



FINAL REPORT
2008-2009
OHIO ELECTION SUMMIT
AND CONFERENCE

Lawrence Norden, chair of the Elections Summit
with Jessie Allen

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Framework for Reform

The first 21 pages of this final report on the 2008 and 2009 Ohio Election Summit and Conference contains a framework for future election reforms in Ohio, which aims to distill and organize the different points of view on specific policies detailed in the report, and to assist all stakeholders by (1) prioritizing issues based on the need for reform, as stated by the election officials, advocates and academics we interviewed; (2) pointing to places of agreement among election officials and advocacy groups for addressing those issues (as well as places where agreement has not yet been reached); and (3) identifying research that would help develop a reform agenda for these issues.

The **Ohio Association of Election Officials**, the bipartisan organization representing the members of Ohio's 88 county boards of election, their directors and deputy directors, has reviewed this framework and the full final report and stated that it "concur[s] with the report's identification of several broad categories of elections administration, which are ripe for review and reform prior to the 2010 election year, and that the framework detailed in the executive summary should serve as the basis for the future of election reforms in Ohio."

In addition, the following organizations and individuals have endorsed the framework:

Advancement Project

Advocates for Basic Legal Equality

CASE (Citizens Alliance for Secure Elections) Ohio

Common Cause, National

Common Cause Ohio

**Professor Edward B Foley, Director of Election Law at Moritz,
Ohio State University, Moritz College of Law**

**Professor Candice Hoke, Cleveland-Marshall College of Law,
Cleveland State University**

Professor David Kimball, University of Missouri-St. Louis, Dept. of Political Science

Lawyers' Committee for Civil Rights Under Law

League of Women Voters of Ohio

The Miami Valley Voter Protection Coalition

Professor J. Quin Monson, Brigham Young University, Dept. of Political Science

NAACP National Voter Fund

Ohio Citizen Action

Professor Daniel Tokaji, Ohio State University, Moritz College of Law

Verified Voting.org

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Please visit <http://www.brennancenter.org/ohiosummit> to download the full report and appendices to the full report.

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This report was drafted by Lawrence Norden of the Brennan Center for Justice, with Jessie Allen, in Norden's capacity as Chair of the 2008 Ohio Elections Summit. The report attempts to faithfully represent the views of participants with many different perspectives. Unless otherwise indicated, it does not necessarily represent the views of the Brennan Center.

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I. Executive Summary

This final report on the 2008 and 2009 Ohio Election Summit and Conference (the “Summits”) was drafted at the request of Ohio Secretary of State Jennifer Brunner, and follows a “preliminary report” originally published on March 9, 2009.¹ It is the product of two historic summits² called by Secretary of State Brunner to review the 2008 election and to study ways to improve Ohio’s elections going forward. The Summits were open to the public and focused on a wide variety of election related topics.³ Discussions were led by election officials, voting rights advocates, academics, and legislators.

The primary purpose of this report is to assist Secretary Brunner, the State Legislature, election officials, voting rights groups, and other Ohio citizens with framing issues and topics for election reform agendas in 2009. More generally, we hope the report will be a useful tool to anyone in Ohio — or elsewhere — who is interested in crafting a consensus-based elections policy that springs from systematic factual analysis and takes into account many different perspectives on voting and elections.

The sources for the information and ideas in the report include statements offered during the Summits; written testimony provided in advance of each of the Summits; post-summit interviews conducted by Brennan Center staff with election officials, other Ohio public officials, voting rights advocates, members of the media, and Ohio voters who participated in the Summits;⁴ and figures and analyses supplied in response to requests made by the Brennan Center to the Ohio Secretary of State’s office,⁵ the Early Voting Information Center, the Pew Center on the States, and Professors Edward Foley, Paul Gronke, Candice Hoke, David Kimball, Quin Monson, Norman Robbins, and Daniel Tokaji, among others.

Next Steps to Reform

There are many ideas for election policy reform in this document. Given that these ideas come from such a diverse set of participants, it should surprise no one that they sometimes contradict one another. Just as there has been no shortage of disagreement in Ohio when it comes to election policy, there was also no shortage of disagreement on this subject at the Summits, and in our post-summit interviews with summit participants and election experts.

Without papering over these differences, we have been somewhat surprised at the level of agreement on a number of topics, from the general to the specific. On a general level, as already discussed in the preliminary report, participants embraced at least four themes for future policy development: decisions about election policy and practice should be based on systematic data analysis, including analysis of the cost and funding of such decisions; development of policy must include consideration of its impact on the real world of election administration; all election policies should aim to ensure that every vote cast by a qualified voter is counted; and all policies should implicitly or explicitly recognize that election officials, including poll workers, take seriously their duty to make sure that all eligible voters — and only eligible voters — are allowed to vote. Election officials added, and voting rights groups did not disagree, that regardless of policy changes made in the coming year, there should also be greater public education about what voters should do — from confirming

their correct polling locations, to reviewing their ballots and paper trails before casting their votes — to ensure that their votes were correctly counted.

Keeping these themes in mind, there was also a fair amount of agreement on the need for specific reforms, including what a majority of participants identified as high priorities for election reform in the next year. For the purpose of facilitating the next steps in developing a reform agenda, we offer the following “framework” which aims to distill and organize the different points of view on specific policies, and to assist all stakeholders by (1) prioritizing issues based on the need for reform, as stated by the election officials, advocates and academics we interviewed; (2) pointing to places of agreement among election officials and advocacy groups for addressing those issues (as well as places where agreement has not yet been reached); and (3) identifying research that would help develop a reform agenda for these issues.

Framework for Reform: Priority Issues

The Summits covered a wide range of issues, from ballot access for minor parties to campaign finance enforcement to voting technology. Based on our post-summit interviews, there was broad (though not complete) agreement that while all of the issues covered at the Summits were important, some cried out for immediate action. Among those were, first:

- **early voting timeframe and procedures;**
- **the Statewide Voter Registration Database;**
- **provisional voting and voter ID laws; and**
- **poll worker recruitment and training;**

and second:

- **post-election audits**

By providing this context, we do not presume to suggest that action should not be taken on other matters discussed at the conference, or, for that matter, that the reform agenda should be limited to the topics discussed there. In fact, a number of interviewees suggested that there were several issues that were at least as important to election policy reform as any covered in the Summits. These interviewees suggested a number of changes, including: redistricting reform, reforming state oversight of elections administration, clarifying the rules on challenges to voters’ eligibility, and streamlining election litigation.

However, because so many interviewees discussed the importance of the five broad topics covered below, we undertook to produce an organized framework distilling those discussions – noting consensus or the promise of consensus where it seems to exist. At the end of this section, we add two more ideas — (1) **amending laws related to design and language requirements for ballots, registration forms, and provisional and absentee ballot envelopes and applications, and** (2) **reviewing the state’s back-up paper ballot policy** — that appear to have widespread support, but do not fit neatly into the discussion of any one of these five priority issues.

A. Statewide Voter Registration Database

The Issue: There appears to be agreement among election officials, advocates, and academics that adequate design and maintenance of the Statewide Database is among the most important issues that must be addressed in Ohio in the coming months. A functioning database is critical to elections: under Ohio law, citizens' ability to vote and have their votes counted depends on whether their current names and addresses are properly added to the list and updated as information changes, and whether ineligible individuals are the only individuals moved to "ineligible" status. Election officials report that maintaining and updating their databases are among their most labor intensive and costly tasks.

Reform Proposals: Academics, advocates, and county election officials identified at least three general areas where they would like to see improvement to the Statewide Voter Registration Database and the state's registration system. They are detailed below:

1. *Implement better procedures and technology to ensure accuracy and integrity of voter information and consistency across county and state systems.*

Voting rights advocates, election officials and academics all pointed to the need to have more accurate and consistent information in the county and state systems. There was broad agreement on a number of steps that could be taken to accomplish these goals:

a. *Develop better design to minimize voter error*

Interviewees pointed out that the Ohio driver's license (which has a number directly above the picture which is NOT the driver's license number) makes it easy for voters or registrars to list the wrong number on registration forms. They also noted that the forms themselves may confuse some voters — too many voters fail to fill-in information required under state law. To address these problems, they offered the following solutions, which they encouraged the Secretary to explore:

- Make the driver's license number the sole number on the face of the license (or print it in a more prominent size and location, if the other number must be kept);
- Increase awareness among new registrants and registrars of the design problem with the current license;
- Work with usability and design experts to redesign registration forms with the goal of minimizing voter error;
- On registration forms, next to the request for a phone number to contact voters in the event of errors or omissions on the form, add the word "encouraged" in a color-highlighted box next to the existing "optional" notation; and
- Ask for the voter's e-mail address on registration form, so that there is an additional method for contacting voters in case there are mistakes on forms.

Additional details on suggestions for improving design can be found on page 25 of this report.

b. *Adopt better procedures for minimizing “no matches”*

Academics, advocates and election officials also endorsed the idea of establishing protocols at the state and local levels for flagging and addressing problems with registrations, before attempting to match them with Social Security or Bureau of Motor Vehicle (“BMV”) databases. This included using the Statewide Database to flag potential typos and to prepare data for matching, so as to decrease the matching error rate.

While there was substantial dispute that the large number of “failed matches” indicated anything other than problems with the matching protocol or the databases themselves, all parties agreed that the amount of attention given to such failed matches undermined voter confidence in the integrity of Ohio’s elections. For this reason, regardless of political affiliation or profession, all interviewees agreed that developing a protocol that would minimize mismatches was a worthwhile investment. Further suggestions for the development of these protocols are discussed in greater detail at page 32.

c. *Use the U.S. Postal Service and other resources to provide voters with opportunities to update voter information*

Across the board, our interviewees saw the United States Postal Service and the BMV and Social Security Administration as potential sources of opportunities for voters to update their registration information. In particular, there appeared to be broad support for notifying voters of the opportunity to update their voter information when they changed addresses with the postal service through the National Change of Address (“NCOA”) program, and providing them with the appropriate form to do so. Additional suggestions for using the Postal Service and other resources to update voter information can be found at page 26.

The full set of suggestions for increasing accuracy and consistency of voter information can be found at page 25.

d. *Change the policy for updating registration addresses at BMV to comply with federal law*

The National Voting Rights Act states:

“[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.”⁶

Ohio appears to violate this federal mandate, and in the process makes it more difficult for counties to keep up-to-date voter registration lists. Specifically, rather than *requiring the voter to specifically state, on his change of address form*, that the change of address is *not* for voter registration forms, BMV instead appears only to require that employees “make available” to voters *separate* change of address registration forms. If a BMV employee does not specifically offer such a form, or a voter says he does not want the extra form, his address will not be changed for voter registration purposes. This appears to be consistent with

Ohio law — which only requires that BMV provide an applicant with the “opportunity to . . . update [her] registration”⁷ — but not with the mandate imposed by the NVRA. By putting an extra burden on the voter to fill out an extra form, in apparent contradiction to federal requirements, this policy makes it far less likely that voters who have changed their permanent addresses will also change their registration forms.

Moreover, it is not clear that the official BMV policy is even followed in many BMV offices. Summit participants who have changed their driver’s license addresses report that BMV employees failed to ask them whether they wanted the extra change of registration address form. That is not particularly surprising; BMV employees probably do not view keeping voter rolls up-to-date as one of their primary responsibilities. It is for this very reason that the federal mandate is preferable to Ohio’s current policy: it does not rely on BMV employees to ensure that voters update their registration information.

In an interview with the Brennan Center, the Office of Legal Services for the Ohio Department of Public Safety (which oversees the BMV) acknowledged the NVRA requirement and has informed us that the BMV will be working with the Secretary of State’s office to ensure that, in the future, when a voter fills out a change of address form for her driver’s license, it will also serve to change her address for voter registration purposes, unless the voter has specifically indicated on the form that it should not.

This issue is discussed in greater detail at page 26.

2. *Develop a more transparent Statewide Database that will permit user-friendly searches, queries, exports and report-writing*

There was agreement among all we interviewed that the Statewide Database was not as easy to use as it might be. Election officials and voting rights advocates urged the creation of a more user-friendly database with the following suggestions:

a. Ensure that the Statewide Database has all the characteristics of a modern database

Among other things, election officials and advocates believed that the database should include the capacity to handle user-defined searches, queries, “soft searches,” exports and reports, and should make it possible for both the Secretary’s office and the county boards to use these functions.

b. Create a more user-friendly database for voters

Advocates and election officials complained that the current website that voters use to check their registration is both hard to find and difficult to use. These interviewees noted that the easier the system is for voters to use — to check information and to notify officials of the need to correct mistakes — the less likely there will be errors in the system. They recommend that the state and counties refer to Pew’s *Being Online is Not Enough*⁸ for ways to increase the usability of their sites.

c. *Provide counties with “no match” information*

Several county election officials want the Secretary to create a system for notifying boards of elections when information in the Statewide Database does not match records maintained by the BMV, so that they could attempt to contact the voters to update and/or complete their records. Academics and advocates generally supported this idea, though they wanted procedures put in place to ensure that this information was not improperly used and did not lead to improper removal of voters from eligible status. All parties agreed that given the unreliability of database information at the BMV and Social Security Administration, the mere existence of a “no match” alone should not be the basis for removing a voter from eligible status.

These suggestions are more fully discussed at page 30 of this report.

3. ***Ensure the security and privacy of the Statewide Database***

A number of election officials and advocates expressed concerns about ensuring the security and privacy of information on the Statewide Database. In particular, they noted that without adequate security, a wrongdoer could wreak havoc on an election, moving voters to inactive status or changing information, and disenfranchising voters. Interviewees also expressed concern that, in the wrong hands, personal information on the database could lead to identity theft and other abuses. Several expressed frustration at not having a clear understanding of the current policies in place. Accordingly, they recommended the public announcement of several measures for the purpose of reassuring security advocates and members of the public about the integrity of information on the database. The full list of recommendations is detailed on page 30. Among the suggestions with broad support were the following:

a. *Promulgate a rule limiting access to the Statewide Database*

To varying degrees, election officials and advocates supported the promulgation of a rule detailing the requirements for the clearance of employees authorized to view, search, enter, edit and delete information in the county and Statewide Databases, as well as security measures for the protection of all information in these databases.

b. *Preserve archives of deleted and modified records*

Many advocates and election officials supported the preservation of archives of deleted and modified records, which would allow quality assurance and auditing to ensure that voter information was not improperly modified or flagged as removed.

Future Study: Designate a public study group to examine the registration process. Several academics, advocates and election officials urged further study of the Statewide Database and voter registration system in Ohio to assist in making additional changes. The full list of suggested research can be found at page 31. Of particular note was the suggested designation of a public study group — convened by the Secretary of State — to review current practices and make recommendations to the General Assembly on possible

legislative improvements to the statewide voter registration system. Among other topics that might be explored by such a group are:

- Development of better voter registration data entry and management practices, which many election officials and advocates believe could make reconciling and maintaining the various county and state databases easier;
- Adoption of automatic registration and improvement of the state’s portable registration system (also referred to as “voter registration modernization” by several advocacy groups), which some advocates and election officials believe will eliminate the need for election officials to process paper registration applications, eliminate or reduce the role of third-party groups in registering voters, ensure a more complete and accurate voter registration list, increase voter participation, and reduce the opportunity for fraud; and
- Consideration of Election Day registration, which many advocacy groups and academics note is permitted in nine other states, and has a strong track record of increasing voter participation.

In light of the fact that there is growing momentum in Washington, D.C. to establish a federal mandate for voter registration modernization,⁹ such a study seems particularly important. As more than one summit participant noted, there is a real possibility that, at the very least, automatic and improved portable registration will be one component of a federal modernization mandate.¹⁰ Accordingly, it seems well worth the state’s time to begin to investigate, in a public way — with all relevant stakeholders — whether these reforms might work in Ohio, and how they would affect the current registration system.

The Secretary of State’s office reports to the Brennan Center that they believe they have addressed the first of the three points listed in this proposed study, through the Summits and consultations with various experts, and that they will publicly release a plan that covers this point shortly. They report that this plan will not address the second and third points, however.

B. Provisional Voting and Voter ID Laws

The Issue: Ohio’s provisional voting and voter identification policies have been fraught with controversy. Unsurprisingly, then, there are some divisions among summit participants and interviewees on exactly what reforms are needed. Interviewees emphasized different aspects of provisional voting, producing the election policy equivalent of the proverbial glass half empty v. glass half full. For some, widespread provisional balloting is primarily an increased voting opportunity. Others look at it as an opportunity for uncertainty and error. Some election officials emphasized that many Ohioans cast provisional ballots as a way of updating their addresses. They pointed out that over 80% of Ohio’s provisional ballots were counted, that the most common reason for rejecting provisional ballots statewide (47%) was a finding that the voters who cast them were not registered, and that voters must take some responsibility for registering properly. Other interviewees focused on the dangers of disqualification that come with provisional balloting, pointing, for example, to the 36% of provisional ballots not counted because they were cast outside the voters’ assigned precinct locations, and the variation among counties in ballots disqualified for lack of proper ID.

Despite these differences, there was broad agreement on some aspects of provisional voting and identification policies that need to be studied, and even on the direction some reforms should take. Four broad areas of concern are:

- The confusing complexity of current provisional balloting and ID rules;
- The comparatively high rate of provisional balloting in Ohio (which all parties agree leads to more work after the polls have closed, and increases opportunities for post-election litigation in close contests);
- Local inconsistency in the rate and administration of provisional balloting, including the validation rate of provisional ballots cast; and
- Disqualification of procedural ballots cast outside voters' assigned voting locations.

Reform Proposals: Election officials, voting rights advocates, and academics offered a range of suggestions for potential reform, which are described in detail at page 44 of this report. Below we highlight reform proposals that generated the broadest consensus. Note that the reforms listed below are not intended as a single coherent agenda for change. Rather, the goal is to offer a “menu” of some (though not all) of the different proposals offered by summit participants as options to address the issues they agreed should be on the table.

1. *Simplify provisional ballot procedures and voter ID requirements*

Summit participants declared repeatedly that provisional balloting and voter ID rules are confusing and need to be clarified and simplified so that poll workers can administer them properly. To be sure, there are differences of opinion on the direction simplification should take and whether it should expand or limit the use of provisional ballots and documentary identification. Some summit participants see provisional voting as a tool for enfranchising voters at risk, while others believe that, at least in its current form, provisional voting is less a “fail safe” voting protection than a “trap door to disenfranchisement.”¹¹ For some, Ohio’s new voter ID requirements are a reasonable reflection of twenty-first century technology and culture; others consider them an unneeded voting obstacle and administrative burden. Nevertheless, from all of these divergent perspectives, everyone agrees that some changes are needed in the rules, procedures and forms that administer provisional voting and voter identification. Three proposals had particularly broad support.

a. Reform voter ID law to focus on identification rather than address

Some summit participants were in favor of going back to poll book signatures as the simplest way of establishing voters’ identity at the polls, while others felt that documentary ID was a positive development. Nevertheless, across both of these camps there was widespread support for reforms that would make voter identification requirements easier for voters to understand and meet and easier for poll workers to administer.

Many summit participants agreed that a particularly confusing aspect of the current ID law is its inconsistent address requirements. There was wide consensus that — assuming personal identification was the goal — the law’s address requirements should be scrapped and the law should be expanded to include, among other things, the usual gold standard of ID, a U.S. Passport. One election official suggested that the statute spell out the focus on identity to

make it easier for poll workers to understand that a driver's license with an obsolete address is sufficient. Moving away from the address requirement would also allow voters to use another common form of identification that is currently excluded, the standard student ID. Some summit participants advocated shifting to a single required ID document — an identification card issued by the voter's election board. Voting rights advocates, however, questioned how voters would obtain these cards and how accessible they would be, voicing concerns that it would be burdensome if voters had to appear at an office to have a photo taken, particularly for voters who do not drive, and noting that some voters may not have a reliable way to receive mail.

b. Simplify the provisional ballot envelope

There was very widespread agreement that the forms used for provisional voting need to be redesigned. Election officials and voting rights advocates agreed, that as it is, the envelope is confusing and difficult for poll workers and voters to follow and complete. Some officials indicated that the design also made it difficult for staff counting provisional ballots.

c. Clarify rules for counting provisional ballots

Summit participants agreed on the need to set clear, uniform statewide standards for deciding which provisional ballots to count. Both election officials and advocates emphasized that the goal of those rules should be to count as many eligible votes as possible. There was some tension between the recognized need for uniformity, in order to assure equal protection, and the need to give local boards room to respond to problems that arise in a common sense manner. Some election officials emphasized the need to clarify and standardize the approach to remaking paper ballots in general.

2. *Conduct research to provide a better understanding of Ohio's high rates of provisional voting*

One point of consensus is the need to know more about the use of provisional ballot, in order to set informed policy. Ohio both uses and counts provisional ballots at higher rates than most other states. Statewide provisional ballots made up 3.6% of ballots cast in November 2008; 81% were counted. Use and counting rates, however, vary substantially from county to county. In most large urban counties, close to one in twenty voters cast a provisional ballot, while in many other counties that number is more like one in fifty — or less. Despite the attendant costs and risks, not everyone agrees that heavy use of provisional ballots is necessarily a bad thing. Some election officials see high provisional voting rates (coupled with high rates of counting provisional ballots) as a success story. They interpret the growing use of provisional ballots to mean that many Ohioans who would otherwise be turned away from the polls altogether are now getting the opportunity to vote. Advocates and academics pointed out, however, that in states with lower provisional voting rates, there is no evidence that would-be voters are being disenfranchised. They tend to see high provisional voting and counting rates as indicating that many voters who could and should vote on regular ballots are instead voting provisionally. In the absence of specific studies, nobody really knows for sure. Summit participants generally agreed, therefore, that the causes of the state's high and divergent rates of provisional voting need to be investigated in

order to base policy reforms on facts rather than speculation. Specific recommended research includes:

- a. *Fund and conduct studies to find out why provisional voting rates are so high in some parts of the state*

Some interviewees suggested that counties and precincts with particularly high provisional ballot rates should be studied in order to determine what was causing the high rates. Without such studies it is impossible to know whether the differences are a product of different social and demographic factors in the counties, or administrative differences, or both. In addition to collecting and analyzing data from the provisional ballot envelopes, counties on either end of the use and counting spectrum could be asked to detail the procedures and practices they employ regarding provisional voting. Correlations between provisional balloting and other election practices should also be examined — for instance, a county’s use of multi-precinct polling places and different ways of organizing those polling places.

- b. *Make provisional voting data available at the precinct level*

Summit participants pointed out that because Ohio counties are likely to encompass diverse populations in terms of population density, economic and social indices, and mobility, data at the precinct level is needed in order to investigate the demographic and social correlates of provisional ballot use and counting.

- c. *Provide data on reasons why provisional ballots are used and counted or rejected*

The Secretary’s office provided data, collected from all counties, on why provisional ballots were rejected in November 2008. To determine the overall effect of provisional voting in Ohio, it is also necessary to understand why voters are given provisional ballots in the first place. For instance, were provisional ballots issued because voters failed register, moved and did not update their addresses, failed to produce required ID, changed names or failed to appear on the rolls for some other reason. In order to collect this information, it will be necessary to devise a standardized way of identifying the reasons provisional ballots were cast.

Public access to individualized provisional ballot data is an issue with a complex legal and policy background. Some officials, including Secretary Brunner, interpret HAVA (and its Ohio implementing statutes) to allow the public release of provisional voters’ names, along with collective data on the numbers of provisional votes cast and the reasons for the rejection of provisional ballots, but to prohibit making public the counting or invalidation of an individual voter’s provisional ballot and the reasons for its acceptance or rejection. The unavailability of this kind of individualized data for academic and advocacy researchers puts more emphasis on the need for government studies. Protocols for data collection should be conveyed to county boards in time to incorporate necessary record keeping procedures in poll worker and staff instructions before the election.

