be involved in election reform efforts. In addition, WVWV is partnering with similar groups to provide additional "intellectual capital" and, to the extent permissible, enhance their direct lobbying and reform efforts. It is time for a comprehensive report on needed election reform measures and WVWV is committed to focusing on underrepresented populations who need a voice in this arena.

## INTRODUCTION

### Approximately 38 Percent of Eligible Voters Did Not Cast a Ballot in 2008

In the November 2008 election, there were approximately 212 million Americans eligible to vote, but only 133 million cast ballots in the general election.[2] Due in part to the "Get Out the Vote" efforts of groups including WVWV, this figure represents the largest number of voters to have ever participated in a U.S. election,[3] and an increase of 9 million more voters than the 2004 presidential election.[4] While this result is a great accomplishment, much more work remains to ensure that the remaining 79 million eligible citizens that did not cast their vote are encouraged and able to do so in future elections.[5] Of the 79 million Americans who did not participate in the 2008 election, 44 million were not registered.[6]

Astonishingly, in 17 states the percentage of the voting eligible population that voted actually went down from 2004 levels.[7] WVWV believes that one of the main reasons a higher percentage of Americans are not voting is due to the significant obstacles posed by inconsistent and unclear state voting laws.[8] A new study has confirmed that these obstacles were directly responsible for keeping millions of Americans from casting their ballots in the 2008 presidential election.[9] Four million to five million Americans did not vote in the 2008 presidential election because of registration problems or a failure to receive requested absentee ballots.[10] Moreover, because of administrative problems such as voter identification requirements, an additional two million to four million registered voters were "discouraged" from voting.[11] As aptly stated by Senator Charles E. Schumer, "[t]his is unacceptable and undemocratic."[12]

The barriers erected by states also have a disparate impact on underrepresented voters such as African Americans, unmarried women, Latinos, and youth voters. For instance, only 60% of African Americans voted in 2004.[13] While unmarried women represented about 25% of the eligible electorate, data from the U.S. Census Bureau indicates that 20.4 million unmarried women did not vote in the 2008 election.[14] Similarly, 9.8 million Latinos and 21.5 million youth voters (ages 18-29) did not vote in the 2008 election.[15]

### Voting Obstacles – The Need for Election Reform

In recent testimony before the Senate Rules Committee, Professor Nathaniel Persily of Columbia Law School summed up the key electoral problem facing this country -- "The United States continues to make voting more difficult than any other industrialized democracy."[16] Many states have burdensome and confusing registration requirements, limited options to cast ballots prior to Election Day, complicated voter ID requirements, inconsistent rules regarding casting and counting provisional ballots, and varied regulations regarding the maintenance of voter lists. These obstacles make it extremely difficult for groups that facilitate registration and voting to be effective. More importantly, these roadblocks particularly impact underrepresented groups such as unmarried women and young voters who tend to be more mobile and have less education and income, hourly workers who cannot afford to take time off work on Election Day, and immigrant populations that lack common forms of identification.

WVWV has included in this report its firsthand knowledge of the obstacles posed by current election laws and the fact that reaching historically underrepresented groups significantly

increases participation in the electoral process. This report is especially necessary because it focuses on election reform measures that will impact historically underrepresented groups such as unmarried women, African Americans, Latinos, and youth voters. The election reform measures related to voter registration especially impact those groups. Through this report, WVWV endeavors to provide an illustrative guide to the key issues facing these groups. WVWV notes, however, that the sources used in compiling this report span several years and it is not intended to be a 50-state survey of all current state laws.

WVWV's Access to Democracy Report focuses on five key areas where the patchwork of inconsistent laws pose the most significant obstacles and reform could yield the greatest positive results: (1) voter registration (same day registration/registration basics); (2) absentee voting (by mail) and early voting (in person); (3) voter identification requirements for registration and voting; (4) provisional ballots; and (5) voter lists.

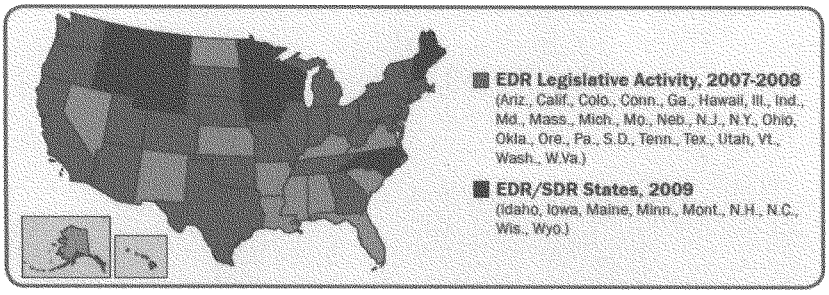
## I. VOTER REGISTRATION

Controversies surrounding voter registration were one of the biggest problems in the 2008 general election and produced more litigation than any other election issue.[17] In 2006, approximately one-third of Americans in the voting age population were not registered to vote.[18] Groups that have studied voter participation problems believe the voter registration system is "antiquated and cumbersome,"[19] "wildly outdated and badly in need of modernization,"[20] and "broken and in need of reform and repair."[21] To increase voter participation, electoral reform efforts should push for universal registration and greater consistency with regard to voter registration standards.

The Brennan Center is one of the key groups at the forefront of the movement toward universal registration with its recent publication advocating for universal registration, providing models for reform, and supporting a Federal Universal Voter Registration Act.[22] Specifically, the Brennan Center proposes establishing a national mandate for universal voter registration within each state, providing federal funds for states to implement universal voter registration, and mandating permanent voter registration systems that will allow voters to stay on the rolls when they move.[23] WVWV views universal registration as a critical piece of election reform to increase voter participation. Absent universal registration, reforms will be essential in several key areas related to registration: (1) same day registration; (2) voter qualifications; (3) registration forms and online registration; (4) registration deadlines.

### A. Same Day Registration

One area in which reform could have the greatest positive impact on underrepresented populations is same day registration ("SDR," also known as Election Day registration or "EDR"). In the 2008 presidential election, voter participation numbers were highest in the states that allowed SDR – 69 percent compared to 62 percent.[24] As noted on the Demos map below, as of early 2009, only eight states had a form of SDR that allows voters to register and vote on Election Day: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming.[25] North Carolina also allows SDR during the state's liberal early voting period ending just prior to Election Day.[26]




**Source: Demos Policy Brief, *Voters Win with Election Day Registration*, Winter 2009, http://www.demos.org/pubs/ VotersWinWithEDR.pdf. "EDR Activity" refers to legislative initiatives to enact a form of SDR/EDR; however, the noted states have yet to pass such legislation.

In most SDR states, a qualified voter may register on Election Day by (1) appearing in person at the appropriate polling place for his/her residence, (2) completing the state's registration materials, and (3) presenting proper proof of identification and/or residence. The identification requirements vary by state and some states also require an oath or affirmation confirming the voter's registration information. In New Hampshire, for instance, qualified individuals may register to vote at the polling place on Election Day, but will be asked to show proof of age, citizenship, and domicile.[27]

All SDR states provide, however, the same basic service to their citizens – allowing them to register and vote on Election Day in one easy step. It simplifies the process for voters, provides "one stop shopping" for registration and voting, reduces problems at polling places, and thereby encourages greater voter turnout and participation. In fact, in SDR states:

- Participation among the voting age population has increased 10 to 12 percentage points.[28] (In 2004, eligible voter turnout was 13.6% higher in states that had SDR versus those that did not!);[29]

- Voting among young people and movers is nearly 15 percentage points higher than in non-SDR states;[30]

- Approximately 90% of the electorate in SDR states registers to vote.[31] (In North Carolina's first year allowing SDR, it saw the greatest gains in voter turnout in the entire country!);[32]

- Most voters prefer to and do register to vote at the polls and election officials enjoy increased oversight of the registration process;[33]

- Election administration costs are the same or less than non-SDR states;[34] and

- Voter fraud has not increased. In fact, U.S. Representative Keith Ellison of Minnesota stated that since the state implemented Election Day registration he has not heard of a single proven case of voter fraud.[35]

Same day registration has proven to dramatically increase voter participation. For example, in Minnesota, where SDR was enacted in 1976, average voter turnout has been more than 70%.[36] Moreover, research has found that Minnesota voters who registered at the polls accounted for 15% to 21% of Minnesota voters in federal elections – about the same margin by which Minnesota leads the nation in voter turnout.[37] In the 2008 presidential election, SDR ballots accounted for more than 18 percent of the votes cast.[38]

In addition, SDR particularly assists young voters and lower income citizens who often move more frequently, and counters reduced registration rates caused by their mobility.[39] Young people move regularly for school, work, and family reasons, which makes it difficult for them to stay registered under existing laws and results in lower registration rates than those in the general population.[40] SDR would allow this highly transitory population to register at the last minute and vote in elections. In fact, Demos has estimated that SDR could increase youth turnout by 14% points for presidential elections in this country.[41]

SDR would also significantly impact other movers. With 90 million eligible voters (45% of the population!) moving every five years,[42] and at least one in six Americans moving every year (mostly within his or her state),[43] reform affecting these voters is imperative. One of the most common problems reported to voter protection hotlines is voters not knowing that they must re-register after moving, even if it is within the same city, or even a few doors down.[44] Census data has demonstrated that millions of Americans move each year.[45] For instance, 40.1 million people moved in this country between 2002 and 2003 and almost 40 million Americans moved between 2004 and 2005, as well as 2005 and 2006.[46] The same data shows that Latinos had the highest moving rate (18%), followed by African Americans (17%), Asians (14%), and then Caucasians (12%).[47] In addition, during the 2004-2005 period, over one-third of those movers had incomes less than $25,000.[48] SDR would allow these voters to re-register on Election Day and cast their ballots rather than deny them their right to vote simply because they miss the registration deadline in their new location.[49]

More generally, SDR counteracts arbitrary voter registration deadlines (i.e., more than half the states cut off voter registration 25 or more days before the election).[50] And even with the most comprehensive voter lists administered with the best intentions, some voters continue to fall through the cracks due to state or individual registration errors. To ensure that eligible voters are not deprived of their right to vote simply because they do not appear on registration lists, SDR must be part of any meaningful electoral reform.[51] On top of all the other compelling reasons to advocate for SDR, voters want it! According to a May 2001 poll, nearly 2/3 of all non-voters said that allowing SDR would make them more likely to vote.[52] And preliminary figures demonstrate the popularity of SDR – over 1 million Americans used SDR to vote on or prior to election day in 2008.[53]

### B. Voter Registration Basics

Typically, the largest cause of unnecessary voter disenfranchisement in the United States involves problems with voter registration.[54] Voter registration requirements vary significantly by state with regard to registration qualifications, forms, and deadlines/methods of delivery. Requirements are even more divergent with regard to movers (within a state and across state lines) and first time voters. Hotlines, Twitter reports, and websites that track voter complaints found that registration issues were the most prevalent problem on the 2008 Election Day.[55] For instance, the election protection hotline set up by the National Campaign for Fair Elections received more than 240,000 calls from voters, and more than one-third of the calls were related to voter registration problems.[56] Additionally, the Election Protection Coalition operated a toll-free line and website tracking election problems on and before the 2008 general election and received the greatest number of online hits (7,421) and calls (28,853) about voter registration problems.[57] The Coalition observed that "[t]he most prevalent and alarming challenge to our electoral process today came in the form of voter registration problems. . . . Our first priority for improving this flawed system should be to make the registration process fair, accurate, and efficient."[58] The following subsections discuss registration issues, including the varied state qualification requirements, registration forms, and delivery deadlines.

#### 1. Voter Qualifications

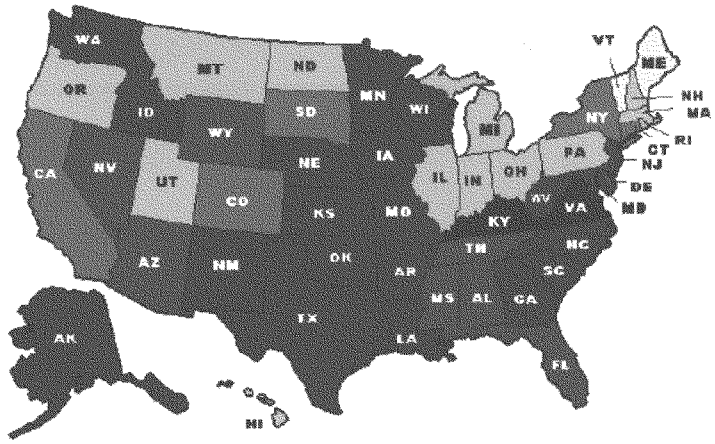
A potential voter must be a U.S. citizen to register to vote, but other qualifications such as residency, age, criminal status, mental capacity, and other state-specific restrictions vary by state as detailed in Appendix A.[59] For example, some states never permit convicted felons to vote after their conviction; other states automatically reinstate the right to vote upon the end of the individual's sentence; and in still other states, an individual must apply for reinstatement after the end of his/her sentence or at a state-specified time afterward. WVWV has received numerous questions on this issue, such as:

- 3.12.08 – Good morning, I wanted to know if my civil rights have been restored and that's why I have started receiving the registration application since I had applied to have them restored. I have not received any thing from the State of Florida to indicate that they have been restored. Is there any way you could find out and advise me. I would then be most happy to register to vote again. This was 10 years ago with my felony and have not seen any trouble prior to or since. Please let me know one way or the other if I am not to sen[d] this completed application back. I do not want to be doing something wrong by completing this application and sending it back to you. . . . Please Advise. Thank you.

- 8.15.08 – I lost my right to vote in 1999 due to a felony charge. I would like to know how I can have my rights reinstated.

- 10.6.08 – My story is this: I am an ex-felon who has been trying to restore my civil rights for voting for the last 20+ years. I was in [in]carcerated, served my term, released and have been participating as a normal honest citizen. I wanted to vote and informed that I could not due to lack of civil rights, which unbeknown to me were restored upon my completion of my parole. That was over 26 years ago. I tried to locate someone who could aide me in the process and could find no one. I now live in a different state and still could not vote. I have been restricted from this right due to lack of information. This election sparked my desire to vote and I found out that the state restores your civil rights once you have completed your sentence and parole. Well needless to say I have contacted the Federal Election Commission in Washington DC, to confirm this and now I have the ability to vote. My point is don't just accept what people say, keep trying and you might be [surprised] . . . I can now VOTE!!!!

The following map published by the Brennan Center illustrates criminal disenfranchisement laws throughout this country:




**Permanent disenfranchisement for all people with felony convictions, unless government approves individual rights restoration**
KY, VA

- **Permanent disenfranchisement for at least some people with criminal convictions, unless government approves individual rights restoration**
  AL, AZ, DE, FL, MS, NV, TN, WY

- **Voting rights restored upon completion of sentence, including prison, parole, and probation**
  AK, AR, GA, ID, IA, KS, LA, MD, MN, MO, NE,* NJ, NM, NC, OK, SC, TX, WA, WV, WI

- **Voting rights restored automatically after release from prison and discharge from parole (probationers may vote)**
  CA, CO, CT, NY,* SD

- **Voting rights restored automatically after release from prison**
  DC, HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT

- **No disenfranchisement for people with criminal convictions**
  ME, VT

* Nebraska imposes a two-year waiting period after completion of sentence.

**Source: Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States*, http://www.brennancenter.org/page/-/d/download_file_48642.pdf (last visited Mar. 16, 2009).

Voting rights and civil rights advocates have advanced for many years the position that voting laws and restrictions applicable to felons who have served their time are purposefully used to disenfranchise minorities.[60] In 2007, the Sentencing Project found that 5.3 million Americans with a felony conviction have lost their right to vote permanently, which disproportionately impacts African American men, 1.4 million of whom have lost their right to vote under these restrictive laws.[61] In fact, the 13% disenfranchisement rate for African American males is seven times the national average,[62] and in six states, more than one in four African American men are disenfranchised permanently.[63]

In addition, people who move or change their name are often unclear about whether they need to re-register to vote and where they are supposed to register or vote since these requirements vary from state to state and sometimes, county to county. For instance, these two emails to WVWV illustrate common questions among potential voters:

- 5.1.08 – I recently got married and I need to know how I can get my name changed with the registry. Any help with this issue would be of great help . . . Once again thanks for any help you can give me. Thanks.

- 9.2.08 – I have moved since the last presidential election from Union [C]ity in NJ to Nutley NJ. How can I [find out] where I vote in Nov. Thanks.

Moreover, some states require individuals to list their permanent address on their voter registration form. These laws primarily impact homeless individuals who are unable to satisfy that requirement -- only one-third of the more than 744,000 homeless individuals in the United States are registered to vote.[64]

WVWV supports reforms to encourage greater clarity with regard to all voter qualification requirements, including those specifically applicable to ex-felons and movers. We critically need reform to raise awareness, understanding, and participation among eligible voters.

**2. Registration Forms and Online Registration**

Subject to very limited exceptions, all states accept the federal voter registration form; however, almost all states also have a state-specific form that differs from not only the federal form, but also from other state forms.[65] This variation can confuse voters and make it extremely difficult for "Get Out the Vote" groups to provide comprehensive information on all acceptable forms and instructions for completing such forms. Many people throughout the country have contacted WVWV with questions and concerns about registration forms as illustrated in this email:

- 3.6.08 - I have already filled out a voter registration application and mailed it in over a month ago. I have not received my voters card yet and today I received a second notice application via mail. Is the[re] a long wait to receive your card and should [I] ignore this second request or should I reapply? I want to vote and need a card to do so. Thank you very much.

Some states also object to registration groups widely distributing the federal form within their state because they prefer to process their own state forms. This issue erects another barrier for registration groups who seek to assist voters in completing and submitting their voter registration forms. WVWV supports reform efforts to require that state officials accept the federal form and adequately fund the registration process, even when it requires sending the applications to county registrars. Use and acceptance of the federal form provides simplicity for voters, increases voter participation, and assists registration groups that seek to enfranchise voters by providing a standard form accepted across the country.

