

BRENNAN

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FOR JUSTICE

EARLY VOTING:
WHAT WORKS

Diana Kasdan

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“We love early voting, we’re big early voting supporters here.”

— MICHELLE PARKER, ASSISTANT DIRECTOR OF ELECTIONS, TRAVIS COUNTY,
TEXAS (POP. 1,095,584)*

“I don’t know that we can do elections without early voting anymore. . . . I really can’t even begin to think of the disadvantages. From an administrative side, it’s just amazing how much more effective it is.”

— KAREN BRINSON, DIRECTOR OF ELECTIONS OF TRANSYLVANIA COUNTY,
NORTH CAROLINA (POP. 32,849)

“If you’re a state that only does Election Day, you should be doing early voting. The benefits far outweigh the limitations.”

— JUDD CHOATE, DIRECTOR OF ELECTIONS FOR
COLORADO (POP. 5,187,582)

“It’s a whole lot more work for us, but it’s worth it because the people love it,” and it “makes Election Day a piece of cake.”

— LARRY LOMAX, FORMER REGISTRAR OF VOTERS FOR
CLARK COUNTY, NEVADA (POP. 2,000,759)

“[E]very two years, we see more local counties increase the number of early voting locations available. We have seen more counties invest in early voting resources. Why would they increase their early voting resources, if they didn’t believe in what they were doing?”

— WAYNE PRUETT, HAVA COORDINATOR,
TENNESSEE DEPARTMENT OF STATE (POP. 6,456,243)

*All population statistics obtained from *State & County Quick Facts*, U.S. Census Bureau, <http://quickfacts.census.gov/> (last visited Oct. 18, 2013).

INTRODUCTION

The lifeblood of a democracy is a voting system that is free, fair, and accessible to all eligible citizens. But much of today's election system was developed more than a century ago. It needs to be updated to sustain a healthy democracy. A remnant of this antiquated system is the notion that all ballots (except for absentee) must be cast on a single day. As Americans' lives become more complex — for many each day is a struggle to balance the needs of work and family — confining voting to a single 8- or 12-hour period is simply not reflective of how most voters live. Additionally, having polls open for such a short time can lead to numerous problems, including long lines, as poll workers — who perform the job infrequently at best — struggle to cope with hordes of voters.

Not surprisingly, early voting leads the list of reforms many states are using or considering. It offers 21st century voters the convenience and flexibility that match the demands of modern life. A majority of states already have some form of early voting. In the 2013 legislative sessions, at least 20 states considered proposals to start or expand early voting.¹ Unfortunately, the trend is not all in one direction. In several states, there have been efforts to curb early voting — efforts that are part of a broader assault on voting rights over the past few years.² For instance, a recently-enacted package of voting restrictions in North Carolina eliminates a full week of early voting, same-day registration during early voting, and reduces the hours of early voting available on the final Saturday before Election Day.³

Despite the widespread use of, and growing interest in, early voting, there has been little comprehensive research to assess its benefits and offer policy recommendations. This report fills that gap. It is based on a review of the laws in all states with early voting, a review of the relevant academic research, and, perhaps most important, in-depth interviews with 21 state and local election officials who have overseen early voting.

Our research shows the key benefits of early in person voting are:

1. Reduced stress on the voting system on Election Day;
2. Shorter lines on Election Day;
3. Improved poll worker performance;
4. Early identification and correction of registration errors and voting system glitches; and
5. Greater access to voting and increased voter satisfaction.

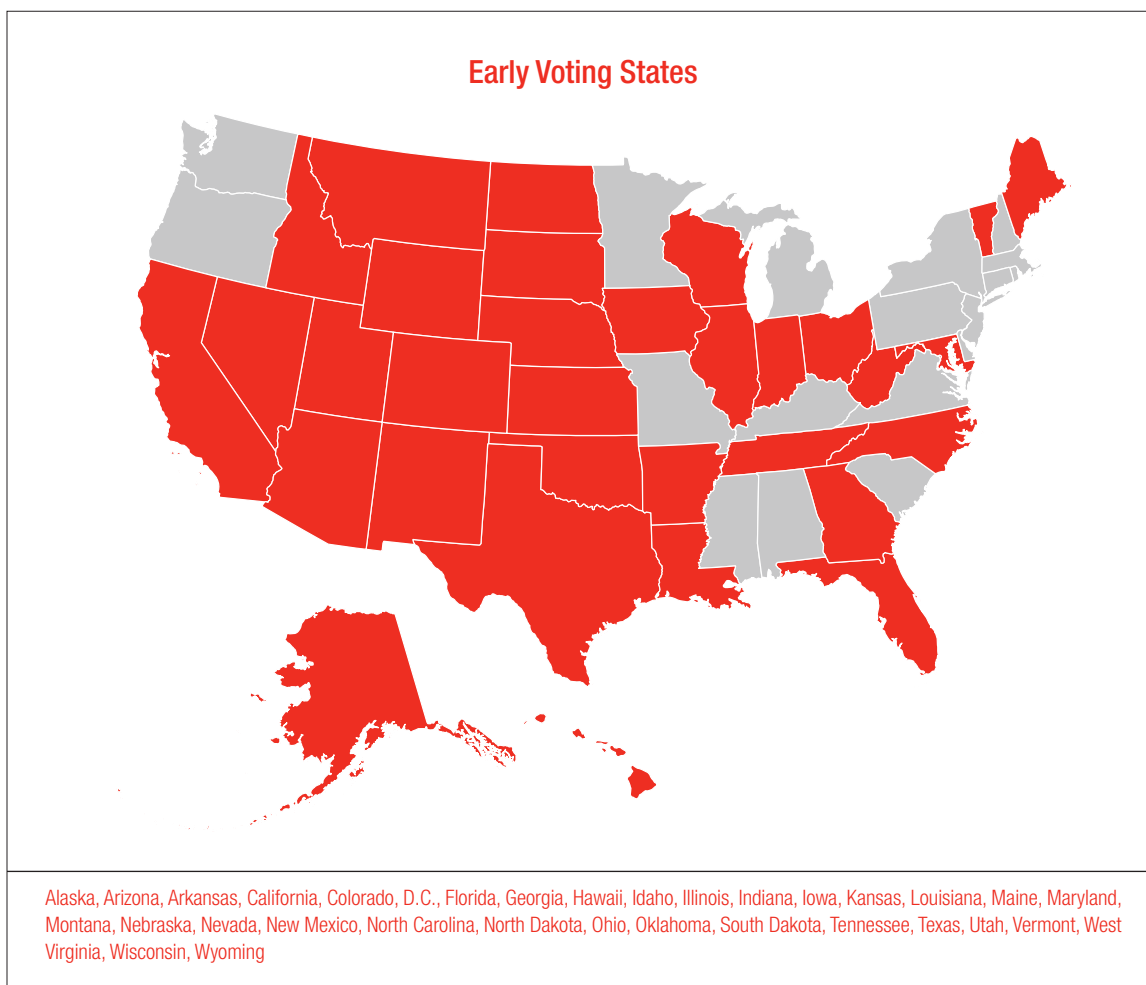
Based on this research, we make the following policy recommendations for early in person voting:

1. Begin early in person voting a full two weeks before Election Day;
2. Provide weekend voting, including the weekend before Election Day;
3. Set minimum daily hours for early voting and provide extended hours outside standard business hours;
4. Allow use of both private and public facilities;
5. Distribute early voting places fairly and equitably;
6. Update poll books daily; and
7. Educate the electorate about early voting.

I. DEFINITIONS AND METHODOLOGY

1. Definition of Early In Person Voting

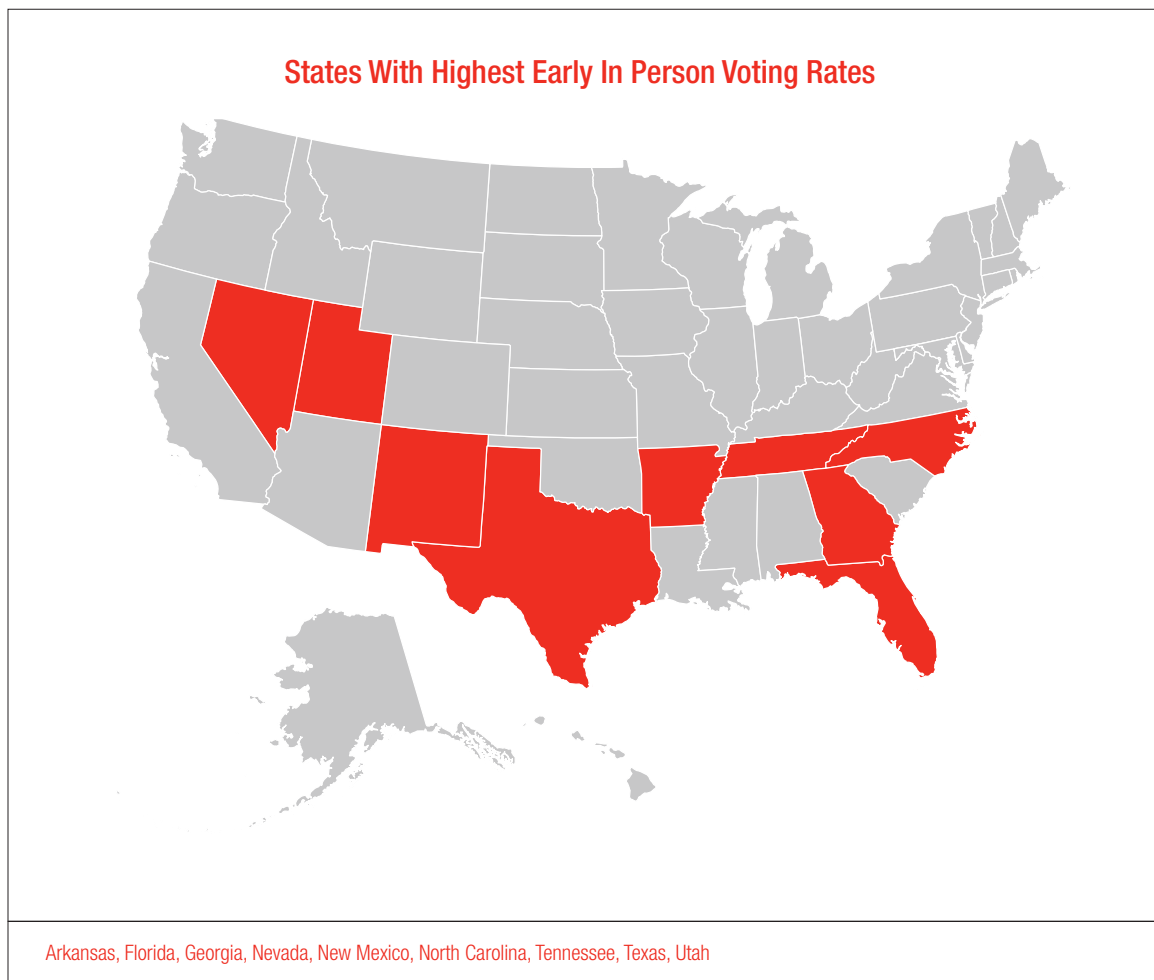
There is no universally recognized definition of early in person voting. At least 32 states, plus the District of Columbia, have laws enabling citizens some opportunity to vote early and in person without an excuse.⁴ However, early voting laws vary substantially. In a few states, early in person voting opportunities are essentially an extension of voting absentee without an excuse. For instance, in Maine, the only way to vote early and in person is to go to the county clerk's office, fill out an application for an absentee ballot, and then receive, complete, and hand in an absentee ballot. That vote, while cast in person, is completed and counted the same way as an absentee ballot.⁵ In other states, early voting is much the same as voting on Election Day. In most states with early in person voting, voters can visit at least one (and usually more) designated early voting locations in their county, cast a vote in the same way they would on Election Day, and have those ballots counted in the same fashion as Election Day ballots.⁶ Additionally, in some states, like California and Colorado, while this model of early in person voting is an option, early voting by mail predominates.⁷



The focus of this report is on those states whose early voting practices most resemble those on Election Day. As used in this report, the term early in person voting (EIPV) refers to such systems and does not include early voting procedures that require a voter to receive a mail ballot, or systems in which the only option for in person voting is to complete an absentee ballot and submit it to the clerk's office.⁸

2. Methodology

We comprehensively surveyed the statutes, regulations, and state election websites in all 33 jurisdictions offering early voting without an excuse.⁹ We also reviewed the literature on early voting — including more than 30 scholarly articles, research studies, and government reports — as well as numerous sources of published national, state, and local early voting turnout data. The research focused particularly closely on the policies and practices in nine states with the highest rate of EIPV in 2008 and again in 2012. This included states in which EIPV represented 25 percent or more of the total voter turnout in 2008.¹⁰ That threshold was more than 10 percentage points above the national early in person voting rate in 2008 and 2012.¹¹ The nine states that meet this criterion are Arkansas, Florida, Georgia, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah.¹²



We also conducted phone interviews with state and local election officials from a sample of those states offering some form of EIPV. A total of 21 state and county elections administrators from nine states — Colorado, Georgia, Illinois, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah — were questioned. We selected states for interviews not only because of their relatively high use of EIPV, but also on the basis of geographic diversity and their history with EIPV. We included states with both well-established and relatively new EIPV laws. We interviewed local officials from urban, mid-size suburban, and small counties, as well as counties with significant minority populations.¹³ We asked each respondent to describe procedures for implementing EIPV and to offer qualitative assessments. Where necessary, we followed up with several interviewees to obtain more complete responses after the initial round of interviews. We provided all 21 interviewees a draft copy of the report to confirm it accurately reflected their views and statements, as well as an opportunity to offer any additional comments. We received affirmative confirmations from 95 percent of those interviewed, with only one failing to respond.

II. THE BENEFITS OF EARLY IN PERSON VOTING

One of the oft-cited benefits of EIPV is increased voter turnout. Yet, so many factors affect turnout — such as the nature of the candidates’ and partisan and non-partisan get-out-the-vote efforts — that the scholarship on whether EIPV by itself increases turnout is unsettled.¹⁴ This report makes no attempt to contribute to that body of research. Instead, it looks at EIPV as a means to improve both election administration and voter satisfaction.¹⁵

There are five key ways, other than increasing turnout, EIPV can improve elections: 1) reducing stress on the voting system on Election Day; 2) alleviating long lines on Election Day; 3) improving poll worker performance; 4) allowing early identification and correction of registration errors and voting system glitches; and 5) providing greater access to voting and increased voter satisfaction. Election officials we interviewed overwhelmingly pointed to these benefits.

1. Reduced Stress on the Voting System on Election Day

EIPV makes election administration easier for both full-time election administrators and part-time election workers. According to election officials interviewed, EIPV “eliminated” or “alleviated” the administrative burdens on Election Day, and caused “less voter frustration.”¹⁶ For example, Michael Dickerson, the director of elections for Mecklenburg County, North Carolina, reported that the evening Election Day rush “no longer exists” because of EIPV.¹⁷ And Pat Beckstead, the former elections director for Davis County, Utah, explained they no longer needed to manage and “deploy as many machines or staff” on Election Day because so many voters have “already been taken care of” because of EIPV.¹⁸

There appears to be broad agreement on this point. Fifteen secretaries of state held a roundtable discussion on election administration in May 2013. “Most participants concurred that the key benefits of early voting are providing a convenience option for voters and enabling local election administrators to mitigate some of the stresses of a busy Election Day, when the largest number of voters show up to vote,” a report on the discussions said.¹⁹

2. Shorter Lines on Election Day

Another key benefit is reducing long lines on Election Day. Election officials frequently cited this outcome, even in counties that reported longer lines during EIPV days than on Election Day.²⁰ Larry Lomax, who served as the registrar of voters in Clark County, Nevada, for more than 15 years (he has since retired and now serves on the Presidential Commission on Election Administration), described it this way: “Early voters are happy voters, and Election Day voters are grumpy voters. People will stand in line 45 minutes to an hour and they don’t complain. But if they have lines of that length on Election Day, there would be serious problems.”²¹

Simply put: When voters can choose to vote on a day and time that does not conflict with work, family care, or other obligations, waiting in line is an option, not an obstacle. However, longer lines during EIPV are neither desirable nor inevitable. For instance in Bernalillo County, New Mexico (which includes Albuquerque), County Clerk Maggie Toulouse Oliver extensively studied wait times in conjunction with researchers from the University of New Mexico and found the average wait time for the 2012 general election during the EIPV period was less than five minutes,²² and on Election Day it was under 16 minutes.²³

3. Improved Poll Worker Performance

Improving poll worker and staff performance is another distinct advantage of EIPV. Several election officials noted that an extended voting period allowed election workers to gain valuable experience, which made them more efficient at handling the higher volume on Election Day.²⁴ Staff and volunteers come to “feel more comfortable in terms of the ballot and experience with voters,” said Michelle Parker, assistant director of elections for Travis County, Texas. She further explained that workers can “identify potential issues for Election Day to flag for voters or staff.”²⁵ These forecasts also reduce the chances for errors by poll workers.²⁶

In some cases election officials have used the extended voting period strategically, either to develop an “A Team” of highly experienced election staff to manage early voting sites or as a tool to recruit a wider pool of volunteers. For example, in El Paso, Colorado, county DMV employees can act as poll workers during the early voting period. Participants are provided on-the-job training as well as chances to act as leaders. The training, and the opportunity to act as a manager, increased motivation and resulted in strong performance by all poll workers, regardless of experience.²⁷

4. Prevention and Correction of Errors

An extended voting period also provides more opportunity to discover and correct problems before the polls close.²⁸ If an error in a voter’s registration record can be fixed during the early voting period, it may mean the difference between a vote that counts and disenfranchisement by mistake. As Rosemary Blizzard, the board of elections director for Wayne County, North Carolina, explained, there is more “time to control things,” and this “helps to make sure that everyone who is entitled to a ballot gets a ballot. It’s just harder to do that on Election Day.”²⁹

A longer voting period also creates more time to run and recalibrate voting machines, re-check electronic systems, and fine-tune poll site management, all of which helps systematically eliminate the small glitches that can lead to more major errors during the increased pressure of Election Day.