3. *Clarify, and consider reforming, rules against counting provisional votes cast somewhere other than the voter's assigned precinct location*

Many election officials and advocates we interviewed believe that the current practice of rejecting provisional ballots cast by properly registered voters at the wrong polling place — or the wrong table at the right polling place — needs to be re-examined. Some Summit participants think the “wrong precinct rule” should be changed to count votes in contests for which the voter was eligible to participate, regardless where in the county or on what style ballot those votes are cast. Thus, if a ballot cast in the wrong precinct included precinct-specific school board issues, votes on those issues would not be counted, but votes on statewide contests and issues at the “top of the ticket” would count. Other summit participants would support at least counting such votes on ballots cast in the correct polling place but at the wrong table or on the wrong style ballot. Many election officials and advocates view voting in the wrong precinct as intertwined with poll worker error. Under the Ohio election code, and the decisions of the Ohio Supreme Court interpreting that code, it is less than clear when to count or disqualify provisional ballots cast on the wrong ballot style or at the incorrect location because of various types of action or inaction on the part of poll workers. Some approaches to reform suggested include:

- a. *Change the law to allow election officials to count the top of the ticket on provisional ballots cast outside the voter's assigned precinct location*

Some election officials we interviewed supported the legislative removal of the wrong precinct rule. They pointed out that prior to litigation in 2004 upholding the statutory requirement, many county election officials would count votes on provisional ballots for contests in which the voter was eligible to participate — regardless whether the ballot was cast at the voter's assigned polling place — so long as the voter was in the correct county. Most advocates and academics we interviewed support Ohio's return to rules that would count such provisional votes.

- b. *Change the wrong precinct rule to a wrong polling place rule*

Some election officials suggested that a compromise position would be to mandate counting all provisional ballots cast in the correct polling place, whether or not they were at the assigned precinct table or on the assigned precinct ballot style. This is the policy followed in Missouri.

Here, too, there were calls for more access to information about provisional ballot practices. Currently, the state does not publish data on the numbers of provisional ballots rejected because they were cast in the correct polling place but “in” the wrong precinct. Data provided by two of Ohio's largest counties, however, indicate that in the 2008 primary and general elections, approximately a third of wrong precinct ballots were cast in the right polling place.

c. *Allow voters to vote provisionally at satellite offices in addition to their home precincts*

For voters who cannot get to their assigned precinct polling place, some election officials suggested allowing additional provisional voting at the election board or another established central location.

d. *Adopt a straightforward method for identifying when ballots are cast in the wrong precinct due to poll worker error, and count the top of the ticket on such ballots*

Many interviewees agreed that if the wrong precinct rule remained in force, statewide votes on provisional ballots should be counted if they were cast in the wrong precinct because poll workers failed to issue the proper instructions. (In the view of at least one election official and some advocates, this is the rule already imposed by the complete Ohio election code and the *Homeless Coalition* court order.) Election officials pointed out that there are instances when voters are warned that they must go elsewhere to vote and nevertheless choose to vote provisionally in the wrong precinct. At the same time, however, many election officials agreed that when voters cast provisional ballots at the wrong voting location because poll workers directed them there, or failed to identify and direct them to the correct location, the lost opportunity to vote on precinct-specific contests should not be compounded by disqualifying votes on statewide issues.

The concern, however, is how to identify when poll worker error is the cause of voting in the wrong location. Advocates suggested adopting a presumption of poll worker error, asserting that few voters upon being informed that they were at the location where their ballots would be disqualified would nevertheless choose to vote there. But some officials were troubled by the idea that even votes cast deliberately in the wrong precinct could be characterized after the fact as poll worker error. A possible solution, particularly since there is broad support for redesigning the provisional ballot envelope, see page 45, would be to use the provisional ballot envelope to record the poll worker's identification of the voter's precinct. There could be a simple line or checkbox on the envelope — or perhaps on a sticker to be attached — where the poll worker assisting the provisional voter would record the voter's correct precinct and voting location. Then, when provisional ballots are counted, it would be easy to identify which ones were cast in the wrong location because poll workers failed to correctly direct voters. If the form was filled in correctly, that would show that the poll worker did his or her job, and the ballot would be disqualified. If the wrong precinct or voting location was recorded, or if the space was left blank, that would indicate poll worker error, and the votes at the top of the ticket could be salvaged. One additional benefit of this system would be the feedback it would provide to election officials, allowing them to identify problems that could be addressed in subsequent poll worker training or by pointing out errors to presiding judges in precincts that had high error rates.

C. Early In-Person and Mail-In Voting Procedures

The Issue: Few areas of election administration have seen bigger changes in Ohio over the last few years than absentee voting, and few changes have had a bigger impact on the entire electoral process. Both voting rights advocates and election officials generally see the recent reforms to Ohio's absentee voting laws in a positive light. Most importantly, many credit the expansion of absentee voting with keeping Ohio generally free of long lines at the polls on Election Day in 2008.

Most summit participants and interviewees who discussed early absentee voting also felt that the last few elections raised serious questions about some aspects of current absentee voting practices in Ohio. Both advocates and election officials argued that further changes to Ohio's laws and practices in this area were necessary. In particular, interviewees raised the following concerns:

- for in-person absentee voting, long lines in 2008, particularly in large counties like Franklin and Cuyahoga;
- for mail-in absentee voting, the relatively high number of ballots and votes not counted;
- for all absentee voting, the long lead time (35 days) prior to the Election Day;
- for all absentee voting, the security and the integrity of elections.

Reform Proposals: Summit participants and interviewees offered a number of proposals to reform both early in-person and mail-in absentee voting. We detail the proposals with the broadest support below. The full range of suggestions relating to early absentee voting can be found at pages 50-61 of this report.

1. *Expand in-person absentee voting and adjust the early voting time period*

There was general, though by no means universal, support for expanding the number of in-person absentee voting sites, at least in those counties where there were long lines in 2008 during the early voting period. At the same time, for cost and philosophical reasons, most also supported (or at least were not necessarily opposed to) shortening the early voting period, which is presently 35 days.

a. *Expand the number of in-person early voting locations*

Many interviewees suggested a change in Ohio law to allow for multiple in-person early voting locations, depending upon each county's number of registered voters. A wide range of election officials, advocacy groups and academics supported this idea. While few objected to this expansion per se, a number of interviewees mentioned potential problems that could arise. Most prominently, these interviewees raised three questions: What will be the procedure for determining which counties set up additional early voting sites? How will counties or the state determine where those sites will be located? How will counties pay for additional locations, which can be very expensive to run? There was no agreement on how to answer these questions, though interviewees offered a number of suggestions, ranging from developing mathematical formulas for the placement of sites to requiring a super-

majority of each county board to determine whether and how many sites should be added. The full range of suggestions is discussed in greater detail on page 52 of this report.

As for addressing the cost of in-person early voting, there were a number of suggestions (*see* page 53 of this report), but many summit participants and interviewees embraced the idea of shortening the early voting period.

b. Shorten the voting period for in-person absentee voting

Several election officials and academics expressed the view that the current period for in-person absentee voting was probably too long. Election officials noted that staffing a polling place for 35 days was very costly, while some academics questioned the rationale for allowing voters to cast votes so early. (Did these voters have time to inform themselves fully about all of the contests and issues? Would they have “buyer’s remorse” weeks later, when the candidates and initiatives received greater scrutiny?) Some election officials hoped for a day or two before Election Day to shut down early voting and gear up for Election Day itself. Some advocates and academics opposed this, citing high usage of early vote centers on these days in 2008.

A number of interviewees also acknowledged objections to what is sometimes referred to as the “Golden Week,” the first seven days of absentee voting before a general election when the 35-day in-person absentee voting period overlaps the period before the voter registration deadline, and during which voters may register and vote on the same day. Some have expressed concerns that this could lead to voter fraud, because county boards cannot use the same verification methods employed for other new registrants to check registration information before allowing newly registered Golden Week voters to vote. Many advocates pointed out that there was little evidence of fraud during the 2008 Golden Week. These advocates believed the overlap between voter registration and the absentee voting period resulted in increased voter participation and hoped that the state would continue the practice, examining data from this period (including allegations of voter fraud and the effect on voter turnout) before considering whether to end the practice.

These different views of the overlap period are at the crux of the dispute over the optimal length of the early voting period. While many advocates stated they were not opposed to shortening the early voting period, they would only support such a reduction if the state adopted an early voting program that allowed voters to register during that period, as is done in North Carolina. Some county election officials we interviewed were opposed to this idea.¹²

2. Refine early mail-in voting procedures

Suggestions for refining Ohio’s early mail-in voting procedures fell into four main categories: make it easier to correct and count absentee ballots with technical defects, take steps to reduce the number of residual votes, explore further expansion of mail-in voting, and develop best practices for vote by mail security.

a. *Make it easier to correct and count absentee ballots with technical deficiencies*

There was widespread agreement that despite important efforts from the Secretary to provide guidance, it was too difficult in 2008 to correct and count absentee ballots with technical defects. Several election officials believed that a 2008 directive imposed restrictions that made it more difficult to process ballots that they previously would have corrected and counted, by forcing voters to come into board headquarters to make corrections. The Secretary of State's office viewed that directive as reflecting the current Ohio law which forbade the counting of ballots with these technical deficiencies and required voters to come into the board of elections to correct their mistakes. At the same time, a representative from the Secretary's office indicated a desire to see the law changed.¹³

Some election officials believe that they should have more discretion to find ways to count ballots with technical defects. Most advocates and academics we interviewed agreed, but they added that they were in favor of clear and uniform statewide standards for accepting or rejecting ballots, to ensure equal protection to all voters. Regardless, all parties we interviewed agreed that the best policy was one "which recognizes that voters will make inadvertent errors and omissions," and that there should be "a routine method, to the extent possible, to contact voters to attempt to correct the deficiency as quickly as possible, thereby improving the odds that the ballots will count."¹⁴ Of course, it should not be necessary to contact voters if the vote can be counted absent correction of the technical defect.

Summit participants agreed that the Secretary of State should work with election officials and advocates to develop these policies, and (where necessary) to request changes to the Ohio Revised Code to allow the use of such policies.

b. *Take steps to reduce residual vote rates on mail-in ballots*

As greater numbers of Ohio residents vote by mail, some advocates and election officials expressed concerns that voter errors will increase. Professor David Kimball has noted that in 2008, counties with higher rates of absentee voting also had higher rates of overvotes.¹⁵ We discuss this potential problem, as well as relevant research on the subject in page 58 of this report.

There was widespread support for working with usability and design experts to determine whether a redesign or rewording of ballots, ballot instructions, and other materials sent to voters would reduce voter error rates, taking into account that voters who vote by mail will not have the advantage of using machines that will notify them of certain errors. There was also support among academics and advocates for the state to adopt a practice of manually reviewing absentee ballots before they are run through scanners, to separate out ballots that might not be read by machines, and to remake these ballots for voter intent when there is bipartisan agreement.¹⁶ This is done in Oregon. (Regarding remake practices in general, some election officials and advocates felt that greater direction from the state is needed to create consistent statewide standards.)

A more detailed discussion of steps that the state could take to reduce residual vote rates on mail in ballots can be found on page 58.

c. *Explore expansion of mail-in voting through pilots in special elections*

Interviewees offered many ideas for expanding mail-in voting — from allowing voters to apply for “permanent” mail-in voting status, to paying for the postage for all absentee ballots. Those concerned about the potential for greater voter error, as well as potential equity issues raised objections about rushing to adopt any of these proposals. A full discussion of this debate can be found at page 59.

Nevertheless, there seemed to be widespread support for holding one or two special elections only by mail in a specific location, to study the concerns raised by those worried about the negative effects of expanding mail-in voting. These pilots could study a number of issues, such as the cost, impact on voter turnout, and effectiveness of the United Postal Service in delivering ballots to rural and densely urban areas.

d. *Develop best practices for vote by mail security*

Most election officials and advocates we interviewed supported the suggestion that the Secretary of State develop “best security practices” for absentee ballots, which could then be adapted to particular counties and their systems.

Future Study: There is a great need for additional data to support informed policy decisions about early voting. We detail the types of studies that would be useful in page 60 of this report. For such research to be effective, it is critical that the state consider *requiring reporting of data for vote by mail and in-person early voting separately*, even though these ballots are both deemed “absentee.” Separate data collection would allow careful monitoring of whether different balloting methods, styles and the like to determine their effects on the franchise, and whether these methods operate differently in different parts of Ohio and for different segments of the population. Because this data is not currently available for the 2008 election, much of the discussion of the potential impact of changes to early voting laws is driven by speculation, or is based on the experiences of other states where such data is kept.

D. **Poll Worker Recruitment and Training**

The Issue: Ohio has been ahead of the curve in recognizing the importance of poll workers’ job and training, in part because of the extraordinary challenges Ohio poll workers have faced in recent elections. Voting technology has changed, and so has the law — multiple times — so that even veteran poll workers recently have had to learn election procedures and standards from the ground up. As one election official remarked, in the past four years poll workers have not had the same training twice. Moreover, many aspects of voting in Ohio have grown more complex — including the provisional balloting process and the introduction of voter ID laws. Secretary Brunner responded by making available online poll worker training. A number of county election boards have experimented with innovative methods of recruiting poll workers and developing new training initiatives, including the use of that online training and creating hands on training to focus on perceived problem areas, such as provisional ballots. There was strong support among summit participants for increased resources to support these efforts and to improve poll worker

compensation, and research and funding to identify and support effective training programs. At the same time, participants noted that there were a number of potential reforms that would cost nothing.

Reform Proposals: One basic — no cost — change received virtually unanimous support from summit participants, who believed it would address problems in both poll worker recruitment and training: *simplify the rules on provisional balloting and voter identification.*

Election officials and advocates repeatedly expressed the view that complex and changing election rules and practices put too much pressure on poll workers and made it extremely difficult to produce competent poll workers with the current training commitments. Moreover, officials believe that poll workers' frustration with constantly changing and increasingly complicated election procedures led to problems with recruitment and retention. Streamlining procedures for administering provisional ballots and voter identification was by far the most frequently mentioned reform to improve both poll worker recruitment and performance. In particular, officials and advocates agreed that the provisional ballot forms need to be redesigned, to make them less wordy and easier for voters — and poll workers — to follow.

In addition, the following proposals garnered broad support:

1. Recruitment

a. Increase recruitment from schools

Many officials spoke of the success they have had integrating high school seniors into the poll worker ranks. There was strong support for increased recruitment from both high schools and colleges to build this new source of poll workers. A call to close schools to make it easier to recruit both students and teachers was met with enthusiastic support. It was pointed out that the most successful college recruitment program involved professors who built election administration into lesson plans and school administrators who gave students the day off to work at the polls. The EAC provides a guide to college recruitment, available at http://www.eac.gov/files/BPPollWorker/College_Guidebook.pdf.

b. Recruit through direct mail

A number of counties reported good results using direct mailings to voters as a way to recruit new poll workers. Butler County sent recruitment post cards to voters in areas identified as at risk for poll worker shortages due to the aging poll worker pool there, producing a large group of back-up poll workers. Franklin County enclosed an application to serve as a poll worker in its mandatory notice mailing to voters. The result was the first ever surplus of poll workers. In Clermont County, officials combined a cable advertising campaign with flyers mailed to all residents with their water bills, producing about 200 potential poll workers in a week and a half. At least one official, however, expressed the view that poll workers obtained through broad direct mail campaigns may not stay as long as workers who know more about election administration before getting into it. One possible solution, if there is such a retention problem, would be to target frequent voters, as people

who already have some commitment to the election process and know more what they will be getting into by becoming poll workers. In Summit County, officials sent recruitment post cards to 1,000 Democrats and 1,000 Republicans who they identified as frequent voters and netted about 150 new workers.

c. Improve poll worker compensation and recognition

Many interviewees agreed that poll workers should be better compensated. Officials pointed out that despite the ever increasing demands made on them, poll workers have received only a small increase in compensation to a pay scale that one county official characterized as “dismal.” Officials and advocates agree that increasing poll worker pay and finding other ways to recognize poll workers’ service would make it easier to recruit and retain high-quality poll workers. Summit participants pointed out that many, if not most, poll workers serve primarily out of a sense of civic duty. Thus, in these tight economic times, there may be ways to boost poll workers’ rewards, other than by increasing pay rates. For instance, counties might consider certificates, awards, published honor rolls or other ways to show appreciation for poll workers’ service.

2. Training

a. Collect data on successful training programs and techniques

County officials appreciated the Secretary’s online training materials. A study of two counties’ incorporation of the new online materials into their poll workers’ training showed that voters were more satisfied with their experience at polling places staffed by workers who had taken the additional training. It was pointed out, however, that more research was needed to determine whether that beneficial effect was attributable specifically to the online training, or simply to additional training. Similarly, officials believed that the addition of some new hands on and roll playing training segments improved poll worker performance, but studies are needed to confirm these benefits and to determine the relative importance of training in different settings — individual online, interactive hands on, and traditional lecture format.

b. Develop on-the-job informational aids for poll workers

County election officials praised the flip charts created by the Secretary’s office for use at the polls. Other possible aids include palm-sized reference cards and easy-to-read posters with answers to common questions about state voting guidelines. Along these lines, one academic pointed out that there is a well-developed literature in the medical world about the utility of check lists as aids for preventing errors. Those studies indirectly support summit participants’ belief that these types of aids were effective supports for reducing errors in the election context. The importance of clear, simplified instructional tools further highlighted the need for overall simplification in the administration of provisional ballots. Unlike the flip charts, summit participants felt the flow chart provided by the Secretary on administering provisional voting was not helpful, because it was so complex that it was too hard to follow. But participants agreed that the problem was not so much with the chart as with the rules and procedures themselves, which had become so tangled and confused that it was not possible to render them in straightforward, instructional terms.

E. Post-Election Audits

In 2008, Secretary Brunner published two directives that led to the first post-election audits of paper records in Ohio. Secretary Brunner has received substantial praise from advocacy groups and some election officials for advancing the use of post-election audits in Ohio. In fact, it appears that at least two previously unknown problems with Ohio voting equipment were discovered as a result of these audits. For the most part, however, the audits showed that Ohio's machines were working remarkably well, accurately recording and tallying the intent of voters.

Several election officials and advocates we interviewed would support legislation requiring post-election audits after major elections. One suggestion was a law that laid out broad principles (such as a requirement to compare a certain percentage of paper records to electronic tallies), and gave the Secretary of State with room to develop the details of the audit through directive. Some interviewees thought that at least some details in the law (types of ballots to be audited, which contests to audit, percentage of ballots to audit; reporting requirements) would be helpful, both in allowing county boards to develop regular procedures ahead of each election and to ensure that each audit met minimum standards of effectiveness.

There was widespread agreement that the more information election officials and the public had about the audit ahead of an election, the more likely the audit would be effective and efficient, and serve the goals of increasing transparency and public confidence in election results. Most Summit participants we spoke to also agreed that it would be helpful to get a report from the Secretary of State's office detailing the information they received from counties about the post-election audits conducted in 2008, as well as what lessons were learned from those audits.

Discussion of various proposals for a post-election audit law can be found on page 73 of this report.

F. Additional Ideas

Election officials, voting rights groups and academics also gave high priority to other issues that did not neatly fall into any of the five areas detailed above. Below we note two suggestions that appeared to have support across these groups.

- 1. For the purpose of reducing voter errors, amend laws related to design and language requirements for ballots, registration forms, and provisional and absentee ballot envelopes and applications***

The Brennan Center has previously concluded that Ohio's laws related to ballot design are among the worst in the country, directly conflicting with best practices, and impeding the ability of election officials to ensure that ballots are easily understood by the largest number of voters.¹⁷ After reviewing of Ohio's laws related to design requirements for ballots, registrations forms, and provisional and absentee ballot envelopes and applications, we conclude they are similarly flawed.¹⁸ Tens of thousands of registrations forms, absentee

ballots and provisional ballots were rejected last year, often for technical defects that might have been avoided if forms used plain language and more usable designs.¹⁹ As a general rule, we recommend using simple, non-legalistic language and reducing the number of fields that voters must complete to the bare minimum. We also recommend eliminating as many rules as possible that affect design and giving the Secretary of State board discretion to recommend designs and language that will make forms and ballots as usable as possible. Unfortunately, in many cases, making these changes will require amending state law. Participants we interviewed strongly recommended that the Secretary and legislature work with design and usability experts, like those at Design for Democracy and the Usability Professional Association, as well as voting system vendors, to develop new requirements.

2. *Review the back-up paper ballot policy*

In 2008, in compliance with Secretary Brunner's directive, counties that use DRE machines provided every polling place with a supply of paper ballots equal to 25% of turnout in the 2004 general election.²⁰ In addition, machine counties were required to use a two-line system to separate paper-ballot voters from those voting by machine.²¹ These directives only applied to the 2008 election. Summit participants we interviewed recommended that the Secretary conduct a thorough evaluation of the policy, consulting with election officials, advocates and academics, for the purpose of determining whether, and in what form, she should institute such a policy in the future.

While several advocates, academics and election officials believed that the two-line system reduced waiting times at polling places and liked the fact that it gave voters an extra option, others questioned the utility of offering voters a choice between paper ballots and DREs, when DREs were working and there were no long lines. Specifically, some county election officials criticized the 2008 paper ballot directives in terms of cost, administrative efficiency, and election accuracy. One county election official questioned how counties could afford to support two separate voting systems at every election.²² He reported that his county spent approximately \$24,000 to provide and administer ballots. Under the required formula, they printed 14,700 ballots. Only 704 were used. While ballot printing would be reimbursed, other costs associated with paper ballot administration, e.g., poll worker time, would not.

On a related note (as discussed in this report on page 70) because counties that use DREs do not have precinct scanners to notify voters of errors at their polling places, some academics and advocates have expressed concern that having large number of voters choose to vote on paper without precinct based optical scans will lead to problems: higher error rates and — in cases where contests are close and recounts necessary — more disputes about voter intent on ballots that machines can't read.²³

At least one federal court has held that DRE counties must have back-up paper ballots in case of machine failures, which can cause long lines.²⁴ One possible compromise in Ohio might be to continue to supply counties with supplemental paper ballots, but to only require their *use* in the event of long lines and/or machine failure. This appears to be the policy in Illinois and Indiana.²⁵ Such a policy might save most precincts the cost of administering two lines: for the most part, DREs do not fail on Election Day, and because most precincts will not have long lines, it would generally not be necessary to administer and staff a second line. This compromise would also address the concern of many advocates that encouraging voters

to use a system without error notification will lead to higher error rates and more disputes over voter intent.

In fact, this compromise is consistent with what the Secretary of State's office has told the Brennan Center is the primary purpose of last year's back-up paper ballot policy: to serve as a safety valve when machines break-down or long lines might otherwise prevent people from voting.²⁶

Unlike the need to amend state laws related to design of election materials, there is little agreement among election officials and voting rights advocates on the best policy for back-up paper ballots. However, most Summit participants we spoke to agreed it made sense for the Secretary to consult with election officials and advocates as she considered what policy the state should employ for back-up paper ballots next year.

A full discussion of recommendations relating to the state's back-up paper ballot policy and polling place resources generally can be found at page 69.

II. Statewide Voter Registration System

A. Background

The Help America Vote Act of 2002 (“HAVA”) requires the Ohio Secretary of State’s Office to maintain a uniform, interactive statewide voter registration system to serve as the official central source of voter registration information.²⁷ Ohio constructed its Statewide Database from the bottom up, working to link together its existing county databases.²⁸ When a new Ohio voter fills out a registration form, local officials input the data into the system maintained by the county election board where the voter resides. The record is then uploaded to the Statewide Database maintained by the Secretary of State’s Office.²⁹ Counties use the Statewide Database to help eliminate cross-county duplicate voter registration records and to verify previous registration status of provisional voters necessary to validate their ballots.