In addition to standard acceptance of the federal form, election reform efforts should include a push to mandate the option of online registration in all states. As of October 2008, Arizona and Washington were the only two states to allow voters to register via the Internet, and they have seen very successful results.[66] For instance, Arizona began allowing online registration in 2003, and in that first year 25% of voter registration occurred online.[67] By 2007, the figure climbed to 72%.[68] In Washington, over 6,500 citizens registered online in the two weeks after the system's launch in early January.[69] Washington Secretary of State Sam Reed believes the online option significantly increased voter registration, particularly among youth voters who generally tend to change addresses more frequently than other age groups.[70]

### 3. Registration Deadlines

Registration deadlines also vary widely by state and by method of delivery (i.e., by mail, fax, or personal delivery), whereas one standard registration date throughout the country would provide consistency and clarity for voters (particularly, movers). The following chart published by the Pew Center in October 2008 details the registration deadlines for the November 4, 2008, general election and highlights the lack of uniformity across the United States:

## Voter Registration Deadlines

| | |
|---|---|
| ALABAMA | Oct. 24 |
| ALASKA | Oct. 5 |
| ARIZONA | Oct. 6 |
| ARKANSAS | Oct. 6 |
| CALIFORNIA | Oct. 20 |
| COLORADO | Oct. 6 |
| CONNECTICUT | Oct. 21 by mail; Oct. 28 in person; Presidential ballots available for unregistered on Election Day |
| DELAWARE | Oct. 11 |
| DISTRICT OF COLUMBIA | Oct. 6 |
| FLORIDA | Oct. 6 |
| GEORGIA | Oct. 6 |
| HAWAII | Oct. 6 |
| IDAHO | Election day registration. Oct. 10 last day to pre-register. |
| ILLINOIS | Oct. 7 |
| INDIANA | Oct. 6 |
| IOWA | Election day registration. Oct. 25 last day to pre-register. |
| KANSAS | Oct. 20 |
| KENTUCKY | Oct. 6 |
| LOUISIANA | Oct. 6 |
| MAINE | Election day registration |
| MARYLAND | Oct. 14 |
| MASSACHUSETTS | Oct. 15 |
| MICHIGAN | Oct. 6 |
| MINNESOTA | Election day registration. Oct. 14 last day to pre-register. |
| MISSISSIPPI | Oct. 4 |
| MISSOURI | Oct. 8 |
| MONTANA | Late and election day registration; Oct. 6 last day to register by mail |
| NEBRASKA | Oct. 17 by mail; Oct. 24 in person |
| NEVADA | Oct. 4 by mail; Oct. 14 in person |
| NEW HAMPSHIRE | Election day registration. Oct. 25 to pre-register. |
| NEW JERSEY | Oct. 14 |
| NEW MEXICO | Oct. 7 |
| NEW YORK | Oct. 10 |
| NORTH CAROLINA | Oct. 10 or one stop registration and absentee voting from Oct. 16 – Nov. 1 |
| NORTH DAKOTA | No voter registration |
| OHIO | Oct. 6; one-stop registration and voting period |
| OKLAHOMA | Oct. 10 |
| OREGON | Oct. 14 |
| PENNSYLVANIA | Oct. 6 |
| RHODE ISLAND | Oct. 4. Presidential ballots available to unregistered voters on Election Day |
| SOUTH CAROLINA | Oct. 4 |
| SOUTH DAKOTA | Oct. 20 |
| TENNESSEE | Oct. 6 |
| TEXAS | Oct. 6 |
| UTAH | Oct. 6 by mail; Oct. 20 in person |
| VERMONT | Oct. 29 |
| VIRGINIA | Oct. 6 |
| WASHINGTON | Oct. 4 by mail and online voter registration; Oct. 20 for in person |
| WEST VIRGINIA | Oct. 14 |
| WISCONSIN | Election day registration. Oct. 15 last day to pre-register. |
| WYOMING | Election day registration. Oct. 6 last day to pre-register. |

**Source: The Pew Center on the States, *Election Preview 2008: What if We Had an Election and Everyone Came?*, October 2008, http://www.pewcenteronthestates.org/uploadedFiles/Election%20Preview%20FINAL.pdf.

In addition to the varying deadlines, some states mandate that mail-in registration be *postmarked* by the deadline, whereas other states require that election officials *receive* the form by the deadline. Requiring receipt by the deadline is in direct violation of the National Voter Registration Act (NVRA) of 1993.[71] Another confusing inconsistency (particularly for people who move to a new state) is that some states set a particular delivery time, whereas others simply set a date. Moreover, there is no federal deadline for states to notify voters of their disposition. The following sampling of states illustrates these issues:

**Mail-In Registration Deadlines**

- *Colorado*: Postmarked 29 days before the election
- *Michigan*: Received 30 days before the election
- *Minnesota*: Received by 5:00 p.m. 21 days before the election
- *Nevada*: Received by 9 p.m. on the fifth Saturday before the election and postmarked within 3 days of signing the form

WVWV has received countless questions regarding registration deadlines. The following emails illustrate a handful of common concerns:

- 10.2.08 – I filled out the reg form and it is required in my state that I be registered 30 days prior to the election. If my form is postmarked by today 10/3 will that qualify me or do I have to go in person to register now???
- 9.23.08 – I need to know how to [register] to vote for mail in application. How do I get this application before the Oct 6th due date? I am already registered to vote in Colorado.
- 10.15.08 – Did not know [the] deadline for change of address was yesterday. Can I still put [it] in [the] mail or fax to someone?

### C. Ensuring State Compliance with the National Voter Registration Act

Recognizing how voter registration laws throughout the country have disproportionately impacted participation in the democratic process by low-income citizens, Congress passed Section 7 of the NVRA requiring states to offer voter registration opportunities to those utilizing or applying for public assistance programs such as Food Stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Section 7 requires public assistance agencies to not only provide a voter registration application, but also help with the completion of the application and transmission of the form to the appropriate election official.

Unfortunately, many states are falling far short of Congress's mandate and inconsistently complying with the requirement that they offer voter registration services to those utilizing public assistance programs.[72] Recent surveys have found numerous instances where public assistance organizations did not offer voter registration, including sites where voter registration applications were completely absent.[73] The NAACP Legal Defense Fund "uncovered significant evidence of widespread non-compliance among several states, including Louisiana and Mississippi" where agency personnel were "simply unfamiliar with the law and the obligation to make voter registration forms available...."[74] When comparing 2003-2004 with 1995-1996, voter registration applications from public assistance agencies fell 59.64% while applications from other sources actually increased by 22.43%.[75] Moreover, although 13 million (40 percent!)

of the voting age population from households earning under $25,000 were unregistered in 2006, the number of voter registration applications from public assistance agencies is a small fraction of what it was when the NVRA was first instituted.[76]

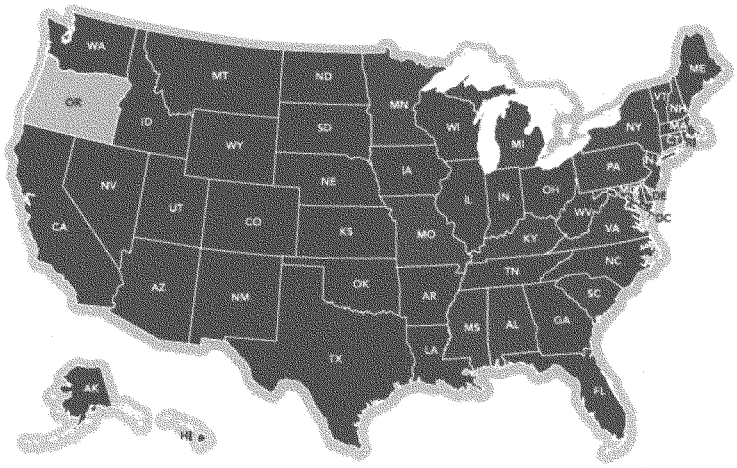
Although there has been strong evidence of noncompliance by states, the Department of Justice (DOJ) has fallen short of its duty to enforce the public assistance program requirements of the NVRA.[77] WVWV believes it is essential that DOJ enforce state compliance with NVRA's public assistance program provisions. WVWV aims to assist in this effort by researching whether states are in compliance with the public assistance program provisions and alerting DOJ where states are falling short of their obligation. WVWV will provide this research to assist other election reform groups in pushing the DOJ to better enforce compliance.

## II. ABSENTEE AND EARLY VOTING

In this report, the term "absentee voting" is used to signify voting by a mail-in paper ballot, whereas the term "early voting" is utilized in reference to voting in person at an election official's office or other voting location prior to Election Day. Rates of both absentee and early voting are on the rise. In the 2008 elections, approximately 38 million Americans voted prior to Election Day – constituting nearly 30% of the ballots cast.[78] This figure represents a substantial increase from prior years. In 2004, 20% of ballots were cast by absentee or early voters, 15% in 2000, and 7% in 1992.[79] States such as Florida and Texas saw especially large numbers of ballots cast before Election Day. Four million people voted early in Florida's 2008 general election; and Texas had more people voting before Election Day in 2008 than voted on Election Day in 2007![80]

Although every state allows some voters to cast absentee ballots prior to Election Day, states vary on whether they allow early voting in addition to absentee voting.[81] Moreover, states' regulations regarding who can vote absentee or early differ widely. For example, some states allow "no excuse" absentee and early voting where any registered voter can vote prior to Election Day; whereas other states require an excuse such as absence from the state on Election Day, military duties, or health problems. Additionally, some states have hurdles for those voting by mail such as restrictions for first time voters and requirements for signatures by witnesses or notaries.

See the following Pew Center map published in October 2008, which summarizes absentee and early voting state laws:




- 33 states allow no-excuse absentee voting by mail and/or no excuse in-person early voting.
- 16 states and the District of Columbia require an excuse for absentee voting.
- 1 state is all vote-by-mail.

**Source: The Pew Center on the States, *Election Preview 2008: What if We Had an Election and Everyone Came?*, October 2008, http://www.pewcenteronthestates.org/uploadedFiles/Election%20Preview%20FINAL.pdf.

### A. No Excuse Absentee Voting[82]

All states allow some voters to cast ballots by mail, but significant variations between states remain, which causes confusion among voters.[83] The following questions posed by potential voters to WVWV provide examples of this confusion:

- 3.11.08 – My mother has moved here from Florida. She is living in an Assisted Living facility in Rock Hill, SC - all of her mail is sent to my address which is where you sent the registration form. My question - how can I get her registered to vote and also she would have to vote with an absentee ballot as she is unable to drive or walk . . . Can you help me with this?

- 4.10.08 – How do I sign up for absent[ee] [ballot], please let me know. I [a]m 74 years old.

- 7.27.08 – My daughter turned 18 this past May and is a student in Germany for the next year. I've emailed her the link to your site, but still need to do something about an absentee ballot. Can you help? Thank you.

- 8.15.08 – To Whom It May Concern, Can I be sent an Absentee Voter Application in the mail or do I have to visit my local town hall. Thank you.

Some states require an excuse to request an absentee ballot such as health reasons or absence from the state on Election Day. In contrast, 28 states allow no excuse absentee voting.[84] Five states – California, Colorado, Hawaii, Montana and Washington – allow permanent no excuse absentee voting. Upon request, voters automatically receive absentee ballots in all future elections.[85] In 1998 Oregon voters overwhelmingly voted to adopt an exclusive vote by mail system, and since 2000, Oregon has conducted all elections solely by mail ballot.[86] In 2006, 33 of 39 Washington counties conducted their elections entirely by mail, as allowed under state law.[87]

Many states also erect hurdles to those voting by absentee ballot. For example, some states require a witness or notary public to sign absentee ballots.[88] And in most states, voters must pay for the postage on the return envelope of their absentee ballot. At least four states pay the return postage – Hawaii, Minnesota, Nevada, and West Virginia.[89]

The following October 2008 chart from the National Conference of State Legislatures illustrates the states that allow any registered voter to vote by absentee ballot (i.e., no excuse absentee voting).

| **No Excuse Absentee Voting** | |
|---|---|
| Alaska | Nevada |
| Arizona | New Jersey |
| Arkansas | New Mexico |
| California | North Carolina |
| Colorado | North Dakota |
| Florida | Ohio |
| Georgia | Oklahoma |
| Hawaii | Oregon* |
| Idaho | South Dakota |
| Iowa | Utah |
| Kansas | Vermont |
| Maine | Washington |
| Montana | Wisconsin |
| Nebraska | Wyoming |

**Source: National Conference of State Legislatures, Absentee and Early Voting, *available at* http://www.ncsl.org/programs/legismgt/elect/absentearly.htm. Updated in part on October 9, 2008.

As illustrated in the following chart, as of October 2008, approximately half of all states require the signatures of either a witness or notary public on an absentee ballot.

| Witness/Notary Signature | |
|---|---|
| **Required** | **Not Required** |
| Alabama | Arizona |
| Alaska | Arkansas |
| Delaware | California |
| Florida | Colorado |
| Georgia* | Connecticut |
| Hawaii* | District of Columbia |
| Louisiana | Idaho |
| Maine | Illinois |
| Michigan* | Indiana |
| Minnesota | Iowa |
| Mississippi | Kansas |
| Missouri | Kentucky |
| Nebraska | Maryland |
| New Jersey | Massachusetts |
| New York* | Montana |
| North Carolina | Nevada |
| North Dakota | New Hampshire |
| Oklahoma | New Mexico |
| Pennsylvania* | Ohio |
| Rhode Island | Oregon |
| South Carolina | South Dakota |
| Tennessee* | Vermont |
| Texas | Washington |
| Utah* | West Virginia |
| Virginia | Wyoming |
| Wisconsin | |

**Source: National Conference of State Legislatures, Absentee and Early Voting, *available at* http://www.ncsl.org/programs/legismgt/elect/absentearly.htm. Updated October 9, 2008.

The Common Cause Education Fund has studied the effects of a Vote By Mail ("VBM") election, where every registered voter is sent a ballot so that they have the option of voting by mail. According to their January 2008 study, VBM elections can increase turnout by four to five percentage points in general elections and significantly more in local or off-year elections.[90] Many other benefits to absentee voting have been touted, including:

- Significant reductions in Election Day logistical problems such as equipment failures, equipment shortages, poll worker shortages, and bad weather;
- Additional opportunities for voter mobilization;
- Reductions in last minute negative campaigning;
- Greater time to deliberate about choices;
- Money and time savings; and

- More efficient deterrence of fraud when, rather than imposing photo-ID requirements, signatures on ballot envelopes are compared to signatures on voter registration files.[91]

A VBM system, in addition to no excuse absentee voting, would be the best way to ensure that underrepresented groups are able to cast a ballot once they are successfully registered.

**B. No Excuse Early Voting**

Early voting takes place in person before Election Day – voters cast their ballots at a county clerk's office or another satellite voting location such as a grocery store, school, or library.[92] The time period for early voting varies by state but typically takes place during the 10 to 14 day window before the election and ends on the Friday or Saturday proceeding Election Day.[93] As of January 2009, fifteen states require voters to have a statutorily-delineated excuse to vote early, 32 states allow no excuse early voting, and four states do not allow early voting.[94]

| Early Voting Summary | | | |
|---|---|---|---|
| **State** | **No excuse** | **Excuse required** | **Not Permitted** |
| Alabama | | x | |
| Alaska | x | | |
| Arizona | x | | |
| Arkansas | x | | |
| California | x | | |
| Colorado | x | | |
| Connecticut | | x | |
| Delaware | | x | |
| District of Columbia | | x | |
| Florida | x | | |
| Georgia | x | | |
| Hawaii | x | | |
| Idaho | x | | |
| Illinois | x | | |
| Indiana | x | | |
| Iowa | x | | |
| Kansas | x | | |
| Kentucky | | x | |
| Louisiana | x | | |
| Maine | x | | |
| Maryland | | | x |
| Massachusetts | | x | |
| Michigan | | x | |
| Minnesota | | x | |
| Mississippi | | x | |
| Missouri | | x | |
| Montana | x | | |
| Nebraska | x | | |

| Early Voting Summary | | | |
|---|---|---|---|
| **State** | **No excuse** | **Excuse required** | **Not Permitted** |
| Nevada | x | | |
| New Hampshire | | x | |
| New Jersey | x | | |
| New Mexico | x | | |
| New York | | x | |
| North Carolina | x | | |
| North Dakota | x | | |
| Ohio | x | | |
| Oklahoma | x | | |
| Oregon | | | x |
| Pennsylvania | | x | |
| Rhode Island | | | x |
| South Carolina | | x | |
| South Dakota | x | | |
| Tennessee | x | | |
| Texas | x | | |
| Utah | x | | |
| Vermont | x | | |
| Virginia | | x | |
| Washington | | | x |
| West Virginia | x | | |
| Wisconsin | x | | |
| Wyoming | x | | |

**Source: LongDistanceVoter.Org, Early Voting Rules, *available at* http://www.longdistancevoter.org/early_voting_rules (last visited Jan. 29, 2009).