5. Greater Access to Voting and Increased Voter Satisfaction

In a paper presented at a 2007 conference about the possible use of “voter satisfaction” surveys to measure election administration, Yale Law School Professor Heather Gerken noted the importance of a positive experience in the act of voting. “[V]oter satisfaction correlates with confidence in the election system... and [is] something that may even affect voter turnout.”³⁰ Given the importance of the benefit, it is worth discussing in some detail.

The election officials we interviewed agreed that offering more voting opportunities to their constituents was itself a critical election administration benefit. They commonly emphasized the importance of providing greater “accessibility” and “flexibility” for voters who would otherwise face obstacles on Election Day because of work schedules, commutes, unexpected military deployment, or bad weather.³¹ Describing her office’s goal in serving more than half a million registered voters, Michelle Parker, assistant director of elections for Travis County, Texas, summed it up in these terms: “[Early voting] gives voters more opportunities to exercise their right to vote. There is more convenience, and more flexibility, which is a good thing.”³²

The convenience of EIPV is unquestionably popular with voters. Turnout data confirms voters are increasingly choosing EIPV instead of voting on Election Day. According to the U.S. Election Assistance Commission, between the 2004 and 2008 presidential elections, EIPV grew by one-third, to 13 percent of all votes cast nationally.³³ And comprehensive studies drawing on a direct survey of voters nationwide report an even higher rate of usage in 2008 and again in 2012, 18 percent.³⁴ In some regions, the growth of EIPV has been even more dramatic. In Nevada, North Carolina, Tennessee, and Texas, a majority of voters used EIPV in both 2008 and 2012.³⁵

Early In Person Voting as a Percentage of Total Turnout

State	2004	2008	2012
Arkansas	22.9	29.6	44.1
Florida	18.7	31.3	28.2
Georgia	11.7	44.9	43.8†
Nevada	41.7	57.9	60.8
New Mexico	29.7	40.1	41.8
North Carolina	27.6	55.8	56.3
Tennessee	44.9	57.9	56.6
Texas	47.7	60.6	62.4†
Utah	N/A (started in 2006)	28.7	23.9
Nationwide:	8.4	13.0	14.0†

Table 1: The table displays early in person voting percentages for the 2004, 2008, and 2012 elections in the nine top-performing EIPV states and nationwide. All but three percentages (†) are as reported by the U.S. Election Assistance Commission in its 2004, 2008, and 2012 Election Administration and Voting Surveys. The nationwide EIPV percentage for 2012 is based on responses from the Voting Registration Supplement of the Current Population Survey. The 2012 percentages for Georgia and Texas are based on top of ticket election results as published by the Secretary of State offices for those states. For further explanation regarding the 2012 data sources, see footnotes 11 and 12.

Notably, among the growing population using early voting, the face of the electorate is becoming more diverse. Until relatively recently, studies identified the typical early voter as an older white conservative.³⁶ More recent scholarship has found that in some parts of the country, communities of color disproportionately prefer early voting.³⁷ For example, by 2012, 41 percent of blacks in the South, as compared to nearly 35 percent of whites, voted early and in person.³⁸ Now black voters are one of the fastest growing groups of early in person voters in some regions. Between 2004 and 2008, in the South where EIPV rates are typically higher than the rest of the nation, the rate of blacks voting early nearly tripled.³⁹

These usage trends suggest EIPV has the potential to sustain and encourage minority voter participation. The flip side, however, is that efforts to reduce EIPV, such as those passed by North Carolina, pose a greater threat to minority voters.

A Word About Costs

The potential for cost savings and other efficiencies are issues that deserve further study. Election officials were split about whether EIPV increased or decreased costs. For every election administrator who asserted with great certitude that EIPV saved money, there was one who maintained just the opposite. None of the officials interviewed had completed an assessment about the incremental costs and savings of EIPV.

Those that described EIPV as cost-efficient pointed to considerations such as the need for fewer voting machines or polling places on Election Day and the increased ratio of voters served per staff at each early voting location. For example, as retired Clark County election official Larry Lomax explained: “It’s so much more cost efficient based on the number of workers we hire. Our early voting sites get about 1,500 voters a day, the Election Day sites have about 300-350 per day.”⁴⁰

However, even those who highlight the potential for implementing EIPV in a manner that enhances cost efficiencies caution it should not be perceived as a quick-fix budget reduction measure. They emphasized that there must be substantial planning for EIPV, including the transition period to prepare for Election Day.⁴¹

Notably, there was strong support for EIPV even among officials that reported increased costs. For instance, Maggie Toulouse Oliver of Bernalillo County, New Mexico, said that while EIPV “definitely doesn’t save money,” she still nonetheless supported “keep[ing] early voting days open as long as is practicable” to maximize the benefits to voters, including increased participation, and reduction of Election Day “bottlenecks.”⁴² Katherine C. Schultz, the county clerk for McHenry County, Illinois, said EIPV had increased costs, particularly for staffing. Yet, based on her positive experience with EIPV, she recommended that “[a]ny state that does not have early voting, they need to consider it.”⁴³

IMPACT OF EIPV REDUCTIONS ON MINORITY VOTERS

The danger of rolling back EIPV opportunities was vividly demonstrated in Florida in 2012. Four years earlier, blacks used early voting at much higher rates than whites. The gap was even more pronounced on the last Sunday before Election Day as a result of highly popular “Souls to the Polls” drives.⁴⁴ In advance of the 2012 presidential election, Florida’s legislature drastically reduced the total available days and hours of early voting,⁴⁵ including this final Sunday.⁴⁶ Concerned about the discriminatory purpose motivating the change and the burden on minority voters, the Department of Justice and several voter advocacy groups, including some represented by the Brennan Center, sought to block the measure in the five Florida counties for which the Voting Rights Act required federal approval of voting law changes to ensure they were not discriminatory.⁴⁷ A panel of three federal judges agreed, noting, “a dramatic reduction in the form of voting that is disproportionately used by African-Americans would make it materially more difficult for some minority voters to cast a ballot than under the prior law.”⁴⁸ In order to obtain federal approval, the five counties had to mitigate the law’s impact by guaranteeing the maximum allowable hours (12) on each available day of early voting.⁴⁹ However, Florida’s 62 other counties — not bound by the court’s decision — remained free to offer as few as 6 hours per day if they so chose.⁵⁰

The experience of Florida voters in the 2012 presidential election validated the concerns of critics and the court. Preliminary post-election research found minority voters shouldered an unequal share of the reduced EIPV opportunities. An analysis by Professors Paul Gronke of Reed College and Charles Stewart of MIT found that despite an overall decrease in EIPV from 2008, blacks were still more likely to use EIPV than whites in 2012.⁵¹ Additionally, they found that slightly more than 18 percent of those who voted on the last Sunday of early voting in 2008 — the popular “Souls to the Polls” day, which was eliminated in 2012 — did not vote at all despite still being registered.⁵²

And some Florida voters who otherwise would have voted early chose to vote on Election Day, where again there were long lines and delays.⁵³ One analysis estimated at least 200,000 eligible voters did not cast a ballot because of these long lines.⁵⁴ Florida’s 2012 voting problems, many of which stemmed from curtailing EIPV, were so evident, and so widely criticized, that Florida lawmakers voted six months later to lengthen the allowable EIPV period.⁵⁵

III. POLICY RECOMMENDATIONS FOR EARLY IN PERSON VOTING

For states looking to maximize EIPV's potential benefits, jurisdictions already successfully implementing EIPV can offer best practices. One key measure of success is if a substantial percentage of the total ballots cast in an election are cast in person during the early voting period. In those states, EIPV is a popular option that many voters find preferable or more accessible than Election Day or absentee voting. A sizable EIPV turnout means administrators have more opportunity to reduce the burdens and stresses caused by having all poll site management challenges (from checking in voters to fixing machines) converge on a single day. Thus, in formulating our recommendations we looked for common laws, policies, and practices in states with high EIPV rates, particularly those nine states with the highest usage in the last two presidential elections.

Based on our research and interviews, we have seven strong policy recommendations for lawmakers and administrators contemplating early voting policies. These recommendations are based on a combination of factors, including: the common legal requirements and practices in the nine states with the highest usage of EIPV, points of consensus among the election officials we interviewed on what contributes to successful EIPV,⁵⁶ and supporting evidence drawn from existing early voting research and data. Notably, all seven recommendations discussed below share two primary criteria: 1) they track the policies set forth by statute, regulation, or statewide guidance in at least a majority of the nine states with the highest use of EIPV and 2) the election officials interviewed — including those outside of the highest usage EIPV states — overwhelming identified the policies as among the key ingredients for successful administration of EIPV.

Laws in States with the Highest EIPV Rates, as of 2012

EIPV Laws	Arkansas	Florida	Georgia	Nevada	New Mexico	North Carolina	Tennessee	Texas	Utah
Must begin EIPV a two full weeks before Election Day	✓		✓	✓	✓	✓	✓	✓	✓
Must offer weekend voting	✓	✓	✓	✓	✓	✓	✓	✓	
Sets minimum daily hours and allows extended weekday hours	✓	✓	✓	✓	✓	✓	✓	✓	✓
Allows both public and private voting locations	✓			✓	✓	✓	✓	✓	✓
Sets standards for quantity or distribution of EIPV locations		✓	✓		✓	✓		✓	✓
Counties must update county poll book or state voter file daily during EIPV		✓		✓	✓		✓	✓	
Must educate the electorate about the EIPV schedule			✓	✓	✓		✓	✓	✓

Table 2: The laws regulating EIPV statewide are based on each state's requirements for general elections. In some states, these standards do not apply, or are different, for primaries or special elections. Additionally, this chart only captures the minimum requirements of state law. As discussed in the report, in several of the states and counties interviewed, common practices meet or exceed these standards even if not mandated by state law. This is particularly true with respect to the daily updating of countywide poll books or the state voter registration file. Recent changes in state laws (after 2012) and notable variations regarding the details of these standards are highlighted below.

Recent Changes in EIPV Laws

FLORIDA: After the 2012 election, Florida changed its early voting period to give counties discretion to offer early voting the second week before the election (which had been mandatory in the 2008 election, but was eliminated prior to the 2012 election). It also changed the law to permit counties to use more types of early voting locations, including a non-public facility if necessary.

GEORGIA: Early in person voting, or "advance voting" as it is called in Georgia, begins three weeks before Election Day. This makes it the only state among the nine states with the highest rates of EIPV that mandates more than two full weeks for early voting. The minimum daily hours during weekday early voting hours are set as the "regular business hours," which may vary for each county.

NEVADA: While Nevada law does not specify daily updating of the poll books during EIPV, it does require the county clerk to have procedures, approved by the secretary of state to determine that the voter has not already voted during the EIPV period. Statewide, counties use electronic poll books for daily updating.

NORTH CAROLINA: In 2012, North Carolina had two full weeks of EIPV. In 2013, North Carolina changed its laws to eliminate early voting during the second week before the election. This change is set to take effect in 2014. The minimum daily hours during weekday early voting hours are set as the "regular business hours," which may vary for each county.

UTAH: The EIPV period starts during the second week before Election Day, but does not constitute a full two week period as it begins just 14 days before and ends the Friday before Election Day. Utah does not mandate any weekend voting days, however, in practice, some counties do provide them.

1. Begin EIPV a Full Two Weeks Before Election Day

Currently, nearly half the states with early voting laws specify that early voting begin between two and three weeks before Election Day in a general election.⁵⁷ All nine states with the highest EIPV rates in both 2008 and 2012 fell within this range for both of those election years, with the exception of Florida, which had only eight days in 2012.⁵⁸ By contrast, states offering significantly more or less time to cast an early ballot have not seen greater use of early in person voting. Ten of the 11 states that start early voting more than three weeks before Election Day⁵⁹ (many of which simply allow no excuse absentee voting to be done in person, but do not provide true EIPV) reported single-digit early in person voting in 2008 and 2012.⁶⁰ In the three states that required less than two full weeks of EIPV in both 2008 and 2012 — Kansas, Oklahoma, and Louisiana — EIPV turnout was well below that in the states with the highest use of EIPV (25 percent or more) in both of these election years, and below the national rate for EIPV in 2008 (13 percent).⁶¹

According to election officials interviewed — all of whom had implemented EIPV periods beginning two to three weeks before recent general elections — this period was an effective minimum duration for generating the administrative benefits described above. They consistently said less time would be insufficient, and significantly more time was unlikely to increase voter use of EIPV or administrative benefits. Michelle Parker, assistant director of elections for Travis County, Texas, stated: “I can’t imagine us starting [early voting] much sooner. I think it’s about right, two full work weeks and a weekend. I can’t imagine it being any longer.... Making it shorter would be difficult in our big elections because we would increase wait times and crowding.”⁶² Likewise, Scott Gilles, Nevada’s deputy secretary for elections, believes a two-week period is optimal: “[T]he counties essentially run the election for two weeks in advance of Election Day, not as if they are gearing up for just one big day. It provides them the ability to get their system in line for Election Day, which is still the biggest day.”⁶³

Conversely, Florida’s 2012 debacle, when it cut EIPV from two weeks to one, shows holding early voting for less than two weeks is not wise policy.

2. Provide Weekend Early Voting, Including the Last Weekend Before Election Day

Weekend voting can help maintain a more manageable and even distribution of voters over each day of EIPV. It also has the potential to increase overall usage of EIPV by drawing voters who are less likely to vote during weekdays due to work schedules, or might otherwise wait until Election Day but for the convenience of weekend voting. Indeed, in some jurisdictions, weekends are peak voting days, and the last weekend before Election Day often sees the biggest day of EIPV turnout.

Not surprisingly, the majority of states with early voting require some weekend days or give local election officials discretion to offer weekend voting.⁶⁴ In eight of the nine states with the highest EIPV turnout in 2008 and 2012, there are statutory mandates for at least one weekend day of early voting.⁶⁵ In three of those states, the final Saturday before Election Day is the last mandated day of EIPV.⁶⁶ Notably, weekend voting hours were offered in 2008 and 2012 in all the jurisdictions we interviewed, even when not required by state law.

According to interviews with election officials, weekends were commonly peak EIPV periods, particularly in large counties that are major population centers — and in those counties, the last Saturday of EIPV often constituted the highest turnout day.⁶⁷ For example, according to publicly available data for Mecklenburg County, North Carolina, in 2012, the first weekend of early voting saw nearly 17,000 voters, about 11,000 of them on Saturday. For the final Saturday of early voting, the daily turnout was almost 21,000 voters — the single highest turnout in 17 days of early voting. A similar pattern occurred in 2008.⁶⁸ And in Florida in 2012, the last Saturday before Election Day was the highest EIPV day in 9 of the state’s 10 most populous counties.⁶⁹

Policies or practices that make weekend voting equally accessible as weekday voting can also help increase its usage. In New Mexico, state law requires eight hours for each weekday and Saturday voting, and Bernalillo County goes even further, offering 12 hours on every day of early voting.⁷⁰ This approach has made Saturday voting a meaningful option in New Mexico and election officials reported Saturday is one of the most popular voting days across the state.⁷¹

3. Set a Consistent Number of Minimum Daily Hours for Each Day of EIPV and Provide Extended Hours Outside Standard Business Hours

Election officials can reduce lines during EIPV, enhance access for many voters, and even increase EIPV turnout by maximizing daily hours and including a regular set of non-business hours.