There are several procedures by which the Statewide Database should be maintained and updated. The Secretary of State’s Office attempts to locate duplicate registration entries, and give local officials notice of duplicates. The Secretary of State’s Office also attempts to match the information in each registration record with information from the Ohio Bureau of Motor Vehicles (“BMV”) and the U.S. Social Security Administration. The Secretary of State’s Office notes within an individual voter’s record whether the data has been confirmed or mismatched.³⁰ County election officials update their local voter databases regularly, both by flagging records of individuals who are no longer eligible to vote,³¹ and by adding new registrants. For example, local county boards of elections identify voters who become ineligible: upon notification of death by the Department of Vital Statistics or a family member of the deceased, determination of incompetence by a county Probate Court Judge, incarceration pursuant to a felony conviction, notice by a voter requesting removal from the rolls, or after a voter has failed to respond to a “postage prepaid, pre-addressed return card sent by forwardable mail” and has not voted in two consecutive federal general elections following the date of the notice.³² Changes made through local list maintenance are also automatically reflected in the Statewide Database. Updates from the county databases are uploaded to the Statewide Database at least once a week.³³

There appears to be agreement among election officials, advocates, and academics that adequate design and maintenance of the Statewide Database is one of the most important issues to be addressed in Ohio in the coming months. A functioning database is critical to elections: under Ohio law, citizens’ ability to vote and have their votes counted depends on whether their current names and addresses are properly included on an updated list of eligible voters. The accuracy of that list, in turn, requires that ineligible individuals are the only names removed through purging. Election officials report that maintaining databases is one of their most costly and labor intensive tasks.³⁴

There was also agreement among interviewees that the statewide voter registration system needs repair. There was less agreement, however, on the type and degree of problems, as well as the most effective potential solutions. Nevertheless, academics, advocates, and county election officials identified at least three general areas where they would like to see improvement:

- procedures and technology to better ensure accuracy and integrity of voter information and consistency across county and state systems;
- a more transparent Statewide Database that will permit user-friendly searches, queries, exports and report-writing; and
- procedures to better ensure security and privacy of voter data and privacy on the Statewide Database.

Some advocates and election officials also identified procedures they would like to see adopted to guide ‘big picture’ reforms. Included among the suggestions offered and supported by interviewees³⁵ were these:

- Designation of a public study group, convened by the Secretary of State, to review current practices and make recommendations to the General Assembly on possible legislative improvements to the statewide voter registration system and voter registration data entry and management practices, including but not limited to the eventual adoption of Statewide Automatic Registration and/or Election Day Registration.
- Convening of an independent technical study, similar to the EVEREST voting system top-to-bottom review, to determine the Statewide Database’s security, accuracy, reliability, and compliance with federal and state voting rights laws.

B. Issues to Address

1. *Accurate, consistent voter registration information*

Voting rights advocates and election officials stress the importance of accurate and consistent information in the county and state systems.³⁶ All agreed that there was more than one cause for inaccurate, incomplete, or inconsistent information in the Statewide Database: the most common reason stems from the fact that the Statewide Database was built with different software than the county databases; the fact that a number of different vendors manufactured the county databases complicates matters further.³⁷ Professors Candice Hoke and David Jefferson note in their forthcoming book that the tasks of building, maintaining and updating a statewide database are “exceedingly error prone for states with more than a handful of counties . . . [a] large number of small but vital incompatibilities inevitably appear when data from separate sources have to be unified.”³⁸

Several county election officials complained about the inefficiency and possible disenfranchisement caused by the current process for dealing with potential “duplicate” voters.³⁹ These officials estimated that they received tens of thousands of duplication notices, identifying potential duplicate entries, every year.⁴⁰ Because the type of information maintained is often inconsistent from one database to the next, it is sometimes difficult to judge whether a voter record flagged as a potential duplicate should be cancelled, merged, or kept. The number of potential duplicates swells in the months before major elections (a particularly busy time in county election offices), as the number of voters registering tends to increase dramatically. Frequently, a new registrant with a relatively common name (for instance, “Joe Smith”) or other common information (for instance, duplicates of the last four digits of the Social Security number) can trigger duplication notices to several counties.

Each county is then left to investigate and address duplicates on its own. Advocates noted that removals under these circumstances without appropriate protections might raise concerns under the National Voter Registration Act and HAVA.⁴¹

Advocates were especially concerned about reports from voters who had attempted to confirm their registrations on the Secretary of State's online database query website (the "State Database Query"), and found that their names were not listed.⁴² This may have translated to problems at the polls as well. Election Protection, the nation's largest non-partisan voter protection coalition, reported that 26% of the nearly 8,000 voter calls they received from Ohio voters on and before Election Day were related to voter registration. "Many of the problems at the polling place were . . . problems with the voter registration system," Election Protection wrote. "In 2008, long time Ohio voters who have voted at the same precinct for many years showed up at their polling place to find out that their names have disappeared from the rolls . . . some voters were listed on the statewide voter registration database but not on the precinct list, some were listed on the statewide registration database but not the county's database and some voters showed up on the county's list, but not the statewide lists."⁴³ County election officials and advocates offered⁴⁴ at least three possible explanations for most of the reported discrepancies between the voter's Election Day experience and actual election records:

1. occasional a lag time between when a county enters a new registrant into its database and the point at which that information is uploaded to the Statewide Database and is searchable using the Secretary of State's Office website;
2. data entry errors or inconsistencies and consequent poll worker inability to find the voter's name in the voter register (for example, reversed numerals in a voter's social security number, or an incorrectly entered name, as has been documented);⁴⁵ and
3. in some cases, some kind of data format issue where information is entered correctly but still causes conflicts (for instance, for women who are registered and appear in the poll book under their maiden name, but present themselves at the polls with voter identification bearing their married name).⁴⁶

Another problem with maintaining accurate registration lists is that many registration forms have to be rejected because they contain incomplete or inaccurate information. In 2008 in Cuyahoga County, for instance, 16,000 registrations, or about 6% of all registration forms, were found to be defective or "fatal pending."⁴⁷ Of these, about half were due to problems with the addresses supplied. One advocate says that many of these errors are probably caused by voters or data entry clerks reversing digits in the house or street number, but might sometimes be caused by flaws in the county systems used to verify the legitimacy of street addresses.⁴⁸ Unfortunately, because new registrants frequently do not provide a phone number (it is listed as "optional" on registration forms), the county board of elections has no way of notifying these voters of problems, or of supplying an opportunity to correct or verify the information.

Some voting rights groups suggested that there might be additional, more troubling reasons that voters' names could not be found on the voter rolls.⁴⁹ These potential reasons include voters who may have been improperly purged or voters whose information was never entered (or belatedly entered) into the county registration systems, as shown in a 2004 study of about 9,600 registrations.⁵⁰ For instance, the Greater Cleveland Voter Coalition estimates

that in Cuyahoga County in 2004 alone, over 900 provisional ballots were apparently rejected for one of these reasons; the Coalition notes that it made similar preliminary findings in 2008, and is currently working with the Cuyahoga Board of Elections to confirm these findings.⁵¹

One advocate pointed to the nearly 40,000 provisional ballots cast in November 2008 that were later rejected as possible evidence that voters who should have been listed in the database were either not listed, or were listed with incorrect information.⁵² He recommended greater quality control in the county and statewide databases, including greater proactive outreach to solicit and incorporate changes in registrants' information before Election Day.

Interviewees offered several proposals to ensure greater accuracy and consistency in voter registration information.

Redesign of Ohio driver's license. Advocates note that the present design of Ohio's driver's license makes it very easy for voters or registrars to list the wrong number on registration forms. Currently, the license has a number directly above the picture which is NOT the driver's license number.⁵³ If voters or registrars record this number as the license number, it will at worst preclude the voter from being properly registered or at best contribute to inaccuracy in the registration database. Redesigning the license to make the license number the sole number on the face of the license (or in a more prominent size and location, if the other number is needed on the license face) would contribute to the accuracy of the database and protection of voting rights. At the very least, advocates say, there needs to be much better public education about this problem.⁵⁴

Redesign of voter registration forms. As already discussed above, about 6% of all registrations received by the Cuyahoga County Board of Elections in 2008 were rejected because of incomplete or inaccurate information. At least 1/3 of these forms were rejected because voters failed to fill-in information required under state law. Advocates and academics urged the Secretary of State to work with usability and design experts to redesign registration forms with the goal of minimizing voter error.⁵⁵

Encourage collection of additional contact information. When there is an error on a registration form or in county registration records, county boards of elections currently have few practical means to reach the voter — particularly if the error is in the address field. Advocates suggest adding the notation “encouraged” to the existing “optional” notation in a color-highlighted box for a phone number on the registration form, or dropping the “optional” notation entirely. For the same reasons, the registration form might also attempt to collect a voter's email address.

Minimize “no matches” at state level by flagging and addressing problems before attempting to match. In 2008, the information in many registration entries, in Ohio and across the country, could not be matched with records in motor vehicle or Social Security databases: though there is substantial dispute that these “failed matches” indicate eligibility concerns rather than problems with the matching protocol, the issue nevertheless generated substantial controversy. A number of advocates suggested using the Statewide Database to flag potential typos, and to prepare data for matching, so as to decrease the matching error

rate.⁵⁶ These advocates noted that there are protocols that can be used to standardize and double-check data (such as all caps, no punctuation, checksums on driver's license numbers, validation rules for dates of birth) before attempting to match registration records with Social Security or BMV databases, thus minimizing matching errors. The state could implement a post-failed-match human review of all initial failed matches to look for typos and other errors that could have caused the mismatch, before notifying anyone of the failed match.

Establish a data entry protocol for local officials, to flag and address problems before attempting to match records. Advocates further endorsed the creation of a data entry protocol for local officials to reduce errors, for instance, requiring teams of workers to conduct data entry, so that work is reviewed by one other person before it is finalized.⁵⁷ Advocates also endorsed the suggestion that original forms be digitized, with the image appended to a record in the database, to facilitate double-checking down the road.⁵⁸ This procedure has already been implemented in several counties.⁵⁹

Use the U.S. Postal Service and other sources to provide voters with opportunities to update voter information. Some election officials and many advocates supported the creation of a rule that would require regular updates of the county and Statewide Databases by notifying voters of the opportunity to update their voter information when they have changed their addresses with the postal service through the National Change of Address (“NCOA”) program,⁶⁰ or have updated their addresses with the BMV (for citizens at least 18 years only)⁶¹ — and for providing such voters with the appropriate form.⁶² Some election officials further supported notifying voters of the need to update their registration information when the voter's date of birth, drivers license number, and/or social security number were missing or were known to be inaccurate or incomplete — and for providing the appropriate form to do so.⁶³ At least one advocacy group questioned whether this final recommended notification was a good idea, particularly if it could lead voters to believe that they might be purged if they did not update their information; other groups said it would be easier and less expensive to simply allow the boards of elections to phone these voters and correct the information in-house.⁶⁴ Advocates agreed that if such notices are required, there should be guidelines to ensure that they are written simply, in a tone that will not lead voters to believe they have been removed from the rolls.⁶⁵ Norman Robbins suggested going one step further, and to follow the practice in New York State, where a voter's registration address will be changed automatically if the NCOA or a public assistance agency reports a change of address; the voter is sent, at the new address, a postage paid returnable confirmation notice, to ensure the change of address for registration purposes is correct.⁶⁶

Change the policy for updating registration addresses at BMV to comply with federal law. One factor making it difficult for the state and counties to maintain an up-to-date registration list is the fact that large numbers of voters move frequently, but do not think about canceling old voter registrations and re-registering in a new location. The result is that lists can become outdated, resulting in problems at the polls on Election Day.

In addition to working with the U.S. Postal Service, a partial solution to this problem is to ensure that anyone who changes the address for his drivers license has his voter registration address changed as well, unless he specifically opts-out. In fact, this is specifically required under the National Voting Rights Act:

“[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.”⁶⁷

Ohio appears to violate this federal mandate, and in the process makes it more difficult for counties to keep up-to-date voter registration lists. Specifically, rather than *requiring the voter to specifically state, on his change of address form*, that the change of address is *not* for voter registration forms, BMV instead appears only to require that employees “make available” to voters *separate* change of address registration forms. If a BMV employee does not specifically offer such a form, or a voter says he does not want fill out an extra form, his address will not be changed for voter registration purposes. This appears to be consistent with Ohio law – which only requires that BMV provide an applicant with the “opportunity to . . . update [her] registration”⁶⁸ — but not with the federally mandated procedure imposed by the NVRA. By putting an extra burden on the voter to fill out an extra form, in apparent contradiction to federal requirements, this policy makes it far less likely that voters who have changed their permanent addresses will also change their registration forms.

Moreover, it is not clear that the official BMV policy is even followed in many BMV offices. Summit participants who have changed their driver’s license addresses report that BMV employees failed to ask them whether they wanted the extra change of registration address form.⁶⁹ That is not particularly surprising; BMV employees probably do not view keeping voter rolls up-to-date as one of their primary responsibilities. This is yet another reason that the federal mandate is preferable to Ohio’s current policy: it does not rely on BMV employees to take extra steps ensure that voters update their registration information.

In an interview with the Brennan Center, the Office of Legal Services for the Ohio Department of Public Safety (which oversees the BMV) acknowledged the NVRA requirement and has informed us that the BMV will be working with the Secretary of State’s office to ensure that, in the future, when a voter fills out a change of address form for her driver’s license, it will also serve to change her address for voter registration purposes, unless the voter has specifically indicated on the form that it should not.⁷⁰

Use information from other databases to improve county and statewide voter records. At least one election official suggested that when it is certain⁷¹ that a record in the Statewide Database matches a record maintained by the BMV — based on fields such as first and last name, date of birth, and social security or driver’s license digits — the Ohio Secretary of State’s Office should fill in any missing information on the voter’s record from information in the BMV systems, to update both the state and county voter databases.⁷² While advocacy groups we interviewed did not necessarily oppose this recommendation, there were concerns that such a process could easily create more inaccuracies in the Statewide Database unless proper controls were put in place.⁷³ In particular, they insisted that such a process should

not be automated without oversight, and several groups suggested a better practice might be to contact voters to confirm that additional information was correct before updating.⁷⁴

Greater quality control at state level. At least one advocate suggested that the Secretary of State's Office (and/or County Boards) could check for inadvertent purges (which Cleveland Votes documented as having occurred in 2004)⁷⁵ by creating a list of voters deleted from the database in a six month period and comparing that list against a separate list of "intentional deletions" (e.g., for death, moving out of state, felony incarceration, etc.) created by the counties during the same six month period. The purpose would be to ensure that there were no voters who had been unintentionally deleted without a legal reason. The advocate argued that these procedures could be temporary, if several cross-checks showed virtually no inadvertent purges. Alternatively, at the very least, the Secretary of State's office could post a list of all voters deleted from the state database on her website, increasing transparency and allowing voters to search to make sure their names were not taken off the rolls erroneously.⁷⁶

Greater quality control at local level. Some advocates suggested that the Secretary of State's office and county election officials conduct periodic quality control checks or audits to ensure that registration cards were "fully accounted for" on the Statewide Database, and that there were no inadvertent deletions or other errors.⁷⁷ Along these lines, other advocates suggested that county boards be required to supply registration groups with periodic reports on the outcomes of registration forms those groups submitted,⁷⁸ so that errors or deletions could be corrected before a major election.⁷⁹ Some county election officials objected to these steps as creating unnecessary work.⁸⁰

Release of provisional ballot information. Advocates also requested the public release of the names, addresses, and birthdates of those who cast provisional ballots that were rejected,⁸¹ so that independent groups could check for database or registration entry errors, to ensure that no provisional ballots were incorrectly required or rejected.⁸² Other officials, and some advocates, however, interpret HAVA to preclude public access to this information.⁸³ The Secretary of State has issued an advisory that states that only the name and precinct of provisional voters should be released to the public.⁸⁴ (This and other issues relating to provisional ballots are more thoroughly discussed in the *Provisional Ballots & Voter Identification* section below at pages 34-49).

More state responsibility for list maintenance. As discussed below, some election officials and advocacy groups have argued in favor of the creation of a public study group, convened by the Secretary of State, to review current practices and make recommendations to the General Assembly on possible legislative improvements to the statewide voter registration system and on voter registration data entry and management practices. At least some election officials and advocacy groups hoped that this would eventually lead to the state taking over the practice of addressing potential duplicate registrations or data entry altogether, or review of deletions.⁸⁵

Voter registration modernization. Several interviewees argued in favor of modernizing the registration system to the point where the state ensures that all eligible, unregistered voters are in the database, and that voters' address information is updated when they move.⁸⁶ The basic outlines of this proposal, supported nationally by organizations like the

Brennan Center for Justice and the Lawyers Committee for Civil Rights would be as follows: (1) adoption of automatic registration from other state lists, (2) improvement of the state's portable registration system, and (3) adoption of fail-safe methods of correcting the list. Many voting rights groups and some election officials believe this could: eliminate the cost, burden, and planning difficulties for election officials caused by the need to process paper-based voter registration applications, often in a deluge of last-minute submissions; eliminate or reduce the role of third-party groups in the registration process; ensure a more complete and accurate voter registration list, containing far more eligible voters, more accurate address information, and far fewer duplicates and ineligible voters; increasing voter participation; reduce the opportunity for fraud; and freeing up resources for other critical election administration tasks. Nevertheless, at least one county election official expressed skepticism about adopting such a system, fearing, among other things, that it would create very large rolls of voters who never intended to vote.⁸⁷ Some advocacy groups that may support Voter Registration Modernization as a general matter are not convinced that legitimate third party registration efforts would, or should, be eliminated in an automatic regime. Instead, they believe that more study is needed to determine whether the elimination of third party registration could have negative effects, for example, reducing turnout among new voters.⁸⁸

2. *Creating a more transparent statewide database*

Several county election officials complained that the Statewide Database was not user-friendly, and did not allow them to conduct the user-defined searches and queries that would allow them to easily identify voter records that needed to be updated.⁸⁹ For the most part, academics and advocates that we interviewed agreed that that Statewide Database should be more accessible to searches and queries by local election officials and public users. They argued that “the more user-friendly a database is, the more it can be trusted,”⁹⁰ and, in particular, the easier it would be to conduct audits and other quality controls to ensure that information in the Statewide Database was accurate.⁹¹

Many county election officials also wanted the Secretary of State to create a system for notifying boards of elections when information in the Statewide Database did not match records maintained by the Bureau of Motor Vehicles (the “BMV”), and providing the capacity to easily generate a list of such records, so that they could attempt to contact the voters to update and/or complete the voters’ records.⁹²

Interviewees made the following suggestions for creating a more transparent Statewide Database:

Create a more user-friendly database for election officials. Several election officials and advocacy groups hoped that the Secretary would ensure that a new version of the Statewide Database would have all of the characteristics of a modern enterprise database, including the capacity to handle user-defined searches, queries, “soft searches,” exports, and reports, and that both the Secretary’s office and county boards would have the ability to use these functions.⁹³ At least one advocate has suggested that this should be done with the assistance of outside technical consultants who have top security and programming qualifications.⁹⁴

Create a more user-friendly database for voters. Advocates complained that the current website that voters use to check their registration⁹⁵ is both hard to find and difficult to use;

they further note that it cannot be used at all to notify the state or boards of elections of mistakes.⁹⁶ These advocates note that the easier the system is for voters to use, check information and notify officials of the need to correct mistakes, the less likely that the system will contain errors.⁹⁷ For a more detailed discussion of what the state and local boards of elections can do to create a more user-friendly database for voters, see Pew Center on the States' *Being Online is Not Enough*, annexed to this report as Appendix 4.⁹⁸

Provide counties with “no match” information. County election officials we spoke to were unanimous in their view that “no match” information alone should not be used to keep citizens from voting. In fact, at least one federal court has determined that such an attempt would violate federal law.⁹⁹ Nevertheless, several county election officials wanted the Secretary of State to create a system of notifying boards of elections when information in the Statewide Database did not match records maintained by the BMV, so that they could attempt to contact the voter to update and/or complete the voter’s records.¹⁰⁰ Some advocacy groups and election officials opposed these regular notifications. In particular, at least one election official believed they already had enough information, and believed the Social Security and BMV databases to be so riddled with mistakes¹⁰¹ and omissions that a list of “no matches” would only provide them with extra work.¹⁰² In fact, a Social Security Administration report for year-to-date 2008 at the end of September 2008 showed a 31% failed match rate.¹⁰³ While academics and advocates we spoke to generally support the idea of the Secretary of State sharing data on “no matches,” some expressed concern that sharing of this information could lead to improper purges.¹⁰⁴

3. Ensuring security and privacy of Statewide Database

A number of election officials and advocates expressed concerns about ensuring the security and privacy of information on the Statewide Database.¹⁰⁵ In particular, interviewees expressed concern that without adequate security, a wrongdoer could wreak havoc on an election, purging names from the rolls or changing information, and disenfranchising tens of thousands of voters.¹⁰⁶ Interviewees also expressed concern that, in the wrong hands, personal information on the database could lead to identity theft and other privacy abuses.¹⁰⁷ These concerns have been covered at length nationally in reports by organizations like the Association for Computing Machinery.¹⁰⁸

Advocates and county election officials had little knowledge of the security practices currently in place at the Secretary of State’s office.¹⁰⁹ They offered a number of suggestions for promoting security and privacy of Statewide Database information, and urged the *public* adoption of these steps so that privacy and security advocates and members of the public could be reassured about the integrity of this information:

Promulgate a rule limiting access to voter databases. Some election officials and advocates suggested that the Secretary promulgate a rule detailing requirements for the clearance of employees authorized to view, search, enter, edit and delete information in the county and Statewide Databases, as well as security measures for the protection of all information in these databases.¹¹⁰

Mandate audit logs. Some advocates believed that the Statewide Database should have secure audit logs that would allow monitoring of the activity of employees to protect against

and, if necessary, correct nefarious or innocent but misguided conduct.¹¹¹ To be reliable, however, these logs must be impervious to manual modifications and must be subject to independent as well as bi-partisan auditing.

Preserve archives of deleted and modified records. This suggestion, supported by most advocates and election officials we interviewed, would allow quality assurance and auditing to ensure that voter information was not improperly modified or flagged as “removed.”¹¹²

Conduct an audit independent of the database activity to achieve public accountability. As noted above, many advocates and election officials have stressed the need for transparency and accountability in vital Database functions. Some have recommended that an independent audit of operator logs and other Database management activities should occur routinely, and with a public report that is issued directly to the public without modification by state officials.¹¹³

Develop a privacy policy. A number of studies have documented that government officials often omit specifications relevant to ensuring that the architectural design of government databases sufficiently protect individuals’ personal data.¹¹⁴ A new study commissioned by the U.S. Election Assistance Commission (“EAC”) also notes that many States have maintained Database practices that may endanger personal information and threaten identity theft.¹¹⁵ Election officials and advocates we asked agreed that the Secretary of State should provide voters registering to vote with information about the state’s privacy policy detailing the use limitations and security safeguards in place to protect the voter’s personal information.¹¹⁶

C. Examination of the Voter Registration System Is Needed

Several academics, advocates and election officials urged further study of the Statewide Database and voter registration system in Ohio to assist in making additional changes.¹¹⁷ In particular, two ideas for study were suggested and supported (in some form) by a number of interviewees:

1. *Types of studies needed*

Designation of a public study group to examine the registration process. Many interviewees supported the idea of the Secretary of State convening a public study group, composed of leaders from both political parties, elections officials, and advocacy groups, to review current practices and make recommendations to the General Assembly on possible legislative improvements to the statewide voter registration system.¹¹⁸ Among other topics that might be explored by such a group:

- Development of better voter registration data entry and management practices, which many election officials and advocates believe could make reconciling and maintaining the various county and state databases easier;
- Adoption of Automatic and Portable Registration, which has been promoted by a number of advocacy groups¹¹⁹ and election officials as a way of increasing voter participation, eliminating or reducing the need for third-party voter registration groups, and eliminating the cost, burden, and planning difficulties for county boards of elections caused by the last minute deluge of applications for voter registration.¹²⁰
- Consideration of Election Day Registration, which many advocacy groups and academics note is permitted in nine other states, and has a strong track record of increasing voter participation;¹²¹

The Secretary of State's office reports to the Brennan Center that they believe they have addressed the first of the three points listed in this proposed study, through the Summits and consultations with various experts, and that they will publicly release a plan that covers this point shortly. They report that this plan will not address the second and third points, however.¹²²

Independent technical study of the Statewide Database. Some academics and advocates also urged the convening of an independent technical study (analogous to, but probably less costly than the EVEREST voting system top-to-bottom review).¹²³ In such a study, the investigators should determine the Statewide Database's security, accuracy, reliability, and compliance with federal and state voting rights laws; assess Database managerial policies and practices in light of new technical findings; recommend interim management practices for mitigating deficiencies; and offer recommendations on how the state should proceed in light of the findings.