### C. Reform Efforts

Advocating for relaxed requirements for absentee and early voting should be a priority in election reform because these voting methods give voters more flexibility in casting their ballots and thereby encourage voter participation, particularly among historically underrepresented groups. The best case scenario would be expanding no excuse early and absentee voting to make it a standard practice throughout the country. As of October 2008, thirty-four states already allow either no excuse early voting or no excuse absentee voting.[95] Expanding the number of no excuse states will increase voter turnout of underrepresented populations such as college students and low-wage workers who cannot afford to take time off of work to vote. Other benefits include reducing Election Day logistical problems such as bad weather and poll worker shortages. Increased early and absentee voting has been credited with the smoother November 2008 Election Day in Ohio and Florida.[96]

## III. VOTER IDENTIFICATION REQUIREMENTS

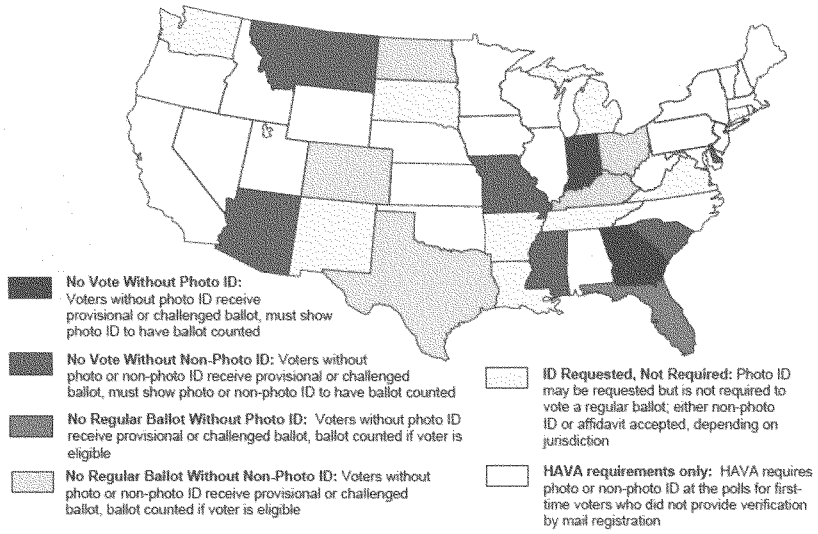
States are increasingly implementing restrictive laws requiring various forms of identification, and in some cases proof of citizenship, before voters can register to vote or cast their ballot. These strict requirements adversely impact populations such as women, African Americans, Latinos, low income citizens, and youths who often lack current or acceptable forms of identification.[97] For example, a 2007 Brennan Center study found that over half of voting-eligible women do not have proof of citizenship with their current names.[98] A recent study in the Election Law Journal also found that one in ten Caucasian voters lack necessary identification, whereas the figure for African Americans is twice as high.[99] In Wisconsin, for example, a 2005 study found that 78% of African American men between 18 and 24 years of age lack a driver's license.[100] "[D]ue to varying levels of political resources (time, money, political sophistication, etc.) the impact of additional hurdles, like voter-ID laws, is most pronounced on specific segments of the electorate, including the elderly, racial and ethnic minorities, immigrants, and those with less educational attainment and lower incomes."[101]

Moreover, required forms of identification are different in every state, prompting questions from potential voters such as:

- 5.2.08 – I live in NC, but I have a TN driver's license. [H]ow do I register to vote without a NC license. I am a military dependent?
- 8.12.08 – I am register[ed] to vote in KY. I got married two weeks ago. [W]ill I need to do something [different] because my last name change[d]?
- 9.22.08 – My daughter is turning 18 on October 11. She wants to register but she does not have a paycheck or bank account and she lives at home. So what does she do?

See Appendix B for state-by-state information compiled by the League of Women Voters in 2008 regarding the patchwork of identification laws governing voter registration.[102] In addition, see Appendix C for the League's detailed account of each state's identification requirements for casting one's vote.[103]

This 2008 Brennan Center map below also illustrates the state variations related to identification needed to vote:




**Source: Brennan Center for Justice, ID Requirements Discourage Voters, http://www.brennancenter.org/page/-/Democracy/2%20current%20ID%20provisions.pdf (last visited Mar. 16, 2009).

WVWV encountered this issue when it sought to mail information summarizing identification requirements to unmarried women residing in selected states. The state laws were detailed, complicated, and inconsistent, which made them extremely difficult to summarize accurately on a mailer.

For instance, see the following comparison of Indiana and New Jersey.[104]

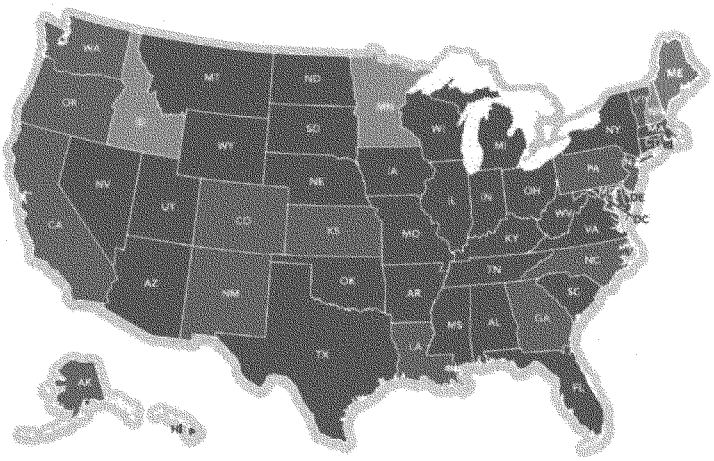
| Indiana | New Jersey |
|---|---|
| Indiana uses HAVA as a minimum for first time voters and has expanded state requirements for all voters.<br><br>(1) Every voter must present ID issued by the federal government or state of Indiana before signing in at the polling place. The ID must contain:<br>- the voter's name (which must conform to his/her voter registration record);<br>- the voter's photo; and<br>- the expiration date (the ID must be current or have expired after the date of the last general election, including military IDs with the INDEF expiration date).<br>Acceptable forms of ID include an IN driver's license or photo ID card, military ID, and U.S. passport.<br><br>(2) In addition to the noted photo ID, a first time voter who registers by mail and does not include a copy of his/her ID with the registration materials must present ID at the polling place that includes his/her name and address (if not printed on the photo ID) in accordance with HAVA. Acceptable ID includes a current and valid driver's license, other photo ID, or current utility bill, bank statement, paycheck, government check or other government document showing the voter's name and address. | Pre-HAVA, New Jersey did not require ID from any voters and post-HAVA has adopted only HAVA's minimum requirements.<br>(1) Only a first time voter who registers by mail and does not include a verifiable driver's license number or last 4 digits of his/her social security number with the registration form must present ID at the polling place in accordance with HAVA. Acceptable forms of ID includes a current and valid driver's license, other photo ID (student or job ID, military or government ID, store membership ID, U.S. passport) or current utility bill, bank statement, paycheck, government check or other government document, non-photo driver's license, rent receipt, sample ballot, or any other official document showing the voter's name and address. |

WVWV instead provided internet links to the applicable state websites; however, voters lacking internet access could not benefit from the information. With roughly half the states requiring voters to show some form of ID, the burdensome ID requirements and the lack of consistent and clear voter ID laws will continue to impact voter participation and election results.

## IV. PROVISIONAL BALLOTS

The Help America Vote Act of 2002 (HAVA) requires states to provide provisional ballots to voters who are not on the registration list or lack proper ID (among other reasons). State regulations vary widely, however, in terms of when a voter may submit a provisional ballot and how and when a state counts such votes. For instance, although HAVA requires provisional ballots, many states refuse to count provisional ballots unless they are cast in what the state considers the correct precinct.[105] In addition, some states even differ by county on processing provisional ballots.[106] Moreover, some of the disparities stem from informal administrative

practices, where custom and discretion are the cause of differences, rather than statutes or ordinances. HAVA simply has not led to uniformity among the states (or even counties within some states). See the patchwork of state laws governing provisional ballots on the Pew Center's October 2008 map below:




- 31 states and the District of Columbia require provisional ballots to be cast in the correct precinct to be eligible for counting.
- 14 states count provisional ballots cast in the correct jurisdiction - i.e. municipality, county, state.
- 3 states are exempt from HAVA's provisional ballot requirement because they allow Election Day Registration.
- 1 state is exempt from HAVA's provisional ballot requirement because it does not have voter registration
- 1 state with election-day registration allows voters to cast challenge ballots.

**Source: The Pew Center on the States, Election Preview 2008, What if We Had an Election and Everyone Came?, Oct. 2008, http://www.pewcenteronthestates.org/uploadedFiles/Election%20Preview% 20FINAL.pdf.

Moreover, because of unclear and complicated rules in states and counties regarding who receives a provisional ballot, some voters who should get provisional ballots are turned away from the polls and others who qualify for a regular ballot are given provisional ballots.[107] Additionally, in some states certain administrative procedures governing provisional ballots are left to the discretion of local election officials.[108] In 2004, provisional ballot problems were among the top five complaints received by the Election Protection Coalition's hotline.[109] Reported problems included poll workers confused about provisional ballot rules and procedures, a lack of provisional ballots at the voting site, and poll workers refusing to allow voters to cast

provisional ballots or not offering it as an option.[110] The confusion in administering provisional ballots was apparent once again in 2008. For example, at a precinct in Georgia, voters who did not have a government ID were not given provisional ballots.[111] In Franklin County, Ohio, if a voter had an old address on their valid driver's license they were mistakenly forced to cast a provisional ballot.[112] Additionally, even though provisional ballots cast in the wrong precinct are not counted in Ohio, poll workers were giving provisional ballots to those in the wrong precinct rather than directing them to their correct precinct.[113] With 800,000 provisional ballots cast in just 14 states alone in the 2008 general election, reform in this area would have a significant impact in future elections.[114]

WVWV suggests that all states allow voters to cast a provisional ballot at *any* precinct within a county or municipality and then count all properly cast ballots throughout the state. Such a reform would encourage voter participation and provide a true and accurate voting record for each county and state. Election reform efforts should also push for a uniform standard governing which provisional ballots are counted. In 2004 for instance, one third of all provisional ballots (as many as one million votes!) were discarded at the discretion of state and local election officials.[115] In addition, clear and consistent rules should govern the administration of provisional ballots so local and county poll workers are able to correctly implement the proper procedures. If states provided SDR and improved the maintenance and accuracy of voter lists, many issues related to provisional ballots will become moot; however, until that time, election reform efforts must address issues surrounding provisional ballots.

## V. VOTER LISTS

State regulations significantly differ in terms of who updates voter lists, how the state maintains its lists, how expansively or narrowly state or local election officials read the laws and allow for name variations, and how and when officials purge voter lists. Additionally, many states do not implement NVRA's rules that a voter cannot be systematically purged from the polls within 90 days of an election and a voter must be notified when purged.[116] These variations cut both ways in negatively affecting the registration and voting process. On one hand, improper purges disrupt the registration and voting process because they cause confusion for voters who believe they are registered (and later find out they are not registered) and for registration groups attempting to enfranchise voters by contacting unregistered voters to provide registration information. In some states, voter registration databases match names on voter rolls against other government databases containing ineligible voters and purge those voters even though the matching process is often inaccurate.[117]

For example, in 2000, Florida incorrectly purged thousands of voters from their rolls because their names shared 80% of the characters of the names of convicted felons.[118] This type of name matching system particularly impacts communities of color.[119] In 2006 and 2007, Florida again purged thousands of voters when its restrictive "match" rules caused the rejection of 15,000 new registrants – almost 75% of whom were Latino and African American voters.[120] In 2007, Louisiana undertook a purge program that attempted to "match" voters by comparing their names and dates of birth with lists in other states and purging those that were registered in a state other than Louisiana.[121] Approximately 12,000 voters were purged using this system, a significant number of which were African Americans and those displaced by Hurricanes Katrina and Rita.[122] Numerous studies have proven that matching programs such as these are

"unreliable" and "error-prone."[123] This account from Nevada further illustrates the problem of improper purges:

> On February 5th, the day of the Super Tuesday caucus, a school-bus driver named Paul Maez arrived at his local polling station to cast his ballot. To his surprise, Maez found that his name had vanished from the list of registered voters, thanks to a statewide effort to deter fraudulent voting. For Maez, the shock was especially acute: He is the supervisor of elections in Las Vegas.
>
> Maez was not alone in being denied his right to vote. On Super Tuesday, one in nine Democrats who tried to cast ballots in New Mexico found their names missing from the registration lists. The numbers were even higher in precincts like Las Vegas, where nearly 20 percent of the county's voters were absent from the rolls. With their status in limbo, the voters were forced to cast "provisional" ballots, which can be reviewed and discarded by election officials without explanation . . . . [Maez] says he was the victim of faulty list management by a private contractor hired by the state.[124]

On the other hand, when lists are not maintained or updated properly, the lists contain duplicates and other names that should have been purged (such as the names of deceased persons or pets), which can cause confusion and frustration for voters, registration groups, and state officials. This problem often results in registration groups sending registration forms, vote by mail applications, and other Get Out the Vote ("GOTV") messages to persons who should not receive this information. For instance, WVWV inadvertently sent GOTV material such as vote by mail applications to persons who appeared on the voter list, but were actually deceased. Consistency and uniformity on both ends of the spectrum should be a priority in the election reform movement.

## VI. HELPFUL RESOURCES REGARDING ELECTION LAWS AND REFORM

The confusing and inconsistent patchwork of state election laws discussed in this report pose an overwhelming obstacle to increased voter participation and necessitates election reform in this country. Through this report, WVWV aims to provide a comprehensive repository of information, which other groups and officials can use in their direct advocacy efforts. WVWV's advocacy arm will promote and support election reform efforts within its constituency; however, its key focus is providing this information to other groups and officials engaged in direct advocacy to aid them in demonstrating the significant problems posed by current laws.

Many groups also recognize the serious obstacles caused by the current registration and voting process in this country and are working to reform various aspects of the process. For more information on election laws and reforms, see the sources identified on the chart below.

| **Source** | **Website** |
|---|---|
| ABA NET | http://www.abanet.org/vote/2008/events/home.shtml |
| Brennan Center for Justice | http://www.brennancenter.org/content/section/category/voting_rights_elections/ |
| Common Cause | http://www.commoncause.org (Election Reform) |
| Demos | http://demos.org |
| Election Assistance Commission (EAC) | http://www.eac.gov/index_html1 |
| Fair Elections Legal Network | http://www.fairelectionsnetwork.com/ |
| Federal Voting Assistance Program | http://www.fvap.gov/for-voting-assistance-officers/vote-guide/index.html |
| Lawyers' Committee for Civil Rights Under Law | http://www.lawyerscommittee.org |
| Leadership Conference on Civil Rights | http://www.civilrights.org/issues/voting/2008-resources.html |
| League of Women Voters Education Fund | http://www.vote411.org/ |
| Long Distance Voter | http://www.longdistancevoter.org/ |
| National Association of Secretaries of State | http://www.canivote.org/ |
| National Conference of State Legislatures | http://www.ncsl.org |
| Nonprofit Voter Engagement Network | http://www.nonprofitvote.org |
| Pew Center on the States | http://www.pewcenteronthestates.org |
| Project Vote | http://projectvote.org |
| Rock the Vote | http://www.rockthevote.com/ |
| Vote Smart | http://www.votesmart.org/voter_registration_resources.php?state_id=CO&go2.x=0&go2.y=16 |

# APPENDIX A

| VOTER QUALIFICATION REQUIREMENTS | | | | | |
|---|---|---|---|---|---|
| State | Residency | Age | Criminal Status | Capacity | Other |
| **AL** | State resident | At least 18 | Not convicted of a felony unless rights restored | Not legally declared mentally incompetent by a court | -- |
| **AK** | Resident of state + election district for at least 30 days before Election Day | 18 at least 90 days before Election Day | -- | -- | Not registered to vote in another jurisdiction |
| **AZ** | State resident | 18 on or before general Election Day | Not convicted of a felony unless civil rights restored | Not adjudicated incompetent | -- |
| **AR** | State resident | 18 on or before Election Day | Not convicted of a felony unless sentence discharged or pardoned | Not presently adjudged mentally incompetent by court of competent jurisdiction | Not claiming the right to vote in another county or state |
| **CA** | State resident | 18 on or before Election Day | Not in prison or on parole for felony conviction | Not judged by a court as mentally incompetent to register and vote | -- |
| **CO** | State resident + at present address at least 30 days before the election | 18 on or before Election Day | -- | -- | -- |
| **CT** | State + town resident | 18 by Election Day | Not convicted of a felony unless voter has completed confinement and parole and had voting rights restored | -- | -- |
| **DE** | State resident (proof required) | 18 on or before general Election Day | No felony conviction for murder, sexual crimes, or crimes against the public. If sentence and fines satisfied at least 5 years prior to the application date, voter may be eligible. | Not mentally incompetent | -- |
| **DC** | State resident | 18 on or before Election Day | Not in jail for a felony conviction | Not adjudged mentally incompetent by a court of law | Not claiming the right to vote anywhere outside D.C. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX A