State laws generally are less specific in mandating that minimum hours of EIPV be offered outside of usual business hours. A minority of states with early voting, 14 of the 33 jurisdictions, explicitly require early voting locations remain open outside regular business hours or explicitly grant local jurisdictions discretion to offer additional hours.⁷² In contrast, as with weekend voting, such policies and practices are standard among the states with the highest EIPV turnout in the last two presidential elections. All nine of these states have statutes that set minimum daily early voting hours and most explicitly authorize local jurisdictions to set at least some early voting hours beyond the minimums specified.⁷³ In two of the nine states, Arkansas and Nevada, the statutory minimums are 8:00 a.m. to 6:00 p.m., automatically establishing one hour at the beginning and end of the day outside standard business hours.⁷⁴

The number of hours of EIPV per day is a significant contributor to EIPV usage. According to our research, in states with some of the highest rates of EIPV, like New Mexico, Tennessee, and Texas, election officials chose to offer EIPV for significantly more hours than the statutory minimum.⁷⁵ In Montgomery County, Tennessee (pop. 184,468), for example, early voting typically occurs from 8:00 a.m. to 6:00 p.m., well beyond the daily three-hour minimum set by law.⁷⁶ In Bernalillo, New Mexico (pop. 673,460), the county provides 12 hours of EIPV for general elections.⁷⁷ This 12-hour daily schedule is 50 percent more than the legally mandated eight hours. And in Travis County, Texas (pop. 1,095,584, which includes the state capital, Austin), one early voting “mega center” is open until 9:00 p.m., an additional two hours beyond the statutorily required 12-hour day.⁷⁸ In describing the choice of extended hours, two common refrains were the importance of making hours consistent over several days to encourage use, and including evening hours for those more likely to vote outside work hours, or on their commute home.⁷⁹

Recent research likewise confirms offering extended EIPV hours can enhance early voting turnout. A study of EIPV in 2008 in 117 of 159 Georgia counties concluded that “[i]ncreasing the hours of operation for early voting sites... appears to be the most cost-effective measure for boosting turnout.”⁸⁰ The study found most early voting sites in Georgia were open only during weekday business hours and noted, “Adding hours in the evening and/or on the weekend might also correlate with convenience and, in turn, increase turnout prior to the date of the election.”⁸¹

4. Allow Counties to Use Both Private and Public Facilities

Because early voting locations typically operate as “vote centers” — serving all registered voters in a county — and must remain open several days, election officials need the flexibility to choose facilities that can meet unique logistical, security, and capacity needs. Election officials can best address these needs when they are able to use a mix of public and private facilities. A handful of states limit early voting to the county clerk’s office. Notably, many of these are states in which early in person voting is the same as, or little more than an extension of, no-excuse absentee voting.⁸² In contrast, most states with EIPV, including most of the nine states with the highest EIPV rates, permit election officials to use a range of voting locations, both public and private.⁸³

Most election officials confirmed the benefits of using a variety of voting locations. County-owned libraries, recreation centers, and community centers were commonly selected voting locations among all officials interviewed. With the exception of election officials in Illinois and some smaller counties with only one voting location,⁸⁴ all other state and county election officials we interviewed reported that non-government facilities were valuable early voting sites. Private sites included malls, shopping centers, unused vacant commercial spaces, churches, and corporate office centers.⁸⁵ Daniel Burk, former registrar of voters in Washoe County, Nevada, reported that for 15 years EIPV turnout “never reached more than 15 percent of voting until we switched over to commercial voting locations in 2004.”⁸⁶

Even when state laws mandate a preference for government buildings, officials often supplement them with private locations. In Utah, state law directs that early voting locations must be government facilities “unless the election officer determines that . . . there is no government building or office available that” meets certain criteria.⁸⁷ This exception is invoked frequently. Utah Director of Elections Mark Thomas estimates more than half the state’s early voting locations are in private buildings.⁸⁸ One challenge for EIPV supervisors is finding locations that are willing to hand over their space and relinquish security control to election officials for several nights.⁸⁹ But in North Carolina, local election officials can demand that a public facility suspend conflicting uses during the entire early voting period.⁹⁰ Not only does such a requirement give election officials enormous leverage in dealing with their public sector counterparts, it also reduces the need for private facilities. Nonetheless, private buildings may offer better space to accommodate large numbers of voters and voting machines. In Mecklenburg County, North Carolina, for example — which had 22 EIPV polling places in 2012 — the county leased large private facilities such as Masonic temples and unused office buildings to supplement the wide variety of public locations used.⁹¹

In contrast to all other states with the highest EIPV rates, Florida's counties faced fairly strict legal limits on the types of facilities that could be used for early voting in 2008 and 2012, and it suffered as a consequence. Only a clerk's office, a pre-existing permanent branch of the clerk's office, a city hall, or a permanent public library were acceptable early voting sites.⁹² County election officials protested that this roster was too restrictive to meet demand.⁹³ Within six months of Florida's widely criticized 2012 election performance, the legislature adopted a package of reforms, including an expansion of suitable EIPV locations, allowing early voting in fairgrounds, civic centers, stadium and convention centers, and other locations.⁹⁴

5. Distribute Early Voting Places Fairly and Equitably

Fair and equitable siting policies are critical to the successful administration of EIPV, just as they are on Election Day. An extensive body of academic literature addresses the ways siting policies can impact, and even increase, turnout.⁹⁵ Further, the laws and practices in states with the highest EIPV rates — many of which attempt to address the issue of equal access of EIPV sites — suggest more specific standards on this point can improve EIPV usage.

As is true with other early voting policies, most state laws say little about the distribution of early voting facilities.⁹⁶ In contrast, laws in those states with high rates of EIPV are more likely to set rules either about the number of early voting locations per county, how they are to be distributed within each county, or both. Georgia, New Mexico, and Texas all mandate a minimum number of early voting locations based on county population.⁹⁷ New Mexico has an additional provision requiring equitable distribution of voting sites based on population density and travel time.⁹⁸ While Florida and North Carolina impose no population-based minimum number of EIPV locations, they do have laws requiring equitable distribution of discretionary satellite locations. And Utah requires early voting locations in its most populous county, Salt Lake (which represents nearly 40 percent of the state's population), be proportionately distributed based on the county population.⁹⁹

Not surprisingly, standards for the number and placement of early voting locations vary widely. For instance in New Mexico, any county with 250,000 or more voters must establish at least 15 additional early voting locations beyond the clerk's office.¹⁰⁰ Across the border in Texas, counties with populations between 120,000 and 400,000 must establish at least one additional early voting location for each "commissioners precinct" covered by the election, and those with a population of more than 400,000 must establish at least one additional early voting location for each state representative district covered by the election.¹⁰¹ And in Georgia, only counties with populations more than 550,000 must make "any branch of the county courthouse or courthouse annex" available for early voting purposes.¹⁰²

Despite the variability in statutory standards, election officials interviewed typically rely on a common set of criteria in determining the appropriate number and placement of early voting sites, in addition to those necessary to meet any legal minimums. These criteria include projected turnout, equitable geographic distribution within the county, and extra voting locations or hours in high-turnout areas. These same criteria are used in selection of EIPV sites.¹⁰³

Washoe County, Nevada, is a good example of all the variables factored into achieving equitable distribution. The goal, said Daniel Burk, former registrar of voters, is to “try to make sure that no voter is more than three miles from an early voting center.”¹⁰⁴ Election officials also consider whether EIPV polling places are on major roads, accessible by public transportation, have disability access, adequate electricity, and sufficient security after machines are locked for the night.¹⁰⁵

6. Update Poll Books Daily

Daily and electronic updating of poll books can help election officials manage two challenges related to early voting implementation. First, if a countywide poll book is updated daily by each early voting site, administrators will not face the crunch of having to manually update and prepare accurate precinct-specific poll books just days, or less, before Election Day. Second, officials will have a real-time mechanism to verify that a voter has not already cast an early ballot at another early voting location, or absentee. Absent such contemporaneous record keeping, it is theoretically possible that a voter could cast ballots at multiple sites during the early voting period and on Election Day and not be discovered until after Election Day. Although this has not been a serious problem anywhere (especially since it is easy to get caught after the election), there is no reason not to eliminate any risk.

Plainly these issues are important to election integrity, but for the most part, early voting laws do not clearly require daily updating of countywide poll books. Just over half of the early voting states have general requirements concerning maintenance of poll books at early voting sites, or for providing the names of those who already voted early or absentee to local precincts in time for Election Day.¹⁰⁶ And very few — Colorado, Florida, Illinois, Maryland, Tennessee, Texas, and West Virginia — mandate the specific technology or procedures to enable daily updating of countywide poll books or use of a statewide registration database.¹⁰⁷ Among states with the highest EIPV rates, however, over half have laws or statewide policies that specifically require or encourage systems to ensure daily updating of poll books during early voting.¹⁰⁸ While we found no evidence that the lack of specific laws mandating daily, countywide updates to the poll books created problems, our interviews confirmed the benefits of a system in which each early voting site has the capacity to daily, and electronically, access and update the voter rolls during the EIPV period.

In practice, the election officials we interviewed uniformly ensure daily updating during EIPV. Using electronic poll books or computers at each voting site networked to the countywide or state registration database, administrators access and update voter rolls at least daily if not more.¹⁰⁹ Election officials overwhelmingly agreed that in addition to easing the management of poll books, particularly in preparation for Election Day, electronic systems also enhanced the integrity of the voting system. Specifically, it helps deter or catch any attempt at repeat voting. Nonetheless, according to officials, there are relatively few instances of repeat voting,¹¹⁰ and practically all attempts were due to voter confusion. Occasionally a few voters attempt to vote more than once to “test” the system or to “make a point.”¹¹¹ Despite the infrequency of this problem, the key to maximizing an early voting program is a modern system of poll book maintenance that allows at least daily updates of poll books. A voting system attuned to the needs of the 21st century electorate must have the appropriate technology to implement it.

7. Educate the Electorate About Early Voting

States should ensure counties provide sufficient advance notice and widespread public education about EIPV opportunities. This will achieve two goals. First, it gives voters the specific information they need to determine when and where they can most readily vote in light of their work and family schedules and travel options. Second, according to election officials we interviewed, and academic research, counties can increase EIPV usage by widely publicizing its availability through a range of public communications.

About half of the early voting states have laws specifically requiring some form of public announcement of the early voting period (distinct from generally applicable notice requirements).¹¹² Not surprisingly, most states with the highest EIPV rates — six of the nine — have such public notice requirements. Laws in Georgia, Nevada, New Mexico, Tennessee, Texas, and Utah require that local election officials furnish all voters with notice of EIPV schedules.¹¹³ Still, even these rules vary widely on the timing of when voters are notified. In Georgia, for example, it need only be “reasonable,” while in other states it can be as short as 72 hours (Texas) or as long as 25 days before Election Day (Tennessee). And the specificity of the form of notice also varies considerably.¹¹⁴ In another two of the highest performing EIPV states, Florida and North Carolina, all counties must submit their schedule for EIPV to the state election authority in advance. While these laws do not explicitly require advance notice provided directly to voters, they do create a publicly accountable process for establishing schedules in advance of the EIPV period.¹¹⁵

In general, however, most of these statutory requirements fall short of providing the necessary guidance to ensure adequate voter education. Interviews confirmed that, for the most part, public education efforts depend on the initiative of local election administrators. For example, in the 2012 election, Bernalillo County, New Mexico, truly adapted to the needs of its constituents by offering a mobile app that allowed early voters to find the nearest polling place, learn approximate wait times, and get directions.¹¹⁶ In Travis County, Texas, election officials anticipated heavy turnout in 2008 and conducted a widespread media campaign encouraging early voting, including engaging in multiple media interviews for both print and television.¹¹⁷ Administrators in both believe these efforts resulted in greater use of EIPV. In addition to encouraging EIPV, officials also emphasized that voter education is important for preventing voter confusion between the early voting and Election Day locations and times.

A study of EIPV in Georgia in 2008 found, not surprisingly, the greater the variety of forms of public education, the greater the effect on early voting turnout. Among the means cited in the report were newspaper, radio, and television announcements, public billboards and signs, notices in utility bills, and presentations to neighborhood groups.¹¹⁸ Similar methods of outreach were commonly described by those interviewed.

IV. CONCLUSION

Early in person voting is a substantial improvement in voting that Americans of all political persuasions should be able to agree upon. Its widespread and growing use by voters, and the uniform view of the election officials we interviewed, confirms it provides ample benefits for both voters and election administrators. EIPV should be available nationwide. States without EIPV should enact laws based on the policy recommendations in this report. However, local election officials must retain sufficient discretion to tailor their EIPV programs to suit their communities. This will ensure there are sufficient voting days, hours, and locations for all eligible citizens to cast their ballots without undue delay or obstacles. And, it will help administrators improve election performance by more effectively managing daily voter flow, poll worker training and staffing, and the resolution of registration problems before Election Day.

ENDNOTES

- ¹ *Voting Laws Roundup*, BRENNAN CENTER FOR JUSTICE (Aug. 15, 2013), <http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>. Of these, two became law. The Maryland General Assembly passed a bill that expanded the early voting period as of July 1, 2013. Election Law — Improving Access to Voting, 2013 Md. Laws Ch. 157, sec. 3, § 10-301.1 (2013). Florida also passed a law expanding its early voting period. H.B. 7013, 115th Leg., Reg. Sess. (Fla. 2013). The New Jersey Legislature passed a bill that would have established early voting in the state, but it was vetoed by Governor Christie. S.B. 2364, 215th Leg., 1st Sess., (N.J. 2012); Jenna Portnoy, *Christie vetoes early voting bill, angering Democrats*, NJ.COM, May 10, 2013, http://www.nj.com/politics/index.ssf/2013/05/christie_vetoes_early_voting_b.html.
- ² In addition to bills to expand early voting, at least seven states introduced bills that would limit opportunities to vote early in person. Both Nebraska and North Carolina passed legislation reducing their early in person voting periods. *Voting Laws Roundup*, *supra* note 1.
- ³ See David Zucchini, *North Carolina's Governor Signs Sweeping Voter ID Bill Into Law*, LA TIMES, Aug. 12, 2013, <http://articles.latimes.com/2013/aug/12/nation/la-na-nn-north-carolina-voter-id-law-20130812>.
- ⁴ Alaska, Arizona, Arkansas, California, Colorado, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, Wyoming. See ALASKA STAT. § 15.20.064; ARIZ. REV. STAT. ANN. § 16-542(E); ARK. CODE ANN. § 7-5-418; CAL. ELEC. CODE §§ 3017, 3018; COLO. REV. STAT. ANN. § 1-8-202; D.C. MUN. REGS. tit. 3 § 703; FLA. STAT. ANN. § 101.657; GA. CODE ANN. § 21-2-385(d) (1); HAW. REV. STAT. §§ 15-2, 15-7; IDAHO CODE ANN. § 34-1006; 10 ILL. COMP. STAT. ANN. § 5/19A-10; IND. CODE ANN. § 3-11-10-26; IOWA CODE ANN. § 53.10; KAN. STAT. ANN. § 25-1119; LA. REV. STAT. ANN. § 18:1309; ME. REV. STAT. ANN. tit. 21A § 753-B; MD. CODE ANN. ELEC. LAW § 10-301.1; MONT. CODE ANN. § 13-13-222; NEB. REV. STAT. ANN. § 32-938(1); NEV. REV. STAT. ANN. § 293.3568; N.M. STAT. ANN. § 1-6-5.7; N.C. GEN. STAT. § 163-227.2; N.D. CENT. CODE § 16.1-07-15; OHIO REV. CODE ANN. § 3509.01; OKLA. STAT. ANN. tit. 26 § 14-115.4(A); S.D. CODIFIED LAWS § 12-19-2.1; TENN. CODE ANN. § 2-6-102; TEX. ELEC. CODE ANN. § 81.001; UTAH CODE ANN. § 20A-3-601; VT. STAT. ANN. tit. 17 § 2537; W. VA. CODE § 3-3-3; WIS. STAT. ANN. §§ 6.86, 6.87; WYO. STAT. ANN. §§ 22-9-104, 22-9-113. Oregon and Washington are not counted among the 32 states with early in person voting since virtually no voting — including Election Day — takes place in person in those states. All state and federal elections are conducted by mail. Oregon elections are exclusively voted by mail, and only one county in Washington still conducts in person voting. See U.S. ELECTION ASSISTANCE COMM'N, 2012 STATUTORY OVERVIEW 10, 28-30 (2013), *available at* http://www.eac.gov/assets/1/Documents/EAC_StatutoryOverviewReport_FINAL-rev.pdf.
- ⁵ See ME. REV. STAT. ANN. tit. 21A § 753-B. In 2007 and 2009, Maine experimented with a pilot program for an early voting system in which voters could cast a ballot at a polling location in the same manner as on Election Day, rather than through an in person absentee ballot. See DEP'T OF SEC'Y OF STATE, ME., REPORT ON THE NOV. 2009 PILOT PROGRAM FOR EARLY VOTING (2010), *available at* http://www.maine.gov/sos/cec/elec/voter_info/2009earlyvotingreport.pdf. Likewise, in Ohio, South Dakota, Vermont, and Wyoming, it is only under the state's no-excuse absentee voting statutes and procedures that voters have an opportunity to submit their absentee ballot early at a clerk's office. See OHIO REV. CODE ANN. §§ 3509.01, 3509.02; S.D. CODIFIED LAWS §§ 12-19-1, 12-19-2.1; VT. STAT. ANN. tit. 17 § 2537; WYO. STAT. ANN. §§ 22-9-102, 22-9-104, 22-9-113; *see also Voting Early in Person, Elections & Voting*, OHIO SEC'Y OF STATE, <http://www.sos.state.oh.us/SOS/elections/Voters/absentee/inperson.aspx> (last visited Oct. 7, 2013); *Voting by Early or Absentee Ballot, Elections*, VT. SEC'Y OF STATE, http://vermont-elections.org/elections1/absentee_overview.html (last visited Oct. 7, 2013); *Absentee Voting Info., Elections*, WYO. SEC'Y OF STATE, <http://soswy.state.wy.us/Elections/AbsenteeVoting.aspx> (last visited Oct. 7, 2013).
- ⁶ Currently, state laws explicitly authorize this type of early voting model in at least 21 states plus the District of Columbia. See ALASKA STAT. § 15.20.064; ARIZ. REV. STAT. ANN. § 16-542(E); ARK. CODE ANN. § 7-5-418; COLO. REV. STAT. ANN. § 1-8-202; D.C. MUN. REGS. tit. 3 § 703; FLA. STAT. ANN. § 101.657; GA. CODE ANN. § 21-2-385(d)(1); HAW. REV. STAT. §§ 15-2, 15-7; IDAHO CODE ANN. § 34-1006; 10 ILL. COMP. STAT. ANN. § 5/19A-10; IOWA CODE ANN. § 53.11; KAN. STAT. ANN. § 25-1119; MD. CODE ANN. ELEC. LAW § 10-301.1; NEV. REV. STAT. ANN. § 293.3568; N.M. STAT. ANN. § 1-6-5.7; N.C. GEN. STAT. § 163-227.2; N.D. CENT. CODE § 16.1-07-15; OKLA. STAT. ANN. tit. 26 § 14-115.4(A); TENN. CODE ANN. § 2-6-102; TEX. ELEC. CODE ANN. § 81.001; UTAH CODE ANN. § 20A-3-601; W. VA. CODE § 3-3-3. A 2009 study found that laws in three states required one early voting site, while 20 states allowed officials discretion to