2. Topics for additional research

Whether part of the mandate of a "public study group" or conducted separately, academics, advocates and election officials identified a number of items that they thought productive to research, in the hopes that hard data in these areas would help resolve political differences and assist in creating good policy.

Conduct audits of the Statewide Database. Most of the disagreements about the problems with the Statewide Database are based on hunches and anecdotal information, without numbers detailing the type and extent of problems. In addition to the technical Study of the Database, discussed above, a number of advocates suggested that periodic external, independent audits of the database as a whole — to obtain basic statistics on the extent to which records contain incomplete or invalid information — are critical to improving the system. These advocates stressed that the audits should not be used to jeopardize the eligibility of any individual voters, but to let the database managers know, realistically, the extent of problems with the existing data.

Investigate discrepancies. A number of advocates called for an investigation of the reasons for the “disappearance” of legitimate voters from the Database, and for investigation of the differences and inconsistencies between county boards of elections and statewide registration lists.¹²⁴ They hoped that based on this investigation, the Secretary of State could mandate routine corrective actions.

Investigate the extent of faulty registrations. Faulty registrations, not including duplicates, are those with missing information (e.g., birth date, signature) or faulty information (address errors yielding non-existent addresses). Data from Cuyahoga County in 2004, in which over 15,000 faulty registrations were submitted, gives some idea of the potential extent of this problem. One advocate argues that a statewide tally of all county data in 2008 might well reveal some 60,000 faulty registrations, which would strengthen the argument for corrective actions already discussed in this section.¹²⁵

Investigate “failed matches.” Several interviewees hoped that research could show the number of records checked against the Social Security Database and BMV Database, the number of failed matches returned, and — through sample spot-checks, if necessary — an accounting of the reasons for the failed matches. The interviewees also hoped to see this data broken down by county and precinct, for a better understanding of the type of voter affected by this problem. Many of these same interviewees hoped to receive a full accounting from the Social Security Administration and the Ohio BMV of errors in their databases, based on past experience.

Study the feasibility of Election Day access to the Statewide Database. Some advocates proposed that the Secretary of State would study the feasibility of giving counties access and use of either the Statewide Database, or replicated copies of the Database. These advocates hoped that eventually, this information could be disseminated to the polling places on Election Day. Such dissemination might help officials resolve problems related to voters arriving at the wrong polling place, and could make Election Day Registration much easier.¹²⁶

III. Provisional Ballots and Voter Identification

A. Background

Both provisional voting and voter ID have been the subject of considerable controversy in Ohio. It was the 2002 Help America Vote Act (HAVA) that ushered in widespread multi-use provisional voting.¹²⁷ Under HAVA, Ohio was required to expand the use of provisional ballots to cover voters who affirm that they are registered in a particular location, but do not appear on the registration list, and first-time voters who do not present HAVA mandated ID.¹²⁸ HAVA also required documentary identification from a small subset of voters.¹²⁹ Ohio's use of provisional balloting and documentary ID, however, goes beyond HAVA's requirements.

In Ohio, voters who must cast a provisional rather than a regular ballot include individuals:

- whose names are not in the poll books;
- who do not present proper ID;¹³⁰
- who have requested an absentee ballot but appear at the polls to vote;
- whose notice of registration was deemed undeliverable;¹³¹
- who are challenged by an election judge at the polls;
- who are subject to a pending challenge by another voter;¹³²
- who have changed their name;¹³³ or
- who have moved to a new precinct.¹³⁴

To vote a provisional ballot, these individuals must complete a written affirmation that they are registered and eligible to vote, and provide as much identifying information as they can.¹³⁵

To vote by regular ballot, Ohio voters must present “a current and valid photo identification [issued by a government agency],¹³⁶ a military identification, or a copy of a current utility bill, bank statement, government check, paycheck or other government document . . . that shows the name and current address of the elector.”¹³⁷

There are some longstanding conflicts among election officials, advocates and academics about key issues driving both provisional balloting and ID in Ohio. Despite these differences, the election officials, advocates and academics we interviewed agree on a number of broad issues that need to be investigated and even on the direction of some needed reforms. Issues of concern include:

- The comparatively high rate of provisional balloting in Ohio (at least to the extent that rate reflects voters who could vote by regular ballot at their assigned precinct);
- The confusing complexity of current provisional balloting and ID rules;
- Local inconsistency in the rate and administration of provisional balloting, including the validation rate of provisional ballots cast; and
- Disqualification of procedural ballots cast outside voters' assigned voting locations

B. Issues to Address

1. *Ohio's high rates of provisional balloting*

Provisional voting in Ohio is widespread and increasing. Ohio voters cast 206,859 provisional ballots in the November 2008 election, 3.6% of all ballots returned. That 3.6% figure is half a percentage point higher than the rate of provisional balloting in Ohio's 2006 general election, up from 2.7% in 2004.¹³⁸ In 2006, only 5 states had higher rates of provisional voting than Ohio.¹³⁹ Ohio is also one of the country's leaders when it comes to the rate at which provisional ballots are counted. Of the provisional ballots cast in November 2008, 81% were counted.¹⁴⁰ Ohio was number six in the country on this score in 2004, counting 78.4% of provisional ballots cast. (Compare, e.g., New York and Missouri, which counted only 40%.)¹⁴¹ In 2006, only 10 states had higher rates of counting provisional ballots.¹⁴²

Comparative 2008 data are not yet available from many states, but barring major divergence from recent experience, Ohio will maintain its position as one of the heaviest users of provisional ballots in the country. In many states, rates are far lower. For instance, looking at two states for which 2008 provisional ballot data are available, provisional ballots in Missouri accounted for only 0.2% of turnout, and in Virginia that figure was 0.1%.¹⁴³ Thus the proportion of Ohio voters who cast provisional ballots in the 2008 general election was 18 times greater than in Missouri and 36 times greater than in Virginia.

Professor Ned Foley suggested another way of comparing Ohio voters' experience with provisional ballots with that in other states that would take into consideration both a state's rates of provisional ballot use and the rate at which those provisional ballots are counted. He proposed multiplying each state's rate of provisional voting (i.e., the percentage of total ballots cast that were provisional) by the provisional ballot rejection rate (i.e., the percentage of provisional ballots that are rejected), to determine the percentage of voters who turned out but failed to have their votes counted because their provisional ballots were rejected.¹⁴⁴ Using this method, Ohio rejected .61% of total ballots cast in 2006, more than double the national average of .26%.¹⁴⁵

Not everyone agrees that Ohio's wide use of provisional ballots is necessarily a bad thing. Some election officials see high provisional voting rates (coupled with high rates of counting provisional ballots) as a success story. They interpret the growing use of provisional ballots to mean that many Ohioans who would otherwise be turned away from the polls altogether are now getting the opportunity to vote, albeit provisionally, and note the collateral benefits of provisional ballots.¹⁴⁶ Secretary Brunner clarified in a directive that Ohio boards of elections "may" use provisional ballots as registration forms. A positive result of using provisional ballots might therefore be that, at least in some counties, individuals who are not registered to vote will be registered the next time they attempt to vote.¹⁴⁷ Moreover, as one election board member pointed out, when voters fill out the provisional ballot envelope at the polls it creates more accurate voter files.¹⁴⁸ However, even some of these officials concede that there are some dangers in having such a high percentage of voters use provisional ballots, at least under the current complex Ohio rules.¹⁴⁹

A variety of problems and risks can flow from the heavy use of provisional ballots in Ohio elections. These include increased uncertainty and delays in election outcomes (including likely litigation), the injection of partisanship into provisional balloting rules, reduced voter confidence, and the greater cost and increased staff time required to administer large numbers of provisional ballots. Advocates and academics pointed out that in states with lower provisional voting rates, there is no evidence that would-be voters are being disenfranchised. Instead, they see low provisional voting rates as indicating that in many states a greater proportion of the electorate is voting with regular ballots.¹⁵⁰

Election officials were less disposed to view high rates of provisional balloting as inherently problematic. As Timothy Burke, Member of the Hamilton County Board of Elections, emphasized, these officials see provisional ballots as a good thing to the extent that they save votes that would otherwise be lost to administrative mistakes — some of which are inevitable.¹⁵¹ Election officials also stressed that, contrary to what advocates sometimes seemed to presume, election boards want to count every provisional ballot they can under the law.¹⁵² They repeatedly expressed the view that while ballot counting should err on the side of the voter, voters must bear some responsibility for following proper election procedures.

Some uncertainty and delay necessarily accompany high rates of provisional voting. Election officials are therefore concerned with provisional ballot rates to the extent they indicate that people who could and should vote by regular ballot are voting provisionally.¹⁵³ Because provisional ballots are counted after regular votes are tallied, when contests are close, widespread provisional balloting delays the ability of election officials to provide final election results. Such delays can deplete voter confidence and lead to partisan disputes over the rules for administering provisional ballots, as all sides understand that counting or not counting a particular vote can affect the outcome of a contest. Professor Edward Foley pointed out that they also increase the likelihood of post-election litigation.¹⁵⁴ With Ohio's higher rates of provisional voting, a lawsuit like the one currently being fought to determine the outcome of the Minnesota Senate race is actually much more likely to happen in Ohio. The Minnesota case was a fluke — the product of a razor thin electoral margin. In Ohio, with over 200,000 provisional ballots, any statewide race won with less than those 200,000 potential votes is subject to question and likely to end up in court. As a recent news article pointed out, in 2004, then-president George Bush defeated Senator John Kerry in Ohio by only 118,601 votes. Had this year's presidential race been that close, Ohio's high rate of provisional voting would have delayed the result and potentially had national repercussions.¹⁵⁵

Alternatively, when races are decided on Election Night, provisional voters may be left feeling that their votes did not count. Because provisional ballots are counted after Election Day, when regular ballots create decisive victories, those who voted provisionally may feel shut out of the process, even though their ballots are counted in the official tally. The regular ballots determined the election's political results, and provisional ballots are a kind of afterthought. As Donita Judge of Advancement Project explained, "People come out to vote on Election Day, and they want to be counted on that day."¹⁵⁶

The process of counting provisional ballots is itself necessarily open to ambiguity and error in a way that regular ballot counting is not. Because of the longer and more involved steps in processing provisional ballots, they are open to multiple interpretations and vulnerable to disqualification through administrative missteps by voters, poll workers, and election officials that do not threaten votes cast by regular ballot. In December, Ohio's Supreme Court ruled that under Ohio law, 1,000 provisional ballots cast by eligible voters in Franklin County must be disqualified solely because of errors in the way voters printed or signed their names on the ballot envelopes.¹⁵⁷ If these votes could have been cast via regular ballot, those voters would have avoided disenfranchisement. Other aspects of this issue are discussed below in the sub-section on the wrong precinct rule and in the section on poll worker error.

Finally, as one election official noted, provisional balloting creates a great deal of additional work and is resource intensive.¹⁵⁸ Ohio's high rates of provisional voting mean longer hours for poll workers and election officials on election night and afterwards. The widespread use of provisional voting makes election administration more difficult, more time consuming, and more expensive. Some election officials were quick to emphasize that the additional expense and effort were well worth it, if voters who would otherwise be disenfranchised were allowed to vote.¹⁵⁹ But election officials would gladly reduce the number of provisional ballots cast if that result could be achieved with HAVA compliance and without disenfranchising eligible voters.

Summit participants and interviewees offered a range of proposals to reduce Ohio's reliance on provisional ballots:

Establish pre-election quality control procedures and outreach activities to perfect registrations. Some voters who cast provisional ballots do so because their names are not on the poll lists. As one official emphasized, election boards cannot help voters who never attempt to register.¹⁶⁰ Statewide, a finding that voters were not registered was the most common reason for disqualifying provisional voters, accounting for 47% of rejected provisional ballots.¹⁶¹ For instance, in Lorain County in November 2008, 697 of the 4,500 provisional ballots cast were disqualified because voters were found to be unregistered.¹⁶² Election officials stress that many of these were cast by individuals who had failed to timely register or who had registered but were purged from the rolls following a statutory period of inactivity following notice.¹⁶³ Some unknown number of rejected provisional ballots are cast by individuals who attempted to register, but did not appear on the rolls. One advocate asserts that registration verification procedures indicate that some valid registration applications in Ohio are lost in the process of database entry.¹⁶⁴ In other cases, voters may properly and timely complete registration forms at BMV locations or with third party registrars that are never delivered to election officials.¹⁶⁵ Additionally, some voters are kept off the rolls due to their failure to fill out their registration applications fully and correctly. As discussed in the section on Ohio's registration system, additional quality control at the local level could increase the number of registrants whose applications are correctly processed.¹⁶⁶ Additional local outreach by telephone and mail to fix incomplete or incorrectly filled out registrations would reduce the numbers of these would-be registrants who must vote provisionally. As one election official pointed out, that kind of outreach would require additional cost and staff time.¹⁶⁷ The earlier expense could save election board time and resources later, however, by reducing the number of provisional ballots they must process, and some election officials liked the idea.¹⁶⁸

Make registration portable without resorting to provisional ballots. Some academics suggested creating a separate registration-update ballot, to be used by voters who want to vote in their new neighborhood without re-registering at their new address before the election.¹⁶⁹ Alternatively, movers could be allowed to correct their registration at the polls, and if they had proof of residency, be allowed to vote a regular ballot. Both of these suggestions would both reduce the numbers of HAVA-mandated provisional ballots and clarify how many provisional ballots are in use for reasons other than Ohio's policy of registration portability. At least one election official, however, worried that this would introduce even more complexity and confusion into an already baroque Election Day process.¹⁷⁰

Allow counties to offer all voters the option of voting by regular ballot at a satellite vote center. Some officials supported allowing counties to direct voters who were not on the rolls at their assigned precinct, or the precinct where they turned out, to a satellite location.¹⁷¹ At this central location, election officials would have access to the statewide voting list and to all the various ballot formats and be able to assist the voter to cast a regular ballot in the correct precinct format.

Allow voters returning unused absentee ballots to vote by regular ballot. Some interviewees believe that the recent turn to “no fault” absentee voting, and the greatly increased numbers of voters requesting absentee ballots, is responsible for some of the increase in provisional ballots.¹⁷² They hypothesize that voters request absentee ballots, then forget or simply do not fill them out and show up at the polls, only to find that they must now vote provisionally. Some interviewees would be in favor of allowing voters who have unused absentee ballots to bring them with them to the polls and, upon turning them in, vote by regular ballot.¹⁷³ At least one election official was leery of this suggestion, however, pointing out that it would be difficult for poll workers to know that the absentee ballot being presented belonged to that voter and was not a duplicate.¹⁷⁴ Alternatively, these individuals could be allowed to vote their absentee ballots at the polls.¹⁷⁵

Conduct studies and research to find out why provisional voting rates are so high in some parts of the state. As discussed in greater detail below in the section on local variations in provisional balloting, rates of provisional voting vary dramatically from county to county and within states. One academic emphasized that in order to figure out how to reduce the use of provisional ballots, it is necessary to understand what triggers are used in the jurisdictions where it is most extreme.¹⁷⁶ Professor David Kimball pointed out that a strong predictor of a county's high rate of provisional voting in 2006 or 2008 was its high rate of provisional voting in 2004.¹⁷⁷ He suggested that counties and precincts with particularly high provisional ballot rates should be studied in order to determine what was causing the high rates.

Increase voter education efforts. Election officials believe that one way to decrease provisional balloting under the current statutory construction is to inform voters that they need to update registration information when they move and check their registration information and the location of their assigned polling place online before going out to vote.¹⁷⁸

Enact Election Day Registration. Some interviewees pointed out that shifting to Election Day Registration — or doing away with registration altogether — would do away with the need to use provisional ballots at all.¹⁷⁹ Some states have experienced significant declines in provisional ballot usage after adopting Election Day registration.¹⁸⁰ The Iowa Secretary of State’s report for the 2008 general election attributes that state’s dramatic drop in the use of provisional ballots to the adoption of EDR. In Iowa in 2004, 14,661 provisional ballots were cast at the presidential election. In 2008, only 4,725 provisional ballots were cast.¹⁸¹

2. *Local variations in provisional voting*

Ohio County Election Board reports and advocates’ investigations have revealed significant differences in the numbers of provisional ballots issued and counted and the procedures used to administer provisional voting.¹⁸² The challenge faced by state law makers and election officials is how to provide uniform standards that can be equitably applied to every voter in what are often very different particular circumstances. One official commented that, in the area of determining the validity of provisional ballots, “the more direction [local officials] receive in how to handle ballots, the less consideration we are able to give to our voters.”¹⁸³ On the other hand, the principles of equal protection require standard procedures for using and counting provisional ballots.¹⁸⁴ In order to do that academics and advocates point out that it is necessary to understand more about the current differences in Ohio counties’ provisional voting.¹⁸⁵

A chart showing the range of provisional voting rates in Ohio’s counties, and the different rates at which those provisional votes were counted is attached to this report as Appendix 22. Rates of provisional balloting in Ohio’s 2008 election varied from 1.3% in Coshocton County to 5.0% in Athens County, which is home to Ohio University. In other words, while only one in every hundred voters in Coshocton voted provisionally, nearly one in twenty Athens County voters cast a provisional ballot.¹⁸⁶ Among Ohio’s large urban counties, differences in provisional voting rates are not as dramatic, but still apparent. Five have rates above the statewide average of 3.6%. They are Cuyahoga (4.3%), Hamilton (4.5%), Lucas (4.7%), Montgomery (4.4%), and Franklin (5.0%). Summit County, however, had a substantially lower rate of provisional ballots cast — 2.9%.

The rates at which Ohio counties invalidated provisional ballots cast are even less consistent — ranging from 3% in Monroe County to 38% in Lawrence County. Notably, several of the more populous counties had rejection rates near the high end of the state continuum. Only 13 of Ohio’s 88 counties rejected provisional ballots at a higher rate than Cuyahoga, which disqualified 26% of provisional ballots cast there. Nearby Lorain County also rejected 26% and Lucas County 23%. Franklin County, however, had a rejection rate of only 18%.¹⁸⁷

A chart prepared by Professor David Kimball, and annexed as Appendix 24,¹⁸⁸ shows that in Ohio high rates of provisional voting are correlated with the proportion of non-white residents in a county’s population. According to Cuyahoga board member Eben ‘Sandy’ McNair, provisional voting in that county is correlated with the proportion of African Americans in precincts’ voting age population, as shown by comparing the two maps annexed as Appendix 25. An advocacy group’s analysis of provisional ballot rejection rates in Cuyahoga County in November 2004 also found such a correlation.¹⁸⁹ Some advocates believe that high rates of provisional ballot use and rejection are correlated with high

numbers of low income voters.¹⁹⁰ One advocate suggested other factors as potential correlates of high rates of provisional ballot use and/or rejection, namely the density and mobility of a voting population and the use of multi-precinct polling places.¹⁹¹ Some election officials suggest that the complexity of Ohio's provisional ballot rules — and the confusion that results — is another potential factor in local differences.¹⁹² The fact that counties encompass diverse populations may conceal other demographic and social predictors of provisional balloting that would be revealed by comparing data at a more local level.¹⁹³

There was also a great deal of local variation relating to the rejection of provisional ballots for failure to produce acceptable identification. Statewide, only about 1% of disqualified provisional ballots were rejected for lack of ID, compared with 47% for lack of registration and 36% for being cast in the wrong precinct.¹⁹⁴ But in a few counties, ID rejections approached, or even surpassed, registration and wrong precinct disqualifications. For example, voters in Lawrence County cast only 771 provisional ballots, 294 of which were rejected.¹⁹⁵ Failure to provide proper ID was the most common reason for rejection — accounting for 47% of rejected provisional ballots — more than Lawrence's disqualifications for registration and wrong precinct errors combined. Differences among the large urban counties were also striking: Hamilton County did not reject a single provisional ballot for lack of ID; Lucas disqualified only 3, and in Cuyahoga County only 29 of the 7,410 provisional ballots rejected (0.4%) were disqualified because voters failed to provide acceptable ID.¹⁹⁶

Interviewees agreed that it was crucial to move beyond speculation about the causes of local variations in provisional balloting and develop systematic studies of what is happening locally. In order to find out more about the wide divergence in provisional ballot practice, interviewees made the following suggestions:

Make provisional voting data available at the precinct level. Some interviewees said that because Ohio counties are likely to encompass diverse populations in terms of population density, economic and social indices, and mobility, data at the precinct level is needed in order to investigate the demographic and social correlates of provisional ballot use and counting.¹⁹⁷

Follow up with data on the reasons why provisional ballots were used and rejected. The Secretary's office provides data, collected from all counties, on why provisional ballots were rejected in November 2008. To determine the overall effect of provisional voting in Ohio, it is also necessary to understand why voters are given provisional ballots in the first place. For instance, were provisional ballots issued because voters failed register, moved and did not update their address, failed to produce required ID, changed names, or failed to appear on the rolls for some other reason? In order to collect this information, it will be necessary to devise a standardized way of identifying the reasons provisional ballots were cast. Advocates believe that understanding why provisional ballots were issued in the first place is crucial to understanding the local differences in their use and validation.¹⁹⁸

Ask county boards of elections with very high and very low levels of provisional ballot use and rejection to describe their provisional ballot practices and poll worker training procedures. Interviewees suggested that counties on either end of the use and counting spectrum should be asked to detail the procedures and practices they employ regarding provisional voting.¹⁹⁹

Make information about individual provisional ballots available for study. Some advocates called for the treatment of provisional ballot envelopes as public records — so that they could learn the names of provisional voters, whether or not a voter’s provisional ballot was counted, and if it was rejected the reason for rejection. This issue has a complex legal and policy background.²⁰⁰ In 2007, in response to public record requests for this information, some election officials treated such information as public records.²⁰¹ Other counties and some advocates, however, interpreted the law to preclude public access to the names of provisional voters, the outcome of individual provisional ballots and the basis for a ballot’s rejection.²⁰² In 2008 Secretary Brunner issued an advisory interpreting the law to allow the public release of provisional voters’ names and the numbers of provisional votes cast and the reasons for the rejection of provisional ballots, but to prohibit making public the counting or invalidation of an individual voter’s provisional ballot and the reasons for its acceptance or rejection.²⁰³ Unfortunately, as one advocate pointed out, election board staff are often overburdened and hence unwilling or unable to respond to requests for data that they are not required to produce by Ohio’s public information laws. He proposed, therefore, that in order to ensure access to needed information, the Secretary issue a directive requiring boards to complete research on provisional ballots, and in addition that the Secretary’s office carry out such research using the state database.²⁰⁴

3. The complexity of provisional ballot procedures and ID requirements

There was universal agreement among interviewees that the rules and procedures governing both provisional voting and voter ID are too complex, make poll workers’ jobs extremely difficult, and lead to confusion and errors. Even the Ohio Supreme Court in *Skaggs v. Brunner* noted that Ohio’s “generally murky” provisional ballot statutes “present a quagmire of intricate and imprecisely stated requirements, including internal inconsistencies and multiple affirmations and declinations.”²⁰⁵ Bryan Clark, of the Secretary of State’s Office, expressed the view that even if no provisional voting or ID policies are changed, the relevant sections of the code covering these issues needs to be rewritten and streamlined.²⁰⁶ Both voters and election workers often misunderstand provisional voting and voter identification standards. Even when the rules are fully understood, their complexity makes them difficult to administer.