**VOTER QUALIFICATION REQUIREMENTS**

| State | Residency | Age | Criminal Status | Capacity | Other |
|---|---|---|---|---|---|
| **FL** | State resident | 18 on or before general Election Day | Not convicted of a felony unless civil rights restored | Not adjudicated mentally incapacitated with respect to voting (in FL or any other state) | -- |
| **GA** | Legal state resident + of the county in which the voter wishes to vote | 18 by Election Day | Not serving any sentence imposed by a felony conviction | Not judicially determined to be mentally incompetent | -- |
| **HI** | Legal state resident | At least 18 | Not an incarcerated felon | Not adjudicated mentally incompetent | -- |
| **ID** | State resident + of the county for 30 days prior to Election Day | 18 on or before Election Day | Not convicted of a felony unless civil rights restored | -- | -- |
| **IL** | Resident of the precinct at least 30 days prior to Election Day | 18 by Election Day | -- | -- | -- |
| **IN** | Resident of the precinct at least 30 days before the election in which the voter is voting | 18 on or before Election Day | Not currently in prison after committing a crime | -- | Registration application must be approved in order to vote |
| **IA** | State resident | 18 on Election Day<br>Note: If a voter is 17½, s/he may register to vote, but registration will not be effective until his/her 18th birthday | Not convicted of a felony unless voting rights restored | Not currently judged incompetent to vote by a court | Not voting in any other place |
| **KS** | State resident | At least 18 | -- | -- | -- |
| **KY** | State resident for no less than 28 days before the election | 18 on or before general Election Day | Not convicted of a felony unless civil rights restored | Not judged mentally incompetent in a court of law | Not claiming right to vote anywhere outside KY |
| **LA** | State resident | At least 17, and 18 prior to next election to vote | Not currently under an order of imprisonment for felony conviction | Not currently under a judgment of interdiction for mental incompetence | -- |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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**VOTER QUALIFICATION REQUIREMENTS**

| State | Residency | Age | Criminal Status | Capacity | Other |
|---|---|---|---|---|---|
| **ME** | Resident in the municipality where voter intends to register to vote | At least 18 | -- | -- | Registered to vote in voter's municipality[125] + enrolled in a party in that municipality to vote at that party's caucus, convention or primary election, (unless otherwise permitted by the party) |
| **MD** | State resident | 18 on or before general Election Day | Not convicted of a felony unless voter has completed serving a court ordered sentence of imprisonment, including parole or probation | Not under guardianship for mental disability | Not convicted of buying or selling votes |
| **MA** | State resident | 18 on or before Election Day | Not in prison or convicted of election fraud even if prison term is completed | Not under legal guardianship with respect to voting | -- |
| **MI** | State resident + at least a 30 day resident of voter's city or township by Election Day | 18 by Election Day | Not confined in a jail after being convicted and sentenced | -- | -- |
| **MN** | State resident for 20 days immediately preceding Election Day | 18 on or before Election Day | Not convicted of a felony unless voter's sentence has been completed or otherwise discharged | Not under court-ordered guardianship in which the court order revokes right to vote or not found by a court to be legally incompetent to vote | -- |
| **MS** | State resident + have lived in the voter's city or town for at least 30 days prior to Election Day | 18 on or before Election Day | Never convicted of murder, rape, bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy unless pardoned or had rights of citizenship restored | Not considered mentally incompetent | Registered to vote at least 30 days before Election Day |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX A

| VOTER QUALIFICATION REQUIREMENTS | | | | | |
|---|---|---|---|---|---|
| State | Residency | Age | Criminal Status | Capacity | Other |
| **MO** | State resident + registered to vote in the jurisdiction of the voter's domicile prior to the election | 18 by Election Day | Not confined under a sentence of imprisonment, on probation or parole after the conviction of a felony, or convicted of a felony or misdemeanor connected with voting or the right of suffrage | -- | -- |
| **MT** | State resident + of the county in which voter intends to vote for at least 30 days | 18 on or before Election Day | Not convicted of a felony and serving a sentence in a penal institution | Not judged in a court of law to be of unsound mind | -- |
| **NE** | State resident on or before registration deadline | 18 on or before Election Day | Not convicted of a felony unless civil rights have been restored at least 2 years since sentence was completed, including probation or parole | Not officially found to be mentally incompetent | -- |
| **NV** | State resident for 30 days preceding an election | At least 18 | Not convicted of a felony unless civil rights restored<br><br>* Note: Recent legislation has provided for automatic restoration of the right to vote for those who have been honorably discharged from prison, probation or parole, with certain exceptions related to the seriousness of the crime committed. | Not declared by a court to be mentally incompetent | -- |
| **NH** | -- | 18 on or before Election Day | -- | -- | -- |
| **NJ** | County resident for 30 days before the election | 18 by Election Day | -- | -- | -- |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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**VOTER QUALIFICATION REQUIREMENTS**

| State | Residency | Age | Criminal Status | Capacity | Other |
|---|---|---|---|---|---|
| **NM** | State resident | 18 by Election Day | Not convicted of a felony unless voter has completed all terms and conditions of sentencing | Not legally declared mentally incapacitated | -- |
| **NY** | Resident of present address for at least 30 days before the election | 18 by general Election Day | Not in jail or on parole for a felony conviction | -- | Not claiming the right to vote elsewhere |
| **NC** | A resident of North Carolina and county for 30 days before the election | 18 by general Election Day | Not convicted of a felony unless rights of citizenship restored | -- | Not registered or voting in any other county or state |
| **ND** | Legal state resident + a resident in the precinct for 30 days preceding the election | 18 on or before Election Day | -- | -- | -- |
| **OH** | Resident of Ohio for at least 30 days immediately before the election | 18 on or before general Election Day | Not incarcerated in prison for a federal or state felony conviction | Not declared incompetent for voting purposes by a probate court | -- |
| **OK** | State resident | At least 18 | Not convicted of a felony unless a period of time equal to the original judgment and sentence has expired | Not adjudged to be an incapacitated person prohibited from voting | -- |
| **OR** | State resident | 18 by Election Day | -- | -- | -- |
| **PA** | State resident + election district resident in which voter registers and votes for at least 30 days before the general election | 18 on or before general Election Day | -- | -- | U.S. citizen for at least 1 month before general election |
| **RI** | Resident of a RI city or town where voter wishes to vote | 18 on or before Election Day | Not convicted of a felony unless voter has completed prison sentence and had rights restored | Not legally declared mentally incapable by a court | -- |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

## APPENDIX A

| VOTER QUALIFICATION REQUIREMENTS | | | | | |
|---|---|---|---|---|---|
| State | Residency | Age | Criminal Status | Capacity | Other |
| SC | State resident | 18 on or before Election Day | Not confined in any public prison resulting from a criminal conviction; not convicted of a felony or offense against the election laws or if previously convicted, have served the entire sentence, including probation or parole, or have received a pardon for the conviction | Not under a court order declaring voter mentally incompetent | -- |
| SD | State resident | 18 on or before Election Day | Not currently serving a sentence for a felony conviction that included imprisonment, served or suspended, in an adult penitentiary system | Not judged mentally incompetent by a court of law | -- |
| TN | State resident | 18 on or before Election Day | -- | -- | Not disqualified under the law |
| TX | Resident of the county in which voter intends to vote | At least 18 (voter may register at 17 years and 10 months) | Not convicted of a felony unless sentence completed, including any probation or parole | Not declared mentally incompetent by a court of law | -- |
| UT | State resident for at least 30 days before Election Day | 18 on or before Election Day | -- | -- | -- |
| VT | State resident | 18 on or before Election Day | -- | -- | Must take the Voter's Oath (formerly called the Freeman's Oath) |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER QUALIFICATION REQUIREMENTS | | | | | |
|---|---|---|---|---|---|
| State | Residency | Age | Criminal Status | Capacity | Other |
| VA | Resident of Virginia (A person who has come to Virginia for temporary purposes and intends to return to another state is not considered a resident for voting purposes.) | 18 (any person who is 17 and will be 18 at the next general election may register in advance and also vote in any intervening primary or special election) | Not a convicted felon unless right to vote restored | Not currently declared mentally incompetent by a court of law | Not claiming the right to vote in any other state |
| WA | State resident + resident in the state, county, and precinct 30 days immediately preceding the election | 18 on or before Election Day | Not disqualified by a felony conviction | Not disqualified by mental incompetence | -- |
| WV | State resident + county where voter registers | 18 on or before Election Day | Not currently under conviction for a felony, including probation or parole | Not currently under a court ruling of mental incompetence | -- |
| WI | State resident at least 10 days before the election | 18 on or before Election Day | Not required to report to a probation or parole officer because of a felony conviction | Not ruled incapable of voting by a judge | Have not already voted in the election; Have not made or become interested, directly or indirectly, in any bet or wager depending upon the election result |
| WY | State resident + precinct in which voter registers | 18 on or before Election Day | Not convicted of a felony | Not adjudicated mentally incompetent | Must withdraw from voter registration from any other jurisdiction if applicable |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX B

| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **AL** | Identification is not required when registering to vote in Alabama. |
| **AK** | If you register by mail, you are required to include information that will verify your identity. If you have not previously registered to vote in Alaska and you are submitting your registration application by mail, you must provide a copy of one of the following:<br>➢ Driver's license<br>➢ State ID card<br>➢ Birth certificate<br>➢ Passport<br><br>In addition, you must provide your birth date and at least the last 4 digits of your Social Security number. |
| **AZ** | If this is your first time registering to vote in Arizona or you have moved to another county in Arizona, your voter registration form must also include proof of citizenship or the form will be rejected. The following will serve as proof of citizenship and no additional documents are needed:<br>➢ An Arizona driver license or non-operating identification number issued after October 1, 1996: write the number in box 13 of the Arizona Voter Registration form<br>➢ A Tribal Identification number (Bureau of Indian Affairs Card Number, Tribal Treaty Card Number, or Tribal Enrollment Number): write the number in box 16 of the Arizona Voter Registration form<br>➢ The number from your certificate of naturalization: write the number in box 20 of the Arizona Voter Registration form<br><br>If you do not have one of the above, you must attach proof of citizenship to the form. Only one acceptable form of proof is needed to register to vote. The following is a list of acceptable documents to establish your citizenship:<br>➢ A legible photocopy of a birth certificate that verifies citizenship and supporting legal documentation (i.e. marriage certificate) if the name on the birth certificate is not the same as your current legal name<br>➢ A legible photocopy of pertinent pages of a U.S. passport identifying the applicant<br>➢ Presentation to the County Recorder of U.S. naturalization documents<br>➢ A legible photocopy of a driver license or non-operating identification from another state within the U.S. if the license indicates that the applicant has provided satisfactory proof of citizenship<br>➢ A legible photocopy of a Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth.<br><br>If you are registered in Arizona and use the registration form because you move within a county, change your name, or change your political party affiliation, you do not need to provide photocopies of proof of citizenship. You only need to provide proof of citizenship if you are a new resident in an Arizona county. |
| **AR** | If you are registering to vote by mail, you must provide either your driver's license number or the last four digits of your Social Security number on your Arkansas voter registration application. If you do not have any of these items, you may be required to vote on a provisional ballot when you vote for the first time unless you submit a photocopy of one of the following with your mail-in application or at the time of voting:<br>➢ A current and valid photo ID<br>➢ A copy of a current utility bill, bank statement, government check or paycheck that shows your name and address<br>➢ Another government document that shows your name and address |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **CA** | If you are registering to vote in California you will have to provide your California drivers' license number or identification card number or the last four digits of your Social Security Number. If you do not include this information you will be required to provide identification when you vote.<br><br>If you register to vote by mail and submit a driver's license number that the state or local election official can match with an existing state identification record, then you will not be required to provide identification when you vote. |
| **CO** | Your completed voter registration form must contain your Colorado driver's license number or your Department of Revenue ID number. If you do not have a driver's license or Department of Revenue ID number, then you must provide the last four digits of your Social Security number. If you do not have any of these forms of ID, please check the appropriate boxes on the registration application form. A unique identifying number will then be assigned to you by the state and you will still be registered to vote. However, if the identification section is left blank and you do not check the box(es) indicating you do not have identification, you will not be registered to vote.<br><br>You may also be required to include a copy of one of the following documents when registering by mail, please contact your county clerk and recorder or contact the League of Women Voters of Colorado for more information. Any form of identification that contains an address must have a Colorado address to be valid.<br>➢ A valid U.S. passport<br>➢ A valid Colorado drivers' license<br>➢ A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the U.S. government or Colorado, or by any Colorado county, municipality, board, authority, or other political subdivision of this state<br>➢ A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the U.S.<br>➢ A U.S. military identification card with photograph of the elector<br>➢ A copy of a current utility bill, bank statement, government check, paycheck, or other government document that show the name and address of the elector. A cable bill, a telephone bill, documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and residence address of the student elector, or a paycheck from a government institution are also sufficient forms of identification<br>➢ A valid Medicare or Medicaid card<br>➢ A certified copy of a U.S. birth certificate<br>➢ Certified documentation of naturalization<br>➢ A valid identification card issued by Department of Revenue in accordance with the requirements of part 3 of article 2 of title 4 CRS.<br>➢ Certified documentation of naturalization |
| **CT** | You are required to show identification when registering to vote in person. Acceptable identification includes anything with a name and address: a Connecticut driver's license, a utility bill, or even a checkbook. If you register by mail, you must provide your Connecticut driver's license or the last four digits of your Social Security number on the voter registration form, which will be confirmed by the state's centralized voter registration system. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX B

| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **DE** | Identification is not necessary to register to vote if you use the National Voter Registration Form. However, when registering with the Department of Elections or at an alternate approved location, current identification is required. The identification must include current and valid photo ID that shows full name and address, examples include:<br>➢ Current utility bill<br>➢ Bank statement<br>➢ Government check<br>➢ Paycheck<br>➢ Other government document that shows full name and address |
| **DC** | Identification is not required during registration but must be provided the first time you go to the polls. |
| **FL** | You must provide your current and valid Florida driver's license number, an ID number, or the last 4 digits of your Social Security number to register. If you have none of these numbers, you must write "NONE" on the voter registration form. |
| **GA** | If you are a first time voter, you are required to provide your Social Security number and one of the following acceptable items of identification when you register:<br>➢ A valid Georgia driver's license<br>➢ A valid ID card issued by a branch, department, agency, or any other entity of Georgia, any other state, or the U.S. authorized by law to issue personal ID<br>➢ A valid U.S. passport<br>➢ A valid federal employee ID card containing your photograph and issued by any branch, department, agency, or entity of the U.S. government, Georgia, or any county, municipality, board, authority, or other entity of Georgia<br>➢ A valid employee ID card containing your photograph and issued by any employer in the ordinary course of such employer's business<br>➢ A valid student ID card containing your photograph from any public or private college, university, or postgraduate technical or professional school located within Georgia<br>➢ A valid Georgia license to carry a pistol or revolver<br>➢ A valid pilot's license issued by the FAA or other authorized agency of the U.S.<br>➢ A valid U.S. military ID card<br>➢ A certified copy of your birth certificate<br>➢ A valid Social Security card<br>➢ A certified naturalization document<br>➢ A certified copy of court records showing adoption, name, or sex change<br>➢ A current utility bill, or a legible copy thereof, showing your name and address<br>➢ A bank statement, or a legible copy thereof, showing your name and address<br>➢ A government check or paycheck, or a legible copy thereof, showing your name and address<br>➢ A government document, or a legible copy thereof, showing your name and address<br><br>You can register by mailing a copy of your identification with your voter registration application; providing a copy of your identification to the registrar during the absentee voting process; or by showing one of the pieces of acceptable identification when voting at your polling place. |
| **HI** | It is not necessary to show any form of ID when registering to vote. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **ID** | If you are a first time voter in Idaho, you must either submit a copy of one of the following items with your registration form or show it at the polls prior to voting:<br>➢ A current and valid photo ID<br>➢ A current utility bill<br>➢ Bank statement<br>➢ Government check<br>➢ Paycheck<br>➢ Government document that shows your name and address |
| **IL** | Two forms of identification are required when registering to vote, one that shows your current residential address. If you register by mail, you must vote in person the first time you vote. |
| **IN** | You are not required to show identification when registering to vote. However, if you are a first time voter who registered by mail, you may be required to provide additional documentation that matches the address on your voter registration record. Those meet the following qualifications will need to provide additional documentation:<br>• You registered to vote in the *county* between January 1, 2003 and January 1, 2006<br>**or**<br>• You registered to vote in the *state* after January 1, 2006<br><br>However, this does not apply if you submitted an application at a license branch or other voter registration agency. If you are a military or overseas voter, or presented this documentation to the county voter registration office with your registration application, you are also exempt from the additional documentation requirement. You should be notified of this requirement when the county receives your registration application or absentee ballot application.<br><br>You may present any of the following types of documents to meet the requirement:<br>➢ Indiana driver's license<br>➢ Indiana state identification card, with your current name and address<br><br>NOTE: An Indiana driver's license or Indiana state identification card may meet both the photo ID requirement and the valid and current address requirement.<br><br>To fulfill the photo ID requirement the document does not need to contain an address that matches the address on the poll list, but must meet the other requirements. However, to meet the additional document requirement, you only need to present a document that contains a matching name and current address to the poll list. Other documents that meet the additional documentation requirement:<br>➢ Any other current and valid photo ID that contains your current name and address<br>➢ A current utility bill with your current name and address<br>➢ A bank statement with your current name and address<br>➢ A government check with your current name and address<br>➢ A paycheck with your current name and address<br>➢ Other government documents that show your current name and address |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **IA** | To register to vote in Iowa, you must provide an Iowa driver's license number if you have one. If not, put the number of your Iowa non-driver ID card. If you have neither of these, put the last four numbers of your Social Security number. Your name, birth date and ID number will be checked. If they don't match, your registration will be rejected and you will be notified by mail. |
| **KS** | You do not need to provide photo ID during registration, but you must provide some form of identification with your name and address either during registration or at the polls. Examples include:<br>➢ Utility bill<br>➢ Paycheck<br>➢ Kansas driver's license or non-driver's license issued by the DMV<br>➢ Bank statement<br>➢ Government check or other government document |
| **KY** | ID is not required when registering to vote. |
| **LA** | If you register to vote in person at a parish registrar of voters' office, you are required to prove age, residency, and identity. You may submit your current Louisiana driver's license, birth certificate, or other documentation which reasonably and sufficiently establishes your identity, age, and residency. |
| **ME** | When filling out your voter registration card, you must provide either your Maine driver's license number or the last four digits of your Social Security number. If you are a new voter in Maine, you must send a copy of either your Maine driver's license or a utility bill or a government document that states your name and address with your voter registration form. If you are registering less than 21 days before an election, you must register in person at your town office or city hall, through any motor vehicle branch office, in most state & federal social service agencies, or at voter registration drives. You will need to provide proof of identity and residency. |
| **MD** | When registering to vote, you will need to provide either your current, valid Maryland driver's license or MVA ID card number or the last four digits of your Social Security number on your voter registration form. If you do not have any of these numbers, you will be asked to provide one of the following:<br>➢ A copy of a current and valid photo ID (i.e., Maryland driver's license, MVA-issued ID card, student, employee or military ID card, U.S. passport, or any other state or federal government issued ID card.)<br>➢ A copy of a current utility bill, bank statement, government check, paycheck or other government document that shows your name and address. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **MA** | You must attach identification to your voter registration form if you are registering to vote for the first time in Massachusetts. If you registered to vote by mail on or after January 1, 2003, you will be required to show identification when you vote for the first time in a federal election. However, you can also send in a copy of your identification with your voter registration form. Acceptable identification must include your name and the address at which you are registered to vote. Examples include:<br>➢ A current and valid driver's license<br>➢ Photo identification<br>➢ A current utility bill<br>➢ A bank statement<br>➢ A paycheck<br>➢ A government check<br>➢ Other government document showing your name and address<br><br>If you send in a copy of your identification with your mail-in voter registration form, it may not be returned to you. If you do not provide such identification, the Help America Vote Act of 2002 requires that you may only cast a provisional ballot which will be counted later, but only after your eligibility to vote has been determined. If you provide your driver's license number or the last four digits of your Social Security number on the voter registration form and those numbers are verified, you will not have to provide identification when you register to vote or at the polls. If you do not provide those numbers or if they cannot be verified (you will notified by your town or city clerk if that happens), then you have to provide identification either at town or city hall prior to the election or at the polls when you vote. Acceptable identification is a copy of any of the following:<br>➢ Current and valid photo identification<br>➢ Government check or official document showing name and address<br>➢ Current utility bill showing name and address<br>➢ Paycheck or stub showing name and address |
| **MI** | It is recommended that you show identification when you register to vote. However, if you register by mail and do not provide identification you must bring ID to the polls when you vote for the first time.<br><br>If you are registering for the first time and submitting your registration by mail, you should accurately enter your state issued driver's license number or personal ID card number on the mail-in registration form. If you have neither of these, please provide either a copy of a current and valid photo ID or a copy of a paycheck stub, utility bill, bank statement or government document that states your name and address. The residential address you use for voter registration must be the same as the address on your driver's license. Submitting a change for a driver's license address will be applied to your voter registration and vice versa. Note: If you have never voted in Michigan and register by mail, you must appear in person to vote in the first election in which you wish to participate. This requirement does not apply if you: personally hand deliver the mail registration form to your local clerk's office instead of mailing the form; if you are 60 years of age or more; if you are disabled; or you are eligible to vote under the uniformed and overseas citizens absentee voting act. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **MN** | To register to vote you need to provide your Minnesota driver's license number or Minnesota ID number. If you do not have a Minnesota driver's license or Minnesota ID, you will need to provide the last 4 digits of your Social Security number. If you have none of these, write "NONE" in box #10b of your voter registration application. This is required by law. To register at the polling place on Election Day, you must have authorized proof of residence. This includes:<br>➢ A valid Minnesota driver's license, learner's permit or receipt of either with your current address located in the polling place precinct<br>➢ A valid Minnesota ID or receipt with current address located in the polling place precinct<br>➢ A witness or voucher by another voter of the same precinct. A voter may vouch for a limit of 15 voters. This includes an oath of a pre-registered voter in the same precinct or of a voter who registers in the same precinct on Election Day with an authorized identification document. A voter who is vouched for cannot vouch for another voter.<br>➢ Registration in the same precinct indicating a previous address<br>➢ If you are a student, you can show your address in the precinct by using an ID<br>➢ Tribal ID issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, U.S. Department of the Interior containing your name, address in the precinct, signature and picture<br><br>You can also register using a combination of one approved photo ID and one approved utility bill. Photo ID examples include:<br>➢ Minnesota driver's license with current name (licenses from out-of-state are not acceptable.)<br>➢ Minnesota state ID. (An ID from another state is not acceptable.)<br>➢ U.S. Military ID<br>➢ U.S. passport<br>➢ Minnesota Tribal ID<br>➢ Utility bill examples include: electric bill, gas bill, water bill, sewer bill, solid waste bill, cable television bill, telephone bill. Please note that the utility bill must have your name, current address, and be due within 30 days of the election. You must re-register if your name or address changes or you have not voted in four years. |
| **MS** | You will need to provide your driver's license number or the last 4 digits of your Social Security number on your voter registration form. If you do not have a driver's license number or Social Security number and you are registering by mail for the first time, you must include one of the following with your application:<br>➢ A copy of current valid photo identification<br>➢ A copy of a current utility bill, bank statement, government check, paycheck, or other government document showing your name and address<br><br>Once you are registered, you generally remain registered indefinitely, unless you move or no longer meet one of the qualifications to vote. |
| **MO** | You do not need to provide identification to register. However, you will be required to show ID at the polls or provide ID with your absentee ballot. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX B

| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **MT** | When filling out the registration form, you must provide either a driver's license number, or the last four digits of your Social Security number. If you have neither a driver's license or Social Security number, provide (in-person) or enclose (by mail) a copy of one of the following:<br>➢ Any photo ID with your name<br>➢ A current utility bill<br>➢ Bank statement<br>➢ Paycheck<br>➢ Government check<br>➢ Other government document that shows your name and current address |
| **NE** | You do not need to show identification when you register to vote. |
| **NV** | If you do not show an ID when you register, you will be required to show ID at the polls. ID must show proof of residence, proof of identity, and a picture is required. Examples of recommended identification include a driver's license or any government issued ID. If the current photo identification does not include the voter's current address, a copy of a current utility bill, bank statement, government check, or other government document that shows voter's name and current residence address is required. |
| **NH** | When registering to vote, you are required to provide proof of identity, age, citizenship, and domicile. To prove age, any reasonable documentation indicating you are 18 years of age or older is acceptable. If you do not have sufficient proof of identity, citizenship and domicile, you may sign an affidavit. |
| **NJ** | If you registered to vote by mail in your county after January 1, 2003 and have never voted in a federal election in the county, you are required to provide your county commissioner of registration with identification. If you registered by mail before January 1, 2003, you are not required to show identification to register. If you did not provide identification to the county commissioner of registration or if the identification information could not be verified (i.e., your driver's license number or the last four digits of your social security number), you must show identification at the polling place when you go to vote. Acceptable Identification includes:<br>➢ Any current and valid photo ID<br>➢ Driver's license<br>➢ Student or job ID<br>➢ Military or other government ID<br>➢ Store membership ID<br>➢ U.S. passport<br>➢ Bank statement<br>➢ Car registration<br>➢ Government check or document<br>➢ Non-photo driver's license<br>➢ Rent receipt<br>➢ Sample ballot<br>➢ Utility bill<br>➢ Any other official document |
| **NM** | If the voter registration application is submitted by mail and it is the first time you have registered in your county or in the state of New Mexico, you must submit a copy of a current valid photo ID or a copy of a current utility bill, bank statement, paycheck or other government document that shows your name and address. Submitting this identification information will allow you to avoid showing personal identification at your polling place on Election Day. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

# APPENDIX B

| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **NY** | To register to vote you must have either a verifiable New York State driver's license number or the last four digits of your Social Security number. If you do not have either of these, and you are registering for the first time by mail, you may provide a copy of one of the following:<br>➢ A valid photo ID<br>➢ A current utility bill<br>➢ A bank statement<br>➢ A government check<br>➢ Some other government documentation that shows your name and address<br><br>If you do not provide identification with this form, you will be asked for it the first time you vote. Forms of "current and valid photo identification" include but are not limited to:<br>➢ Passport<br>➢ Government ID card<br>➢ Military ID card<br>➢ Student ID card<br>➢ Public housing ID card<br>➢ Any ID specified by HAVA and New York State law as acceptable<br>➢ Utility bill<br>➢ Bank statement<br>➢ Paycheck<br>➢ Government check (Social Security, tax refund, military paycheck or paycheck stub)<br>➢ Other government documents with your name and address including but not limited to: voter registration card, hunting, fishing, or trapping license or firearm permit. |
| **NC** | Identification is required to register to vote in the form of a driver's license number, or the last four digits of a Social Security number. If the voter does not have either of these, alternate accepted forms of identification include:<br>➢ Current and valid photo ID<br>➢ Current utility bill<br>➢ Bank statement<br>➢ Paycheck<br>➢ Government check<br>➢ Another document that shows the voter's name and address |
| **ND** | No registration is necessary. |
| **OH** | When registering to vote, you are required to provide an Ohio driver's license, state ID, or Social Security number, if you have one. |
| **OK** | When you register to vote you will need to provide your identification with your application. You can provide a copy of a current driver's license or the last four digits of your social security number. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **OR** | You must provide acceptable ID information to register to vote. If you have a current, valid Oregon driver's license or ID, you must provide that number on your voter registration form. If you do not have either of these items, you must provide the last four digits of your Social Security number on your voter registration form. If you do not have any of these items, you must affirm this on the voter registration form and provide a copy of one of the following with your voter registration form:<br>➢ Valid photo identification<br>➢ A paycheck stub<br>➢ A utility bill<br>➢ A bank statement<br>➢ A government document<br>➢ Proof of eligibility under the uniformed and overseas citizens absentee voting act (UOCAVA) or the voting accessibility for the elderly and handicapped act (VAEH) |
| **PA** | If you have a Pennsylvania driver's license, you must provide your driver's license number on your registration form. If you do not have a Pennsylvania license you must supple the last 4 digits of your social security number. If you do not have a Social Security Number, write "none" in the space provided for this number. |
| **RI** | If you are a first time voter in Rhode Island, you must provide your valid Rhode Island driver's license number or valid Rhode Island ID number issued by the Rhode Island division of motor vehicles. If you do not have a valid Rhode Island driver's license or Rhode Island ID number, you must provide the last four digits of your Social Security number. If you do not have a driver's license, Rhode Island ID or Social Security number; if these numbers cannot be verified; or if you fail to complete this item on the registration form, you will be required to present one of the forms of identification listed below at the time of registration prior to voting or at the time of voting:<br>➢ Current utility bill<br>➢ Current bank statement<br>➢ Current government check<br>➢ Current paycheck<br>➢ Another current government document<br><br>If you are a first-time applicant for voter registration in Rhode Island and mail your registration form you must submit with your registration either:<br>➢ A copy of a current and valid photo identification<br>➢ A copy of a current utility bill, bank statement, government check, paycheck, or government document that shows your name and address.<br><br>If you fail to include a copy of either of these requisite identification documents with your registration, you will be required to do so prior to voting. |
| **SC** | If you are registering for the first time by mail, you must attach a copy of a current valid photo ID or a copy of a current utility bill, bank statement, paycheck, or other government document that shows your name and address in the county where you wish to vote. If you do not provide this identification information by mail, you will be required to provide it when you vote. |
| **SD** | You are required to show your South Dakota driver's license or provide the last 4 digits of your Social Security number when registering to vote. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **TN** | If you registered to vote by mail and are voting for the first time since registering, you must present an acceptable form of ID. Your social security number is required on the form to avoid duplication of registration. If you registered to vote by mail and are voting for the first time since registering, you must present an acceptable form of ID. Both photo and non-photo IDs are accepted. Examples of acceptable photo ID (all must contain photograph and signature):<br>➢ Tennessee driver's license<br>➢ U.S. passport<br>➢ Student ID Card<br>➢ Military ID Card<br>➢ Valid commercial pilot's license<br><br>Examples of acceptable non-photo ID (all must contain name, address, and signature):<br>➢ Tennessee voter registration card<br>➢ Valid ID card issued by any Tennessee agency or an agency of the U.S.<br>➢ Valid pilot's license issued by the FAA or any other authorized agency in the U.S.<br>➢ Valid Tennessee hunting or fishing license<br>➢ Valid Tennessee license to carry a handgun |
| **TX** | You do not need to show ID to register, but you must provide your Texas driver's license number, or personal ID card number issued by the Department of Public Safety on your registration application. If you have neither, you must give the last four digits of your Social Security number or a statement that you have not been issued one. If you register by mail and do not provide the above information and are a first time voter, you must show an acceptable form of identification in addition to your voter registration certificate when you vote. |
| **UT** | A driver's license or state ID number is required to register to vote. If you do not have either of these identification documents, please fill in the last 4 digits of your Social Security number. If you do not have either format write none in the space provided. |
| **VT** | You must include your Vermont driver's license number on the voter registration form. If you do not have a Vermont driver's license number or if your license is suspended, include the last 4 digits of your Social Security number. |
| **VA** | When submitting your voter registration by mail for the first time, you must provide your Social Security number on the application and a copy of following with your application:<br>➢ A valid photo identification<br>➢ A copy of a utility bill, bank statement, government check, paycheck, or other government document that shows your name and address<br>➢ Another government document that shows your name and address (for example a voter card)<br><br>If no ID is sent, you must produce ID the first time you vote and it must be in person (not a mailed-in absentee ballot). |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **WA** | ID is necessary to register. If you register by mail and do not have a Washington state driver's license, Washington state ID card, or a Social Security number, you will be required to provide one of the following items when you cast your ballot:<br>➢ Valid photo ID<br>➢ Valid tribal ID of a federally recognized Indian tribe in Washington state<br>➢ Copy of a current utility bill<br>➢ Current bank statement<br>➢ Copy of a current government check<br>➢ Copy of a current paycheck<br>➢ A government document that shows both your name and address<br><br>If you do not provide one of the above items either before or at the time of voting, your ballot will be treated as a provisional ballot. |
| **WV** | If you register in person, you must bring proof of physical address. Examples include a driver's license, utility bill, bank statement, paycheck, or other government document.) If you are registering by mail, fill out the application and remember to submit a copy of a current and valid ID or bring proof of identification with you to the polls. First time West Virginia voters who have registered by mail and did not provide verification with application must show identification at the polls. |
| **WI** | To register to vote, you are required to supply your Wisconsin Department of Transportation issued driver's license or ID card number. If you have not been issued a Wisconsin driver's license or ID, you must provide the last 4 digits of your Social Security number or your Wisconsin state ID card number. Alternately, you may indicate that you have not been issued a Wisconsin driver's license, ID, or Social Security number. Your registration cannot be processed until you provide this information.<br><br>If you are a first time voter, you must provide a copy of acceptable ID documentation when submitting your registration application by mail. You may not use a residential lease as proof of residence. If a copy of proof of residence is not included, you will be required to supply it before being issued a ballot at the polling place or before being issued an absentee ballot at the municipal clerk's office.<br>The following constitute acceptable proof of residence (must contain your current and complete name, including both the given and family name and a current and complete residential address, including a numbered street address, if any, and the name of a municipality):<br>➢ A current and valid Wisconsin driver's license<br>➢ A current and valid Wisconsin ID card<br>➢ Any other official identification card or license issued by a Wisconsin governmental body or unit<br>➢ Any ID card issued by an employer in the normal course of business and bearing a photo of the card holder, but not including a business card<br>➢ A real estate tax bill or receipt for the current year or the year preceding the date of the election<br>➢ A residential lease which is effective for a period that includes Election Day (this will not be sufficient for first time voters registering by mail)<br>➢ A university, college or technical institute fee card (must include photo)<br>➢ A university, college or technical institute identification card (must include photo)<br>➢ A utility bill (gas, electric or telephone service) for the period commencing no earlier than 90 days before Election Day<br>➢ Bank statement<br>➢ Paycheck<br>➢ A check or other document issued by a unit of government |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER REGISTRATION ID REQUIREMENTS | |
|---|---|
| **State** | **Identification** |
| **WY** | When registering to vote (by mail or in person,) you may provide the following forms of acceptable identification:<br>➢ Wyoming driver's license<br>➢ A different state's driver's license<br>➢ An ID card issued by a local, state or federal agency<br>➢ A U.S. passport<br>➢ School ID<br>➢ Military ID<br><br>You can also show two of the following in any combination:<br>➢ Certification of U.S. citizenship<br>➢ Certificate of naturalization<br>➢ Draft record<br>➢ Voter registration card from another state or county<br>➢ Original or certified copy of a birth certificate bearing an official seal<br>➢ Certification of birth abroad issued by the department of state<br>➢ Any other form of identification issued by an official agency<br><br>Wyoming is exempt from the federal motor voter law and does not offer voter registration at the driver's license division. However, you may register at the polls on Election Day with acceptable ID. |