establish more than one site, and three states required more than one early voting site. See NATHAN CEMENSKA, JAN E. LEIGHLEY, JONATHAN NAGLER, & DANIEL P. TOKAJI, REPORT ON THE 1972-2008 EARLY AND ABSENTEE VOTING DATASET 5 (2009) *available at* www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/Non-Precinct_Laws_1972-2008.pdf.

⁷ In 2012, for example, 39.8% of early ballots in California and 71.4% of early ballots in Colorado were cast absentee by mail (not including UOCAVA voters), whereas only 0.4% of California ballots and 9.7% of Colorado ballots were cast early in person. See U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, Table 28 Ballots Cast by Means of Voting 23-26 (2013), *available at* http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf and U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, Corrected Table 28 Ballots Cast by Means of Voting (2013) (on file with author).

⁸ Accordingly, the impact of early voting primarily conducted through no excuse absentee or permanent vote by mail is outside the scope of this report.

⁹ See *supra* note 4.

¹⁰ These statistics are based on election data reported by the Election Assistance Commission. See U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, Table 29A Ballots Cast By Means of Voting 22-23 (2009), *available at* <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>. While this data source is limited by the lack of complete reporting from all states, it is the best available collection of election turnout data from every state that provides separate breakdowns of the percent of voters in each state that cast a ballot early in person and those who cast a ballot early absentee.

¹¹ According to the Election Assistance Commission, across 22 states reporting early voting data, 13% of ballots cast were cast in person and early in 2008. See *id.* In 2012, the Election Assistance Commission reported that across 29 states reporting early voting data, the proportion of early and in person voting was 9%. See U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 7. However, the 2012 EIPV rate does not include EIPV reporting from Georgia and Texas (which it did in 2008) and thus substantially understates the use of EIPV nationwide. Georgia and Texas were among the states with the highest use of EIPV nationally in 2012. In Georgia, as a percentage of all ballots cast for president (3,897,839), 43.8% were cast “advance in person” (1,706,236). See BRIAN P. KEMP, GA. SEC'Y OF STATE, 2012 OFFICIAL ELECTION RESULTS, PRESIDENT OF THE UNITED STATES SUMMARY BY VOTE TYPE, <http://results.enr.clarityelections.com/GA/42277/113204/en/vts.html?cid=5000> (last visited Oct. 7, 2013) (reporting official top of ticket statewide results by vote type). In Texas, the Secretary of State does not publish the total of all early in person ballots cast statewide, but does publish the number cast for the 15 counties with the highest number of registered voters. As a percentage of all ballots cast (5,106,453) in those same 15 counties, 62.4% were cast early in person (3,188,396). See JOHN STEEN, TEX. SEC'Y OF STATE, 2012 GENERAL ELECTION, PRESIDENT/ VICE-PRESIDENT TOP OF TICKET 2012 CANVASS REPORT, VOTES FOR PRESIDENT, <http://elections.sos.state.tx.us/elchist.exe> (last visited Oct. 7, 2013) (query “2012 General Election” and query “2012 General Election” and “County by County Canvass Report”, then select “President/Vice-President” for “race” to find total top of ticket ballots cast for each county in Texas, including Harris, Dallas, Tarrant, Bexar, Travis, Collin, El Paso, Denton, Fort Bend, Hidalgo, Montgomery, Williamson, Nueces, Galveston, Cameron) and JOHN STEEN, TEX. SEC'Y OF STATE, NOVEMBER 6, 2012 EARLY VOTING CUMULATIVE TOTALS, <http://www.sos.state.tx.us/elections/earlyvoting/2012/nov2.shtml> (last visited Oct. 7, 2013) (reporting 3,188,396 “Cumulative In-Person Voters for Harris, Dallas, Tarrant, Bexar, Travis, Collin, El Paso, Denton, Fort Bend, Hidalgo, Montgomery, Williamson, Nueces, Galveston, Cameron). When more complete national data sets are used, it indicates the early in person voting rate remained fairly steady between 2008 and 2012. Charles Stewart and Daron Shaw note that “in contrast [to the 2012 EAC data], based on responses from the Voting Registration Supplement of the Current Population Survey, the distribution of voters [was reported as] 14% early. The discrepancies [between the two surveys]. . . appear primarily due to a handful of states with in-person early voting (notably Texas and Georgia) combining early voting statistics with absentee statistics.” CHARLES STEWART III AND DARON SHAW, LESSONS FROM THE 2012 ELECTION ADMINISTRATION AND VOTING SURVEY 9 (2013), *available at* <https://www.supportthevoter.gov/files/2013/08/Charles-Stewart-EAVS-White-Paper-Stewart-and-Shaw.pdf> (citing data from the 2012 Census Current Population Survey Voting Registration Supplement). Additionally, comprehensive studies drawing on a direct survey of voters nationwide report an even higher steady usage of EIPV — 18% — in 2008 and again in 2012. See *Early Voting in the 2012 General Election*, PEW CHARITABLE TRUSTS (Aug. 6, 2013), www.pewstates.org/research/analysis/early-voting-in-the-2012-general-election-85899495516 (citing 2012 Survey of the Performance of American Elections Data); see also R. Michael Alvarez, Ines Levin & J. Andrew Sinclair, *Making Voting*

Easier: Convenience Voting in the 2008 Election, 65 POL. RES. Q. 248, 251 (2012) (citing 2008 Survey of the Performance of American Elections Data).

- ¹² U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 10 (reporting 2008 EIPV percentages as follows: Ark. (29.6%), Fla. (31.3%), Ga. (44.9%), Nev. (57.9%), N.M. (40.1%), N.C. (55.8%), Tenn. (57.9%), Tex. (60.6%), Utah (28.7%)). Each of these nine states had the highest percentage of EIPV again in 2012. *See* U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 7 (reporting EIPV percentages as follows: Ark. (44.1%), Fla. (28.2%), Nev. (60.8%); N.M. (41.8%), N.C. (56.3%), Tenn. (56.6%), Utah (23.9%)). *See also supra* note 11 (explaining reported rates for Ga. (43.8%) and Tex. (62.4%)).
- ¹³ Interviews were conducted with election officials in El Paso County, Colo. (pop. 644,964); DeKalb County, Ga. (pop. 707,089); Cook County, Ill. (pop. 5,231,351); McHenry County, Ill. (pop. 308,145); Mecklenburg County, N.C. (pop. 969,031); Transylvania County, N.C. (pop. 32,849); Wayne County, N.C. (pop. 124,246); Clark County, Nev. (pop. 2,000,759); Washoe County, Nev. (pop. 429,908); Bernalillo County, N.M. (pop. 673,460); Montgomery County, Tenn. (pop. 184,468); Travis County, Tex. (pop. 1,095,584); Davis County, Utah (pop. 315,809); and Salt Lake County, Utah (pop. 1,063,842). *See State & County Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/> (last visited Oct. 18, 2013) (2012 population estimates). Of these jurisdictions, those with significant minority populations include: DeKalb County, Ga. (54.6% black); Cook County, Ill. (24.8% black); Mecklenburg County, N.C. (31.8% black); Wayne County, N.C. (32.1% black); Clark County, Nev. (29.8% Hispanic); Bernalillo County, N.M. (48.4% Hispanic); Travis County, Tex. (33.8% Hispanic). *Id.*
- ¹⁴ Scholars of early in person voting have identified several challenges that make it difficult to conclusively determine the relationship between the implementation of early in person voting and turnout: particularly, the variance of how early in person voting is implemented and its relation to other election reforms. *See, e.g.*, Paul Gronke, Eva Galanes-Rosenbaum, Peter A. Miller, & Daniel Toffey, *Convenience Voting*, 11 ANN. REV. POL. SCI. 437, 446 (2009), *available at* http://people.reed.edu/~gronkep/docs/Gronke2008-Convenience_Voting.pdf (noting research on convenience voting and turnout, including early voting, is limited because “methodological constraints do not allow clear interpretation of effects”). But most scholars agree that, at best, the available data and research to date has shown early in person voting is among those reforms that can have a small, but statistically significant positive impact on participation. *Id.* at 442; *see also* Joseph D. Giammo & Brian J. Brox, *Reducing the Costs of Participation: Are States Getting a Return on Early Voting?* 63 POL. RES. Q. 295, 298-300 (2008) (finding that slight gains in turnout in first election after implementation of early voting was negated in subsequent elections); JAN E. LEIGHLEY & JONATHAN NAGLER, *THE EFFECTS OF NON-PRECINCT VOTING REFORMS ON TURNOUT, 1972-2008* 14 (2009), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/Non-Precinct_Laws_1972-2008.pdf (finding a 2.8% increase in turnout for states that adopted a no-excuse early voting system). Thus, as the D.C. District Court recently found after hearing extensive expert testimony on the impact of early voting on turnout, “there is not currently a consensus . . . that there is no effect of early in-person voting on turnout.” *Florida v. United States*, 885 F. Supp. 2d 299, 371 (D.D.C. 2012). In contrast, one of the newest studies on early voting concludes that early voting — when isolated from other election reforms such as Same Day Registration — decreases turnout. Barry C. Burden, David T. Canon, Kenneth R. Mayer, & Donald P. Moynihan, *Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform*, AM. J. POL. SCI. 14 (2013). However, this study considers absentee and in person early voting as interchangeable, thus it does not purport to analyze the turnout impact of EIPV specifically.
- ¹⁵ To date, there is a limited body of research on the potential benefits of EIPV. A 2008 EAC report provides some initial assessment on the benefits to election administration. U.S. ELECTION ASSISTANCE COMM'N, *ALTERNATIVE VOTING METHODS* 9 (2008), *available at* http://www.eac.gov/assets/1/workflow_staging/Page/54.PDF (studying early voting in Texas and finding that “long lines at polling places and resulting consequences become less likely for local election officials on Election Day”). Additionally, a study of efforts to increase early voting turnout in Georgia looked at early voting from the standpoint of election administrators, and their ability to improve the convenience and efficiency of elections. M.V. Hood III & Charles S. Bullock III, *An Examination of Efforts to Encourage the Incidence of Early In-Person Voting in Georgia, 2008*, 10 ELECTION L. J. 103, 103 (2011) (“While much academic work has focused on the effects of non-precinct voting from the standpoint of the consumers — the voters — we examine early in-person voting in Georgia from the standpoint of the producers — county election administrators.”). In contrast, a 2009 survey of Wisconsin election officials highlights the expectation of increased burdens for election administrators tasked with implementing EIPV. *See* BARRY C. BURDEN, DAVID T. CANON, KENNETH R. MAYER, & DONALD P. MOYNIHAN, *THE EFFECTS AND COSTS OF EARLY VOTING, ELECTION DAY REGISTRATION, AND SAME DAY REGISTRATION IN THE 2008 ELECTIONS* (2009), *available at* <http://electionadmin.wisc>

edu/pewreportfinal.pdf. Those findings, however, are limited to the predictive views of election officials, in one state, who are experienced only with “in-person-absentee voting,” not a true EIPV system. *Id.* at 17-21.

- ¹⁶ Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep’t of State (Feb. 27, 2013) (stating that early voting eases the counties’ job on Election Day); Interview with Rupert T. Borgsmiller, Exec. Dir., Ill. State Bd. of Elections (Feb. 14, 2013) (stating that county clerks take it upon themselves to get the word out about early voting in order to increase early voting turnout to make Election Day easier); Interview with Scott Gilles, Deputy Sec’y for Elections, & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (noting that early voting is easy for voters, and that voters think about when to vote by determining when is convenient in a two week span rather than simply on Election Day); Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013) (stating that early voting “solves so many problems on Election Day, in terms of getting all those people out of the way”); Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (noting that early voting makes Election Day more functional, causes less stress, and is easier to administer); Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013) (noting that Election Day is easier, and although early voting is initially a lot of work it has gotten easier over the years); Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) (“I really can’t even begin to think of the disadvantages [of early in person voting]. From an administrative side, it’s just amazing how much more effective it is.”); Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013) (“Early voting just makes Election Day easier, and there is less voter frustration.”); Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013) (stating that they encourage voters to vote early because it takes pressure off of Election Day).
- ¹⁷ Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013).
- ¹⁸ Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013).
- ¹⁹ See NAT’L ASS’N OF SECRETARIES OF STATE, PRIORITY ELECTION ISSUES FOR SECRETARIES OF STATE: SUMMARY OF NASS ELECTION ADMINISTRATION ROUNDTABLE 5 (2013), *available at* http://www.nass.org/index.php?option=com_content&view=article&id=226&Itemid=469.pdf.
- ²⁰ Longer lines during EIPV are not unusual. Data from the Survey of the Performance of American Elections and the Cooperative Congressional Election Study shows that nationwide the average wait time is longer during early voting days than on Election Day. This was most recently reported in Professor Charles Stewart’s study of wait time data from the 2012 presidential election. CHARLES STEWART III, WAITING TO VOTE IN 2012 21 (2013), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2243630. However, the academic research on what election practices might cause or reduce long voting lines is still “primitive” and inconclusive. *Id.* at 10. As Stewart explains in his study, “there is no published analysis of how the allocation of election resources has affected long lines at the polls....[and] the empirical study of waiting in line to vote is still in its infancy.” *Id.*
- ²¹ Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013). The view that voters could tolerate or adjust for longer lines during EIPV than on Election Day was echoed in the interviews of several election officials. See Interview with Rupert T. Borgsmiller, Exec. Dir., Ill. State Bd. of Elections (Feb. 14, 2013) (noting that voters tolerated longer lines for early voting because it was their choice); Interview with Jan Kralovec, Dir. of Elections, and Gail Weisberg, Manager of Voter Servs., Cook Cnty., Ill. (Mar. 13, 2013) (reporting that voters who encountered long lines during early voting would come back on Election Day); Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (noting anecdote of a voter who waited an hour for early voting because he would be busy on Election Day).
- ²² Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013). Election officials in other counties reported that the longest lines during early voting did not exceed 20 minutes. See Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) (noting the longest wait time in county was only 20 minutes); Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013) (noting the longest lines during early voting were 15-20 minutes).