One election official commented that provisional ballot laws are too complex to explain to poll workers and even harder for poll workers to explain to voters.²⁰⁷ The statutory list of specific circumstances requiring provisional voting would be hard for anyone to commit to memory. A provisional ballot is required when:

1. a voter declares he is a registered voter but his name does not appear on the voter roll;
2. an election official “asserts that the individual is not eligible to vote;”²⁰⁸
3. a voter does not have or does not provide proper identification;
4. a voter voted by absentee ballot;
5. a voter’s registration notification was returned as undeliverable;
6. a voter changed his address;
7. a voter changed his name;
8. a voter was challenged without resolution; or
9. the challenged voter’s hearing was postponed.²⁰⁹

In addition, Ohio law imposes specific duties on poll workers to direct voters to their correct precinct polling locations before issuing provisional ballots and directions for what voters must be told regarding provisional ballots’ validity.²¹⁰ The poll worker is supposed to determine where an individual is eligible to vote on the basis of the “precinct voting location guide,”²¹¹ which is an electronic or paper record that lists “the correct jurisdiction and polling place” for addresses in the county, or another means of “determin[ing] the correct jurisdiction and polling place of any qualified elector who resides in the county.”²¹²

The rules for counting provisional ballots are both lengthy and unspecific. They require election officials to “determine whether a provisional ballot is valid and entitled to be counted,” by examining voter records and the information contained in the lengthy written affirmation executed by the provisional voter.²¹³ The code sets out a list of information that should be included in the ballot affirmation, but Ohio counties may create their own versions of the affirmation. In *Skaggs v. Brunner*, the Ohio Supreme Court was asked to decide whether mistakes and omissions on the affirmation could disqualify a provisional ballot under some circumstances, and prohibited counting some 1,000 otherwise valid provisional ballots because voters had filled out their ballot affirmations incorrectly.²¹⁴

Voter identification rules are similarly complex, and further complicate provisional ballot use, because one reason for issuing a provisional ballot is a lack of proper ID.²¹⁵ A county election official and an advocate both noted that the basic list of acceptable forms of voter ID seems to lack a guiding principle.²¹⁶ In particular, it is not clear whether the ID required of voters at the polls is being used to identify the individual, to establish residence, or both. The list of acceptable documents is diverse and hard to communicate in any summary fashion. Most of the documents listed must carry a current address; acceptable military ID, however, carries no address, and the law allows a voter to use a driver’s license or state issued identification card with an obsolete address, so long as the address printed in the poll list is current. At the same time, some forms of identification in wide use are excluded. For example, ordinary student picture ID from private universities is not sufficient.²¹⁷ Adding another layer of complexity, the list of ID sufficient for voting at the polls is different from the ID required to obtain an absentee ballot or to register to vote.

A central question is whether, and to what extent voters are disenfranchised due to confusing and complex identification requirements.²¹⁸ Research into Indiana’s 2008 primary election showed that 14% of provisional ballots cast were issued due to lack of required ID (399, or 14%) of a total 2,770 ballots. The rejection rate for the identification inspired ballots (80%) was somewhat higher than that of provisional ballots overall (73%).²¹⁹ One advocate

pointed out that elderly people, as a group, are disadvantaged by current requirements.²²⁰ These voters are both less likely to have drivers licenses and more likely to have difficulty obtaining alternative forms of identification because they lack mobility. Senior citizens in group homes have little access to utility bills. Advocates also argue that low income voters of color and city dwellers in general are less likely to have the most common form of identification, a driver's license, and may be discouraged from coming to the polls.²²¹ Some election officials, however, said that based on their own experience in their counties few voters were disenfranchised for lack of identification.²²² Ohio does not currently collect data on reasons for issuing provisional ballots; it does however collect data on the reasons provisional ballots were rejected. This data shows that in November 2008, "failure to provide acceptable identification" was the third most common reason for rejecting a provisional ballot, accounting for 1% of rejected ballots.²²³ Thus, across the state, a relatively small proportion of provisional ballots are disqualified for lack of ID. In comparison, 47% of rejected provisional ballots were disqualified because election boards found that the voters who cast them were not registered.²²⁴ However, as described above (at page 40), the rejection rate for lack of ID varies greatly from county to county. In a few counties, the numbers of ballots rejected because voters failed to provide proper ID surpass those rejected for lack of registration, while in some other counties not a single ballot was disqualified for lack of ID.²²⁵

Election officials and advocates pointed out that complex rules governing both ID and provisional ballots are particularly problematic for poll workers.²²⁶ These volunteers administer elections only once or twice a year.²²⁷ Under the circumstances, it is difficult for them to familiarize themselves with the intricate rules that apply to provisional balloting and voter ID and to keep up with changing procedures. As Marilyn Jacobcik, Deputy Director of the Lorain County Election Board, put it, "We ask a great deal of poll workers, and then make changes each election . . . often adding requirements with marginal benefits."²²⁸ Moreover, as she pointed out, poll workers are dealing with the complexities of ID requirements and provisional ballot affirmations in the context of a busy polling place, with a number of voters waiting to vote and requiring extraordinary help, sometimes while observers are creating additional demands on their attention.²²⁹ With these realities in mind, election officials caution that changes to the rules concerning provisional balloting and identification should be made only after careful consideration and "in sufficient time to fully educate voters, poll workers and BOE staff."²³⁰ Brian Shinn, Assistant General Counsel to the Secretary of State, emphasized that, in addition, reforms need to be sensitive to the impact on the entire election code of changes in any given section, as the code functions as an integral whole.²³¹

There are differences of opinion on the direction even well-considered simplification should take and whether it should expand or limit the use of provisional ballots and documentary ID. Some election officials see provisional voting as a tool for enfranchising voters at risk, whereas many advocates and some other officials believe that, at least in its current form, provisional voting is less a "fail safe" voting protection than a "trap door to disenfranchisement."²³² While some election officials believe the new voter identification requirements are a natural outgrowth of twenty-first century technology and culture,²³³ others view the move to documentary identification as unnecessary and wrongheaded.²³⁴ Nevertheless, from all of these divergent perspectives, everyone agrees that at least some

changes are needed to simplify the rules, procedures and forms that administer provisional voting and voter identification.

Interviewees made the following suggestions for simplification:

Reform the ID law to focus on identification and make explicit the law's purpose to confirm voters' identity rather than their addresses. Interviewees pointed out that a particularly confusing aspect of the current ID law is its inconsistent address requirements. One election official suggested that the statute spell out the focus on identity to make it easier for poll workers to understand that a driver's license with an obsolete address is sufficient.²³⁵ In the same vein, some officials and advocates agreed that — assuming personal identification was the goal — the address requirement should be scrapped and the law should be expanded to include the usual gold standard of ID, a U.S Passport.²³⁶ Moving away from the address requirement would also allow inclusion of another common form of identification, the student ID.

Reform the law to allow voters to use broader, simpler categories of ID. The Secretary of State's Office recommends allowing voters to use *either* any government issued photo ID, *or* any two forms of ID that show the full name of the voter. This would greatly simplify the rule and poll workers' job, making it unnecessary to determine whether the proffered ID is the proper *type* of photo ID or whether an address is current.²³⁷ Along the same lines, one advocate proposed expanding the law to allow use of any photo ID, again greatly simplifying matters for both voters and poll workers.²³⁸ Another advocacy group proposed changing the ID law to expressly allow for the use of student IDs issued by public and private schools and institutions of higher learning in Ohio.²³⁹

Return to signature identification. Several advocates²⁴⁰ and some election officials²⁴¹ were in favor of going back to signatures as a way of establishing voters' identity at the polls. This would do away with the complex documentary ID requirements altogether and also simplify and reduce provisional voting by removing one complicated provisional ballot trigger. These interviewees point out that signing the poll book was a longstanding untroubled identification procedure, that there is no evidence of significant voter fraud, and that in any case documentary identification prevents only voter impersonation, a type of fraudulent voting that is virtually unknown.²⁴² They argued that a return to simple poll book signatures would speed up the voting process and noted that if a poll worker has any doubts about a signature's authenticity, the poll worker may challenge the voter.²⁴³ Indeed, some election officials commented more generally in regard to provisional ballot and documentary ID policies that increasingly complex and detailed statutory requirements seemed to assume that local election officials and poll workers will not be vigilant and respond in the face of threats to election integrity. They emphasized that election boards and poll workers take their jobs very seriously and do react protectively when they perceive potential misbehavior.²⁴⁴

Move to voter ID cards. Some officials advocate shifting to a single required ID document — an identification card issued by the voter's election board.²⁴⁵ Advocates, however, question how voters would obtain these cards and how accessible they would be, particularly to people who do not drive. Would they require appearing at an office to have a photo taken? Would a voter need a new card every time he or she moved?²⁴⁶

Simplify the basis for issuing provisional ballots. One advocate suggested defining the basis for provisional voting (in addition to HAVA mandated reasons) as simply: the voter's name is not on the rolls or the voter's name is marked on the poll list as having received an absentee ballot.²⁴⁷

Simplify the provisional ballot envelope. There was widespread agreement that the forms used for provisional voting need to be redesigned. Election officials, including the Secretary of State's Office, and voting rights advocates endorsed this idea. Some officials indicated that the design also made it difficult for staff counting provisional ballots. The Secretary's Office was in favor of requiring state prescribed forms.²⁴⁸

Clarify rules for counting provisional ballots. Some interviewees felt that it was important to set clear, uniform statewide standards for deciding which provisional ballots to count.²⁴⁹ Election officials emphasized that the goal of those rules should be to count as many eligible votes as possible.²⁵⁰ One official pointed out that centralized directions inevitably rigidified the process and made it harder for local election officials to find ways to recognize and accommodate voters' good faith errors in order to count their ballots. She suggested that local boards be required to adopt a common sense policy that recognizes that voters make inadvertent errors and to use a routine method to contact voters to attempt to correct mistakes and omissions in order to count as many ballots as possible.²⁵¹

Count provisional ballots cast anywhere in the county of registration. Advocates and some officials propose doing away with the "wrong precinct" rule invalidating provisional ballots cast outside the voter's assigned polling place.²⁵² This proposal is discussed in greater length in the section below. As a matter of simplification, it would mean one less check for election workers counting provisional ballots. On the other hand, it would require additional work to identify and remake the votes cast in the races in which the provisional voter was eligible to participate.

4. *Provisional ballot administration and the wrong precinct rule*

Ohio is one of 30 states that invalidate provisional ballots cast by voters in the wrong precinct.²⁵³ That is, in order to count, provisional ballots must be cast at the polling location assigned by the county board of elections to the precinct (i.e., the administrative subdivision) that encompasses the voter's residence. Ohio's wrong precinct rule was upheld against a facial HAVA challenge in 2004. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004). Statewide, in the 2008 general election, 14,335 voters' provisional ballots were thrown out because they had been cast in the "wrong precinct."²⁵⁴ Sixty-one percent of those discarded provisional ballots were from Cuyahoga, Franklin, Hamilton, Lucas, Montgomery and Summit counties, although only 52% of Ohio's provisional ballots were cast in those counties.²⁵⁵ Provisional ballots disqualified as cast in the wrong precinct accounted for 8% of all provisional ballots issues in Ohio on Election Day and 36% of all rejected provisional ballots.²⁵⁶ Rejection rates varied considerably, county by county. In Cuyahoga County, 13% of Election Day provisional ballots were disqualified as having been cast in the wrong precinct, compared with only 5% in Franklin County.²⁵⁷ In Ohio's other large urban counties, rejection rates were as follows: Hamilton – 10%, Lucas – 13%, Montgomery – 9%, and Summit – 7%.²⁵⁸

Nearly every election official and advocate we interviewed believes that the current practice of rejecting all votes on provisional ballots cast in the wrong precinct needs to be re-examined.²⁵⁹ Some election officials and all the advocates and academics we interviewed think the wrong precinct rule should be changed to count the “top of the ticket,” i.e., votes in contests for which the voter was eligible to participate — regardless where in the county or on what style ballot those votes are cast.²⁶⁰ Others would at least count such votes on ballots cast in the correct polling place but at the wrong table or on the wrong style ballot.²⁶¹ Some election officials were concerned that such a rule would lead to many additional remakes of ballots, and wanted to be sure counties adopt uniform remake practices.

One advocacy group and one election official we interviewed interpret the October 27, 2008 court order in *Northeast Ohio Coalition for the Homeless v. Brunner* — and the underlying Ohio statutes — to mean that if poll workers fail to direct a voter to her correct assigned polling place, that voter’s provisional ballot should be counted, even if it was cast in the wrong precinct.²⁶² Other election officials, however, who oppose the wrong precinct rule on policy grounds, nevertheless believe that the current code requires them to reject all provisional ballots cast in the wrong precinct — even when the cause is poll worker error.²⁶³ After reviewing complaints filed by voters in November 2008 and research into provisional balloting in previous elections, advocates believe that thousands of disqualified provisional ballots fall into this category.²⁶⁴

Election officials, academics and advocates offered several different suggestions for reforming the wrong precinct rule and/or clarifying how that rule interacts with poll workers’ duty to direct voters to the correct polling place.

Change the law to allow election officials to count the top of the ticket on provisional ballots cast outside the voter’s assigned precinct location. Election officials we interviewed supported the legislative removal of the wrong precinct rule.²⁶⁵ That is, they would count votes on those ballots for contests in which the voter was eligible to participate. All the advocates and academics and some of the election officials we interviewed support Ohio’s adoption of rules that would count such provisional votes.²⁶⁶

Change the wrong precinct rule to a wrong polling place rule. One election official suggested that a compromise position would be to mandate counting all provisional ballots cast in the correct polling place, whether or not they were at the assigned precinct table or on the assigned precinct ballot style.²⁶⁷ This is the policy followed in Missouri.

Here, too, there were calls for more access to information about provisional ballot practices. Currently, the State of Ohio does not publish data that details the numbers of provisional ballots rejected because they were cast in the correct polling place but in the wrong precinct. A sample of provisional ballots cast in the wrong precinct in Cuyahoga County’s 2008 primary showed that 34% of the wrong precinct ballots were cast in the correct polling place.²⁶⁸ Hamilton County reports that in November 2008, 32% of ballots disqualified for being cast in the wrong precinct were cast in the right polling place.²⁶⁹

Adopt an explicit policy that ballots cast in the wrong precinct due to poll worker error should be counted. Advocates, academics and some election officials agreed that if the wrong precinct rule remained in force, provisional ballots should be counted if they were cast in the wrong precinct because poll workers failed to issue the proper instructions.²⁷⁰ (In the view of one election official and some advocates, this is the rule already imposed by the complete Ohio election code and the *Homeless Coalition* court order.²⁷¹) Some interviewees took the view that, since voters do not choose where to vote, but, in fact, vote where poll workers send them, much, if not most, wrong precinct voting was the result of poll worker error.²⁷² As Steven Harsman explained, an eligible voter could do everything he is asked to do on Election Day, and still end up having his provisional ballot disqualified.²⁷³ One advocacy group therefore proposed that in the absence of evidence that a voter was directed to the correct polling place and refused to go, provisional ballots cast in the wrong precinct should be presumed to be the result of poll worker error, and counted.²⁷⁴

Adopt a straightforward method for identifying when ballots are cast in the wrong precinct due to poll worker errors. Some officials were troubled by the idea that even votes cast deliberately in the wrong precinct could be characterized after the fact as poll worker error. A possible solution, particularly since there is broad support for redesigning the provisional ballot envelope (*see* page 45) would be to use the provisional ballot envelope to record the poll worker's identification of the voter's precinct.²⁷⁵ There could be a simple line or checkbox on the envelope — or perhaps on a sticker to be attached — where the poll worker assisting the provisional voter would record the voter's correct precinct and voting location. Then, when provisional ballots are counted, it would be easy to identify which ones were cast in the wrong location because poll workers failed to correctly direct voters. If the form was filled in correctly, that would show that the poll worker did his or her job, and the ballot would be disqualified. If the wrong precinct or voting location was recorded, or if the space was left blank, that would indicate poll worker error, and the votes at the top of the ticket could be salvaged.²⁷⁶ In addition, the poll worker could check a box indicating that the voter was informed that a ballot cast in an incorrect precinct would not be counted. One additional benefit of this system would be the feedback it would provide to election officials, allowing them to identify problems that could be addressed in subsequent poll worker training or by pointing out errors to presiding judges in precincts that had high error rates.

Improve poll worker training and the administration of provisional balloting on Election Day. Advocates recommend that boards instruct poll workers that if a voter's name is not on the rolls, the worker contact the local board, where officials can check to see whether the voter is in the correct polling location.²⁷⁷ At least one election official, however, believes this is not practicable.²⁷⁸ Under the current election code, poll workers should have the ability to check for the voter's assigned precinct,²⁷⁹ preferably with a computer or handheld device that has access to statewide information.²⁸⁰ Election officials pointed out that these procedures could increase costs. Digital devices are expensive and printouts of even countywide address locators can also be costly. One advocate pointed out that such a procedure is important even in the absence of a wrong precinct rule, and will in any case reduce reliance on provisional ballots, because most voters would then be able to cast regular ballots at their assigned polling place.²⁸¹ At least one local election board has put into practice increased training and election-day resources to assist and encourage poll workers to correctly direct voters to their assigned precinct voting locations, with positive results.²⁸²

This practice is discussed in greater detail on pages 62-66 in the *Poll Worker Recruitment and Training* section.

C. Topics for Additional Research

Interviewees identified a range of subjects that they thought should be researched in order to support effective and equitable policy decisions regarding provisional balloting and ID requirements.

Investigate the reasons provisional ballots are cast. Interviewees thought it would be useful to know more about why provisional ballots are used. In particular, they emphasized a need to investigate the extent to which the new documentary ID requirement forced otherwise eligible voters to cast provisional ballots and what percentage of provisional ballots were cast because voters had moved.²⁸³

Investigate the reasons provisional ballots are rejected. Likewise, interviewees thought it would be beneficial to learn counties' reasons for rejecting provisional ballots, including how identification requirements interact with other reasons for disqualifying provisional votes. Another specific question is what proportion of ballots rejected as cast in the wrong precinct were cast by voters in their correct polling place.²⁸⁴

Conduct reviews to find out why provisional voting rates are so different in different parts of the state. Advocates suggested looking more deeply into the provisional ballot results and procedures in Ohio counties at the extreme ends of provisional ballot use and counting. Several academics emphasized that in order to figure out how to reduce the use of provisional ballots, it is necessary to understand what triggers that use in the jurisdictions where it is most extreme.²⁸⁵ Professor David Kimball pointed out that a strong predictor of a county's high rate of provisional voting in 2006 or 2008 was its high rate of provisional voting in 2004.²⁸⁶ He suggested that counties and precincts with particularly high provisional ballot rates should be studied in order to determine what was causing the high rates. Studies should aim to determine to what extent variations are the product of the statutory provisional balloting scheme's interaction with different populations of voters and the role of local administrative practices, if any.

Study the demographic, social and economic correlates with provisional ballot rates. Interviewees also recommended studying the relationships between provisional voting rates and counting in different locations and demographic, social and economic variables, such as race, income, population density, and population mobility.²⁸⁷

Study all of the above in at least some locations at the precinct or zip code level. Academics and advocates urged that to uncover relationships between provisional balloting and different social variables, it was necessary to investigate their correlation at a more local level rather than only county by county.

Study the effects of voter ID requirements on different groups. Advocates and academics thought it would be useful to study the impact the new voter ID law has on voters generally, and the differential impact, if any, on different social, economic, racial, and age groups. Though there has been some research on voters' reactions to ID requirements,

academics say that not enough is known about this issue and more investigation is needed in order to determine the effects of Ohio's current ID requirements.²⁸⁸ Academics suggested conducting surveys of poll workers and registered voters after an election, combined with an analysis of provisional ballots to determine to whether the new ID law is preventing voting via regular ballot, and if so, what aspects of the law are the cause. What are poll workers' understandings of the ID requirements? How many provisional ballots were provided because voters did not have the requisite ID? How many voters were turned away for lack of ID? How many did not go to the polls because they did not have — or did not believe they had — the proper ID?

IV. Early In-Person and Mail-In Absentee Voting

Few areas of election administration have seen bigger changes in Ohio over the last few years than absentee voting, and few changes have had a bigger impact on the entire electoral process. Both voting rights advocates and election officials generally see the recent changes to Ohio's absentee voting laws in a positive light. Most importantly, many credit the expansion of absentee voting with keeping Ohio generally free of long lines at the polls on Election Day in 2008 with the expansion of absentee voting.

A. Background

The number of absentee ballots cast in Ohio during federal election years rose from under 350,000 in 2000 to more than 1.7 million in 2008.²⁸⁹ In 2008, the number of absentee ballots cast was nearly three times the number of absentee ballots cast in 2004.²⁹⁰ Ohio ranks 25th in the country in the rate of in-person absentee voting. It experienced the fifth highest growth rate of in-person absentee voting, compared with the percentage of early voters in 2004.²⁹¹

1. *The current law*

In 2005 the Ohio legislature amended the state's absentee voting law to allow any voter to cast an absentee ballot without providing a reason or excuse for doing so.²⁹² Ohio's absentee voting law has long included an in-person provision that allows voters to cast their absentee ballots at county election offices up to 35 days before general election and 25 days before a presidential primary election, "or as many days as reasonably possible for special elections held on days other than the general election and primary."²⁹³ Thus, in addition to expanding "vote by mail" to all Ohioans who choose it, the change to "no excuse" absentee voting, in effect, dramatically expanded pre-Election Day, in-person voting. The result is somewhat similar to what other states call "early voting."

2. *Consensus on the need for refining the law*

While nearly everyone we interviewed had positive things to say about the expansion of voting in Ohio, most also felt that the last few elections raised serious questions about some aspects of absentee voting as currently constituted. Both advocates and election officials argued that further changes to Ohio's laws and practices in this area were necessary. In particular, interviewees raised the following concerns:

- For in-person absentee voting, long lines in 2008, particularly in large counties like Franklin and Cuyahoga;
- For mail-in absentee voting, the relatively high number of ballots and votes not counted;
- For all absentee voting, the long lead time (35 days) prior to the Election Day;
- For all absentee voting, the security and the integrity of elections.

B. Issues to Address

The same sections of the Ohio election code cover in-person absentee voting and mail-in absentee voting.²⁹⁴ Because they present such different challenges, interviewees generally discussed them separately, as we do below.

1. *In-person absentee voting*

Long Lines for In-Person Absentee Voting

Election officials, advocates and academics praised the creation of what is, in effect, early in-person absentee voting at one location in every county in Ohio.²⁹⁵ They pointed to the large numbers of Ohio voters who voted absentee in-person as proof of its appeal, and they noted its advantages over mail-in absentee voting; in particular, they pointed out that a larger percentage of in-person voters would ultimately have their votes counted (the reasons for this are discussed below, in *Mail-In Absentee Voting* at page 55).

However, supporters of in-person absentee voting noted that there were very long lines in most large counties during the absentee voting period, forcing some people who chose to vote early to wait many hours to cast a ballot.²⁹⁶ Some proponents of in-person absentee voting argued that the solution to long lines during the absentee voting period was to expand the number of in-person absentee voting sites, at least in large counties.²⁹⁷ This would require a change to Ohio's current law.²⁹⁸

While in-person absentee voting received support from most interviewees, some advocates and election officials pointed to a number of potential problems associated with increasing the number of in-person absentee voting sites. The most common concern was how to choose additional polling sites fairly, and how the counties and states could avoid political and partisan manipulation of that selection process. Those concerned pointed out that in certain states, like Texas or Indiana, the process for selecting early voting sites has led to charges of favoritism and litigation.²⁹⁹ Others responded that the current process was already unfair to voters in large counties, who were forced to wait in line for several hours during the in-person absentee voting process, while those in smaller counties were not.³⁰⁰

In addition to the questions about placement of in-person absentee voting sites, some officials raised concerns about the potential costs associated with expanding the number of early voting sites.³⁰¹ The Director of one County Board of Elections noted that in-person absentee voting was extremely expensive for her county.³⁰² Requiring the county to expand to three or four in-person absentee voting sites could triple or quadruple those costs, and she did not believe it would substantially reduce the lines associated with in-person absentee voting.³⁰³ One county commissioner expressed the opinion that early absentee voting could be cost effective *if* it led to reduced costs on Election Day — something that he felt had yet to take place.³⁰⁴

The cost challenge appears to be in two categories: direct costs and opportunity costs. The most significant of the direct costs of in-person absentee voting is for personnel. The personnel employed during in-person absentee voting are not subject to the per diem cap established by State law for compensating poll workers and must be paid at least the minimum wage. Instead of working just one day, these workers may be employed for the full 35-day period during which in-person absentee voting is available. In Franklin County, compensation for officials operating the in-person absentee voting location at the Franklin County Veterans Memorial topped \$142,000 to service approximately 55,000 in-person absentee voters.³⁰⁵ Most counties relied on their existing full and regular season staff to administer in-person absentee voting, resulting in opportunity costs of lost productivity for these individuals on the other tasks of administering the election. These other tasks either received less attention than was planned, or required other staff to work additional hours.³⁰⁶

Interviewees offered several suggestions for reducing the long lines during the in-person absentee voting period. Most noted that the demand for in-person absentee voting would probably not equal the high levels of 2008 until the next presidential election, though some argued that the 2010 general election might generate heavy in-person absentee voting, particularly if one of the statewide contests was perceived as being close.³⁰⁷

Expanding In-Person Absentee Voting

Interviewees who supported the expansion of in-person absentee voting offered a number of suggestions for tackling the challenges associated with doing so.