***Source***: *League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **AL** | Several forms of ID are acceptable at the polls, including: government-issued photo identifications authorized by law (current and valid, including any branch, department agency, or entity of the federal government); employee ID with photo of employee produced by the employer; utility bill of voter with your name and address; bank statement with your name and address; government check with your name and address; paycheck with your name and address; valid ID card (authorized by law) issued by the State of Alabama (including any branch, department, agency, or entity of the State of Alabama, including colleges, universities, and technical or professional schools); valid ID card (authorized by law) issued by any of the other 49 states (including any branch, department, agency, or entity of that State); valid U.S. passport; valid Alabama hunting license; valid Alabama fishing license; valid Alabama pistol/revolver permit; valid pilot's license issued by the FAA or other authorized agency of the federal government; valid U.S. military ID; birth certificate (certified copy); valid Social Security card; naturalization document (certified copy); court record of adoption (certified copy); court record of name change (certified copy); valid Medicaid card; and valid electronic benefits transfer (EBT) card. |
| **AK** | You will need to show your signed voter ID card, or any other signed ID that will allow the election worker to verify your signature. Examples include your driver's license, military ID, Indian ID, fish and game license, state ID card, passport, or senior citizen ID card. A picture ID is not necessary. |
| **AZ** | You will be required to show proof of identity at the polling place before receiving a ballot. You will announce your name and place of residence to the election official and present one form of ID that bears your name, address, and photograph or two different forms of ID that bear your name and address. ID is "valid" unless it can be determined on its face that it has expired.<br><br>Acceptable forms of ID with photograph, name, and address include: valid Arizona driver's license; valid Arizona non-operating ID license; tribal enrollment card or other form of tribal ID; or valid U.S. federal, state, or local government issued ID.<br><br>Acceptable forms of ID without a photograph that bear your name and address (two required): utility bill that is dated within 90 days of the date of the election and for electric, gas, water, solid waste, sewer, telephone, cellular phone, or cable television; bank or credit union statement that is dated within 90 days of the date of the election; valid Arizona Vehicle Registration; Indian census card; property tax statement of your residence; tribal enrollment card or other form of tribal ID; recorder's certificate; or valid U.S. federal, state, or local government issued ID, including a voter registration card issued by the county recorder. |
| **AR** | At the polls, you will be asked to identify yourself to verify your name on the precinct voter registration list. You will also be asked, in the presence of the election official, to state your address and state or confirm your date of birth. It will then be determined that your date of birth and address are the same as that on the precinct voter registration list. In the presence of the election official you will be asked to sign your name in the space provided on the precinct voter registration list. If you cannot sign, the election official shall enter his/her initials and your date of birth in the space.<br><br>For purposes of ID, you will be asked to provide one of the following: a valid driver's license; photo ID card issued by a governmental agency; voter card; Social Security card; birth certificate; U.S. passport; employee ID card issued in the normal course of business; student ID card; Arkansas hunting license; U.S. military ID card; copy of a current utility bill, bank statement, government check, or pay check; or other government document that shows the name and address of the voter. If you are unable to provide this ID, the election official shall indicate this on the precinct voter registration list. |
| **CA** | A first-time voter who registers and did not provide ID with his/her application, may need to show ID at the polls. Bring your driver's license or another photo ID. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **CO** | When voting in person you will need one of the following types of ID: a valid Colorado driver's license; valid ID card issued by the Colorado Department of Revenue; a valid U.S. passport; a valid employee ID card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the U.S. government or Colorado, or by any Colorado county, municipality, board, authority, or other political subdivision of this state; a valid pilot's license issued by the FAA or other authorized agency of the U.S.; a valid U.S. military ID card with photograph of the elector; a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector; a cable bill, a telephone bill, documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and residence address of the student elector, or a paycheck from a government institution are also sufficient forms of ID; a valid Medicare or Medicaid card; a certified copy of a U.S. birth certificate; or a certified documentation of naturalization.<br><br>A Social Security number (or last four digits) is NOT a legal form of ID for voting in person. |
| **CT** | You must either show ID or sign a one line affidavit at the polling place if you have not provided proper ID when registering. A photo ID is not required. Acceptable forms of ID at the polling place are:<br>• A Social Security card<br>• Any other preprinted form of ID that shows your name and address, name and signature, or name and photograph<br><br>If you do not have ID, the affidavit form requires your name, residential address, date of birth, and signature. The affidavit states, under penalty of false statement, that you are the one whose name appears on the official checklist.<br><br>First time voters who registered to vote by mail and did not provide acceptable ID at registration must show ID at the polls or with their absentee ballots. Acceptable forms of ID include a copy of a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows your name and address. If you are a first time voter, you will be required to present ID and may not use the Secretary of State's affidavit in lieu of acceptable ID. |
| **DE** | ID is required only if you have registered using the National Voter Registration Form and thus did not supply it originally. In that case, the voter must present current ID that includes a current and valid photo ID that shows full name and address. If a photo ID cannot be produced, a current utility bill, bank statement, government check, paycheck or other government document that shows full name and address will be accepted. ID is also required the first time you vote in person or with an in person absentee ballot. |
| **DC** | ID is required of first-time voters who register by mail and do not provide proof of ID with their application. |
| **FL** | To vote at the polls, you must provide picture ID that also shows a signature. The picture and signature do not have to be on the same document. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **GA** | When you arrive at your polling place, you will be required to present one of the following forms of ID:<br>• Georgia driver's license, even if it is expired<br>• Photo ID issued by a state or federal government agency<br>• Valid U.S. passport<br>• Employee ID card containing your photograph and issued by any branch, department, agency, or entity of the U.S. government, Georgia, or any county, municipality, board, authority, or other entity of Georgia<br>• Valid U.S. military ID card<br>• Valid tribal ID card<br>If you are unable to show ID at the time of voting, you may cast a provisional ballot which will be counted only if you present ID within the two day period following the election. |
| **HI** | A picture ID is needed for verification of your identity at the polls. You will be asked to sign a poll book to record that you voted at that polling place. Your voter registration notice is not an acceptable form of ID. |
| **ID** | If you are a first time voter in Idaho and have not provided proper ID documentation with your mail registration, you will need to bring a copy of a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows your name and address to the polling place on Election Day. |
| **IL** | In general, ID is not required to vote at the polls, although you will be required to verify your signature. However, there are individual circumstances that may require that ID be shown. In those cases, you must present a photo ID, and if the photo ID has an address, it must match the registration address. If a photo ID is not used, the document (examples of which are listed below) must show your name and address. This must be presented to an election judge before being permitted to vote. If you do not present a required form of ID, you may vote by provisional ballot.<br><br>If you registered to vote by mail after January 1, 2003, and you did not submit a copy of the required ID with the registration application at that time, and you will be voting in a jurisdiction for the first time, then you will be required to submit a copy of one of the following:<br>• Current and valid photo ID<br>• Utility bill<br>• Government check<br>• Paycheck<br>• Government document<br><br>Illinois voters who vote during the early voting period must vote in person and must provide a valid ID. Valid forms of ID for this purpose include a current driver's license, state-issued ID card, or another government-issued ID card. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **IN** | Photo ID is required of all voters casting a ballot in person. There are exceptions for certain confined voters and voters casting absentee ballots by mail. Acceptable forms of ID include: driver's license, passport, military ID, or picture ID from the Bureau of Motor Vehicles. The criteria for acceptable ID include:<br>• Photograph<br>• A name which matches the voter registration record<br>• An expiration date after Election Day<br>• Issuance by the U.S. government or the state of Indiana. |
| **IA** | You may need to show ID at the poll if: you registered to vote by mail after January 1, 2003 and you have never voted in a primary or general election in your county of residence; your registration is inactive; you have moved from the address where you are registered to vote; your right to vote is challenged; or the precinct election officials do not know you.<br><br>You can use any of these forms of ID:<br>• Current and valid photo ID card<br>• Copy of a current document that shows your name and address, such as: a utility bill, bank statement, government check, or paycheck |
| **KS** | You must provide ID at the polls if you are a first-time voter in the county and have not already provided ID during registration. You must show some form of ID with your name and address. Examples include:<br>• Utility bill<br>• Paycheck<br>• Kansas driver's license or non-driver's license issued by the DMV<br>• Bank statement<br>• Government check or other government document |
| **KY** | ID is required; however, photo ID is not required. Acceptable forms of ID include a personal acquaintance or a document such as a motor vehicle operator's license, Social Security card, or credit card. |
| **LA** | To vote, you must either present a valid photo ID, or sign an affidavit if no photo ID is available. Acceptable photo ID includes:<br>• Louisiana driver's license<br>• Louisiana special ID card<br>• Any other generally recognized picture ID card<br><br>If you do not have a picture ID card, you may sign an affidavit, which will be attached to the precinct register, and you will be required to provide further ID as requested by the commissioner at the polling place. |
| **ME** | If you are already registered to vote, you do not need to provide ID to receive a ballot. If you are registering on Election Day, you will need to provide proof of identity and residency. |

***Source***: *League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **MD** | You will be asked to provide ID at the polling place if: you are voting for the first time in Maryland; you registered to vote by mail on or after January 1, 2003; or you have not previously met the ID requirements.<br><br>If you registered to vote by mail after January 1, 2006, you most likely satisfied the ID requirement during the registration process. If you did not satisfy the requirement, your county election board will have notified you and requested information to satisfy the ID requirement. You can satisfy the ID requirement by providing one of the following:<br>• A copy of a current and valid photo ID (i.e., Maryland driver's license, MVA-issued ID card, student, employee or military ID card, U.S. passport, or any other state or federal government issued ID card);<br>• A copy of a current utility bill, bank statement, government check, paycheck or other government document that shows your name and address. |
| **MA** | If you registered to vote by mail on or after January 1, 2003, you will be required to show ID when you vote for the first time in a federal election. If you provide your driver's license number or the last four digits of your Social Security number on the voter registration form and those numbers are verified, you will not have to provide ID when you register to vote or at the polls. If you do not provide those numbers or if they cannot be verified (the acknowledgement of your voter registration that you receive in the mail will notify you) then you have to provide ID either at town or city hall prior to the election or at the polls when you vote. ID must have your name and current address. Acceptable forms of ID including any of the following:<br>• Current and valid photo ID<br>• Government check or official document<br>• Current utility bill<br>• Paycheck or stub |
| **MI** | All voters are requested to show an acceptable form of photo ID at the polls. Voters who do not have acceptable photo ID or forgot to bring acceptable photo ID to the polls can vote like any other voter by signing an affidavit (see below). Your photo ID does not need to have your address on it. In addition, the name on your ID card may be a shorter form of your name. For example, "Bill" for "William" and "Kathy" for "Katherine" are acceptable. After showing your photo ID to the poll worker and signing the application, you may cast your ballot. Acceptable photo ID includes:<br>• Driver's license or personal ID card issued by another state<br>• Federal or state government-issued photo ID<br>• U.S. passport<br>• Military ID card with photo<br>• Student ID with photo from a high school or an accredited institution of higher education<br>• Tribal ID card with photo<br><br>Voters without photo ID: Michigan election law anticipates that not all voters will have photo ID. Voters who do not have acceptable photo ID or forgot to bring acceptable photo ID to the polls can vote like any other voter by signing an affidavit.<br><br>If you have registered to vote, but your name is not on the precinct list, you can show acceptable ID (see above) to cast a provisional ballot. If in this situation you do not present ID, you can cast an envelope ballot, which will not be counted unless you present acceptable ID to your local clerk within 6 days after the election. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **MN** | You only need ID to vote if you have not registered before arriving at the polling precinct. You may register to vote at your polling place on Election Day. ID needed to register to vote at the polling precinct must consist of a combination of one approved photo ID and one approved bill. Photo ID examples include:<br>• Minnesota driver's license with current name (licenses from out-of-state are not acceptable)<br>• Minnesota state ID (ID from another state is not acceptable)<br>• U.S. military ID<br>• U. S. passport<br>• Minnesota tribal ID<br>Examples of bills include: electric bill, gas bill, water bill, sewer bill, solid waste bill, cable television bill, telephone bill, rent statement dated within 30 days of Election Day that itemizes utilities, current student bill statement, or current student fee statement. Please note that the utility bill must have your name, current address, and be due within 30 days of the election. |
| **MS** | If you do not provide proper ID when you register to vote, you may be required to show one of the following ID documents to the election officials at the polling place on Election Day:<br>• Copy of current valid photo ID<br>• Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address |
| **MO** | You must show an acceptable form of ID when voting. Acceptable forms of ID are:<br>• ID issued by the state of Missouri, an agency of the state, or a local election authority of the state<br>• ID issued by the U.S. government or agency<br>• ID issued by an institution of higher education, including a university, college, vocational or technical school located within Missouri<br>• A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains your name and address<br>• A driver's license or state ID card issued by another state<br><br>The Missouri DMV will issue free non-driver's licenses to those (with proper ID) who need them to vote. |
| **MT** | You must present ID when voting. When you enter your polling place, an election judge will greet you, ask your name, and confirm that you are registered to vote in that precinct. S/he will then ask you to show ID. This can be any current photo ID that shows your name (for example, a valid driver's license, school ID, state ID, or tribal ID) or a current utility bill, bank statement, paycheck, voter confirmation notice, government check or other government document that shows your name and current address. |
| **NE** | ID is required if you are a first-time voter who registered by mail and did not provide verification with your registration application. Please check with your local election officials to determine what form of ID is needed at the polls. |
| **NV** | ID is necessary at the polls the first time you vote if you did not show your ID when you registered. ID must show proof of residence, proof of identity, and a picture. Examples of recommended ID include a driver's license or any government issued ID. If the current photo ID does not include the voter's current address, please bring a copy of a current utility bill, bank statement, government check, or other government document that shows voter's name and current residence address. |
| **NH** | If you are a registered voter, you do not need to show ID at the polls. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **NJ** | ID is required of first time voters who register by mail and do not provide ID verification with application. If you registered to vote by mail in your county after January 1, 2003, and never voted in a federal election in the county, you are required to provide your County Commissioner of Registration with ID.<br>Acceptable ID includes current and valid photo ID such as: driver's license, student or job ID, military or other government ID, store membership ID, U.S. passport, bank statement, car registration, government check or document, non-photo driver's license, rent receipt, sample ballot, utility bill, or any other official document.<br><br>If you show ID, you will vote via the voting machine. If you do not show ID, you will vote via provisional ballot and have until the close of business on the second day after the election to provide ID to the applicable county election office. You will be given a hand-out at the polling place that will tell you which county election office to contact. |
| **NM** | You are required to show ID at the polls. You may choose the form of ID to show election officials, including:<br>• An original or copy of a current and valid photo ID with or without an address. The address shown is not required to match the address on your certificate of registration or voter ID card.<br>• An original or copy of a utility bill, bank statement, government check, paycheck or student ID card.<br>• Other government document, including ID issued by an Indian nation, tribe or pueblo that shows your name and address. The address provided on the government document is not required to match the address on your certificate of registration.<br>• A verbal or written statement by you detailing your name, year of birth and unique identifier; provided, however, that the statement of your name need not contain your middle initial or suffix. |
| **NY** | If you are a new voter who is registering by mail, you will be required to show ID when you go to vote for the first time. If you are already registered at the board of elections or a state agency, you should not have to show ID at the polls. It is advisable for all new voters to bring ID when voting for the first time. Acceptable IDs to vote are: passport; government ID card; military ID card; student ID card; public housing ID card; any ID specified by HAVA and New York State law as acceptable; utility bill; bank statement; paycheck; government check (Social Security, tax refund, military paycheck or paycheck stub); or other government documents with your name and address including voter registration card, hunting, fishing, or trapping license, or firearm permit. |
| **NC** | ID is required if you are a first time voter who registered by mail and did not provide verification with your application. |
| **ND** | Acceptable forms of ID must include a street address. P.O. Boxes do not establish residency and cannot be accepted. Acceptable forms of ID with residential addresses are: valid drivers license; valid state ID card; valid federally issued ID card, such as a passport or agency ID card; valid tribal government issued ID card; valid student ID card; valid U.S. military ID card; utility bill dated 30 days prior to Election Day with name and residential address; or change of address verification letter from the U.S. Postal Service.<br><br>If you do not have one of the forms of ID listed above, you still have the right to vote if:<br>• An election poll worker is able to vouch for your identity and residence<br>• You complete a voter's affidavit on which you certify, under oath, your identity and that you are a resident within this precinct. |

*Source: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **OH** | All voters must show an ID at the polls. You may show one of the following:<br>• Ohio driver's license or ID card (even if it shows a previous address)<br>• Military ID<br>• Bank statement<br>• Current utility bill<br>• Current paycheck<br>• Any current government-issued document showing your current address |
| **OK** | First-time voters who register by mail and do not provide verification with application must show ID at the polls. You may choose to submit a copy of one or more of the following forms of ID with your voter registration application but are not required to do so:<br>• A current driver license or other photo ID<br>• A utility bill, bank statement, government check, paycheck, or other government document that shows your name and address |
| **OR** | Oregon has a vote by mail process. Instead of using traditional polling places where voters go to cast ballots on Election Day, a ballot is mailed to each registered voter. The ballot is then voted and returned to the county election office to be counted. You will need to sign the return envelope of your ballot. Your signature will be matched with your voter registration card to verify your identity. |
| **PA** | All first time voters must show ID. Acceptable forms of ID include: PA driver's license or ID card issued by PennDOT; ID issued by any other commonwealth agency ; ID issued by the U.S. government; U.S. passport; U.S. Armed Forces ID; student ID; or employee ID.<br><br>You can also show a non-photo ID issued by the commonwealth, including: non-photo ID issued by the U.S. government; firearm permit; current utility bill; current bank statement; government check; or current paycheck. |
| **RI** | If you registered by mail and did not provide proper documentation of ID, you will need to show ID when you go to vote. |
| **SC** | If you did not submit a form of ID with the mail-in voter registration application you will be required to show an additional form of ID at the polls in addition to your voter registration card. This could include one of the following forms of ID:<br>• Your driver's license<br>• A picture ID card issued by the department of motor vehicles |
| **SD** | You must show one of the following forms of ID at the polls when you go to vote:<br>• South Dakota driver's license or non-driver ID card<br>• Passport or an ID card, including a picture, issued by an agency of the U.S. government<br>• Tribal ID card, including a picture<br>• Current ID that includes a picture, issued by an accredited institution of higher education, including a university, college, or technical school, located within South Dakota |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **TN** | At the poll, voters can show any ID with signature or voter registration card to vote. However, if you are a first time voter that registered by mail, you are required to show your voter registration card, drivers' license, or photo ID with your name and signature.<br><br>If you have none of these IDs, then you must show two of the following forms of ID. One from each group.<br>Group A<br>• Valid photo ID government or private<br>• Current utility bill<br>• Bank statement<br>• Government check<br>• Pay check<br>• Government documents with your name and address<br>Group B<br>• Any document with voters' name and signature (example: credit card)<br>• Sign an affidavit of ID form provide by the poll workers |
| **TX** | You are required to show your voter registration certificate to cast your vote. If you have lost or misplaced your certificate, you must show another form of ID.<br>Acceptable forms of ID include:<br>• Driver's license or personal ID card issued by the Texas department of public safety<br>• Similar document issued to you by an agency of another state, regardless of whether the license or card has expired<br>• Form of ID containing a photograph<br>• Birth certificate<br>• U.S. citizenship papers<br>• U.S. passport<br>• Official mail addressed to you from a government agency<br>• Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address<br>• Any other form of ID presented by the secretary of state's office. |
| **UT** | The first time you vote, you must provide a valid photo ID that include your name, photograph, and current address, or present two different forms of ID that show current name and home address. ID is required if you are a first time voter who registers by mail and does not provide a copy of ID with your application. |
| **VT** | First-time voters that registered by mail and did not provide verification are required to show ID at the polls. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **VA** | Photo ID is not required to vote at the polls, but some form of ID is required. If you do not provide an ID, you must sign the "Affirmation of Identity" statement before voting.<br><br>If you have registered by mail for the first time in Virginia on or after January 1, 2003, you are not eligible to sign the "Affirmation of Identity" statement. If you cannot provide one of the federally required forms of ID, you must vote by provisional ballot. Acceptable forms of ID include:<br>• Virginia voter ID card<br>• Social security card<br>• Federal, state, local government issued ID<br>• Valid Virginia drivers' license<br>• Employer-issued ID |
| **WA** | Acceptable forms of ID for voting include:<br>• Photo ID, such as a driver's license, state ID card, student ID card, or tribal ID card<br>• Voter registration card<br>• Utility bill<br>• Bank statement<br>• Paycheck<br>• Government check<br>• Other government document<br>A voter who does not have ID may vote a provisional ballot. |
| **WV** | If you registered by mail, take your driver's license or other ID that shows proof of residency and age to the polls the first time you vote. Acceptable IDs include:<br>• Copy of a current & valid photo ID with current residence address<br>• Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and current residence address. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