- ²³ LONNA RAE ATKESON, ALEX ADAMS, & LISA BRYANT, ASSESSING ELECTORAL PERFORMANCE IN NEW MEXICO USING AN ECOSYSTEM APPROACH 104-105 (2012), *available at* <http://polisci.unm.edu/common/documents/c-sved/papers/BernCoFinalReport.pdf>.
- ²⁴ For example, Pat Beckstead stated that early voting is used like a training session for poll workers, and it “means that you have people with experience at the polls by Election Day.” Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013); *see also*, Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013); Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. Of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep’t of State (Feb. 27, 2013) (noting that workers gain extra training during early voting leading up to Election Day); Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) (citing ability to have long term staff as one of the main administrative advantages of early voting).
- ²⁵ Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013).
- ²⁶ Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (“The issues that were bottled up on one day are less than what they were before. The errors by elections administrators are also less. Less overload, less election problems”).
- ²⁷ Interview with Liz Olson, Manager, & Wayne Williams, Clerk & Recorder, El Paso Cnty., Colo. (Feb. 27, 2013). In El Paso this staffing model is facilitated by the fact that the County Clerk and Recorder’s Office offers both motor vehicle and elections services. *Id.*; *see also* *The Office of the Clerk & Recorder*, EL PASO CNTY., COLO., <http://car.elpasoco.com/Pages/default.aspx> (last visited Oct. 18, 2013). While such an arrangement will not be possible in all counties, it demonstrates one example of the creative synergies that election officials can develop in order to maximize available resources.
- ²⁸ Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (“If you have administrative errors you can correct them.... The counties would rather have more early voting because there are usually fewer problems, and when they have problems, they can correct them”). Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013) (noting that early voting makes Election Day easier because “if the voter shows up during early voting and there’s problems with their registration etc., they have time to fix it”).
- ²⁹ Interview with Rosemary Blizzard, Bd. of Elections Dir., Wayne Cnty., N.C. (Mar. 1, 2013); *see also*, Interview with Wayne Pruett, HAVA Coordinator, Tenn. Dep’t of State (Mar. 18, 2013) (noting that certain administrative matters “are more easily handled in early voting, than they are on Election Day”).
- ³⁰ Heather Gerken, *Voter Satisfaction*, in DEMOCRACY INDEX CONFERENCE MATERIALS, at Part IV e.i. (2007), *available at* <http://people.reed.edu/~gronkep/docs/Democracy%20Index%20Conference%20materials.pdf>.
- ³¹ *See, e.g.*, Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (noting early voting provides “accessibility” and allows the voter “to be able to vote on their schedule”); Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013) (reporting early voting helps with military voters who may be deployed); Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013) (early voting allows voters to vote “at their leisure”); Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (reporting early voting works well for people who work or commute); Interview with Mark Thomas, Dir. of Elections, Utah (Feb. 20, 2013) (stating that early voting allows voters to “pick a day that works really well for them” and helps people avoid bad weather).
- ³² Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013).
- ³³ Compare U.S. ELECTION ASSISTANCE COMM’N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 10, at 1 (reporting that 13% of ballots were cast by early voting in the 2008 election) with U.S. ELECTION ASSISTANCE COMM’N, A SUMMARY OF 2004 ELECTION DAY SURVEY 6 (2005), *available at* <http://www.eac.gov/assets/1/AssetManager/2004%20EAVS%20Executive%20Summary.pdf> (reporting that 8.4% of ballots were cast by early voting in the 2004 election). EIPV turnout is consistently lower in non-presidential election years. *See, e.g.*, U.S. ELECTION ASSISTANCE COMM’N, 2010 ELECTION ADMINISTRATION AND VOTING SURVEY 1 (2011), *available at* http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf (reporting 8.2% of ballots were cast by early voting in the 2010 midterm election).

- ³⁴ See *Early Voting in the 2012 General Election*, PEW CHARITABLE TRUSTS, *supra* note 11 (citing 2012 Survey of the Performance of American Elections Data); see also Alvarez et al., *supra* note 11 (citing 2008 Survey of the Performance of American Elections Data).
- ³⁵ See U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 10; see also Alvarez et al., *supra* note 11 (noting states where 50% of voters reported voting early in the 2008 election). According to available 2012 EAC data, and state data, in the 2012 election these states again surpassed 50% for EIPV usage. See *supra* note 12.
- ³⁶ See, e.g., Gronke, et al., *supra* note 14, at 443 ("Early research on the demographic profile of individual voters who took advantage of convenience voting painted a portrait of a voter who is 'conservative, middle-to-upper-class, generally interested in politics, and Republican.'" (internal citations omitted)).
- ³⁷ See Alvarez et al., *supra* note 11, at 253; see also RUSSELL WEAVER AND SONIA GILL, LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW, EARLY VOTING PATTERNS BY RACE IN CUYAHUGA COUNTY OHIO: A STATISTICAL ANALYSIS OF THE 2008 GENERAL ELECTION 10 (2012), available at http://www.lawyerscommittee.org/admin/site/documents/files/EarlyVoting_Cuyahoga_Report.pdf (finding that "African Americans are estimated to have utilized EIP voting at rates approximately 26.6 times greater than white voters"). It is worth noting that while 2008 is commonly described as a "game-changer" in terms of black use of EIPV, strong evidence demonstrates this trend developed prior to 2008. See, e.g., *Florida v. United States*, 885 F. Supp. 2d at 327, 368 (citing Expert Report of Prof. Gronke) ("The trend of increased African-American usage of early in-person voting pre-dated 2008 to some degree: African-American early voting rates in Florida exceeded white early voting rates in 2004, as well.")
- ³⁸ PAUL GRONKE & CHARLES STEWART, *Early Voting in Florida* 6-7 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2247144 (citing 2012 Cooperative Congressional Election Study data).
- ³⁹ *Id.* ("African American usage of early in-person voting in the South nearly tripled in the 2008 presidential election when compared to the 2004 presidential election Data from the 2012 CCES show that African Americans continuing [sic] to use early in-person voting in the South at high rates, comparable to the outcomes of the 2008 presidential election."); see also *Florida v. United States*, 885 F. Supp. 2d at 365 (finding increased usage of EIPV by black voters in the past elections and concluding that "all available evidence suggests that these trends 'will continue into the 2012 general [election] and likely in[to] the future'" and finding that the adoption of EIPV by black voters in 2008 "had a lasting impact, and that the higher rate of usage will continue") (quoting deposition of Prof. Gronke (brackets in original)).
- ⁴⁰ Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013). This perspective was also reflected in the assessment of the Director of Elections for Transylvania County, North Carolina: "Overall, considering we're pushing the 60% mark [in EIPV turnout], we are getting a pretty good bang for our buck. If we are losing money, really we are losing money on Election Day." Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013).
- ⁴¹ Michael Dickerson, director of elections of Mecklenburg County, with about 650,000 registered voters, describes it this way: "It is initially a lot of work on the county election officials, you are essentially holding Election Day for two and a half weeks. At the same time, Election Day is a lot easier. Ultimately, the county [Board of Elections] officials are in the business of customer service. It has gotten easier over the years — familiarity is the key." Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013).
- ⁴² Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013). In contrast, New Mexico state officials view EIPV as a cost saver because the state pays for ballot printers which are used for both early voting and Election Day. It would have to purchase far more printers to have enough for Election Day if early voting was not available. Interview with Bobbi Shearer, Bureau of Elections Dir., N.M. Sec'y of State (Apr. 25, 2013).
- ⁴³ Interview with Katherine C. Schultz, Cnty. Clerk, McHenry Cnty., Ill. (Mar. 12, 2013). Similarly, Nevada officials noted that although early voting "requires you to hire more staff" the costs are "offset by the burden that is lifted on Election Day." Interview with Scott Gilles, Deputy Sec'y for Elections & Justus Wendland, HAVA Adm'r, Nev. Sec'y of State (Mar. 1, 2013).

- ⁴⁴ Michael C. Herron and Daniel A. Smith, *Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355*, 11 ELECTION L. J. (2012) 331,332, 346 (recounting history of 2008 “getting your souls to the polls” mobilization efforts and analyzing Florida turnout data showing that black voters “comprised only 13 percent of total voters and 22 percent of early voters in Florida in the 2008 General Election, [but] they accounted for 31 percent of early voters on the final Sunday of early voting”).
- ⁴⁵ Specifically, with the passage of H.B. 1355, Florida cut the state’s available number of early voting days nearly in half, reducing the total period from a period of 12 days minimum to 14 days maximum down to just 8 mandatory days. And the number of required in person early voting hours offered by counties were also reduced from 96 hours to 48 hours. *Id.* at 332. See also H.B. 1335, 2011 Fla. Laws ch. 40, § 39 (2011) (codified as amended at FLA. STAT. ANN. § 101.657). The law also severely restricted the activities of voter registration drives and prevented voters who had moved between counties from updating their address and casting a regular ballot in their new voting locality.
- ⁴⁶ FLA. STAT. ANN. § 101.657 (changing the last early voting day from the second day before the election to the third day).
- ⁴⁷ Prior to the Supreme Court’s recent ruling in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), Section 5 of the Voting Rights Act required certain jurisdictions have all changes to election practices and procedures approved as nondiscriminatory (or “precleared”) by the federal government before their implementation. The jurisdictions in the United States subject to preclearance were determined by a formula outlined in Section 4 of the Voting Rights Act, a section that in its current form has been deemed unconstitutional by the Supreme Court. *Id.*; see also *The Voting Rights Act: A Resource Page*, BRENNAN CENTER FOR JUSTICE (Sept. 29, 2013), <http://www.brennancenter.org/analysis/voting-rights-act-resource-page>.
- ⁴⁸ *Florida v. United States*, 885 F. Supp. 2d at 371. Based on its findings that minority voters would be disproportionately affected by a reduction in early voting, the district court held that “Florida has failed to sustain its burden of proving that [changes to early voting] would not impose a material burden on — and therefore a retrogressive effect with respect to — African-American voters’ effective exercise of the electoral franchise.” *Id.* at 329.
- ⁴⁹ *Id.* at 337.
- ⁵⁰ See Warren Richley, *Court: Some Florida Early-Voting Plans Undermine Minority Voting*, THE CHRISTIAN SCIENCE MONITOR, Aug. 17, 2012, <http://www.csmonitor.com/USA/Justice/2012/0817/Court-Some-Florida-early-voting-plans-undermine-minority-voting> (describing impact of court decision on five covered counties as compared to the law governing early voting hours in the remaining 62 counties).
- ⁵¹ Gronke & Stewart, *Early Voting in Florida*, *supra* note 38, at 26. Gronke and Stewart found that black voters of both political parties were more likely to utilize early voting, which lends “credence to the notion that, at least as far as presidential elections are concerned, early voting is a mode preferred by *African Americans* and not just partisans who happen to also be African American.” *Id.* at 15-18 (emphasis in original). Because Florida’s early voting period was compressed, there were much higher levels of congestion on each day in 2012, which disproportionately affected black voters. *Id.* at 22, 25-26.
- ⁵² *Id.* at 24. Another analysis by Professors Herron and Smith also found that a disproportionate number of minority voters chose not to use EIPV in 2012 as compared to 2008, and that the long lines that developed on the last days of the truncated early voting period disproportionately affected black voters. See Michael C. Herron & Daniel A. Smith, *Early Voting In Florida in the Shadow of House Bill 1355* 3-8, 27, 33-39 (Apr. 15, 2013) (unpublished working paper), available at <http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf> (finding also that in early in person voting may have been made up by absentee voting by mail; however, the substitution of absentee for early voting is “not innocuous” because thousands of absentee ballots are rejected because of signature issues).
- ⁵³ See, e.g., Gronke & Stewart, *Early Voting in Florida*, *supra* note 38, at 25. (finding that “the latest early voters in 2008 shifted disproportionately to Election Day voting in 2012”).
- ⁵⁴ Scott Powers & David Damron, *Analysis: 201,000 in Florida didn’t vote because of long lines*, ORLANDO SENTINEL, Jan. 29, 2013, http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner (citing analysis of Professor Theodore Allen of Ohio State University).

- ⁵⁵ 2013, 2013 Fla. Sess. Law Serv. Ch. 2013-57, sec. 13, § 101.657(1)(d). The bill was introduced in February 2013. H.B. 7013, 115th Leg., Reg. Sess. (Fla. 2013). *See also* Lizette Alvarez, *Florida Lawmakers Approve Overhaul of State's Problem-Ridden Voting Process*, N.Y. TIMES, May 3, 2013, <http://www.nytimes.com/2013/05/04/us/florida-lawmakers-approve-overhaul-of-states-problem-ridden-voting-process.html>.
- ⁵⁶ The 21 officials interviewed represented county and state election offices in seven of the nine states with the highest rates of EIPV: Georgia, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah. We also interviewed election officials from Colorado and Illinois. *See supra* part I.2 (Methodology).
- ⁵⁷ Alaska, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Nevada, New Mexico, North Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. These periods apply to general elections, and may be different for primaries or other elections, such as primaries or municipal elections. *See* ALASKA STAT. § 15.20.064(a) (EIPV begins 15 days before and continues until Election Day); ARK. CODE ANN. § 7-5-418(a)(1) (EIPV begins 15 days before and ends the last Monday before Election Day); COLO. REV. STAT. ANN. § 1-8-202 (EIPV begins 15 days before and ends the last Friday before Election Day); GA. CODE ANN. § 21-2-385(d)(1) (EIPV begins the fourth Monday before and ends the last Friday before Election Day); HAW. REV. STAT. § 15-7(b) (EIPV to begin at least 10 weekdays before Election Day); IDAHO CODE § 34-1012 (for counties that elect to provide EIPV, the period shall begin the third Monday before and end the last Friday before Election Day); 10 ILL. COMP. STAT. ANN. § 5/19A-10(a) (EIPV begins 15 days before and ends the third day before Election Day); NEV. REV. STAT. ANN. § 293.3568(1) (EIPV begins the third Saturday before and ends the last Friday before Election Day); N.M. STAT. ANN. § 1-6-5.7(A) (EIPV begins the third Saturday before and ends the final Saturday before Election Day); N.D. CENT. CODE § 16.1-07-15(2)(a) (EIPV begins 15 days before and ends on Election Day); TENN. CODE ANN. § 2-6-102(a)(1) (EIPV begins 20 days before and ends five days before Election Day); TEX. ELEC. CODE ANN. § 85.001 (EIPV begins 17 days before and ends the 4th day before Election Day); UTAH CODE ANN. § 20A-3-601(2) (EIPV begins 14 days before and ends the last Friday before Election Day); W. VA. CODE § 3-3-3(a) (EIPV begins the 13th day before and ends the third day before Election Day); WIS. STAT. ANN. § 6.86(b) (application for absentee ballot may be made in person from third Monday before to final Friday before Election Day); *see also*, *Absentee Voting*, Gov't ACCOUNTABILITY BD., STATE OF WIS., <http://gab.wi.gov/elections-voting/voters/absentee> (last visited Oct. 18, 2013) (indicating in person absentee voting runs for two weeks prior to election). Although Florida had two weeks of early voting in 2008, as a result of the cuts to early voting in 2011, it only had one week during the 2012 election. However, due to recently enacted legislation, Florida now gives counties discretion to offer early voting the second week before the election. *Compare* FLA. STAT. ANN. § 101.657(1)(d) (2011) *with* 2013 Fla. Sess. Law Serv. Ch. 2013-57, sec. 13, § 101.657(1)(a). Meanwhile, the recent reduction of early voting in North Carolina means North Carolina will no longer offer a full two weeks of early voting, although it did in both 2008 and 2012. H.B. 589, 2013 Leg. Sess. (N.C. 2013).
- ⁵⁸ *See* statutes collected *supra* note 57; *see also supra* notes 45-46, 55 (describing changes in Florida's allowable early voting period from 2008 through 2012).
- ⁵⁹ Arizona, California, Indiana, Iowa, Maine, Montana, Nebraska, Ohio, South Dakota, Vermont and Wyoming. *See* ARIZ. REV. STAT. ANN. § 16-542(C) (absentee ballots distributed 26 days before an election); CAL. ELEC. CODE § 3001 (applications for absentee ballot accepted between the 29th and 7th day prior to the election); IND. CODE ANN. § 3-11-10-26(e) (absentee in person voting 29 days before an election); IOWA CODE ANN. § 53.10 (absentee in person voting no more than 40 days before an election); ME. REV. STAT. ANN. tit. 21A § 753-B (no excuse absentee in person voting begins 45 days prior to an election); MONT. CODE ANN. § 13-13-205(1)(c) (absentee ballots available 30 days prior to general federal election); 2013 Neb. Laws L.B 271, sec. 3, § 32-942 (amending NEB. REV. STAT. ANN. § 32-942 to provide that EIPV may not be offered more than 30 days prior to an election); OHIO REV. CODE ANN. § 3509.01(B)(2) (absentee in person voting 35 days prior to an election); S.D. CODIFIED LAWS § 12-19-2.1 (may apply and vote by absentee ballot "anytime" before an election); VT. STAT. ANN. tit. 17 § 2479 (Secretary of State must make absentee ballots available to clerks 45 days before an election); *Absentee Voting Information*, WYO. SEC'y OF STATE, <http://soswy.state.wy.us/Elections/AbsenteeVoting.aspx> (last visited Oct. 14, 2013) (no excuse absentee in person voting begins 40 days before an election).
- ⁶⁰ According to EAC data for each of these states, it appears that most ballots cast early were cast and counted as absentee. For the eleven states with over three weeks of early voting, the 2012 percentage of votes cast early in person and those cast absentee (not counting UOCAVA voters) were reported as follows: Arizona (EIPV 0%, absentee 65.9%), California (EIPV 0.4%, absentee 39.8%), Indiana (EIPV 0%, absentee 19%), Iowa (EIPV 0%, absentee 43.1%), Maine (EIPV 0%, absentee 25.5%), Montana (EIPV 0%, absentee 57.5%), Nebraska (EIPV 0%, absentee 25.4%), Ohio (EIPV 10.7%, absentee 22.4%), South Dakota (EIPV 4.1%, absentee 8.9%), Vermont (EIPV 3.6%, absentee 20.4%), and Wyoming

(EIPV 0%, absentee 26.2%). See U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 7. In 2008, the percentage of votes cast early in person and those cast absentee were reported as follows: Arizona (EIPV 1.9%, absentee 50.6%), California (EIPV 1.0%, absentee 41.7%), Indiana (EIPV 0%, absentee 23.6%), Iowa (EIPV 0%, absentee 37.8%), Maine (EIPV 0%, absentee 31.0%), Montana (EIPV 0%, absentee 42.2%), Nebraska (EIPV 0%, absentee 21.5%), Ohio (EIPV 6.8%, absentee 22.7%), South Dakota (EIPV 6.5%, absentee 13.2%), Vermont (EIPV 0%, absentee 27.5%), and Wyoming (EIPV 0%, absentee 25.0%). See U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 10.