Determining the number of in-person absentee voting sites in each county. Some advocates of increased numbers of in-person absentee voting sites believe that it is not necessary to require a larger number of absentee voting sites in every county.³⁰⁸ Several smaller counties reported that they did not have long lines during the absentee voting period.³⁰⁹ Jonah Goldman of the Lawyers' Committee for Civil Rights Under Law noted, however, that the length of lines might not be the only way to judge whether there should be additional in-person absentee voting sites. He pointed out that in some counties, some voters may not be able to take advantage of in-person absentee voting because they cannot travel to the county boards of elections or because the hours of voting are insufficient.³¹⁰ Professor Paul Gronke, Director of the Early Voting Information Center at Reed College, noted that the state could come up with a formula for determining the number of early voting sites required in each county: for instance, requiring one in-person absentee voting site for every X number of registered voters or Y number of precincts, as is done in some states.³¹¹ Norman Robbins suggests that the need, number and location of sites for a future election could also be determined based on the results of the 2008 General Election. As an example, he proposes that if there were waiting times of over 45 minutes in any county, either additional sites or additional personnel could be instituted.³¹²

Placement of early voting sites. Professor Gronke noted that among the states that allow in-person absentee voting, there are no consistent rules regarding the number or placement of absentee voting stations.³¹³ A number of states currently restrict these facilities to county elections offices, while others provide for satellite locations in other governmental offices (most commonly, public libraries). A small number of states provide for other satellite locations.³¹⁴ While many states leave the decision of placement of absentee voting sites to

local election officials, several interviewees worried about how such a process might work in Ohio.³¹⁵ They noted that with county boards evenly divided by political parties, disputes between the parties would ultimately be decided by the Secretary of State, and that in such instances, the decisions about where to place absentee voting sites could easily be perceived as politically motivated.³¹⁶ Some states provide that counties should make these decisions, but allow for an appeal process in the case of disagreements.³¹⁷ Other states have addressed this problem by requiring a unanimous or majority vote rule for placement of absentee voting sites.³¹⁸ At least two interviewees suggested the development of a formula that would help determine locations based on population density (for instance, requiring that no center could be more than X miles for a center of population with Y density or above).³¹⁹ No matter who decides where such early voting sites might be placed, there could well be Voting Rights Act limitations on the placement of early vote centers, particularly if African American communities were disproportionately left without a center.³²⁰

Expansion of a single early voting site. To avoid the potential problems associated with choosing additional absentee voting sites, but to provide relief to large counties, one academic suggested expanding existing sites to include more machines and poll workers to accommodate a larger number of voters.³²¹ Some election officials, such as Jane Platten in Cuyahoga County, did not believe this would alleviate the problem of long lines in big counties. She noted that during absentee voting, Cuyahoga operated at maximum capacity at the county elections office. She did not believe given the physical constraints of the building that it would be possible to increase the number of machines in use or voters being processed per hour (which she estimated peaked at close to 600 voters per hour).³²²

Addressing the cost of in-person absentee voting expansion

A number of officials expressed concerns about the potential cost of expanding in-person absentee voting. They noted that running in-person absentee voting sites requires more staffing, voting locations, materials and coordination at the same time they are preparing for Election Day. In light of tightening county election budgets, they offered some suggestions for reducing costs.

Expand vote by mail. At least one official hoped to decrease the demand for in-person early voting by increasing participation in mail-in absentee voting.³²³ Suggestions for expanding mail-in absentee voting are discussed in detail at page 59 below. Also discussed in that section are objections by some advocates and academics to expanding vote by mail at the expense of in-person voting.

Reduce the number of Election Day polling places. At the Election Summit, Dan Troy, past president of the County Commissioners' Association of Ohio, among others, suggested that the cost of increased sites for in-person absentee voting could be offset by a decrease in the number of polling sites on Election Day. In fact, Cuyahoga County is currently in the process of reducing the number of precincts in the county from 1,436 to 1,100.³²⁴ Voting rights advocates and academics, while not opposed to studying the issue of decreasing the number of polling sites or moving to Election Day "vote centers," expressed skepticism about such proposals and cautioned that any such moves should occur only after extensive study and small-scale experimentation in off-year elections. In particular, they expressed concerns that decreasing the number of polling sites on Election Day could lead to extreme

hardship and possible disenfranchisement of disabled and elderly voters, as well as those without their own cars, particularly if this meant that such voters had to travel further to vote.³²⁵ Professor Paul Gronke noted that focusing on the creation of early voting centers with better accessibility could actually make it easier for elderly, disabled and handicapped voters to vote.³²⁶

Shorten the voting period for in-person absentee voting. A number of advocates and election officials (including the Secretary of State) have suggested that the in-person absentee voting period be reduced from 35 days before a general election to somewhere between one week and 17 days before a general election. This would, of course, eliminate at least two to three weeks of costs associated with the current in-person absentee voting period. A more detailed discussion of this suggestion, as well as opposing viewpoints, can be found below in the section “Length of In-Person Absentee Voting Period.”

Length of In-Person Absentee Voting Period

Some interviewees argued that the current period for in-person absentee voting was probably too long for reasons other than cost.³²⁷ They questioned whether voters who cast ballots so far ahead of Election Day had the opportunity to inform themselves fully about all of the contests and issues, particularly given the clustering of ads and election guides right before the election. Would early voters have “buyer’s remorse” weeks later, when the candidates and initiatives received greater scrutiny?³²⁸ A number of interviewees also acknowledged objections to what is sometimes referred to as the “Golden Week.” During the first seven days of absentee voting before a general election when the 35-day in-person absentee voting period overlaps the period before the voter registration deadline, voters may register and vote on the same day. Some have expressed concerns that this could lead to voter fraud, because county boards are not able to verify registration information before allowing newly registered voters to vote using the same verification methods employed for other new registrants.³²⁹ Advocates pointed out that there was little evidence of fraud during the 2008 Golden Week.³³⁰ These advocates believed the overlap between voter registration and the absentee voting period resulted in increased voter participation and hoped that the state would continue the practice, examining data from this period (including allegations of voter fraud and the effect on voter turnout) before considering whether to end the practice.

In fact, relatively few voters registered and/or voted in the first seven days of absentee voting. There were over 67,000 in-person absentee voters during the Golden Week period, but only 12,800 voters *both* registered and cast ballots in that period.³³¹ This fact cuts both ways in the debate over Golden Week and the length of time that in-person absentee voting should be allowed. On the one hand, with so few people both registering and voting during Golden Week, that there could not have been the kind of widespread fraud some forecast in the heat of the 2008 campaign. On the other hand, the small number of Ohio residents who chose to register and vote during this time raises serious questions about whether the benefit of an extended in-person absentee voting period is outweighed by its cost.³³² It is notable that in 2008, litigation concerning the overlap week and the validity of ballots cast during that time was ongoing throughout the week. In future cycles, more voters might take advantage of registration and voting during this time, if the validity of their votes was not in question.

The Lawyers' Committee for Civil Rights Under Law suggested that Ohio adopt a system similar to what currently exists in North Carolina: shorten the early voting period to two weeks and end it a day or two before Election Day, but allow people to register when they show up to vote during the early voting period. Advocates note that in North Carolina this resulted in a dramatic increase in the number of first-time registrants and voters.³³³

Norman Robbins makes a similar suggestion, noting that if all early in-person voting were restricted to only one or two weekdays, in addition to Saturday all day and Sunday afternoon, then expenses could be reduced and the "overlap week" preserved.³³⁴

Shorten the in-person absentee voting period. Of the 32 states that currently allow no excuse in-person absentee voting, 11 states have in-person absentee voting periods of 15 days or less.³³⁵ Some have proposed shortening Ohio's early voting period to 15 days.³³⁶ Based on data from 2008, this would appear to save county boards money and affect a relatively small number of voters (Paul Gronke notes that based on the turnout data currently available, it appears that less than 1/4 of the ballots received during the early voting period were received prior to the final two weeks).³³⁷ However, it would eliminate the one-week "overlap" or "Golden Week" period during which voters could register and vote on the same day. While some Ohioans would see eliminating the overlap period as a benefit, several academics and advocates are opposed to its elimination, arguing that it increased participation among groups of voters with traditionally low voting participation rates.

Allow boards of elections to end absentee voting the weekend before Election Day. Some election officials proposed ending absentee voting the weekend before Election Day.³³⁸ They noted the logistical challenges of running early voting at county headquarters while preparing for Election Day. Among other things, they noted that in-person absentee voting took away valuable staff for up to fourteen hours a day, when staff were desperately needed for Election Day set-up and other logistical challenges. Of the 31 states that have in-person absentee voting, 8 states end the in-person absentee voting period at least two days before Election Day.³³⁹ Some voting rights advocates and academics were opposed to this proposal, noting that the heaviest days of in-person absentee voter participation during the absentee voting period were the Saturday, Sunday and Monday before Election Day.³⁴⁰ They saw ending in-person absentee voting on the Sunday before Election Day as potentially feasible, however, provided the absentee voting period was sufficiently long and included at least one weekend.³⁴¹ The Lawyers' Committee was not opposed to ending the in-person absentee voting period earlier, as long as the state adopted an in-person absentee voting program that allowed voters to register during that period, as is done in North Carolina.³⁴²

2. *Mail-in absentee voting*

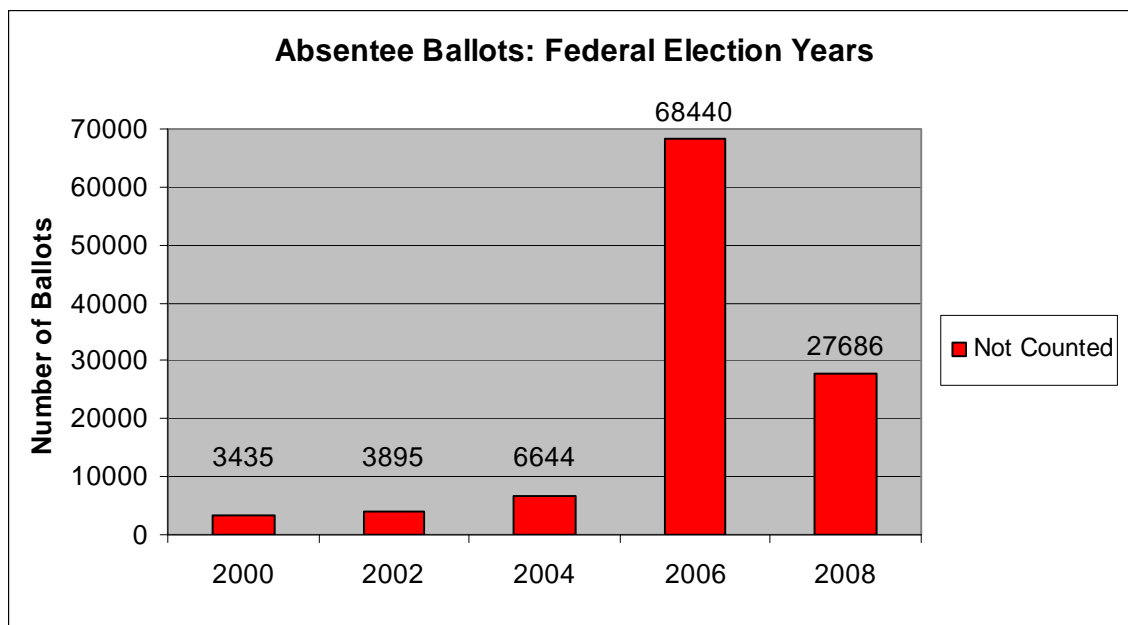
Several advocates and election officials applauded the increased use of mail-in absentee voting, but here too a number of interviewees had serious concerns. The most common worry about vote by mail was the relatively high rate of uncounted mail-in votes. In 2008, statewide, 27,763 mail-in absentee ballots were not counted, and in some counties, more than 4% of absentee ballots sent by mail were not counted.³⁴³ Additionally, there is substantial evidence to suggest that even when mail-in ballots are counted, they are more likely to contain mistakes that will render it impossible to count some choices in specific contests.³⁴⁴ Academics have argued these higher error rates are due to the fact that these

voters do not have the benefit of using machines that notify them of overvotes or undervotes, making it more likely these voters will not notice or correct mistakes made in the process of filling out their ballots.³⁴⁵ In addition, some interviewees pointed to privacy and security issues associated with expanding vote by mail.³⁴⁶ They also noted other potential problems if vote by mail in any way replaces in-person or in-precinct voting. Several other states have experienced big problems with absentee ballot delivery,³⁴⁷ and receiving and sending ballots by mail is going to be particularly difficult for poorer, more transient voters.³⁴⁸

Rejected Mail-in Ballots

One of the main criticisms of vote-by-mail has been that every year, a certain number of voters are disenfranchised because they fail to properly fill out forms or follow the additional procedural steps necessary to have their mail-in ballots counted.

Not surprisingly, in general, as absentee voting has increased in Ohio, so too has the number of mail-in ballots rejected (with a noticeable spike in 2006, when the state moved to “no fault” absentee voting).



In 2008, more than 27,000 vote-by-mail absentee ballots were rejected for various technical reasons, including improperly filled out or unsigned identification envelopes, ballots not placed in sealed identification envelopes, and ballots received too late.

Election officials, advocates and academics acknowledge that some voter error is inevitable, and most argue this is a necessary cost for the added convenience provided by mail-in voting. Nevertheless, they have offered a number of suggestions for decreasing the number of rejected ballots in the future.

Correction of Errors on Mail-In Ballots

Redesign absentee ballot materials. Election officials, voting rights advocates, and usability and design experts we interviewed agreed that many of the materials voters received with their absentee ballots need to be redesigned and re-worded, and that the current materials were likely to confuse voters and lead to mistakes that could invalidate their votes.³⁴⁹ They pointed to the identification envelope as especially confusing and recommended working with design and usability groups, as Oregon did, to recreate the envelope (a copy of Oregon’s envelope is attached as Appendix 31). These interviewees strongly urged the legislature to amend the current required language for the identification envelope, arguing that there were too many fields to complete, and that the current language was complicated and full of technical legal terms.³⁵⁰ They argued that simpler wording and fewer requirements would lead to more voters completing the identification requirements correctly. A check-off reminder on the ballot envelope (similar to that provided by credit card companies) might also reduce errors in completion.³⁵¹

Make it easier to count absentee ballots with technical deficiencies. Some advocates and election officials praised the Secretary’s Directive 2008-109, which was meant to ensure that voters were notified of mistakes on their identification envelopes and provided with an opportunity to correct them, and to provide counties with a uniform method of doing this.³⁵² At the same time, a number of election officials and advocates were critical of the directive, arguing that ballots that some counties would previously have counted were not counted because the directive required voters to come to county election offices in person to correct any mistakes.³⁵³ In particular, officials questioned this section of the directive:

Boards should consider using telephone notification [of errors] as a last resort when all other means of communication have failed, or are impracticable or impossible . . . Because absentee ballot ID envelopes are signed by the voter under penalty of election falsification, the notification must instruct affected voters to physically appear at the office of the board of elections to correct deficiencies³⁵⁴

These officials complained that for many absentee voters, showing up at the county board of elections was impossible (this is why they were voting by mail in the first place). In the past some boards telephoned the voter, with both a Democrat and Republican election official on the line and observing while corrections were made, but they were no longer able to do this under the directive. In a similar complaint, one election official noted that prior to this directive her county would count absentee ballots that were mailed with the identification envelope, even if the ballot was not “inside” a sealed identification envelope.³⁵⁵ The solution offered by some election officials was to provide them with greater flexibility in deciding how to correct mistakes. The Secretary of State’s office has responded that the directive echoed the current Ohio law, which forbade the counting of such ballots, and required voters to come into the board of elections to correct their mistakes.³⁵⁶

For the most part, advocates agreed with election officials that it should be easier for counties to count absentee ballots with technical deficiencies. However, most advocates and academics we interviewed added that they were in favor of clear and uniform statewide standards for accepting or rejecting ballots, to ensure equal protection to all voters.³⁵⁷

Regardless, all parties we interviewed agreed that the best policy was one “which recognizes that voters will make inadvertent errors and omissions,” and that there should be “a routine method, to the extent possible, to contact voters to attempt to correct the deficiency as quickly as possible, thereby improving the odds that the ballots will count.”³⁵⁸

Reducing Residual Vote Rates on Mail-in Ballots

Because Ohio does not keep separate records of residual vote rates for mail-in ballots, it is impossible to know if mail-in ballots had higher error rates than ballots cast in person in the 2008 election. However there is reason to believe that Ohioans who voted by mail are more likely to overvote or inadvertently skip races than were those who voted at polling stations (where they had the benefit of using machines that would notify them if they made such mistakes).³⁵⁹ In fact, several studies provide strong evidence that error rates are reduced when voters are able to use precinct count optical scanners or DREs in the polling place.³⁶⁰

Interviewees offered the following suggestions for reducing the residual vote rates for mail-in ballots.

Explore Redesign of Absentee Ballots and Related Materials. A number of interviewees suggested working with usability and design experts to look at whether to redesign or reword of ballots, ballot instructions, and other materials sent to voters would reduce error rates, taking into account that mail-in voters will not have the advantage of using machines that will notify them of certain errors.

The importance of ballot design was borne out in the November 2008 election. At least 10 counties that used optical scan systems split the presidential contest into two columns, a basic violation of ballot design best practices.³⁶¹ According to Professor David Kimball, the residual vote rate for president in those counties (meaning the rate of voters who did not have a vote counted because they selected more than one candidate for President or did not vote at all) was 1.9%, significantly higher than the 1.2% rate in other optical scan counties.³⁶² Because the state does not keep separate statistics on absentee ballots, it is impossible to know if the higher residual vote rates were particularly great for mail-in ballots.

Manual Review of Ballots. Professors Paul Gronke³⁶³ and Doug Jones³⁶⁴ noted that in a number of states with a large percentage of voters voting by mail, inspection teams with members from different political parties inspect ballots before they are run through scanners. Inspection teams set aside any ballots that may not be read by the machines (because they are torn, smudged by postal mishandling, mismarked, contain extraneous marks, etc.). The teams then review these ballots for voter intent and — when there is agreement on voter intent — count them separately or duplicate them. Details of how this process works in Oregon can be found in Oregon’s “Vote By Mail Manual,” the relevant pages of which are annexed to this report as Appendix 33. Norman Robbins has suggested that another approach that might cost less would be to examine only ballots that scanners showed to be “overvotes.”³⁶⁵

Expanding Mail-In Absentee Voting

Some interviewees expressed hope that the state would expand mail-in voting even further.³⁶⁶ Their reasons for supporting such an expansion ranged from its perceived reduction in administrative costs to general support for any change that will make it easier for voters to vote. However, others raised concerns about mail-in voting — noting the higher rate of rejected ballots, residual votes and security issues — and expressed caution about, if not opposition to, to these proposals. In particular, they argued further work and study are needed to be done to reduce voter error and increase security before expanding mail-in voting even further. Several advocates and academics also raised concerns about whether expanding mail-in voting would lead to the elimination of some or all in-person voting.³⁶⁷ They noted several ways moving to all vote by mail that could disproportionately affect poor voters, including problems with mail service in some impoverished neighborhoods and the fact that voters in some Ohio counties currently must pay to have their applications and ballots mailed to county boards, while in other counties, all absentee activity is postage pre-paid. They also pointed to a study that suggested poor and minority voters are (relatively) negatively affected by a move to all mail-in voting.³⁶⁸

Various suggestions offered by interviewees for expanding mail-in voting are listed below.

Permit voters to apply for “permanent” mail-in voting status. Some advocates and election officials in favor of expanding mail-in voting proposed that the state eliminate the requirement for voters to apply for mail-in absentee votes before every election. This would save counties the administrative cost of processing such forms before every election.³⁶⁹ Advocates and academics who raised concerns about mail-in voting wanted further research done to determine whether and how the state could reduce voter error, increase security and ensure greater participation by all groups before taking this step.

Move to vote by mail for special elections. One participant at the Elections Summit suggested holding all special elections by mail.³⁷⁰ Again, advocates and academics that raised concerns about mail-in voting were cautious about such a move, arguing that it should first be tried in just one or two such elections, in specific locations, and the results of such efforts carefully scrutinized.³⁷¹

Provide state funding to send an absentee application to every qualified registered voter in every county for every election, with all expenses paid by the state. One advocate who favored the expansion of absentee voting felt the state should encourage the practice by paying the counties to send absentee applications to voters before every election.³⁷² Another advocate noted that Cuyahoga County and Franklin County did this efficiently in 2008 by making the absentee application part of the required 60 day notice of election send to all registered voters.³⁷³

Provide state funding for postage for all absentee ballots, both to and from the voter. Some advocates have noted that, particularly if the state moves to all vote by mail for certain elections, or if Election Day polling places are eliminated to reduce costs, requiring voters to pay to mail in their ballots could raise equity issues. They hoped that the state would pay the postage for all absentee ballots.³⁷⁴

Developing Best Practices for Vote By Mail Security

While there is little substantiated evidence of voter fraud in the United States,³⁷⁵ where fraud has occurred, it has most often takes place through absentee ballots.³⁷⁶ Advocates and security experts have expressed concerns about the long period of time that absentee ballots remain at the elections offices, fearing that error or fraud over this period of time could lead to lost votes or corrupted vote tallies.³⁷⁷ They called for consistent and transparent chain-of-custody procedures to ensure the integrity of mail-in ballots.

County election officials we interviewed expressed confidence in the procedures they have adopted to store and count absentee ballots. Nevertheless, most supported advocates' call for the Secretary of State to develop "best security practices" for absentee ballots, which they could then adapt to their particular systems.³⁷⁸ The State of Oregon, which conducted its first elections by mail almost thirty years ago, and has developed its chain of custody and security measures over that time, is often held up as a model for vote by mail security and privacy practices. A copy of the relevant sections of the state's most recent "Vote By Mail Manual" are annexed to this report as Appendix 33.

C. Topics for Additional Research

Interviewees identified a number of areas where additional data would be helpful.

Require reporting of statistics for vote by mail and in-person early votes separately.

The extensive use of mail-in voting is a relatively new phenomenon in Ohio, and several advocates and election officials would like to see it expanded. But academics and advocates have many reservations about mail-in voting. To address these reservations, most advocates and academics agree that it would be helpful to have more data about mail-in votes: in particular, who is voting, how often are these voters overvoting or undervoting, how often their ballots are rejected altogether and what the reasons for these rejections are. To answer these questions, it would be very helpful to academics and advocates if the state and/or counties reported precinct-by-precinct vote totals with Election Day and absentee ballots categorized separately. This would be a departure for many counties that presently count absentee ballots as a single precinct.

The state should consider capturing and reporting the "in-person" absentee votes separate from "by mail" votes, even if these ballots are both deemed "absentee." This allows careful monitoring of whether different balloting methods, styles, and the like may help or hinder the franchise, and whether these methods operate differently in different parts of Ohio and for different segments of the populace.

The date that the mail-in and in-person absentee ballot was cast (or more accurately, processed by the elections office) should be collected as part of the voter history file. This information allows elections officials to identify when and where surges in voter turnout will occur, thus helping them more efficiently manage their staff and material. Also, this information can help the state determine whether a shorter early voting period will disenfranchise some voters. Finally, a laudatory side benefit suggested by some is that capturing this information will result in lower cost political campaigns, since it allows

targeted voter mobilization efforts depending on when citizens commonly cast their ballots.³⁷⁹

Study the Impact of Alternative Voting Systems on Voter Error. Many past studies have shown that the residual voting rate (under and overvotes) are higher for absentee balloting systems. If Ohioans continue to opt for no-excuse absentee balloting, there is a real possibility that residual vote rates will increase. The state should consider studying the impact of past changes in the Ohio election system on residual voting rates, and whether these rates are higher in some regions and precincts than in others. The state should also examine whether no-excuse absentee balloting raises new ballot design issues, and whether new designs can reduce voter error.