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| VOTER ID REQUIREMENTS FOR VOTING | |
|---|---|
| **State** | **Identification** |
| **WI** | You may bring a current and valid photo ID if you are a first time voter, or you may also provide any of the following:<br>• The last four digits of your Social Security number<br>• An assigned voter ID number<br>• Current utility bill<br>• Bank statement<br>• Current pay check<br>• Government check<br>If used, these documents must contain a current and complete name, including both the first and last name, and a current complete residential address, including a numbered street address, if any, and the name of a municipality.<br><br>ID at the polls is only required if you plan to register in person on Election Day. At this time, proof of residence is all that is required in order to register at the polling place on Election Day. If you wish to register to vote at your polling place, you must bring proof that you have lived at your present location for at least 10 days preceding the election. Forms with an expiration date must be valid on Election Day. Proof of residence does not include a piece of mail addressed to you. If you cannot supply acceptable proof of residence, your registration form can be substantiated and signed by one other elector who resides in your municipality, corroborating your residency information. The corroborator must then provide acceptable proof of residence. |
| **WY** | No form of ID (including a registration card) needs to be shown at the polls when voting. You are only required to show ID when registering to vote.<br><br>Wyoming allows qualified voters to register at the polls on Election Day by bringing an acceptable form of ID to the polls:<br>• Wyoming driver's license<br>• A different state's driver's license<br>• An ID card issued by a local, state or federal agency<br>• U.S. passport<br>• School ID<br>• Military ID<br><br>You can also show two of the following in any combination:<br>• Certification of U.S. citizenship<br>• Certificate of naturalization<br>• Draft record<br>• Voter registration card from another state or county<br>• Original or certified copy of a birth certificate bearing an official seal<br>• Certification of birth abroad issued by the department of state<br>• Any other form of ID issued by an official agency. |

***Source**: League of Women Voters Education Fund, http://www.vote411.org/ (last visited Jan. 29, 2009).*

## ENDNOTES

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[1] U.S. Census Bureau, Current Population Survey, Nov. 2008: Voting and Registration Supplement File (Apr. 2009). WVWV utilized relevant data from this survey to calculate the turnout and population size of specified demographics.

[2] Statement of Professor Stephen Ansolabehere, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009. The U.S. Election Project estimates that only 131 million votes were cast for U.S. President. U.S. Election Project, 2008 General Election Turnout Rates, http://elections.gmu.edu/Turnout_2008G.html (last visited Mar. 12, 2009).

[3] The Pew Center on the States, *Briefing: Election 2008 in Review*, Dec. 2008, http://www.pewcenteronthestates.org/uploadedFiles/ElectionInReviewPDF%20Final.pdf (last visited Mar. 12, 2009).

[4] Statement of The Honorable Chris Nelson, Secretary of State of South Dakota, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

[5] Statement of Prof. Stephen Ansolabehere, *supra* note 2.

[6] *Id.*

[7] The Nonprofit Voter Engagement Network, Voter Turnout 2008, http://www.nonprofitvote.org/voterturnout2008 (last visited Mar. 12, 2009).

[8] This report focuses on the varied state law requirements; however, in some states, the laws are even more inconsistent because they operate at the county level.

[9] Ian Urbina, *Hurdles to Voting Persisted in 2008*, N.Y. Times, March 11, 2009.

[10] *Id.*

[11] *Id.*

[12] Statement of Chairman Charles E. Schumer, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

[13] U.S. Census Press Release, U.S. Voter Turnout Up in 2004 (May 26, 2005), http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html (last visited Mar. 12, 2009).

[14] U.S. Census Bureau, Current Population Survey, *supra* note 1.

[15] *Id.*

[16] Statement of Professor Nathaniel Persily, Columbia Law School, Before the Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

[17] *Id.*

[18] Lawyers' Committee for Civil Rights Under Law, *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow: Preliminary Analysis of Voting Irregularities*, Mar. 2009.

[19] Statement of Jonah H. Goldman, Director, National Campaign for Fair Elections Lawyers' Committee for Civil Rights Under Law, Before the Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

[20] *Id.*

[21] Statement of Kristen Clarke, Co-Director, Political Participation Group, NAACP Legal Defense and Educational Fund, Inc., Before the Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

[22] Wendy Weiser, Michael Waldman & Renee Paradis, *Universal Voter Registration Policy Summary*, Brennan Center for Justice, 2008, *available at* http://www.brennancenter.org/content/resource/universal_voter_registration_draft_summary/.

[23] *Id.*

[24] Demos Policy Brief, *Voters Win with Election Day Registration*, Winter 2009, *available at* http://www.demos.org/pubs/voterswin_09.pdf.

[25] The Pew Center on the States, *Election Preview 2008: What If We Had an Election and Everyone Came?*, Oct. 2008, http://www.pewcenteronthestates.org/uploadedFiles/Election%20Preview%20FINAL.pdf (last visited Mar. 12, 2009); Demos, *Voters Win With Election Day Registration*, Winter 2008, http://www.demos.org/pubs/VotersWinWithEDR.pdf (last visited Mar. 12, 2009).

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[26] *Id.*
[27] NH Sec. of State, Elections Division, How to Register to Vote in New Hampshire, http://www.sos.nh.gov/vote.htm (last visited Mar. 12, 2009).
[28] Demos, *About Election Day Registration*, http://archive.demos.org/page52.cfm (last visited Mar. 12, 2009); Demos, *Election Day Registration Helps America Vote*, Summer/Fall 2006, http://www.demos.org/pubs/EDR%20Toolkit%20070506.pdf (citing the U.S. Census figures) (last visited Mar. 12 2009).
[29] Wendy Weiser and Jonah Goldman, *An Agenda for Election Reform*, Brennan Center for Justice, 2007, *available at* http://brennan.3cdn.net/39c28dc05a468de933_2om6bh0aa.pdf.
[30] R. Michael Alvarez & Stephen Ansolabehere, *California Votes, The Promise of Election Day Registration*, Demos, 2002, at 5.
[31] *Id.*
[32] Tova Wang, Common Cause, *Voting in 2008: Lessons Learned*, Nov. 10, 2008, http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/VOTING%20IN%202008%20LESSONS%20LEARNED.PDF.
[33] *Id.*
[34] *Id. See also* Demos, *Election Day Registration Helps America Vote*, *supra* note 28, and Demos, *About Election Day Registration*, *supra* note 28.
[35] Andy Birkey, *Minnesota's Same-Day Registration Success Pushed for Federal Election*, Minnesota Monitor, May 7, 2008, *available at* http://www.minnesotamonitor.com/showDiary.do?diaryId=3913.
[36] *Id.*
[37] *Id.*
[38] Demos Policy Brief, *Voters Win with Election Day Registration*, *supra* note 24.
[39] Demos, *About Election Day Registration*, *supra* note 28.
[40] *Id.*
[41] *Id.*
[42] Statement of Professor Nathaniel Persily, *supra* note 16.
[43] Lawyers' Committee for Civil Rights Under Law, *supra* note 18.
[44] Weiser & Goldman, *supra* note 29.
[45] U.S. Census, Press Release, *Renters Four Times More Likely to Move than Homeowners*, http://www.census.gov/Press-Release/www/releases/archives/mobility_of_the_population/010755.html.
[46] Demos, *Election Day Registration Helps America Vote*, *supra* note 28; U.S. Census Press Release, *supra* note 45.
[47] U.S. Census Press Release, *supra* note 45.
[48] Demos, *About Election Day Registration*, *supra* note 28.
[49] *Id.*
[50] *Id.*
[51] *See* Weiser, Waldman & Paradis, *Universal Voter Registration Policy Summary*, *supra* note 22.
[52] Demos, *Election Day Registration Helps America Vote*, *supra* note 28.
[53] Demos Policy Brief, *Voters Win with Election Day Registration*, *supra* note 24.
[54] Weiser & Goldman, *supra* note 29.
[55] The Pew Center on the States, *Briefing: Election 2008 in Review*, *supra* note 3.
[56] Lawyers' Committee for Civil Rights Under Law, *supra* note 18; *see also* Ian Urbina, *Hurdles to Voting Persisted in 2008*, *supra* note 9.
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[58] *Id.*
[59] League of Women Voters Education Fund, http://www.vote411.org/ (last visited Mar. 12, 2009).
[60] Melanie S. Pinkert, *Convicts Right to Vote, Former Florida Felons Impact on the Next Election*, July 25, 2007, http://humanrights.suite101.com/article.cfm/citizens _again (last visited Mar. 12, 2009).
[61] *Id.*
[62] *Id.*

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[63] Weiser & Goldman, *supra* note 29.
[64] Statement of Kristen Clarke, *supra* note 21.
[65] All states except for New Hampshire, North Dakota (no voter registration), and Wyoming accept the federal voter registration form. U.S. Election Assistance Commission, State by State Information, http://www.eac.gov/index_html1 (last visited Mar. 16, 2009). Voter registration deadlines by state are available at http://www.eac.gov/voter/docs/state-reg-deadlines.xls/attachment_download/file (last visited Mar. 16, 2009).
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[69] Jessica Mintz, AP, *Web Voter Registration Still Bogged Down*, Jan. 23, 2008, http://www.msnbc.msn.com/id/22808540/.
[70] *Id.*
[71] 42 U.S.C. 1973gg-6 (a)(1)(B).
[72] Statement of Kristen Clarke, *supra* note 21.
[73] Douglas R. Hess & Scott Novakowski, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*, Feb. 2008, *available at* http://projectvote.org/fileadmin/ProjectVote/NVRA_Project/Unequal_Access_Final.pdf.
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[75] NVRA Implementation Project, *Ten Years Later: A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005* (July 2005), *available at* http://projectvote.org/fileadmin/ProjectVote/NVRA_Project/Ten_Years_Later_A_Promised_Unfulfilled.pdf.
[76] Hess & Novakowski, *supra* note 73.
[77] *Id.*
[78] The Pew Center on the States, *Briefing: Election 2008 in Review*, *supra* note 3.
[79] *Id.*
[80] Lawyers' Committee for Civil Rights Under Law, *supra* note 18.
[81] National Conference of State Legislatures (NCSL), Absentee and Early Voting, http://www.ncsl.org/programs/legismgt/elect/absentearly.htm (last visited Mar. 12, 2009).
[82] This report does not address voting obstacles for military personnel overseas.
[83] Common Cause, *Getting it Straight for 2008: What We Know About Vote By Mail Elections and How to Conduct Them Well*, Jan. 2008, http://www.commoncause.org/atf/cf/%7bfb3c17e2-cdd1-4df6-92be-bd4429893665%7d/WHAT%20WE%20KNOW%20ABOUT%20VOTE%20BY%20MAIL.PDF (last visited Mar. 12, 2009); NCSL, Absentee and Early Voting, *supra* note 81.
[84] NCSL, Absentee and Early Voting, *supra* note 81; The Pew Center on the States, *Election Preview 2008: What if We Had an Election and Everyone Came?*, *supra* note 25.
[85] NCSL Absentee and Early Voting, *supra* note 81.
[86] *Id. See also* Common Cause, *Getting it Straight for 2008*, *supra* note 83.
[87] Common Cause, *Getting it Straight for 2008*, *supra* note 83.
[88] NCSL, Absentee and Early Voting, *supra* note 81.
[89] *Id.*
[90] Common Cause, *Getting it Straight for 2008*, *supra* note 83.
[91] *Id.*
[92] LongDistance Voter.Org, Early Voting Rules, http://www.longdistancevoter.org/early_voting_rules (last visited Jan. 29, 2009); NCSL, Absentee and Early Voting, *supra* note 81.
[93] NCSL, Absentee and Early Voting, *supra* note 81.
[94] LongDistance Voter.Org, Early Voting Rules, *supra* note 92. The District of Columbia is included as a state in these statistics.

## ENDNOTES

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[95] The Pew Center on the States, *Election Preview 2008: What If We Had An Election and Everybody Came*, *supra* note 25; LongDistance Voter.Org, Early Voting Rules, *supra* note 92.
[96] The Pew Center on the States, *Briefing: Election 2008 in Review*, *supra* note 3. It should be noted that the early voting process in Florida during the 2008 election also had problems such as limited early voting sites and limited hours – both of which caused long lines. It is critical to have an adequate number of polling locations, poll workers, and hours at early voting sites.
[97] Weiser & Goldman, *supra* note 29; *see also* Robert F. Kennedy Jr. & Greg Palast, *Block the Vote*, Rollingstone.com, Oct. 30, 2008, http://www.rollingstone.com/politics/story/23638322/block_the_vote.
[98] Weiser & Goldman, *supra* note 29.
[99] Kennedy & Palast, *supra* note 97.
[100] Weiser & Goldman, *supra* note 29.
[101] Matt A. Barreto, Stephen A. Nuno, and Gabriel R. Sanchez, *The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana*, Jan. 2009.
[102] League of Women Voters Education Fund, http://www.vote411.org/.
[103] *Id.*
[104] U.S. Election Assistance Commission, *Case Studies on the Impact of the Help America Vote Act's Identification Requirements for First Time Voters*, May 2008; Indiana SOS, Voter Guide, http://www.in.gov/sos/elections/pdfs/IVIG_2008.pdf (last visited Jan. 29, 2009); N.J. Dep't of State. Division of Elections, Voter I.D. Requirements, http://www.njelections.org/vote_id_req.html (last visited Jan. 29, 2009).
[105] The Pew Center on the States, *Election Preview 2008: What if We Had an Election and Everyone Came?*, *supra* note 25.
[106] *Id.*
[107] Wendy R. Weiser, *Are HAVA's Provisional Ballots Working?*, Mar. 29, 2006, *available at* http://www.american.edu/ia/cdem/usp/hava_papers/Weiser.pdf; Mark Niquette, *Concerns About Provisional Ballots Surfacing*, The Columbus Dispatch Online, Nov. 4, 2008, http://blog.dispatch.com/vote08/2008/11/concerns_about_provisional_bal_1.shtml,
[108] Weiser, *Are HAVA's Provisional Ballots Working?*, *supra* note 107.
[109] *Id.*
[110] *Id.*
[111] Rhonda Cook, *Senior Citizens Among Those Who Have Voting Problems*, The Atlanta Journal-Constitution, Nov. 4, 2008, http://www.ajc.com/metro/content/metro/atlanta/stories/2008/11/04/problems_election.html.
[112] Niquette, *supra* note107.
[113] *Id.*
[114] Statement of Professor Nathaniel Persily, *supra* note 16.
[115] Kennedy & Palast, *supra* note 97.
[116] U.S. PIRG Education Fund, *Vanishing Voters: Why Registered Voters Drop Off the Rolls*, Sept. 2008, *available at* http://www.uspirg.org/uploads/_T/p3/_Tp3U63I_uA9JpJWhW3TQg/Vanishing-Voters-updated-10-10-08.pdf.
[117] Weiser & Goldman, *supra* note 29.
[118] *Id.*
[119] Statement of Kristen Clarke, *supra* note 21.
[120] Kennedy & Palast, *supra* note 97.
[121] Statement of Kristen Clarke, *supra* note 21.
[122] *Id.*
[123] *Id.*
[124] Kennedy & Palast, *supra* note 97.
[125] If you are a student, you have the right to register in the municipality where you attend school, if you have established residency there. You must meet the same residency requirements as all other potential voters, but may not be asked to meet any additional requirements. If you are a student who is not a resident of the municipality in which you attend school, you cannot register in that municipality. You must determine where you have established

residency and register to vote there. If residency is determined to be in another municipality or state, absentee voting is possible and encouraged. If you are incarcerated in a correctional facility or in a county jail, the municipality where you are incarcerated is not necessarily your voting municipality, unless you resided in that municipality prior to incarceration. If you are incarcerated in a correctional facility you may apply to register to vote in any municipality where you have previously established a fixed and principal home to which you intend to return. You may have a non traditional residence, including, but not limited to a shelter, park or underpass. Your residency is not subject to challenge on the sole basis that it is non-traditional. League of Women Voters Education Fund, http://www.vote411.org/.