⁶¹ While Kansas allows counties to open EIPV starting 20 days prior to an election, only seven days are statutorily required. KAN. STAT. ANN. § 25-1122(g); *Advance Voting*, KAN. SEC'Y OF STATE, http://www.kssos.org/elections/elections_registration_voting.html (last visited Oct. 15, 2013). Oklahoma has just three days of EIPV. See OKLA. STAT. ANN. tit. 26 § 14-115.4(A) (in person early voting Friday, Saturday, and Monday before the election). Louisiana starts its EIPV two weeks before Election Day, but it ends seven days before; thus, the period is only one week long in duration. See LA. REV. STAT. ANN. § 18:1309(A)(1). The percentage of ballots reported as cast EIPV in those states in the 2008 election were 0% in Kansas, 7.8% in Oklahoma, and 12.7% in Louisiana. U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 10. In 2012, those three states reported 16.9%, 8.4% and 15.6%, respectively. See U.S. ELECTION ASSISTANCE COMM'N, 2012 ELECTION ADMINISTRATION AND VOTING SURVEY, *supra* note 7. By 2012, two other jurisdictions that did not have EIPV in 2008, implemented laws that guaranteed less than two weeks of early voting. See D.C. MUN. REGS. tit. 3 § 703.4 (2013) (requiring early voting centers to open at least seven days prior to election); MD. CODE ANN. ELEC. LAW § 10-301.1 (2009) (designating EIPV to begin on the second Friday before the gubernatorial primary and general elections and on the second Saturday before for the 2012 presidential primary and general elections). Recently enacted 2013 legislation moves Maryland's start date to the second Thursday prior to all primary and general elections, but this period is still just short of two full weeks. See 2013 Md. Laws Ch. 157, § 10-301.1 (2013). Finally, while Florida fell into this category in 2012, it did not in 2008, and as of 2013 changes to the law, counties may choose to offer a second week of EIPV. See *supra* notes 45-46, 55.

⁶² Interview with Michelle Parker, Ass't Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013); see also Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) ("The period of time is correct. . . . If you shorten the time on me, I can't make it better, and that's gonna just lead to voter frustration and reduced turnout."). Salt Lake County, Utah, suggested the EIPV period should be extended to the Saturday and Monday prior to Election Day, rather than end on Friday before the election. Interview with Rozan Mitchell, Election Dir., Salt Lake Cnty., Utah (Mar. 20, 2013); but see Interview with Daniel G. Burk, Former Registrar of Voters, Washoe Cnty., Nev. (Mar. 20, 2013) (stating that early voting the weekend before Election Day can be difficult for administrators). However, some Colorado legislators suggested increasing the EIPV period to 22 days, from 15 days, to make the period uniform with that for voting by mail. Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. Of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep't of State (Feb. 27, 2013). Similarly in Illinois, election officials advocated extending the EIPV period until the day before the election, rather than ending three days before, in order to make it consistent with the state's longer period for no-excuse absentee voting. Interview with Rupert T. Borgsmiller, Exec. Dir., Ill. State Bd. of Elections (Feb. 14, 2013). A bill that would make this change is currently pending in the Illinois General Assembly. S.B. No. 2212, 98th Gen. Assemb., Reg. Sess. (Ill. 2013). Only El Paso, Colorado, thought reducing the early voting period would be beneficial as a cost cutting measure due to the number of people who vote by mail in Colorado. Interview with Liz Olson, Manager, El Paso Cnty. Clerk and Recorder's Office, & Wayne Williams, Clerk & Recorder, El Paso Cnty., Colo. (Feb. 27, 2013).

⁶³ Interview with Scott Gilles, Deputy Sec'y for Elections & Justus Wendland, HAVA Adm'r, Nev. Sec'y of State (Mar. 1, 2013). Experts in the field of early voting have likewise recommended a period of early voting that begins approximately two weeks before Election Day. See also Paul Gronke, Op-Ed, *Early Voting Is a Crucial Fix, but It's Not Flawless*, N.Y. TIMES, Nov. 9, 2013, <http://nytimes.com/roomfordebate/2012/11/08/does-our-voting-system-need-to-be-fixed/early-voting-is-a-crucial-fix-but-its-not-flawless> (advising with respect to both EIPV and vote by mail: "Early voting should begin no more than two weeks before an election and end as close to Election Day as possible, including the last Sunday.").

⁶⁴ In at least 18 jurisdictions state law either requires weekend voting or provides discretion to election officials to offer weekend voting. See ARK. CODE ANN. § 7-5-418(a)(1)(A) (requiring Saturday hours); D.C. MUN. REGS. tit. 3 § 703.4 (requiring Saturday hours); FLA. STAT. ANN. § 101.657(1)(d) (requiring weekend voting); GA. CODE ANN. § 21-2-385(d)(1) (requiring weekend hours); HAW. REV. STAT. § 15-7 (requiring Saturday hours); 10 ILL. COMP. STAT. ANN. § 5/19A-15(b) (requiring weekend hours); IND. CODE ANN. § 3-11-10-26(g) (requiring Saturday hours); KAN. STAT. ANN. § 25-1122(g) (giving discretion to provide Saturday hours); LA. REV. STAT. ANN. § 18:1309(A)(2) (requiring Saturday hours); MD. CODE ANN.

ELEC. LAW § 10-301.1(d)(2) (requiring weekend hours); NEV. REV. STAT. ANN. § 293.3568 (requiring Saturdays, giving discretion to provide Sunday hours); N.M. STAT. ANN. § 1-6-5.7(A) (requiring Saturday hours); N.C. GEN. STAT. § 163-227.2(b) (requiring Saturday hours); OKLA. STAT. ANN. tit. 26 § 14-115.4(A) (requiring Saturday hours); TENN. CODE ANN. § 2-6-103(a)(1) (requiring Saturday hours); TEX. ELEC. CODE ANN. § 85.006(a),(e) (requiring weekend hours for counties with more than 100,000 people, and giving discretion to smaller counties); UTAH CODE ANN. § 20A-3-602(2)(c)(ii)(B) (giving discretion to offer weekend hours); W. VA. CODE § 3-3-3(a) (requiring Saturday hours). In other states, such as Colorado and Ohio, the early voting statutes are silent on weekend voting, but election officials have offered weekend voting in past elections. *Compare* COLO. REV. STAT. ANN. § 1-8-202 (not prohibiting weekend hours) *and* OHIO REV. CODE ANN. § 3509.01 (not prohibiting weekend hours) *with* John Husted, Ohio Sec’y of State, Directive 2012-50 (Oct. 16, 2012), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2012/Dir2012-50.pdf> (implementing early voting hours for the weekend statewide for the 2012 election); Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. Of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep’t of State (Feb. 27, 2013) (noting that local election officials have in the past exercised discretion to offer weekend voting).

⁶⁵ Arkansas, Florida, Georgia, Nevada, New Mexico, North Carolina, Tennessee, and Texas (for counties with population of 100,000 or more), each require some weekend voting. *See supra* note 64 (providing statutory cites).

⁶⁶ Florida, New Mexico, North Carolina. FLA. STAT. ANN. § 101.657(1)(d) (requiring final Saturday); N.M. STAT. ANN. § 1-6-5.7(A) (requiring final Saturday); N.C. GEN. STAT. § 163-227.2(b) (requiring final Saturday). Additionally, in Arkansas the final Saturday is required, but early voting continues on the Monday before Election Day. ARK. CODE ANN. § 7-5-418(a)(1)(A).

⁶⁷ Officials reported seeing a “lot of traffic” on both Saturday and Sundays in Clark County, Nevada, and that “Saturdays are always the busiest” in Bernalillo County, New Mexico. Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013); Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013). In Cook County, Illinois, the Saturday before Election Day tends to be “the busiest day,” according to the Director of Elections, Jan Kralovec. Interview with Jan Kralovec, Dir. of Elections, and Gail Weisberg, Manager of Voter Servs., Cook Cnty, Ill. (Mar. 13, 2013). State officials in Nevada, New Mexico, and Illinois reiterated the benefit of weekend voting. Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (“Having had conversations with the clerks in Clark county and Washoe, they see [weekend voting] as very important. Get a lot of traffic on those days.”); Interview with Bobbi Shearer, Bureau of Elections Dir., N.M. Sec’y of State (Apr. 25, 2013) (“Being open on Saturdays is huge. This is really our key day for early voting.”); Interview with Rupert T. Borgsmiller, Exec. Dir., Ill. State Bd. of Elections (Feb. 14, 2013) (stating he “definitely” advises keeping weekend days open, “especially for accessibility” for people who work all week). Some others reported similar or slightly less traffic on weekends as compared to weekdays. *See, e.g.*, Interview with Wayne Pruett, HAVA Coordinator, Tenn. Dep’t of State (Mar. 18, 2013) (stating Saturday voting “follows the temperature of the election.”); Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013) (estimating “if you looked at daily usage rates, you would see a drop off on the weekend,” but reporting weekends, including Sundays, are “still useful, especially for general elections”).

⁶⁸ *See 2012 General Election No Excuse Voting Totals*, CITY OF CHARLOTTE & MECKLENBURG CNTY., <http://charmack.org/mecklenburg/county/BOE/data/Documents/earlyvoting/2012GeneralNoExcuseVoting.pdf> (last visited Oct. 18, 2013); *see also 2008 General Election No Excuse Voting*, CITY OF CHARLOTTE & MECKLENBURG CNTY., <http://charmack.org/mecklenburg/county/BOE/data/Documents/earlyvoting/2008GeneralEV.pdf> (last visited Oct. 18, 2013). While North Carolina counties formerly had the discretion to continue early voting until 5:00 p.m. on the final Saturday, as of 2014 all early voting must end at 1:00 p.m. on the Saturday prior to Election Day. H.B. 589, 2013 Leg. Sess. (N.C. 2013).

⁶⁹ The ten counties are Miami-Dade, Broward, Palm Beach, Hillsborough, Orange, Pinellas, Duval, Lee, Polk, and Brevard. In Brevard County, the last Saturday was the second highest day for turnout, after the last Friday. Notably, however, unlike the other nine counties, Brevard only offered eight hours of early voting on the final Saturday, compared to 10 hours on the final Friday. The other nine counties offered 12 hours for all eight days of the early voting period. *See Statewide Early Voting Summary Files*, FLA. SEC’Y OF STATE, <http://countyballotreports.elections.myflorida.com/AbsenteeEarlyVotingReports/PublicReports> (last visited Oct. 15, 2013) (reporting daily early voting turnout for each county in Florida); *Early Voting Sites by County, Fla. November 6, 2012*, FLA. SEC’Y OF STATE, http://election.dos.state.fl.us/pdf/Early_Voting_Sites_General_2012.pdf (last visited Oct. 15, 2013) (listing early voting site hours by county for 2012). Additionally, scholarly analysis of daily turnout data in Florida, before and after legislative changes were made to the available weekend voting days, confirms that the last weekend before Election Day is likely to see very heavy, or highest, usage. *See Gronke & Stewart, Early Voting in Florida, supra* note 38, at 22.

- ⁷⁰ New Mexico law requires that early voting locations be open for at least eight consecutive hours between 7:00 a.m. and 9:00 p.m. on all days of early voting, including on Saturdays but excluding Sundays and Mondays. *See* N.M. STAT. ANN. § 1-6-5.7. Most jurisdictions are open from 10:00 a.m. to 6:00 p.m. on Saturday. Interview with Bobbi Shearer, Bureau of Elections Dir., N.M. Sec’y of State (Apr. 25, 2013). However, local officials have discretion to offer more than eight hours. *Id.*
- ⁷¹ Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (reporting that “Saturdays are always the busiest”); Interview with Bobbi Shearer, Bureau of Elections Dir., N.M. Sec’y of State (Apr. 25, 2013) (reporting that Saturday is “really our key day for early voting”).
- ⁷² Arkansas, Colorado, D.C., Florida, Georgia, Louisiana, Maryland, Nevada, New Mexico, North Carolina, Oklahoma, Tennessee, Texas, Utah. *See* ARK. CODE ANN. § 7-5-418(a) (requiring 8:00 a.m. to 6:00 p.m. hours on weekdays at “the county clerk’s designated early voting location”); COLO. REV. STAT. ANN. § 1-8-202 (requiring early voting during regular business hours but giving discretion to the board of county commissioners to increase the hours); D.C. MUN. REGS. tit. 3 § 703.4 (requiring hours from 8:30 a.m. to 7:00 p.m.); FLA. STAT. ANN. § 101.657(1)(d) (requiring eight hours per day, allowing up to 12 hours); GA. CODE ANN. § 21-2-385(d)(1) (authorizing counties and municipalities to extend the hours for voting “beyond regular business hours”); LA. REV. STAT. ANN. § 18:1309 (requiring 8:30 a.m. to 6:00 p.m. hours); MD. CODE ANN. ELEC. LAW § 10-301.1(d)(2) (requiring 8:00 a.m. to 8:00 p.m. in a presidential general election); NEV. REV. STAT. ANN. § 293.3568(2),(3) (requiring permanent locations to be open from 8:00 a.m. to 6:00 p.m. on weekdays and allowing locations to be open until 8:00 p.m. during the second week of early voting); N.M. STAT. ANN. § 1-6-5.7(C) (providing that early voting locations “shall open no earlier than 7:00 a.m. and shall close no later than 9:00 p.m.” and must be open for at least eight consecutive hours); N.C. GEN. STAT. § 163-227.2(f) (specifying that in addition to operating during regular business hours, officials “may conduct one-stop absentee voting during evenings”); OKLA. STAT. ANN. tit. 26 § 14-115.4 (allowing a voter to apply in-person for an absentee ballot between 8:00 a.m. and 6:00 p.m.); TENN. CODE ANN. § 2-6-103 (requiring a “minimum” of three hours between 8:00 a.m. and 6:00 p.m. and requiring certain larger counties to be open from 4:30 p.m. to 7:00 p.m. for “at least” three days during the early voting period); TEX. ELEC. CODE ANN. § 85.005(c) (requiring counties with more than 100,000 people to have 12 hours of early voting each weekday during last week of a general election); UTAH CODE ANN. § 20A-3-602 (giving discretion to election officer to determine the hours for early voting, but requiring a minimum of four hours on each day of EIPV). *See also*, 10 ILL. COMP. STAT. ANN. §§ 5/19A-15(b), 5/19A-20(b) (providing that permanent polling places “must remain open” during normal business hours, but temporary locations are not bound by that requirement and may be open “any hours” during EIPV that are determined by the election authority); OHIO REV. CODE ANN. § 3501.10(B) (“[T]he board shall keep its offices and rooms open for a period of time that the board considers necessary for the performance of its duties.”).
- ⁷³ *See supra* note 72 for a description of Arkansas, Florida, Georgia, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah statutory requirements.
- ⁷⁴ However, while Arkansas early voting hours reported by local counties for the main voting sites match the statutorily required hours, “offsite locations” hours were not necessarily open the entire 10 hour period. *See, e.g., Election Day — November 6, 2012: Early Voting Schedule*, PULASKI CNTY. ELECTION COMM., <http://votepulaski.net/Elections/20121106%20General/11062012%20EV%20Schedule.pdf> (last visited Oct. 15, 2013) (listing voting hours and locations for Pulaski County); *Early Voting Begins Monday*, TIMES RECORD (Ark.), Oct. 22, 2012, <http://swtimes.com/sections/news/politics/early-voting-begins-monday.html> (reporting the statutorily prescribed hours for Sebastian County and Crawford County). Likewise, in Nevada only “permanent locations” are required to be open from 8:00 a.m. to 6:00 p.m. on weekdays. NEV. REV. STAT. ANN. §§ 293.3568, 293.3572.
- ⁷⁵ Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (reporting early voting locations are kept open for 12 hours even though only eight are mandated and advising that officials should “keep early voting days open as long as in practicable”); Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013) (stating that the state’s three hour minimum is not sufficient and reporting that the county has found 8:00 a.m. to 6:00 p.m. works well); Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013) (reporting that “normal” hours are from 7:00 a.m. to 7:00 p.m. but that the county’s “megacenter” is open until 9:00 p.m.). *See also* Interview with H. Maxine Daniels, Dir. of Voter Registration and Elections, Dekalb Cnty., Ga. (Apr. 15, 2013) (reporting that early voting hours are 7:00 a.m. to 7:00 p.m. including on Saturdays); Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (noting some counties use extended hours “as a tool to reduce the amount of traffic they see on Election Day”); Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013) (“[Non-business hours] are great, voters can

vote on the way home, voters can vote when it's convenient for them.”); Interview with Rozan Mitchell, Election Dir., Salt Lake Cnty., Utah (Mar. 20, 2013) (reporting 9 of 20 locations have extended hours from 11:00 a.m. to 7:00 p.m., whereas others closed at 5:00 p.m.);

⁷⁶ Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013); *see also Clarksville-Montgomery County voters taking advantage of early voting*, CLARKSVILLE ONLINE (Tenn.), Oct. 25, 2012, <http://www.clarksvilleonline.com/2012/10/25/clarksville-montgomery-county-voters-taking-advantage-of-early-voting/> (publicizing 8:00 a.m. to 6:00 p.m. early voting hours).