Study the Impact of No-Excuse Absentee Balloting on Turnout. Most studies have shown that pre-Election Day voting has a small impact on voter turnout, but virtually none of these studies have examined the impact of these new modes on state and local elections, where many academics suggest the largest impact will be.³⁸⁰ The state should collect and make data available on turnout in local contests so that scholars can understand this important issue.

Study Ballot Integrity and Security Issues. Opponents raise two integrity issues related to mail-in ballots. First, they are concerned about relying on the US Postal Service to handle ballots, both to deliver them to the voter, and to return them to the county office on a timely basis. Second, opponents raise issues of ballot security and fraud, since voters do not appear in front of a government official. The state should consider studying both these issues.

Study Effectiveness of Mail Delivery to Rural Areas and Dense Urban Localities. Professor Paul Gronke suggests that the state needs to examine its own statewide voter registration file to assure that all addresses meet USPS standards. Previous analyses of statewide files have shown that errors such as missing apartment numbers or incomplete zip codes can disenfranchise by-mail voters, and can do so unequally across income and racial groups.³⁸¹ Professor Gronke suggests that the state should also examine the condition of postal delivery services across the state, paying particularly close attention to rural areas and dense urban localities.

V. Poll Worker Recruitment and Training

A. Background

Despite all the attention and resources devoted lately to various aspects of the American electoral process, poll workers remain largely outside the spotlight. Across the country states have spent large sums on new voting technologies and have substantially revised their election laws and procedures, but poll worker training and compensation has changed very little. Numerous academic studies have compared the performance of different voting technologies, but little is known about the effects of different kinds of poll worker training and supervision. What has been shown is that experiences with poll workers affect voters' confidence not only that their own votes will be counted, but in the integrity of the election overall.³⁸² Regarding the importance of training, surveys of poll workers and voters in Ohio show that voters' ratings of poll workers' performance improve with poll workers' satisfaction with the training they received.³⁸³ Additional training improves both poll worker confidence and voters' perceptions of poll workers' competence.³⁸⁴ Election officials agree that poll workers are key. As Dale Fellows, Lake County Board of Elections member, expressed it, a poll worker is the "face of the organization."³⁸⁵

Ohio has been ahead of the curve in recognizing the importance of poll workers' job and training, in part because of the extraordinary challenges Ohio poll workers have faced in recent elections. Poll worker training requirements vary nationwide. In some states no training is legally mandated; in others the law requires training before each election. In Ohio poll workers must be trained, using both the Secretary of State's materials and the county board's supplements. All poll workers must be retrained at least once every three years; and presiding judges must be reinstructed every other year.³⁸⁶ Voting technology has changed, and so has election law — multiple times — so that even veteran poll workers recently have had to learn election procedures and standards from the ground up. As one election official remarked, in the past four years poll workers have not had the same training twice.³⁸⁷ Moreover, many aspects of voting in Ohio have grown more complex — including the expanded provisional balloting process and the introduction of voter ID laws.

Ohio election officials realized that the many recent changes to Ohio's changing election practices, and their increased complexity, make poll worker recruitment and training both more important and more difficult. Election boards responded in 2008 by evaluating and revamping their recruitment and training materials. The Secretary of State made uniform training materials available online, and many county boards gave recruitment and training heightened attention in 2008. Academics and advocates have also focused increasingly on the importance of poll worker recruitment and training in reducing problems at the polls, improving voter confidence and turnout, and preventing needless disenfranchisement.³⁸⁸

B. Issues to Address

Election officials and advocates repeatedly expressed the view that complex and changing election rules and practices put enormous pressure on poll workers.³⁸⁹ In the face of those challenges, the following suggestions emerged for improving poll worker recruitment and training:

Simplify the Rules and Procedures on Provisional Balloting and Voter ID.

Streamlining procedures for administering provisional ballots and voter identification was by far the most frequently mentioned reform to improve both poll worker recruitment and performance. At least one official felt that frustration with constantly changing and increasingly complicated election procedures also led to problems recruiting and retaining poll workers.³⁹⁰ There was widespread agreement that the complexity of current election rules and practices — especially provisional balloting and ID requirements — made it extremely difficult to produce a well-trained staff of poll workers, and that simplifying those procedures would likely improve poll workers' performance and satisfaction.³⁹¹ In particular, officials and advocates agreed that the provisional ballot forms need to be redesigned, to make them less wordy and easier for voters — and poll workers — to follow.

1. *Recruitment*

Recruit through direct mailings to voters. A number of counties reported good results using direct mailings to voters as a way to recruit new poll workers. Butler County sent recruitment post cards to voters in areas identified as at risk for poll worker shortages due to the aging poll worker pool there. Results were good and produced a list of back-up poll workers.³⁹² Franklin County enclosed an application to serve as a poll worker in its mandatory notice mailing to voters. The result was the first ever surplus of poll workers. In Clermont County, officials combined a cable advertising campaign with flyers mailed to all residents with their water bills, producing about 200 potential poll workers in a week and a half. At least one official, however, expressed the view that poll workers obtained through broad direct mail campaigns may not stay as long as workers who know more about election administration before getting into it. One possible solution, if there is such a retention problem, would be to target frequent voters, as people who already have some commitment to the election process and know more what they will be getting into by becoming poll workers. In Summit County, officials sent recruitment post cards to 1,000 Democrats and 1,000 Republicans who they identified as frequent voters and netted about 150 new workers.³⁹³

Partner with civic organizations, government and community employers to expand the usual pool of poll workers.

Some counties have had good experiences with widening their recruitment to new sources. In 2006 Franklin County began a large scale recruitment effort, urging employers, unions, and teachers to recruit employees and students who had never before served as poll workers. An academic study subsequently found that voters gave higher approval ratings to polls staffed with the newly recruited workers.³⁹⁴ Advocates and some election officials would like to see expanded recruitment of workers and students.³⁹⁵ Local businesses could be asked to give employees the day off, and/or workers can be urged to take the day off to serve as “street-level bureaucrats.”³⁹⁶ Government agencies and public institutions, including state colleges and universities, could expand their efforts to recruit public employees and students to serve as poll workers. The Election Assistance Commission provides information and suggestions on recruitment practices.³⁹⁷ One election official suggested recruiting election protection advocates.³⁹⁸

Increase recruitment of students. Ohio law now allows two high school seniors to serve in each polling place with at least six poll workers in any capacity other than as a presiding judge.³⁹⁹ The students must be given time off to serve. Many officials spoke of the success

they have had integrating high school seniors into the poll worker ranks. In November 2008, Cuyahoga County deployed 1,900 seniors as greeters at the polls, arming them with maps and voter lists, to help direct voters to the correct voting location.⁴⁰⁰ Coordinating with 'Kids Voting,' a non-profit, non-partisan civic education program, Franklin County recruited more than 1,000 high school students and trained students as machine judges in November 2008. Hamilton and Lake Counties recruit high school students and use them in all poll worker jobs (except as presiding judges).⁴⁰¹ These counties have found that the infusion of new young blood has been a "huge plus."⁴⁰² High schools and colleges might be encouraged to promote students' service at the polls, perhaps giving them academic credit or some other form of recognition.⁴⁰³ There was strong support for increased recruitment from both high schools and colleges to build this new source of poll workers. A call to close schools to make it easier to recruit both students and teachers was met with enthusiastic support. It was pointed out that the most successful college recruitment program involved professors who built election administration into lesson plans and school administrators who gave students the day off to work at the polls. The EAC provides a guide to best practices for recruitment, including college recruitment, available at http://www.eac.gov/files/BPPollWorker/College_Guidebook.pdf.

Improve poll worker compensation and recognition. Virtually every person we interviewed agreed that poll workers should be better compensated. Officials pointed out that despite the ever-increasing demands made on them, poll workers have received very little increase from a pay scale that one county official characterized as "dismal."⁴⁰⁴ Officials and advocates agree that increasing poll worker pay and finding other ways to recognize poll workers' service would make it easier to recruit and retain high-quality poll workers.⁴⁰⁵ One official suggested that being able to pay workers to do additional training would be particularly beneficial.⁴⁰⁶ Besides increasing election and training pay rates, one advocate suggested finding ways to give year round gestures of appreciation for poll workers and expediting payroll processing.⁴⁰⁷

Experiment with 2-shift poll worker assignments. One advocate points out that many excellent candidates for poll worker assignments may be lost because of the 14-hour grueling day now required of all poll workers.⁴⁰⁸ Experiments with recruitment of some poll workers for 7-hour shifts would determine whether quality of poll worker performance would improve under these circumstances. Other summit participants, however, pointed out that moving to split shifts would double the demand for poll workers and create potential accountability problems when it came to closing out precincts at the end of Election Day.

2. *Training*

Incorporate hands-on training. One advocacy group urged increased practical, hands on training to give poll workers more opportunity to practice operating the machines for which they will be responsible, under procedures that mimic real election-day scenarios.⁴⁰⁹ Some counties have expanded the practical, interactive aspects of their training programs, including setting up the training room as a polling place and doing role playing with poll workers.⁴¹⁰ In Butler County, during training every poll worker fills out a provisional ballot envelope.⁴¹¹

Make online training available earlier and publicize its availability. County officials appreciated the Secretary's new online poll worker training materials.⁴¹² One county

indicated that these resources would have been more helpful if they had been available earlier.⁴¹³ Professor Quin Monson, who conducted a study of two counties' incorporation of the new online materials into their poll workers' training, said that subsequent surveys showed that voters were more satisfied with their experience at polling places staffed by workers who had taken the additional training.⁴¹⁴

Prepare poll workers ahead of time to expect changes in training. With so many changes from election to election, some counties find it useful to alert returning poll workers ahead of time that their training will contain new information. Richland County had good success with a newsletter sent to poll workers in advance of their training sessions, outlining the procedures the training would cover. Poll workers came to training prepared to learn changes.⁴¹⁵

Develop ways to assess poll worker skills. Advocates urge election boards to build into training programs mechanisms to assess trainees' understanding of information, and, if necessary, require trainees to attend additional sessions.⁴¹⁶ Cuyahoga and Butler Counties use a number grading system, assessing and rating poll workers' skills on a scale of one to four or zero to four.⁴¹⁷ When poll workers are deployed, officials make sure that polling places are staffed with workers with different grades.⁴¹⁸ One election official suggested creating a certification program to make sure presiding judges were competent.⁴¹⁹ He proposed such a certification program as a substitute for the current requirement that a presiding judge be from the same political party as the candidate who won the governor's race in that precinct's previous election, which complicates the assignment of these positions.⁴²⁰

Create streamlined, uniform and clear training manuals. For the most part, election officials and advocates felt that the Secretary of State's provision of uniform training materials online was a step forward.⁴²¹ One official believed the requirement that all the Secretary's directives be included in the manual was counterproductive, however, because the directives were written with lawyers in mind and would be confusing rather than informative to most poll workers.⁴²²

Create on-the-job informational aids for poll workers. The Secretary's office provided flip charts for use at the polls. In some counties, the materials arrived after training had already begun.⁴²³ One advocacy group urged that counties provide multiple forms of easily accessible information, including palm-sized reference cards and attractive, easy-to-read posters with answers to common questions about state voting guidelines.⁴²⁴ Along these lines, one academic pointed out that there is a well-developed literature in the medical world about the utility of check lists as aids for preventing errors.⁴²⁵ Those studies indirectly support summit participants' belief that these types of aids were effective supports for reducing errors in the election context. The importance of clear, simplified instructional tools further highlighted the need for overall simplification in the administration of provisional ballots. Unlike the flip charts, summit participants felt the flow chart provided by the Secretary on administering provisional voting was not helpful, because it was so complex that it was too hard to follow. But participants agreed that the problem was not so much with the chart as with the rules and procedures themselves, which had become so tangled and confused that it was not possible to render them in straightforward, instructional terms.

Butler County has developed a set of materials for use by poll workers to direct voters to their correct precinct polling locations. These include a flow chart that walks the poll worker through the steps to follow if a voter is not on the rolls, an annotated address guide that allows the poll worker to look up the voter's street address and obtain his assigned precinct and polling location in one step, and a card for the poll worker to fill out for the voter, directing her to the correct polling place. Betty McGary, Director of Elections for Butler County, credits these materials, along with an increased training focus on this issue, with cutting the rejection rate of provisional ballots cast in the wrong precinct from 20% to 5%.⁴²⁶

C. Topics for Additional Research

Study the effects of different kinds and quantities of training. Professor Quin Monson suggested following up the studies showing that adding online training affects poll worker performance to determine what quantities and types of training are particularly effective.⁴²⁷ Is it important to maintain some hands on training? Is improved performance mostly the result of simply adding more than a single training session, or is mixing hands-on and online training the key? Various other aspects of training could also be studied, including the trainer/trainee ratio and the most effective types of trainers — educators or veteran poll workers or a mix.

Create a standard method to identify “problem polling places.” An exit poll study of the May 2006 primary in Cuyahoga County found that polling places which had been problematic in 2004 tended to have higher numbers of problems in 2006, and that the number of problems was correlated with low-income and percent African American.⁴²⁸ Given this finding of “repeat offenders,” it would be helpful to have statewide indicators of polling place performance, so that low performing sites could be improved, e.g., with assignment of better-testing poll workers. For instance, one measure of poor performance would be the percent of voters forced to vote a provisional ballot in the wrong precinct even though they were in the right polling place.

Study poll workers’ understanding of particular election practices. For instance, in the context of learning more about the effects of ID laws, Professor Daniel Tokaji suggested interviewing poll workers about their understanding of Ohio’s identification requirements. Findings from such studies could also be used to analyze and improve the effectiveness of poll worker training.⁴²⁹

Collect and analyze data on poll worker shortages. Where, when and how do shortages arise? For instance, were insufficient numbers of workers recruited? Did workers fail to show up for training or refuse to accept assignments in particular places? Did poll workers who were assigned for the election fail to show up at the polls on Election Day?

Study possible different recruitment methods. Different counties have done a lot of work on developing different recruitment styles and sources. A study of the results of the various methods could be useful. Professor Monson suggested testing in particular a recruitment method that would use existing information about voters to identify “model” poll workers and recruit them, for example, people who vote a lot and live in areas that are typically underserved at the polls.⁴³⁰

VI. Polling Place Resources

A. Background

The insufficiency of Ohio's polling place resources in 2004 is well documented. At poll closing time in 2004, voters faced five-hour waiting times.⁴³¹ Some 20,000 to 30,000 people were estimated to have been deterred from voting by long lines.⁴³² Moreover, the lack of resources burdened some communities more than others. For instance, in Franklin County, African Americans waited on line an average of thirty minutes longer than other voters.⁴³³ The November 2008 election saw a welcome improvement from the long lines of 2004.⁴³⁴ In order to ensure that future elections extend this healthy trend, it is important to understand the events and policy changes that produced it and to tackle remaining issues regarding the allocation of polling place resources. At the Summits, and in interviews, two key points emerged. First it was clear that unprecedented use of early absentee voting reduced the burden on Election Day polling places and shortened wait times.⁴³⁵ Second, there was some discussion of the role of paper ballot availability in reducing wait time in polling places with DREs, and the pros and cons of maintaining a supplementary supply of paper ballots.⁴³⁶

B. Issues to Address

1. *Voting machine allocation and early absentee voting*

In November 2008, long lines and wait times never materialized. Before the election, advocates and academics warned that voting machine allocations might once again be insufficient to handle the projected record turnout. According to Professor Ted Allen, the Help American Vote Act (HAVA) is partly responsible for the potential problem. Professor Allen's research shows that the HAVA compliant DRE voting machines some Ohio counties have acquired recently require far greater time for voters to cast their ballots than did previous machines.⁴³⁷ One study in Franklin County estimated that average voting times would roughly double on these "screen by screen" machines (compared with the "open faced" machines in use in 2004).⁴³⁸ Thus even with twice as many voting machines, waiting times would likely reach 2004 levels unless something further changed. Moreover, as one advocacy group stressed the increased get out the vote efforts and unprecedented new registration levels suggested that at least some precincts in Ohio counties might be heading for long lines and wait times.⁴³⁹

In the event, however, high rates of early absentee voting relieved the pressure on election-day polling places. Through the combined efforts of the legislature, secretary of state and local election officials who implemented and promoted "no fault" absentee voting, along with the public education support of advocacy groups and at least one well publicized academic study, pre-election day voting reached unprecedented levels. Statewide absentee voting increased to approximately 30% of total votes cast.⁴⁴⁰ One study that simulated different resource scenarios using actual 2008 turnout in Franklin County shows that the increased early voting there (which went from 24% in 2004 to 44% in 2008) was the main reason that county avoided a repeat of 2004.⁴⁴¹ Jane Platten, Director of the Cuyahoga

County Board of Elections, reported that 271,000 Cuyahoga residents cast early ballots. She credited the early turnout as “the number one reason” for shorter lines on Election Day.⁴⁴² Bryan Clark of the Secretary of State’s office pointed to the new requirements from the Secretary that boards use mathematical formulas to develop comprehensive voting resource allocation plans as another factor.⁴⁴³

The effect of early absentee voting in reducing the burden on Election Day raises a number of questions regarding polling place resources for future elections. It is not clear exactly what led to the high numbers of Ohioans who chose to vote early. Clearly, the shift to “no fault” absentee voting was key.⁴⁴⁴ Professor Theodore Allen pointed out that public education about the availability of absentee voting may also have been important.⁴⁴⁵ Advertising campaigns by counties to publicize the importance of early voting may have been effective. News stories highlighting warnings about what would happen if voters all turned out on Election Day also may have contributed to the surge in early voting.⁴⁴⁶

Other questions concerned the extent to which policies to expand or reduce early voting should be linked to resource allocations on Election Day. If the absentee period is reduced, will that create a need for more Election Day resources? Can publicity increase the use of absentee still further, taking more of the burden off polling places on Election Day? Would it be advisable to expand early voting from a single site to several sites throughout the counties? If such an expansion took place, would it be feasible to reduce Election Day expenditures — cutting the number of poll workers, for instance, or the number of machines in use? (These issues are discussed at length in this report’s section on absentee voting at pages 50-61)

It was suggested that early voting should be facilitated by making it available at multiple sites, instead of just a single county voting center.⁴⁴⁷ This policy was recommended by Secretary Brunner in 2008.⁴⁴⁸ Moreover, Professor Dan Tokaji noted that there might be an equal protection problem with the current scheme of one site per county — no matter the size of the region covered.⁴⁴⁹ Commissioner Dan Troy expressed the view that no such expansion would be necessary until the next presidential election, because turnout would likely be much lower until that time.⁴⁵⁰ In his view, any move to increase early voting should be accompanied by a reduction in resources devoted to Election Day in-precinct voting. He pointed out that resources are finite, and recommended that any expansion in early voting locations should be balanced with cuts in the number of polling locations and poll workers on Election Day. Likewise, Commissioner Troy said that he would support lengthening the early voting period only with a concurrent reduction in the number of polling places and poll workers used on Election Day.⁴⁵¹

Increases in voting by mail might be another way to trim the resources needed for in precinct voting on Election Day.⁴⁵² Professor Tokaji, warned, however, that in jurisdictions, like Oregon, that rely entirely on voting by mail, research shows reductions in participation by low income minority voters.⁴⁵³ Overall turnout is marginally increased, but the increases are in demographic groups already overrepresented compared with their presence in the voting age population.⁴⁵⁴ Greg Moore, of the NAACP National Voter Fund, agreed. He pointed out that in low income communities, voters may lack permanent addresses or face other problems receiving regular mail.⁴⁵⁵ Mail in voting thus creates obstacles for those voters. Despite these differences on the direction to take regarding early absentee voting,

every person we spoke with agreed that early voting was the single most important factor in preventing long lines and back ups in Ohio's November 2008 election.

2. *Supplemental paper ballots in DRE counties*

In contrast to interviewees' general agreement about the salutary effect of early voting, there was no consensus on the utility of supplemental paper ballots for election administration. In compliance with Secretary Brunner's directive, counties that use DRE machines provided every polling place with a supply of paper ballots equal to 25% of turnout in the 2004 general election.⁴⁵⁶ In addition, machine counties were required to use a two-line system to separate paper-ballot voters from those voting by machine.⁴⁵⁷ According to Professor Ted Allen, post-election simulation studies showed that supplemental paper ballot voting did help to reduce Election Day lines and waiting times somewhat.⁴⁵⁸

Al Siegal, a presiding judge from a Delaware County precinct, credited the supplemental paper ballots with helping to prevent long waits on Election Day. He observed, however, that his polling place initially was not provided with places where voters could use paper ballots. After he procured 4 additional tables for this purpose and set up a number of paper balloting sites, poll workers asked people as they lined up, "if you are in a hurry, would you like to vote by paper?" and directed them to the spare tables if they chose. In this way they had six to ten paper ballot voters most of the time during high volume periods and were able to process (according to his records) 85 to 90 voters per hour in a precinct with 6 machines.⁴⁵⁹

According to the Secretary of State's Office, the primary purpose of back-up paper ballots is two fold: they offer a safety valve in the event of long lines and an emergency resource in the event of machine failures, power outages, or other disruption in voting.⁴⁶⁰ Several election officials, academics and advocates, however, questioned the current state policy for distribution of paper ballots in counties that use DREs.⁴⁶¹ County election officials criticized the paper ballot requirement in terms of cost, administrative efficiency, and election accuracy. Jeff Wilkinson, Director of the Richland County Board of Elections, questioned how counties can afford to support two separate voting systems at every election.⁴⁶² In an interview, Dan Troy, past President of the County Commissioners' Association of Ohio, made a similar point.⁴⁶³ Jeff Wilkinson reported that Richland County spent approximately \$24,000 to provide and administer ballots. Under the required formula, they printed 14,700 ballots. Only 704 were used. While ballot printing would be reimbursed, other costs associated with paper ballot administration, e.g., poll worker time, would not.⁴⁶⁴ Dale Fellows, Director of the Lake County Board of Elections, said that, given a choice, voters overwhelmingly preferred to vote by machine. Lake County voters were offered a choice between paper and machine; 72,000 voted by machine and only 4,600 on paper ballots. Moreover, he reported that county officials were done counting machine and absentee votes by 10 p.m. on election night but spent until 4 a.m. the next morning counting and reconciling paper ballots. He pointed out that paper ballots that are incorrectly made must be analyzed by officials who try to determine voter intent and then remake them; whereas DRE machines reject incorrectly voted ballots and give the voter a chance to correct them on the spot. Thus counties must have resolution teams to decode voter intent on paper ballots. Finally, based on his own observation, paper ballots take even longer to fill out than the touch screen ballots.⁴⁶⁵ Of course, this is an issue for all paper ballots.

On a related note, as already discussed in this report (*see Mail-in Absentee Voting* section at pages 55-60), there is a substantial amount of academic literature that strongly supports the thesis that voters are more likely to make mistakes (and consequently have their votes lost) if they vote without a machine that will notify them of errors (such as a DRE or precinct-based optical scans).⁴⁶⁶ Because counties that use DREs do not have precinct scanners to notify voters of errors at their polling places, some academics and advocates have expressed concern that having large number of voters choose to vote on paper without precinct based optical scans will lead to problems: higher error rates and — in cases where contests are close and recounts necessary — more disputes about voter intent on ballots that machines can't read.⁴⁶⁷

David Farrell, of the Secretary of State's office, recognized the costs of providing a paper ballot alternative in DRE counties. Nevertheless, he insisted that the 2-line system and the requirement of back up paper ballots were necessary to prepare for and prevent a crisis in the event of machine breakdowns.⁴⁶⁸ One advocate summed up the arguments regarding supplemental paper ballots, saying that policymakers and advocates need to have a discussion on the pros and cons and evaluate the possible options: Offer all voters a choice between machine and paper voting? Offer paper only on request? Offer paper only when lines for machine voting are long or in case of an emergency (i.e., DREs have failed)?⁴⁶⁹ Or do away with paper altogether?