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**Testimony of Kristen Clarke**
**Co-Director, Political Participation Group**
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**Hearing on**
**Engaging the Electorate—Strategies for Expanding Access to Democracy**

**Before the United States House Committee on House Administration**

**July 23, 2009**

Chairman Robert A. Brady, and distinguished Members of the Committee, I am Kristen Clarke, Co-Director of the Political Participation Group of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Founded under the direction of Thurgood Marshall, LDF is the nation's oldest civil rights law firm and has been active in Congressional efforts to address minority voting rights over the last several decades. I am pleased that the United States Committee on House Administration has scheduled this important hearing that seeks to identify and develop strategies for expanding access to democracy.

**Introduction**

The current economic crisis presents challenges that are widely felt throughout our country, but rising unemployment rates and the unprecedented foreclosure crisis disproportionately burden African Americans, the poor, and other racial minorities.[1] In this context, it is imperative that Congress identify strategies that can help achieve the goals of the Fourteenth and Fifteenth Amendments, while paying particular attention to the burdens and barriers faced by those who have been pushed to the margins of our political process. Despite wide interest in the 2008 presidential election, only 61 percent of all Americans eligible to vote cast ballots—just 1% more than in 2004. LDF believes that, but for restrictive and burdensome barriers to the ballot box, many more citizens would have voted in this historic election. It is our hope that today's hearing will lead to the identification of effective and new strategies that might be adopted to help ensure that all eligible Americans will have a meaningful opportunity to vote in future elections.

Access to democracy for some Americans remains a nearly impossible dream. Approximately 213 million voting-age citizens were eligible to vote in the 2008 presidential election, but only 186 million of them were registered to vote. Almost 13 percent of eligible voters remain excluded from participation in our political process. For some Americans, traditional avenues to registering and voting remain beyond reach. For others, life events—whether incarceration for offenses that may have no bearing on eligibility to vote, displacement resulting from natural disasters such as hurricanes, or the threatened loss of a home due to growing rates of foreclosure—result in unforeseen barriers to participation. Finally, even successful efforts to overcome barriers are undermined when officials fail to process registration forms or adopt purge programs that strike eligible voters from the rolls.

Working now to enable all citizens to vote—especially those at the margins—will strengthen our democracy. If the United States is to remain the world's democratic example, we must ensure that we reach the millions of eligible Americans in our country who remain without access to the ballot box.

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[1] *See, e.g.*, Patrick McGeehan & Matthew R. Warren, *Black-White Gap in Jobless Rate Widens in City*, N.Y. TIMES, June 13, 2009, at A1, *available at http://www.nytimes.com/2009/07/13/nyregion/13unemployment.html*; Michael Powell, *Suit Accuses Wells Fargo of Steering Blacks to Subprime Mortgages in Baltimore*, N.Y. TIMES, June 7, 2009, at A16, *available at http://www.nytimes.com/2009/06/07/us/07baltimore.html*.

**The Homeless and Displaced Often Suffer Disenfranchisement**

Our society is one in which many citizens lead very transient lives. Whether homeless or temporarily displaced as a result of a major natural disaster or foreclosure, policies presuming static permanent residences disenfranchise thousands of voters. The National Coalition for the Homeless has estimated that there are more than 744,000 homeless individuals throughout the country, and only one-third are registered to vote. State laws vary with respect to requirements for homeless and other transient individuals seeking to register and participate. Some states require that individuals list a permanent address on the voter registration form and provide some form of identification. Other states allow individuals to list the address of a local shelter or outreach center. During the 2008 presidential election cycle, LDF learned of a group of homeless individuals whose registration applications were rejected by a local Louisiana Registrar because their forms failed to identify a permanent address. The unique registration challenges for homeless Americans present additional barriers that must be eradicated in order to make our political process a more inclusive one for those already living in society's shadow.

Louisiana's 2007 purge of its voting rolls presents another stark example of the kind of actions that have negatively impacted citizens whose voting rights have been threatened as a result of their transient status. The state implemented a program that purged voters presumed to be ineligible because they allegedly appeared on the registration rolls in more than one state. As an initial matter, the state's dubious methodology failed to protect against false-positive results: voters with common names could easily share the relevant identifying information with someone in another state.[2] Second, the states that were the focus of this particular purge scheme were those in which many persons displaced by Hurricanes Katrina and Rita sought refuge following the storms. Third, the broad latitude and discretion given to election officials invited abuses.[3] In August 2007, approximately 12,000 voters were purged from the State's voter registration lists under this program, with an unknown number removed subsequently. Many were African-American voters displaced by the storms. Such efforts unfairly place the burden of re-registration squarely on citizens already facing enormous challenges and, thus, discourage individuals from future participation in the electoral process. Congress

[2] The methodology identified a "match" by comparing the first name, last name and date of birth of Louisiana voters with individuals on the registration rolls in a select number of states. A match on those three criteria entailed removal from the Louisiana rolls. Numerous studies reveal that these matching efforts are error-prone and unreliable because they are not based on sufficiently unique criteria that would prevent the disenfranchisement of eligible voters. *See, e.g.*, MYRNA PEREZ, VOTER PURGES (2008), *available at http://brennan.3cdn.net/5de1bb5cbe2c40cb0c_s0m6bqskv.pdf.*

[3] Illustrating the inherent unreliability of the program, Commissioner of Elections Angie LaPlace identified several scenarios that Registrars may encounter when dealing with "voters who appear to be matches" and proposed an approach for dealing with persons who are registered in Louisiana and out of state but who want to cancel their out-of-state registration; and persons who are registered in Louisiana and indicate that they have never registered out of state, among others. In a June 2007 e-mail to Louisiana Voter Registrars, Commissioner LaPlace indicated, by way of example, that "Lisa A. Anderson" and "Lisa Pruitt Anderson" should be considered a match because with many female voters, "one registration may be under their middle name and one may be under their maiden name as their middle name." In other words, err on the side of disenfranchisement.

should carefully assess voter removal and purge programs to ensure that they do not unfairly and unnecessarily exclude eligible citizens from our political process.

The population of homeless, transient, and displaced persons will only grow as unprecedented numbers of family homes continue to face foreclosure throughout the country. On October 22, 2008, LDF filed a lawsuit on behalf of eligible voters in Indiana with property subject to foreclosure proceedings or eviction. LDF settled the lawsuit, which was filed in Indiana state court, ensuring that eligible voters in those homes maintained the ability to exercise their fundamental right to vote. As we work to identify ways to capture the millions of eligible but not yet registered voters throughout the country, Congress should pay particular attention to those whose access to the political process is threatened as a result of their transient or mobile status.

**Persons with Criminal Convictions Face Wrongful Registration Barriers**

The prevailing methods of voter registration are nowhere less accessible than among those who have faced criminal conviction for an offense that may have no bearing on their eligibility to vote. While felon disenfranchisement laws vary by state, little attention is paid to the barriers faced by those who have come into contact with our criminal justice system—a disproportionate number of these persons are African Americans. On September 30, 2008, LDF filed a lawsuit on behalf of Reverend Kenneth Glasgow, a former offender who initiated a program aimed at identifying and registering eligible voters currently incarcerated in Alabama's correctional facilities.[4] On the eve of the close of registration for the 2008 election cycle, the Commissioner of the Alabama Department of Corrections terminated his voter outreach program after succumbing to apparent political pressure to reverse his initial support. Glasgow's efforts were limited to approximately 6,000 inmates convicted only of simple drug possession crimes, offenses for which one does not lose voting rights under Alabama's constitution and laws. Many of the individuals on the list were simply unaware of their eligibility to register to vote.

As we work to identify ways to capture the millions of eligible but not yet registered voters throughout the country, particular attention should be paid to widely varying state laws concerning the impact of a felony conviction on the right to vote. Many election officials, unfamiliar with the laws concerning felons' voting rights, unfairly exclude or deny otherwise eligible persons access to the ballot box. Programs like Glasgow's play an important role in helping to resolve that confusion by specifically identifying and targeting eligible voters who currently sit on the furthest margins of our political process.

**Non-Compliance with the NVRA Undermines Congress's Objective of Increasing Participation**

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[4] *See* Complaint, *Glasgow v. Allen, available at https://www.naacpldf.org/content/pdf/felon/glasgow_v_allen/complaint.pdf.*

Recognizing the many barriers to registration inherent in the structure of our society, Congress sought to maximize registration opportunities through its adoption of the National Voter Registration Act (NVRA). Accordingly, states must facilitate voter registration at the department of motor vehicles and other social service agencies.[5] Congress mandated registration opportunities at public assistance offices to reach not only those citizens who drive, but also poor or disabled citizens who participate in public assistance programs.[6] The NVRA requires entities that provide public assistance to integrate voter registration opportunities into the agency's initial interaction with the citizen, such as the application for benefits or services.[7]

Despite these requirements, NVRA-designated agencies often do not provide federally-required registration opportunities for a combination of reasons. First, the agencies often fail to implement effective training on the requirements of the NVRA. Second, personnel at NVRA-designated agencies often fail to make registration forms available in the manner contemplated by the law. Third, the agencies often fail to submit (or timely submit) completed applications to the appropriate election official. LDF has, for example, uncovered evidence of non-compliance among several states including Louisiana, Maryland, and Mississippi. Recent LDF investigations in these states reveal that personnel at a number of NVRA-mandated agencies are simply unaware that the law obligates them to provide registration forms to persons seeking services. The NVRA continues to represent one of Congress's most recent and successful efforts to design a law aimed at reaching persons who sit on the margins of our political process, and effective enforcement of the law's mandate can help ensure that more eligible citizens are given the opportunity to register and vote in our elections.

**Conclusion**

Difficult times can present grave challenges, especially for African Americans and ethnic minority groups. Yet our electoral system currently denies our nation's greatest instrument for advancement—the right to vote—to those suffering the greatest adversity. We must reform and repair the system to expand access to our democracy for those who are among the most vulnerable and marginalized among us. The future of American democracy remains tied to our ability to address the persistent barriers that exclude millions of citizens from being able to register and successfully exercise their fundamental right to vote on Election Day.

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[5] States are required to accept voter registration applications "made simultaneously with an application for a motor vehicle driver's license," 42 U.S.C. § 1973gg-2(a)(1), as well as applications submitted at the offices of other state agencies, 42 U.S.C. § 1973gg-2(a)(3).

[6] *See* H.R. Conf. Rep. No. 66, 103d Cong., 1st Sess. 18-19 (1993).

[7] *See* 42 U.S.C. § 1973gg-3, 1973gg-5(a), § 1973gg-5(a)(6).

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

July 24, 2009

The Honorable Robert A. Brady, Chairman

Committee on House Administration

1309 Longworth House Office Building

Washington, D.C. 20515

Re: Hearing on "Engaging the Electorate—Strategies for Expanding Access to Democracy"

Dear Chairman Brady,

On behalf of FAWCO, with over 15,000 members in 38 countries worldwide, and its partner organizations that include Geneva-based ACA (American Citizens Abroad) and Paris-based AARO (Association of Americans Resident Overseas), I would like to enter one comment in the record of your July 23 hearing on "expanding access to democracy".

In April of this year, our organizations returned to Washington for their annual Overseas Americans Week, bringing a position paper I am attaching, that makes a number of points on how the overseas voter base can be broadened by facilitating procedures for registering, applying for ballots and obtaining blank ballots abroad. It also addresses an issue of concern to many overseas voters: the fact that **some people abroad are disenfranchised**, through no fault of their own, because they have not yet established residency in the United States.

Currently 17 states explicitly allow these young people to vote at the voting address of their eligible U.S. citizen parent(s). Some other states will, on request, allow this as well. Some states explicitly deny them the right to vote and in others, frustrated potential voters give up without challenging an initial refusal.

And yet, consider the hypothetical but very possible case of of young John, whose 18th birthday was on October 13, 2008. John, then a high school senior in Rome, Italy, had his first summer job last year and was therefore required by law to file an income tax return with the IRS in spring 2009. John's mother escorted her somewhat reluctant son to the United States embassy in October to register for Selective Service, as required by law, before his 18th birthday. And yet John, whose parents vote in the state of Maryland, was unable to vote in the November 7 election. John was disenfranchised because he still lives at home with his parents, and their home happens to be in Rome.

As you continue to consider ways to expand access to democracy, we urge you to remember the several thousand young people who are similarly disenfranchised, and to bring your considerable influence to bear, through the legislation you are now considering, on those states where the certainly unintended consequence of current election law is to cut these young people off from their most precious asset: the right to vote.

Yours sincerely,

Lucy Stensland Laederich, FAWCO U.S. Liaison

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# Overseas Voting Reform

Americans abroad are proud of their citizenship and vigilant in guarding their constitutional right to help elect their President, Vice President and Members of Congress. For most overseas Americans, their right to vote is the primary means available to them to participate in the American democratic process. Civilian voter turnout overseas has increased steadily in recent years, and overseas Americans have historically had higher election participation rates than their state-side counterparts – typically 3+% of votes cast, although they comprise only about 2% of the electorate. The vast majority of local election officials surveyed after the 2008 federal election noted increased overseas voter participation compared with previous years. Unfortunately – and despite some recent reforms – overseas voters continue to face a range of obstacles and bureaucratic pitfalls that all too frequently frustrate their efforts to exercise their cherished democratic rights.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 defines the rights of overseas U.S. citizens to vote in U.S. federal elections, and sets out the parameters for registering and voting by absentee ballot from overseas. UOCAVA was complemented by the Help America Vote Act of 2002 that addressed a plethora of problems in voting domestically and attempted to eliminate some of those faced by overseas absentee voters.

Nevertheless, overseas citizens still face a number of obstacles in casting their votes and having them counted. In the Overseas Vote Foundation 2008 Post Election Voter Survey, more than one in five (22%) of the 24,000 respondents did not receive the official ballot they expected; nearly one-third (31%) of experienced overseas voters still had questions or problems when registering to vote; and more than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive at all.

Pending legislation will address many of the problems encountered by Americans attempting to vote from abroad and will require urgent support so that the changes called for can be implemented in time for the 2010 federal election.

## Voting procedure reforms still needed

**Voter registration, ballots and/or Federal Write-in Absentee Ballots** *should not be refused for any reason that can disadvantage overseas voters*, such as "non-standard" size, shape, weight or color of paper of the application, envelope or ballot (given that such materials are now often downloaded using non-American machines and paper); notary, witness or oath requirements (given the often prohibitive cost of access to notary services outside the United States); delivery of the application or ballot by a method other than the Post Office (to allow for hand delivery, courier or express mail services); or arbitrary requirements that are not necessary to prevent fraud.

**American citizens who do not meet state residency requirements** should have *the right to vote* in all states and the District of Columbia at the legal voting residence of their U.S. citizen parent(s). Today, only sixteen states explicitly enable Americans who cannot satisfy state residency requirements to exercise their constitutional right to vote in federal elections, though some states are introducing new initiatives.

**The deadline for the receipt of overseas ballots** should be *uniformly fixed on Election Day*, and overseas ballots should be *counted simultaneously* with domestic ballots, ensuring that overseas votes are taken into account in the announcement of the results of the election.

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No voted ballots should be required to be received before the official Election Day. In the event of *special emergency elections*, the period between announcement of the elections and receipt of *all* ballots should be uniformly fixed at 60 days.

**Postmark and date stamp requirements** should be eliminated; all dated ballots should be accepted.

**Timely expedition of ballots**: The lateness of many states in sending out their absentee ballots often makes registration and voting impossible; slow foreign mail systems exacerbate the problem. All states should be required to publish a *Federal ballot* that can, if necessary, be distributed earlier than a full state ballot. Thirty days should be the *minimum interval between transmittal of ballots and the deadline* for voted ballots to be received by local election officials. New methods of *electronic transmission of electoral materials* should be further developed, including the possibility of faxing the federal application form and of downloading ballots from the Internet, to be completed and returned by mail.

### The Help America Vote Act (HAVA) is of crucial importance to overseas voters

**Voting assistance programs** are to be expanded, under HAVA, for absent uniformed services voters. *The same should apply to civilian overseas voters.*

**Statewide voter registration databases** are dependent on funding and essential to the constitution of complete, accurate, regularly updated lists of voters and to the generation of statistics which will enable refining procedures in the future. Overseas voters already benefit from faster response to registration and ballot requests, more accurate information, better statistical reporting. *Full implementation of all such databases must be accelerated.*

**The single state office** should provide information to overseas voters on registration and absentee ballot application procedures. Congress also *recommended* that this same office accept registration applications, absentee ballot applications, and absentee ballots (including Federal Write-In Absentee Ballots) for the entire state. *This recommendation can greatly facilitate and simplify voting from overseas.*

**The Election Assistance Commission (EAC)** is responsible for making recommendations to the President and the Congress about further actions to help overseas voters. *We fully support the EAC, call for its full funding and urge Congress to extend its mandate.*

**Statistical reporting** on the number of overseas absentee ballots transmitted and received. *We hope the EAC will extend these statistics* to the number of registration applications received, the number rejected, the number of ballots requested, the number of ballots rejected and the reasons for any rejection in all cases.

**Appropriations requirements**: There was no 2005, 2006 or 2007 HAVA appropriation for funding to the states. At the beginning of 2009, there remained a shortfall in total HAVA funding of over $800 million, though the Omnibus Appropriations Act of 2009 included $100 million for HAVA requirements payments for the states and voting technology improvements. In view of the considerable needs, we *continue to call for its full funding.*

### Conclusion

Our organizations are all original members of the newly formed *Alliance for Military and Overseas Voting Rights (AMOVR)*, grouping overseas citizens' advocacy organizations; state, local and federal election officials; and all branches of the military including active and retired service members and their families. The stated goals of the Alliance are to effect real change in voting procedures for UOCAVA voters before the 2012 elections and to ensure that absent military and overseas civilian voters enjoy an equal right and ability to vote. Together, we will continue to work with Congress and the Administration to find other appropriate and economically feasible ways to improve the ability of absent uniformed service voters and overseas Americans in the private sector to register and vote absentee in U.S. federal elections.

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