⁷⁷ *See supra* note 75.

⁷⁸ Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013).

⁷⁹ *See, e.g.*, Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013) (noting the importance of consistency and explaining that when county experimented with offering only one day with extended hours they did not see a lot of traffic); Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (reporting that extended hours works really well for people who work or have commutes); Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) (reporting that changing the early voting hours to 9:00 a.m. to 6:00 p.m., from 8:30 a.m. to 5:00 p.m. in previous elections, in order to accommodate those who commuted outside of the county for work).

⁸⁰ M.V. Hood III & Charles S. Bullock III, *An Examination of Efforts to Encourage the Incidence of Early In-Person Voting in Georgia, 2008*, 10 ELECTION L. J. 103, 110 (2011).

⁸¹ *Id.* at 111.

⁸² The early voting statutes in Maine, Montana, Nebraska, Ohio, South Dakota, and Wisconsin appear to limit early voting to the office of the county clerk, or only permit early voting in a single alternate location which supplants the clerk’s office as the early voting location. *See* ME. REV. STAT. ANN. tit. 21A §§ 753-B(8), 754-A(1)(D) (allowing absentee voting to occur “in the presence of the clerk” at the clerk’s office, and allowing for absentee ballots to be returned in person to the clerk); MONT. CODE ANN. § 13-13-222(1) (“[T]he election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before Election Day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.”); NEB. REV. STAT. ANN. § 32-949 (“If the ballot is voted in the office of the election commissioner or county clerk, the registered voter shall return the ballot and identification envelope to the election commissioner or county clerk or an employee . . .”); OHIO REV. CODE ANN. § 3501.10(C) (“The board of elections may maintain permanent or temporary branch offices at any place within the county, provided that, if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other branch office or any other office of the board of elections.”); S.D. CODIFIED LAWS § 12-19-2.1 (requiring application for early voting to be made in office of the person in charge of elections); WIS. STAT. ANN. § 6.855 (“The governing body of a municipality may elect to designate a site other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election. The designated site shall be located as near as practicable to the office of the municipal clerk or board of election commissioners. . . .”); *see also supra* notes 5-6 (describing different types of early voting laws).

⁸³ Alaska, Arizona, Arkansas, California, Colorado, D.C., Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Nevada, New Mexico, North Dakota, Tennessee, Texas, Utah, and West Virginia. *See* ALASKA STAT. § 15.20.064(a) (allowing early voting at “locations designated by the director”); ARIZ. REV. STAT. ANN. § 16-542(A) (“The county recorder may establish on-site early voting locations at the recorder’s office. . . . The county recorder may also establish any other early voting locations in the county the recorder deems necessary.”); ARK. CODE ANN. § 7-5-418(b)(1)(A) (“The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk. . . .”); CAL. ELEC. CODE § 3018(b) (voting may occur at “satellite locations”); COLO. REV. STAT. ANN. § 1-8-204 (giving discretion to county clerk and recorder to establish more than one early voting location); D.C. MUN. REGS. tit. 3 § 703.2 (requiring at least four early voting centers); HAW. REV. STAT. § 15-7 (“Absentee polling places shall be established at the office of the respective clerks, and may be established at such other sites as may be designated by the clerk. . . .”); IDAHO CODE ANN. § 34-1006 (“Each county clerk shall provide one (1) or more “absent electors’ polling place(s)” as determined

necessary by each county”); 10 ILL. COMP. STAT. ANN. §§ 5/19A-10(a), 5/19A-20 (permanent locations may be established at locations “including but not limited to a municipal clerk’s office, a township clerk’s office, a road district clerk’s office, or a county or local public agency office” and temporary locations may be established at privately owned locations); IND. CODE ANN. § 3-11-10-26.3(a) (“A county election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices....”); IOWA CODE ANN. § 53.11 (allowing the establishment of satellite locations for early voting in addition to the commissioner’s office); KAN. STAT. ANN. § 25-1122(g) (“The county election officer may designate places other than the central county election office as satellite advance voting sites.”); LA. REV. STAT. ANN. §§ 18:1309(B)(1), (C), 18:1309.2(A) (providing discretion for registrar of voters to establish branch offices in public buildings and allowing Secretary of State discretion to implement additional locations); MD. CODE ANN. ELEC. LAW § 10-301.1(b) (requiring the establishment of “early voting centers”); NEV. REV. STAT. ANN. §§ 293.3561, 293.3564, 293.3572 (allowing the county clerk to establish permanent and temporary early voting locations); N.M. STAT. ANN. § 1-6-5.7(B) (allowing discretion for counties to establish “alternate voting locations” aside from the clerk’s office and requiring counties with certain populations to have a minimum number of locations); N.C. GEN. STAT. § 163-227.2 (allowing county boards of elections to establish one or more early voting locations); N.D. CENT. CODE § 16.1-07-15(1) (“At the determination of the county auditor, more than one voting location may be utilized for the purposes of operating the early voting precinct.”); TENN. CODE ANN. § 2-6-103(a)(1) (“The county election commission office or another polling place appropriately designated by the county election commission shall be open [for early voting]”); TEX. ELEC. CODE ANN. § 85.062 (allowing for the establishment of temporary branch locations and requiring certain counties with large populations to establish branch locations); UTAH CODE ANN. § 20A-3-603 (giving discretion to election officer to establish “one or more” early voting polling places); VT. STAT. ANN. tit. 17 § 2532a (providing for mobile polling locations for absentee ballots); W. VA. CODE § 3-3-2a (allowing the county commission to designate other early voting locations aside from the courthouse which is the primary location).

Florida, Georgia and Wyoming allow multiple types of public facilities as early voting locations, but not private ones. *See infra* notes 92-94 (describing Florida laws limiting types of early voting sites, including recent changes); GA. CODE ANN. §§ 21-2-385(d)(1), 21-2-382(a) (giving elections officials discretion to establish locations provided the location is “county courthouse, a courthouse annex, a government service center providing general government services, or another government building generally accessible to the public”); WYO. STAT. ANN. § 22-9-125(a)(ii) (“The board of county commissioners may... [d]irect that an absentee polling place may be established in the courthouse or other public building which is equipped to accommodate voters from all districts and precincts within the county and shall be open the same hours as the courthouse on normal business days during the time period allowed for absentee voting”). In Oklahoma the law does not restrict EIPV locations to clerk’s offices, but in practice that is the case. *Compare* OKLA. STAT. ANN. tit. 26 § 14-115.4 (A) (2012) (authorizing in-person absentee voting “at a location designated by the Secretary of the County Election Board”), *with Early Voting*, OKLA. SEC’Y OF STATE, http://www.ok.gov/elections/Early_Voting.html (last visited Oct. 15, 2013) (“You can vote early at the county election board office.”).

⁸⁴ Interview with Jan Kralovec, Dir. of Elections, and Gail Weisberg, Manager of Voter Servs., Cook Cnty, Ill. (Mar. 13, 2013) (reporting only using public buildings such as city halls, libraries, and courthouses); Interview with Katherine C. Schultz, Cnty. Clerk, McHenry Cnty., Ill. (Mar. 12, 2013) (reporting the use of municipal buildings); Interview with Karen Brinson, Dir. of Elections, Transylvania Cnty. Bd. of Elections, N.C. (Mar. 4, 2013) (reporting only using one large modern public facility with adequate parking); Interview with Vickie Koelman, Montgomery Cnty. Adm’r of Elections, Tenn. (Apr. 1, 2013) (reporting only one public location).

⁸⁵ At least one of the earliest studies of EIPV also confirms the value of these types of locations. It found that placing early voting sites in non-traditional locations stimulated participation in Texas. *See* Roberta M. Stein & Patricia A. García-Monet, *Voting Early but Not Often*, 78 Soc. Sci. Q. 657, 665 (1997), *available at* <http://earlyvoting.net/files/2013/06/Stein-Voting-Early-But-Not-Often.pdf> (“The number of early voting sites located at familiar and frequented locations (e.g., supermarkets, convenience stores, shopping malls, and mobile unites) is significantly related to a higher percentage of votes cast early, but the effect is marginal.”).

⁸⁶ Interview with Daniel G. Burk, Former Registrar of Voters, Washoe Cnty., Nev. (Mar. 20, 2013). Notably, the widespread use of private facilities in Nevada is facilitated by statutes that ensure private property owners who allow use of their space for elections do not give up any of the rights the owner would otherwise have, and that also limits the amount private facilities can charge election officials to \$50.00 per election. NEV. REV. STAT. ANN. § 293.3572(4); NEV. REV. STAT. ANN. § 293.437(3); *see also* Interview with Larry Lomax, Former Registrar of Voters, Clark Cnty., Nev. (Mar. 7, 2013).

- ⁸⁷ UTAH CODE ANN. § 20A-3-603(1)(d) (criteria include availability during early voting hours, “physical facilities necessary to accommodate early voting requirements,” “adequate space for voting equipment, poll workers, and voters,” and “adequate security, public accessibility, and parking”).
- ⁸⁸ Interview with Mark Thomas, Dir. of Elections, Utah (Feb. 20, 2013); *see also* Interview with Rozan Mitchell, Election Dir., Salt Lake Cnty., Utah (Mar. 20, 2013) (reporting that government buildings are typical but also churches and storefronts in shopping centers).
- ⁸⁹ *See, e.g.*, Interview with Daniel G. Burk, Former Registrar of Voters, Washoe Cnty., Nev. (Mar. 20, 2013) (noting voting locations must have adequate security for locking up voting machines at night); Interview with Rozan Mitchell, Election Dir., Salt Lake Cnty., Utah (Mar. 20, 2013) (reporting that locations must have space in order to lock up voting machines); Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013) (reporting that voting machines are left at the voting locations but the computer portion of the machine and the ballot box are removed each night, and that security is still required for the machines left at the voting location).
- ⁹⁰ Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013). By statute, a county board of elections is entitled to use any tax-supported school or other state, county, or municipal building Election Day — and thus these may be selected for early voting locations. However, this does not allow any county to demand a tax exempt church property be made available for voting, without the express consent of the individual church. N.C. GEN. STAT. § 163-129. The county plan to use a tax-supported site must be approved by the State Board of Elections, which must find “other equally suitable sites not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county.” N.C. GEN. STAT. § 163-227.2(g1).
- ⁹¹ Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013); *see also* *2012 General Election No Excuse Voting Totals*, <http://charmec.org/mecklenburg/county/BOE/data/Documents/earlyvoting/2012GeneralNoExcuseVoting.pdf> (last visited Oct. 15, 2013) (listing the early voting locations used in the 2012 general election).
- ⁹² FLA. STAT. ANN. § 101.657(1)(a). In order for a branch office of the supervisor of elections to be used for early voting, it must be a “permanent facility of the supervisor and should have been designated and used as such for at least one year prior to the election.” *Id.* Also, if designating any “city hall or permanent public library facility as early voting sites,” they must “be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot.” *Id.*
- ⁹³ *See* Tony Marrero, *Early Voting Hours to Drop*, TAMPA BAY TIMES, Sept. 8, 2011, <http://www.tampabay.com/news/localgovernment/early-voting-hours-to-drop/1190501> (noting that Florida’s voting changes in 2011 did not include flexibility for supervisors of elections to establish early voting locations, which was the only request supervisors had made for new legislation).
- ⁹⁴ 2013 Fla. Sess. Law Serv. Ch. 2013-57, sec. 13, § 101.657(1)(a). The amended statute further allows for the supervisor of election to designate one additional type of site in an area of the county where none of the authorized early voting sites exist.
- ⁹⁵ *See e.g.*, Robert M. Stein and Greg Vonnahme, *Engaging the Unengaged Voter: Vote Centers and Voter Turnout*, J. OF POLITICS 70, 487, 488 (2008) (citing multiple studies examining polling place distribution and finding that “the convenience and accessibility of a voter’s Election Day voting place is a significant factor in voting.”); J.G. Gimpel & J.E. Schuknecht, *Political Participation and the Accessibility of the Ballot Box*, 22 POL. GEOGRAPHY 471(2003) (finding, in context of Election Day, that accessibility — a function of distance and impediments to travel — has significant influence on turnout). Fewer of these studies have focused specifically on early voting. *See, e.g.* Hood III & Bullock III, *supra* note 15 at 109-10 (finding that as ratio of square miles per voting site was reduced there was an increase in early voting); James G. Gimpel, Joshua J. Dyck, & Daron R. Shaw, *Location, Knowledge and Time Pressures in the Spatial Structure of Convenience Voting*, 25 ELECTORAL STUD. 35, 52 (2006) (finding “physical location of [early voting] sites appears to have had a significant impact on the use of convenience voting among those who live most proximate to those sites” but that the impact is significantly less for low-turnout locations where “the electorate is heavily burdened by obstacles to voting other than inconvenience”).

⁹⁶ Eight jurisdictions require, or provide some guidance on, equitable distribution specifically for early voting locations: Colorado, D.C., Florida, Louisiana, Maryland, New Mexico, Utah, and West Virginia. *See* COLO. REV. STAT. ANN. § 1-5-102.9(1)(a)(I)(A) (2013) (listing multiple specific factors for consideration by each county in determining locations and sites for early voting centers); D.C. MUN. REGS. tit. 3 § 703.3 (“Early voting centers shall be equitably distributed geographically throughout the District”); FLA. STAT. ANN. § 101.657(1)(a) (requiring early voting sites, other than the supervisor of elections’ main and branch offices, to be “geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable”); LA. REV. STAT. ANN. § 18:1309.2(B) (instructing the Secretary of State to “select additional locations for early voting based on feasibility, accessibility, and the number of registered voters”); MD. CODE REGS. 33.17.02.02 (providing that local boards of elections must submit a form including whether proposed voting locations are within a specified distance of a certain percentage of voters depending upon the size of the county); N.M. STAT. ANN. § 1-6-5.7(A)(1) (“The county clerk shall. . . . Ensure that voters have adequate access to alternate voting locations for early voting in the county, taking into consideration population density and travel time to the location of voting”); UTAH CODE ANN. § 20A-3-603(3) (requiring “counties of the first class” to “ensure that the early voting polling places are approximately proportionately distributed based on population within the county”); W. VA. CODE R. § 153-13-3.3 (requiring county clerks to submit proposals for satellite early voting that consider “neutrality” of the location based on distance from the main voting location, population centers, turnout rates, and the party affiliation ratios in the precincts).

Several of these same jurisdictions, D.C., Maryland, New Mexico, Texas, as well as Georgia, have laws regulating the minimum number of early voting locations required for each county. *See* D.C. MUN. REGS. tit. 3 § 703.2 (requiring at least four early voting centers); MD. CODE ANN. ELEC. LAW § 10-301.1(b) (requiring between one and eight locations depending on the population of the county); *see infra* note 97 and accompanying text (describing requirements for Georgia, New Mexico, and Texas).

⁹⁷ GA. CODE ANN. § 21-2-382(b); N.M. STAT. ANN. § 1-6-5.7(B); TEX. ELEC. CODE ANN. § 85.062(d).

⁹⁸ *Supra* note 96 (describing New Mexico’s statutory requirement).

⁹⁹ In Florida, all satellite voting locations (early voting sites other than the main or branch offices of the supervisor of elections) “must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable.” FLA. STAT. ANN. § 101.657(1)(a). North Carolina also has a provision that provides a regulatory check on the selection and distribution of EIPV locations. If a county proposes to provide early voting in “a building that the county board of elections is not entitled to . . . demand and use” as a polling locations, such as a private facility, the State Board of Elections must find that “other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county.” N.C. GEN. STAT. § 163-227.2(g1). And Utah requires “counties of the first class,” which are defined as those with a population over 700,000, to ensure that the early voting polling places are “approximately proportionately distributed based on population within the county.” UTAH CODE ANN. § 20A-3-603(3); *see also* UTAH CODE ANN. § 17-50-501 (defining county classes by population). While currently only Salt Lake County meets this threshold, it is home to nearly 40% of the entire state population. *See State & County Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/> (last visited Oct. 18, 2013) (estimating Salt Lake County 2012 population of 1,063,842 and State population of 2,855,287). Additionally, in any county, if during the early voting period it is determined the number of established early polling places is insufficient to serve the number of registered voters turning out, the local election office may designate additional polling places. UTAH CODE ANN. § 20A-3-603(2)(a).

¹⁰⁰ N.M. STAT. ANN. § 1-6-5.7(B).

¹⁰¹ TEX. ELEC. CODE ANN. § 85.062(d). Every county in Texas is divided into four “commissioners precincts.” TEX. CONST. art. 5, § 18(b).

¹⁰² GA. CODE ANN. § 21-2-382(b).

¹⁰³ *See e.g.*, Interview with Liz Olson, Manager, El Paso Cnty. Clerk and Recorder’s Office, & Wayne Williams, Clerk & Recorder, El Paso Cnty., Colo. (Feb. 27, 2013) (reporting that factors for determining locations include projected turnout, past early voting turnout, and locations available); Interview with Michael Dickerson, Dir. of Elections, Mecklenburg Cnty. Bd. of Elections, N.C. (Feb. 26, 2013) (reporting that factors for choosing locations include geography, availability, cost,

and size of locations); Interview with Pat Beckstead, Former Election Dir., Davis Cnty., Utah (Mar. 4, 2013) (indicating that locations are chosen based on geography, where permitted facilities are located, and voter turnout); Interview with Rozan Mitchell, Election Dir., Salt Lake Cnty., Utah (Mar. 20, 2013) (noting that factors for choosing locations include geography, population, parking, ability to accommodate voting hours, and security); Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (noting considerations for choosing locations include serving concentrations of registered voters, ease of access, space, storage, security, data transmission capabilities, and consistency with past elections); Interview with Michelle Parker, Ass't Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013) (reporting that locations are chosen based on ability to accommodate people, high-traffic areas, and distribution among precincts).

¹⁰⁴ Interview with Daniel G. Burk, Former Registrar of Voters, Washoe Cnty., Nev. (Mar. 20, 2013).

¹⁰⁵ See *supra* notes 89 and 103.

¹⁰⁶ Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Maine, Nevada, North Carolina, Tennessee, Texas, and Vermont. See ARIZ. REV. STAT. ANN. § 16-542(G) (“The county recorder or other officer in charge of early balloting shall provide an alphabetized list of all voters in the precinct who have requested and have been sent an early ballot to the election board of the precinct in which the voter is registered not later than the day prior to the election.”); ARK. CODE ANN. § 7-5-418(b)(4) (“The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.”); CAL. ELEC. CODE § 3013 (requiring elections official to send to the inspector of the precinct list of voters who received early ballots); COLO. REV. STAT. ANN. § 1-8-204 (requiring early voting locations to have internet connectivity for updating poll books); FLA. STAT. ANN. § 101.657(2) (requiring election officials to prepare an electronic file of individual voters who vote early and update it daily); IDAHO CODE ANN. § 34-1011 (“The county clerk shall keep a record in his office containing a list of names and precinct numbers of electors making application for absent elector’s ballots, together with the date on which such application was made, the date on which such absent elector’s ballot was returned.”); 10 ILL. COMP. STAT. ANN. § 5/19A-5(c) (“The election authority must maintain a list for each election of the voters to whom it has issued early ballots. The list must be maintained for each precinct within the election authority’s jurisdiction. Before the opening of the polls on Election Day, the election authority shall deliver to the judges of election in each precinct the list of registered voters who have voted by early ballot.”); IND. CODE ANN. § 3-11-10-12.5(b) (“[T]he county election board shall deliver to each precinct a list of the names of voters who have cast absentee ballots”); IOWA CODE ANN. § 53.19 (requiring a list of voters who have been provided absentee ballots to be given to each precinct election board); KAN. STAT. ANN. § 25-1126 (“A list of the names of all advance voting voters of the precinct from whom advance voting ballots have been received shall be given to the supervising judge with the voting supplies, and if additional advance voting ballots are received, the names of voters from whom they are received shall be promptly added to such list. Such list shall be available at the voting place at all times on Election Day.”); LA. REV. STAT. ANN. § 18:1311(B) (“The registrar shall keep a list containing the names of all persons who vote by early voting ballot during early voting”); MD. CODE REGS. 33.17.04.02, and .03(b) (requiring networked electronic poll books and at least one for every 550 voters of the estimated daily turnout at each early voting center); ME. REV. STAT. ANN. tit. 21A § 760-A (requiring clerk to mark incoming voter list with those voters who voted by absentee ballot prior to Election Day); NEV. REV. STAT. ANN. § 293.3585(2) (“The county clerk shall prescribe a procedure, approved by the Secretary of State, to determine that the voter has not already voted [during early voting].”); N.C. GEN. STAT. § 163-232 (requiring list of all returned absentee ballots be distributed to every precinct in the county); TENN. COMP. R. & REGS. 1360-02-16-.03 (“Each county election commission shall prepare, for each day of the early voting period, a list of all persons who voted on the previous day.”); TEX. ELEC. CODE ANN. § 87.121 (“The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot. . . each roster shall be updated daily. . . each roster may be maintained in any form by the Secretary of State”) VT. STAT. ANN. tit. 17 § 2534 (“[T]he town clerk shall make a list of the early or absentee voters. . . . A copy of the list shall be available. . . on Election Day, in each polling place in the town.”).

¹⁰⁷ For instance, Colorado law requires all early voting locations to have on-line computer accessibility to the county clerk and recorder. COLO. REV. STAT. ANN. § 1-8-204 (“[E]arly voters’ polling place. . . shall be provided with on-line computer accessibility to the county clerk and recorder. . . .”). As a result, Colorado early voting locations use electronic poll books that instantly update the countywide poll book and also connect electronically to the state voter registration database. Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. Of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep’t of State (Feb. 27, 2013). In Florida and Illinois, the early voting laws require county authorities to update the state election authority daily with a list of all individuals in the county who voted the prior day and that information is maintained in an electronically accessible format by the state. FLA. STAT. ANN. § 101.657(2) (“During any

early voting period, each supervisor of elections shall make available the total number of voters casting a ballot at each early voting location during the previous day.... The information shall be updated and made available no later than noon of each day and shall be contemporaneously provided to the division.”); 10 ILL. COMP. STAT. ANN. § 5/19A-35(b-10) (“Within one day after a voter casts an early voting ballot, the election authority shall transmit the voter’s name, street address, and precinct, ward, township, and district numbers, as the case may be, to the State Board of Elections, which shall maintain those names and that information in an electronic format on its website, arranged by county and accessible to State and local political committees.”); *see also* MD. CODE REGS. 33.17.04.02, and. 03(b) (requiring networked electronic poll book for early voting); TENN. COMP. R. & REGS. 1360-02-16-.03 (requiring each county commissioner to daily prepare a list of all persons who voted early on the previous day); W. VA. CODE § 153-13-3 (3.2.a.2) (requiring that all proposed early voting location “must have secure access to the internet, or telephone access, for purposes of immediately crediting the voter’s vote”).

¹⁰⁸ *See supra* note 106 (describing policies in Florida, Nevada, Tennessee and Texas); *see also* Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (describing countywide networked electronic rosters as statewide standard during early voting); N.M. STAT. ANN. § 1-6-5.7(D)(4) (requiring each early voting location to “have a broadband internet connection”); Interview with Bobbi Shearer, Bureau of Elections Dir., N.M. Sec’y of State (Apr. 25, 2013) (describing electronic pollbooks linked to a countywide voter file as statewide standard for early voting); Interview with Mark Thomas, Dir. of Elections, Utah (Feb. 20, 2013) (reporting that Utah has built electronic poll book that can be updated immediately, and that counties that are not hooked up live do update daily, although this practice is not statutorily required). Additionally, it is statewide policy and practice in North Carolina for each county to update the State Board of Elections daily with a list of all individuals in the county who voted the prior day and that information is maintained on the state website. Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013).

¹⁰⁹ *See e.g.*, Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013) (reporting that they use an electronic poll book that updates immediately in the county, and then update to the state database nightly during the early voting period); Interview with H. Maxine Daniels, Dir. of Voter Registration and Elections, Dekalb Cnty., Ga. (Apr. 15, 2013) (noting that for early voting they use live databases); Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (reporting that all early voting locations are networked and have ability to tie into the county system and can instantly update voter history); Interview with Michelle Parker, Ass’t Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013) (reporting the use of laptops to check in voters that are connected to county voter registration database); Interview with Judd Choate, Dir. of Elections, Hilary Rudy, Deputy Dir. Of Elections, & Vicky Stecklein, SCORE Manager, Colo. Dep’t of State (Feb. 27, 2013) (reporting that every county uses electronic poll books during the early voting period); Interview with Rupert T. Borgsmiller, Exec. Dir., Ill. State Bd. of Elections (Feb. 14, 2013) (reporting that most of the larger counties in the state have electronic poll books; if they do not, officials must return to the clerk’s office to update the registration rolls at the end of the day); Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (reporting that all counties update early voting information into state website daily); Interview with Wayne Pruett, HAVA Coordinator, Tenn. Dep’t of State (Mar. 18, 2013) (noting that counties use an electronic system of updating and report to the state daily); Interview with Mark Thomas, Dir. of Elections, Utah (Feb. 20, 2013) (reporting that the majority of counties are hooked up to a live database, and that the remaining counties update daily).

¹¹⁰ *See, e.g.*, Interview with H. Maxine Daniels, Dir. of Voter Registration and Elections, Dekalb Cnty., Ga. (Apr. 15, 2013) (reporting one person who attempted to vote twice was detected and denied the opportunity to cast a second ballot and eventually prosecuted); Interview with Gary Bartlett, Former Exec. Dir., Johnnie McClean, Former Deputy Dir., & George McCue, Elections Specialist, State Bd. of Elections, N.C. (Feb. 19, 2013) (reporting that there were a few instances of people voting twice and all such instances were reported to the District Attorney).

¹¹¹ Interview with Scott Gilles, Deputy Sec’y for Elections & Justus Wendland, HAVA Adm’r, Nev. Sec’y of State (Mar. 1, 2013) (reporting that the one instance where someone tried to test the system they were prevented from casting second ballot and arrested); Interview with Mark Thomas, Dir. of Elections, Utah (Feb. 20, 2013) (reporting that the only instances of attempted double voting were tests to the system).

¹¹² Alaska, California, Colorado, Georgia, Illinois, Maryland, Nevada, New Mexico, North Dakota, Texas, and Utah all have statutes requiring some form of public notice for the early voting period generally. Other states, such as Louisiana,

Vermont, West Virginia, and Wisconsin, have statutes which only require public notice of early voting hours and locations if a county uses locations other than the clerk's office. *See* ALASKA STAT. § 15.20.050 (requiring “full public notice of the dates and manner of voting absentee” and “the location of absentee voting stations at least 45 days before each election”); CAL. ELEC. CODE § 3018 (requiring notice of satellite voting locations and hours “by the issuance of a general news release”); COLO. REV. STAT. ANN. § 1-8-204 (requiring the designated election official “give adequate notice to eligible electors” of polling places that are established in addition to the clerk's office); GA. CODE ANN. § 21-2-385(d)(2) (requiring election officials to “provide reasonable notice to the electors” of “times, dates, and locations at which advance voting will be conducted” and to notify the Secretary of State); 10 ILL. COMP. STAT. ANN. § 5/19A-25 (requiring various forms of notice starting the “week before the period for early voting” and at least once a week during early voting); LA. REV. STAT. ANN. §§ 18:1309(A)(2), (L)(1)(b) (requiring notice of alternate early voting locations, when the registrar's office has insufficient space, and for notice of additional locations established by Secretary of State); MD. ELEC. LAWS § 10-301.1(f) (requiring public education plan to begin 30 days prior to early voting period); MD. CODE REGS. 33.17.03.01 (requiring the adoption and implementation of comprehensive “public education plan to educate voters about early voting”); NEV. REV. STAT. ANN. § 293.3576(1) (requiring the county clerk to publish dates, times, and locations for early voting in newspaper before and during the early voting period); N.M. STAT. ANN. § 1-6-5(J) (requiring the “secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided,” and notice “at least ten days before early voting begins”); N.D. CENT. CODE § 16.1-07-15(2)(a) (requiring published “notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election”); TENN. CODE ANN. § 2-6-103(c) (requiring the county election office give notice of the early voting office hours “not less than twenty-five (25) days prior to the day of election by publication in a newspaper of general circulation”); TEX. ELEC. CODE ANN. §§ 85.004, 85.007, 85.067, 85.067 (requiring public notice of hours and locations for early voting); UTAH CODE ANN. § 20A-3-604 (requiring posted notice and publication in a newspaper of dates, times, and locations of early voting five days before early voting begins); VT. STAT. ANN. tit. 17 § 2532a (requiring public notice of a mobile polling location for absentee voting); W. VA. CODE § 3-3-2a(b)(1) (requiring publication of a designation of an early voting location other than county courthouse); WIS. STAT. ANN. § 6.855(2) (requiring public notice of alternate location for early voting).

¹¹³ *See supra* note 112.

¹¹⁴ In Texas “public” notice must be posted continuously on the clerk's bulletin board for public meetings at least 72 hours before the start of EIPV. TEX. ELEC. CODE ANN. § 85.007. In Tennessee public notice must start 25 days before Election Day. TENN. CODE ANN. § 2-6-103(c). New Mexico requires county clerks to “publicly fix” the EIPV schedule at least 90 days before Election Day, but the Secretary of State and county clerks do not need to “publicize and inform” voters about early voting until ten days before the early voting period. N.M. STAT. ANN. § 1-6-5(C), (J). *See also* NEV. REV. STAT. ANN. § 293.3576(2) (requiring clerk to post a copy of the schedule continuously starting the fifth day before early voting); UTAH CODE ANN. § 20A-3-604 (requiring notice five days before the election). *See also supra* note 112 (describing forms of notice).

¹¹⁵ In Florida, counties must submit their EIPV schedules 30 days in advance of the EIPV period. FLA. STAT. ANN. § 101.657(b). In North Carolina, all counties planning to offer extended hours, days, or sites, other than those offered at the office of the county board of elections, must submit a plan to the State Board of Elections for approval. N.C. GEN. STAT. § 163-227.2(f), (g).

¹¹⁶ Interview with Maggie Toulouse Oliver, Cnty. Clerk, Bernalillo Cnty., N.M. (Mar. 22, 2013); *see also*, *My Vote Centers*, BERNALILLO CNTY., N.M., <http://www.berncounty.gov/VCC> (last visited Oct. 18, 2013) (displaying map of voting locations and providing hours, directions, and current wait times).

¹¹⁷ Interview with Michelle Parker, Ass't Dir. of Elections, Travis Cnty., Tex. (Mar. 21, 2013); Interview with Michael Winn, Dir. of Elections, Travis Cnty., Tex. (Sep. 3, 2013).

¹¹⁸ Based on county level survey results and a multivariate model, Hood and Bullock predicted that by utilizing all 15 types of measured outreach efforts counties could achieve an EIPV rate six percentage points higher than counties who did not utilize any of the measured outreach efforts. Hood III & Bullock III, *supra* note 15, at 108-109.

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