Going forward, election officials, advocates and academics offered a number of suggestions for ensuring that polling place resources are adequate and efficiently and equitably distributed:

Conduct simulations in advance in order to estimate the service times and thus the needed resources at individual polling places. Professor Ted Allen recommended simulating voting in advance can predict and help avoid problems, particularly in large urban areas.⁴⁷⁰ Simulations might also aid in cost reduction efforts, helping to identify principled reductions in polling locations.

Factor variable voting times into allocation formulas. Professor Allen also recommended that in deciding how many voting machines are needed in a polling location, officials consider not only the number of registered voters assigned there, but also the length and complexity of the ballot, and the resulting effect on likely voting time. Because voting time varies depending on the length of ballots, it should be included in calculations of how many machines and poll workers are needed in any given location.⁴⁷¹

Examine allocation schemes to make sure resources are distributed equitably. Advancement Project's report on resource allocation recommends basing future allocations on turnout at precincts in the past and also on information about get out the vote efforts in different precincts and predicted registration increases and turnout to ensure equitable distribution of resources.⁴⁷²

Publicize and encourage the use of the absentee voting option and other options that can make Election Day voting easier. Advertising campaigns could alert voters to the availability of early voting and promote its use to avoid delays on Election Day. Voters could also be informed of the best times on Election Day to cast a ballot and procedures that will expedite that process, including, e.g., reading ballot issues before coming to the polls.

Make voter guides and information available early. It was pointed out that early voters in many cases did not have the guides that advocacy groups make available to voters on Election Day. One advocate suggested that making guides early on would increase voters' ability to use early voting well and increase voter satisfaction.⁴⁷³

Provide resources for poll workers to direct voters to the correct voting location. Advocates and some election officials emphasized the benefit of making sure that every multi precinct polling place has a list of all voters in all the covered precincts.⁴⁷⁴ Counties could experiment with making reference books like the one used in Butler County that combines precinct identification by address with polling place locators. This makes it easier for poll workers to direct voters to the correct polling place and save time for both poll workers and voters.

Limit ballot language. One advocate suggested capping the number of words used to describe ballot issues. She pointed out that candidate biographies are not included on the ballot, and suggested that lengthy descriptions of issues should likewise be prohibited.⁴⁷⁵

Reduce the number of elections. Dale Fellows suggested that elections could be consolidated to conserve resources.⁴⁷⁶

Advocate for more and more continuous federal funding. Advocates and academics were sympathetic to local officials' frustration with being asked to implement policies that demanded more expenditure without providing funding support. They agreed that the time is right to advocate for a continuous stream of federal funding for some of the requirements of HAVA.

C. Topics for Additional Research

Conduct research on the effect of using fewer regional voting centers. This model is being tried in some places.⁴⁷⁷ Commissioner Dan Troy suggested looking into how it is working and how it is affecting who votes. One advocate suggested that if larger regional centers are used, their locations should be made permanent to alleviate the persistent problem of voters not knowing where their assigned polling places are located.

Study the impact of using permanent absentee status. There was some support for investigating a system that allows voters to vote by mail without redoing an application for each election. This would make voting easier and saves administrative resources, because there is no application processing. It also has the advantage of allowing election boards to calculate in advance how many people are likely to vote absentee. There are potential concerns, however, regarding fraud.⁴⁷⁸

Analyze data from all counties on the use of paper ballots. Professor Daniel Tokaji suggested that every county submit data on the number of supplemental paper ballots used.⁴⁷⁹

VII. Post-Election Audits

A. Background

The security and reliability of electronic voting has been a subject of dispute almost since the passage of the HAVA, which resulted in many states, including Ohio, moving from punch-card and lever voting systems to “electronic” optical scanners and direct recording electronic voting machines (DREs).⁴⁸⁰ Ohio was one of the first states to require voter-verifiable paper records for all voting systems. In 2004, the General Assembly passed legislation requiring that all direct recording electronic voting machines (DREs) include “a voter verified paper audit trail”⁴⁸¹ (optical scan systems read paper ballots that are filled out by voters). The requirement for paper trails went into effect in 2006, and since that time, there has been some form of voter verifiable paper record associated with every Ohio voter’s election choices, whether voted by mail, on precinct based optical scanners, or on DREs.

As numerous experts have argued, the adoption of a requirement for voter-verifiable records does not resolve the security, reliability and verifiability issues associated with electronic voting machines — whether those machines are optical scanners or DREs.⁴⁸² To the contrary, as the Brennan Center noted in its June 2006 study of electronic voting system security *The Machinery of Democracy: Protecting Elections in an Electronic World*,⁴⁸³ voter-verifiable paper records will not prevent programming errors, software bugs or the introduction of malicious software into voting systems. If paper is to have substantial security value, it must be used to check, or “audit” the voting system’s electronic record.

In fact, this kind of post-election audit, comparing paper records to electronic tallies, can serve several important functions. Among them are:

- generating public confidence in the results of an election;
- deterring fraud against the voting system;
- detecting and providing information about large-scale, systemic errors;
- providing feedback that will allow jurisdictions to improve voting technology and election administration in future years; and
- confirming, to a high level of confidence, that a manual recount would not change the outcome of the race.

1. *Creating an audit law*

Twenty-four states require post-election audits of voter-verifiable paper records,⁴⁸⁴ and more seem poised to pass such laws in the coming months.⁴⁸⁵ In 2008, Secretary Brunner published two directives that led to the first post-election audits of paper records in Ohio.⁴⁸⁶ Secretary Brunner has received substantial praise from advocacy groups and some election officials for advancing the use of post-election audits in Ohio.⁴⁸⁷ In fact, it appears that at least two previously unknown problems with Ohio voting equipment were discovered as a result of these audits.⁴⁸⁸ For the most part, however, the audits showed that Ohio’s machines were working remarkably well, accurately recording and tallying the intent of voters.

Some election officials and advocates we interviewed argued in favor of legislation requiring post-election audits after major elections. At least one election official argued for a law that laid out broad principles (such as a requirement to compare a certain percentage of paper records to electronic tallies), and provided the Secretary of State with room to develop the details of the audit through directive.⁴⁸⁹ Others believed that at least some details in the law (types of ballots to be audited, which contests to audit, percentage of ballots to audit; reporting requirements) would be helpful, both in allowing county boards to develop regular procedures ahead of each election and to ensure that each audit met minimum standards of effectiveness.⁴⁹⁰

There was widespread agreement that the more information election officials and the public had about the audit ahead of an election, the more likely the audit would be effective and efficient, and serve the goals of increasing transparency and public confidence in election results.⁴⁹¹

There are several potential sources that the Ohio legislature could use in crafting a post-election audit law. Most obviously, twenty-four states already conduct audits by law or regulation. The Citizens Alliance for Secure Elections (CASE Ohio) has offered a number of suggestions for best audit practices for Ohio in the past year, including a *White Paper* recommending certain principles in conducting an audit, *Recommended Audit Procedures*, detailing some recommended best practices for audits in Ohio, and a post-election review of the audits conducted in Ohio in 2008. These are annexed to this report in Appendix 37.

Finally, the Brennan Center, the Center for Election Integrity and Verified Voting previously drafted suggestions for the creation of a post-election audit law, based in large measure on the audit requirements in Minnesota, Missouri and Illinois. That document is annexed to this report as Appendix 38.

B. Topics for Additional Research

Collect data on the cost of audit pilots. There was widespread agreement that more data on the cost to counties of conducting audits in 2008 could help the state make determinations about the appropriate dimensions of future audits.

Study risk-limiting audits. A number of participants in the March summit panel on post-election audits expressed support for the idea of “Risk-Limiting” audits, as described in CASE Ohio’s *White Paper*. The concept behind such audits is that county boards of election would audit the minimum number of ballots necessary to confirm, to a high degree of certainty, that a hand count of ballots would not produce a different election outcome. The amount of ballots to audit would be determined by a statistical formula, depending on the margin of victory in the contest and other factors. According to its supporters, the use of this method would result in far less auditing than the kind of flat percentage audit used in Ohio in 2008.

VIII. Third Party Ballot Access

In 2006, a federal court ruled that Ohio's ballot access law was unconstitutional.⁴⁹² Since then, Ohio has administered elections without clear legal means for minor political parties to gain access to the ballot. In 2007, the Secretary of State attempted to fill the void in state election law by issuing a directive that set forth ballot access requirements less restrictive than those set forth in the stricken law, but in 2008, a federal court ruled that those requirements also were unconstitutionally burdensome.⁴⁹³

A. Background

In Ohio, only political parties whose candidates for governor in the most recent state general election received at least 5% of the votes cast in that contest maintain ballot access.⁴⁹⁴ Prior to 2006, minor political parties seeking access to the ballot were required to file a petition containing the signatures of 1% of the total votes cast for governor or president in the last state general election with the Secretary of State's office at least 120 days before the next primary election.⁴⁹⁵ The date of primary elections is set in Ohio law, and in presidential election years, the primary election date is the first Tuesday in March.⁴⁹⁶

In 2004, the Libertarian Party of Ohio challenged Ohio's ballot access law. The filing deadline was such that the Libertarian Party had to file its nominating petitions one year before the general election. In 2006, the U.S. Court of Appeals for the Sixth Circuit ruled that Ohio's requirement that candidates be nominated by primary election, combined with the 120-day filing requirement, imposed an unconstitutional burden on the Libertarian Party.⁴⁹⁷ Among other things, the Court of Appeals found that no other state had ballot access laws as restrictive as Ohio's, averaging one minor political party on the ballot per year compared with four per year in other highly populous states during the period 1992-2002.⁴⁹⁸

In 2007, the Secretary of State issued Directive 2007-09 to try to address the void in Ohio law created by the ruling.⁴⁹⁹ The Directive required minor political parties to file a petition containing the signatures of at least 0.5% of the total number of votes cast for governor in the 2006 election with the Secretary of State's office at least 100 days before the primary election.⁵⁰⁰ In advance of the 2008 election, the Libertarian Party of Ohio went to court to challenge the ballot access requirements established by the Secretary. The U.S. District Court for the Southern District of Ohio found the Directive deficient and unconstitutional.⁵⁰¹

As a result, Ohio is again left without clear legal standards for access to the ballot by minor political parties. Election officials and advocates at the Summits agreed that the Ohio legislature must remedy the void in Ohio election law left by the 2006 court ruling by establishing a new ballot access law. One state election official believed that the absence of a law has resulted in costly ballot access litigation.⁵⁰² Additionally, because of the federal court ruling striking down the Secretary's directive, state election officials do not believe that ballot access can be addressed without a new law.⁵⁰³

B. Issues to Address

Participants in the March Summit brought up four main concerns with Ohio's previous ballot access laws, which they hoped to see remedied in new legislation.

Candidate nomination by primary election. Ohio's Constitution requires all political parties, including minor parties, to nominate their candidates at primary elections.⁵⁰⁴ Forty-three states provide political parties with other methods of nominating candidates besides primary elections. This requirement is one that discourages the participation of minor political parties in Ohio elections. One advocate believed that party organizations should be able to decide how they select their candidates.⁵⁰⁵ A minor political party leader agreed that political parties should be able to determine how their candidates are selected.⁵⁰⁶

One state election official believed that allowing minor political parties to nominate candidates by means other than primary elections could potentially save county boards of elections the expenses associated with administering primary elections.⁵⁰⁷ At the very least, it would be worth studying the ballot access laws in the six other states that require political parties to nominate their candidates by primary election.⁵⁰⁸ At the March summit, one panelist asked whether any states tie party affiliation on voter registration forms to ballot access. Peg Rosenfield of the League of Women Voters of Ohio questioned whether this would be a good idea, noting that it could lead third-party registration groups or political parties to destroy registration forms of voters who registered with certain parties.

Petition signature requirement. Prior to 2006, minor political parties had to gather signatures at least equal to 1% of the total votes cast for governor or president in the last state general election. To qualify to appear on the 2004 general election ballot, that represented 32,290 signatures.⁵⁰⁹ Directive 2007-09 required minor political parties to gather 0.5% of the total votes cast for governor in the 2006 election, which represented 20,114 signatures.⁵¹⁰ Federal courts found both of these signature requirements to be unconstitutionally burdensome on minor political parties.⁵¹¹ One advocate suggested eliminating party references entirely from ballots and making the requirements for candidate access to the ballot uniform.⁵¹² Others at the panel questioned whether this was a realistic possibility.⁵¹³ A minor political party leader has proposed a requirement of 0.25% of the total votes cast for the lowest vote-total-getting statewide office. Other states have fixed numerical requirements established by state law.

Petition filing deadline. Ohio law previously required new political parties to file petitions 120 days before the primary election. At the time that Ohio's law was enjoined as unconstitutional, 48 states had filing deadlines for minor political parties later in the election cycle than Ohio.⁵¹⁴ The Secretary of State's 2007 directive required petitions to be filed 100 days before the primary election. Although one consideration for establishing a new filing deadline is to provide election officials with enough time to check petition signatures,⁵¹⁵ one county election official reported that checking signatures is only a small part of her responsibilities and that it is not a burden.⁵¹⁶ Draft legislation proposed by a minor political party calls for a 75-day deadline.⁵¹⁷

Maintaining ballot access. As mentioned above, political parties must receive at least 5% of the votes for governor to maintain ballot access. One minor party leader suggested mirroring ballot access practices in Minnesota, Wisconsin, and Kansas, where 1% of any statewide office would allow a minor political party to stay on the ballot in the state.⁵¹⁸ Alternatively, he proposed that petitions be considered valid for a fixed number of years, such as 2 or 4 years.⁵¹⁹

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- Appendix 19: Ohio Secretary of State, *Absentee and Provisional Ballot Report: Nov. 4, 2008*
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ENDNOTES

- ¹ A copy of the preliminary report can be found at http://www.brennancenter.org/content/resource/2008_ohio_elections_summit/.
- ² Secretary Brunner held the Ohio Elections Summit 2008 on December 2, 2008. On March 12-13, 2009, Secretary Brunner convened the 2009 Ohio Elections Conference.
- ³ Copy of agendas for each summit annexed as Appendix 1.
- ⁴ A list of individuals we interviewed can be found in Appendix 2 of this report.
- ⁵ A copy of our request to the Secretary of State's Office, as well as a list of what data was supplied can be found in Appendix 3 of this report.
- ⁶ 42 U.S.C. § 1973gg(3)(d).
- ⁷ OH REV. CODE ANN. § 3503.11 (West 2009).
- ⁸ PEW CENTER ON THE STATES, BEING ONLINE IS NOT ENOUGH: STATE ELECTIONS WEB SITES (Oct. 2008), *available at* http://www.pewcenteronthestates.org/uploadedFiles/VIP_FINAL_101408_WEB.pdf [hereinafter BEING ONLINE REPORT] (Annexed as Appendix 4).
- ⁹ Editorial, *Shut Out At the Polls*, WASH. POST, Mar. 16, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501668.html>; Editorial, *Still Broken*, N.Y. TIMES, Mar. 17, 2009, *available at* <http://www.nytimes.com/2009/03/18/opinion/18wed1.html>.
- ¹⁰ Remarks of Matthew Damschroder, Deputy Director, Franklin County Board of Elections, at the 2009 Ohio Elections Conference (Mar. 12, 2009) *video available at* <http://www.ohiochannel.org>; Remarks of Doug Chapin, Director, Electionline.org, at the 2009 Ohio Elections Conference (Mar. 12, 2009) *video available at* <http://www.ohiochannel.org>.
- ¹¹ See ADVANCEMENT PROJECT, PROVISIONAL VOTING: FAIL-SAFE VOTING OR TRAPDOOR TO DISENFRANCHISEMENT? (Sept. 2008), *available at* <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf> [hereinafter *ADVANCEMENT PROJECT REPORT*] (annexed as Appendix 5).
- ¹² Marilyn Jacobcik, Deputy Director of the Lorain County Board of Elections, is one official opposed to this proposal and she notes that the Ohio Constitution requires voters to register 30 days before an election (OHIO CONST. ART. V, § 1), which means that it is not legally feasible absent a change to the state constitution. Telephone Interview with Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections (Feb. 10, 2009) [hereinafter *Marilyn Jacobcik Interview*].
- ¹³ Remarks of Brian Shinn, Assistant General Counsel, Ohio Sec'y of State, at the 2009 Ohio Elections Conference (Mar. 12, 2009), *video available at* <http://www.ohiochannel.org>.
- ¹⁴ Similarly, as discussed in later sections, there is agreement that there should be a routine method, to the extent possible, to correct registration forms, absentee ballot applications and provisional ballots for the purpose of counting the votes of all eligible citizens.
- ¹⁵ E-mail from David Kimball, Associate Professor, Political Science at University of Missouri-St. Louis (Mar. 6, 2009).
- ¹⁶ Or, at the very least, as one advocate suggested, examine votes with overvotes found by scanner.
- ¹⁷ LAWRENCE NORDEN, ET AL., BETTER BALLOTS (Brennan Center for Justice ed. 2008), *available at* http://www.brennancenter.org/content/resource/better_ballots/.
- ¹⁸ *Id.*
- ¹⁹ For instance, Brown County rejected 44.2% of provisional ballots cast, while only eight counties rejected provisional ballots at a higher rate than Cuyahoga County, which disqualified 27.5% of its provisional ballots. Statewide, 27,763 mail-in absentee ballots were not counted, and in some counties, more than 4% of absentee ballots sent by mail were not counted. At least 1/3 of rejected registration forms in Cuyahoga County were because voters failed to fill-in information required under state law. Problems that have been noted with the current laws are inconsistent address requirements, complex documentary ID requirements, and the "wrong precinct" rule.
- ²⁰ Ohio Sec'y of State, Directive 2008-59: Optical Scan Ballots for Voters in Counties Using DRE Voting Machines (Jul. 25, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-59.pdf>.
- ²¹ Ohio Sec'y of State, Directive 2008-65: Precinct Polling Location Arrangement and Diagram for Counties Using DREs (Aug. 13, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-65.pdf>.

- ²² Remarks of Jeff Wilkinson, Director of the Richland County Board of Elections, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* <http://www.ohiochannel.org>.
- ²³ E-mail from Candice Hoke, Director, Center for Election Integrity (Feb. 25, 2009) [hereinafter *Candice Hoke E-mail*]; Telephone Interview with Daniel Tokaji, Associate Director, Election Law at Moritz College of Law (Jan. 7, 2009) [hereinafter *Daniel Tokaji Interview*]; Telephone Interview with David Kimball, Associate Professor, Political Science at University of Missouri-St. Louis (Feb. 3, 2009) [hereinafter *David Kimball Interview*].
- ²⁴ NAACP-SCP v. Cortes, 2:08-CV-05048 (2009).
- ²⁵ Indiana requires emergency paper ballots to be kept at the polling place and allows paper ballots to be used if there are long lines due to machine failure or inadequate allocation of machines. Illinois requires emergency paper ballots be kept at the polling place and allows deployment in the event that *any* machine fails. LAWRENCE NORDEN, ET AL., IS AMERICA READY TO VOTE? (Brennan Center for Justice ed. 2008), *available at* http://www.brennancenter.org/content/resource/is_america_ready_to_vote/.
- ²⁶ Telephone Interview with Bryan Clark, Policy & Planning Coordinator, Ohio Sec’y of State (Apr. 2, 2009).
- ²⁷ 42 U.S.C. § 15483.
- ²⁸ STEVEN F. HEUFNER ET AL., FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES 31 (2007), *available at* <http://moritzlaw.osu.edu/electionlaw/joyce/book.pdf>. Nearly every Ohio county had some form of a computerized database when Ohio began to put together its Statewide Database.
- ²⁹ Affidavit of Gus Maragos, Ohio Republican Party v. Brunner, No. 2:08-CV-913 (S.D. Ohio Oct. 8, 2008) (Doc. 44-2).
- ³⁰ *Id.*
- ³¹ According to the Secretary of State’s Business Procedures Manual records are never physically deleted, but rather flagged as “removed.” OHIO SEC’Y OF STATE, STATEWIDE VOTER REGISTRATION DATABASE (SWVRD) SYSTEM MANUAL 10 (Jan. 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-52.pdf>.
- ³² 42 U.S.C. § 1973gg-6(d)(1).
- ³³ *Id.*
- ³⁴ Matthew Damschroder, Deputy Director of the Franklin County Board of Elections notes that his county’s registration volume has grown since 2004, while its board of elections has the same number of full time employees assigned to voter registration activities. Nearly half are now assigned exclusively to maintaining the Statewide Database (he reports that most of this time is dealing with potential “duplicate” registrations) as opposed to maintaining the county’s local database (for activities such as entering in newly registered voters). Telephone Interview with Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Jan. 27, 2009) [hereinafter *Matthew Damschroder Interview*]; Telephone Interview with Patty Johns, Director, Wayne County Board of Elections (Jan. 20, 2009) [hereinafter *Patty Johns Interview*]; Telephone Interview with Jane Platten, Director, Cuyahoga County Board of Elections (Feb. 5, 2009) [hereinafter *Jane Platten Interview*]; Marilyn Jacobcik Interview, *supra* note 12.
- ³⁵ Matthew Damschroder Interview, *supra* note 34; Candice Hoke E-mail, *supra* note 23; E-mail from Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio (Feb. 23, 2009) [hereinafter *Peg Rosenfield E-mail*]; E-mail from Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (Feb. 23, 2009) [hereinafter *Norman Robbins E-mail*]; E-mail from Michael Stinziano, Director, Franklin County Board of Elections (Feb. 23, 2009) [hereinafter *Michael Stinziano E-mail*]; E-mail from Catherine Turcer, Legislative Director, Ohio Citizen Action (Feb. 23, 2009) [hereinafter *Catherine Turcer E-mail*]; Interview with Wendy Weiser, Deputy Director, Brennan Center for Justice at NYU School of Law (Feb. 23, 2009) [hereinafter *Wendy Weiser Interview*]; E-mail from Donita Judge, Staff Attorney, Advancement Project (Feb. 25, 2009) [hereinafter *Donita Judge E-mail*]; E-mail from Ellis Jacobs, Senior Attorney, Advocates for Basic Legal Equality (Feb. 26, 2009); E-mail from with Timothy Burke, Member, Hamilton County Board of Elections (Feb. 23, 2009) [hereinafter *Timothy Burke E-mail*].
- ³⁶ Patty Johns Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34; Telephone Interview with Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (Feb. 2, 2009) [hereinafter *Norman Robbins Interview*]; Telephone Interview with Michael Stinziano, Director, Franklin County Board of Elections (Jan. 9, 2009) [hereinafter *Michael Stinziano Interview*]; Peg Rosenfield E-mail, *supra* note 35.
- ³⁷ Six different voter registration database vendors were used to create the county databases in Ohio. These vendors include: Triad, ES & S, DIS, Diebold, Sequoia, and SELF. Voting Industry News, Listing of Ohio

Counties and Voter Reg Vendors (Dec. 30, 2004), http://www.votingindustry.com/Ohio_Corner/OhioCounties&Vendors.doc.

³⁸ See CANDICE HOKE & DAVID JEFFERSON, VOTING AND REGISTRATION TECHNOLOGY ISSUES, LESSONS FROM 2008, at Part III (Supp. AMERICA VOTES! ABA Publications 2009) [hereinafter *Hoke & Jefferson*] (annexed as Appendix 6).

³⁹ Matthew Damschroder said that although he finds the process inefficient, he does not believe it disenfranchises voters. Matthew Damschroder Interview, *supra* note 34; Patty Johns Interview, *supra* note 34.

⁴⁰ Jane Platten Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34; Patty Johns Interview, *supra* note 34.

⁴¹ Telephone interview with Myrna Pérez, Counsel, Brennan Center for Justice at NY School of Law (Mar. 6, 2009); Telephone interview with Bradley Heard, Senior Attorney, Advancement Project (Mar. 6, 2009).

⁴² Norman Robbins Interview, *supra* note 36; Telephone Interview with Catherine Turcer, Legislative Director, Ohio Citizen Action (Jan. 20, 2009) [hereinafter *Catherine Turcer Interview*]; Telephone Interview with Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio, (Feb. 3, 2009) [hereinafter *Peg Rosenfield Interview*]; Candice Hoke E-mail, *supra* note 23.

⁴³ ELECTION PROTECTION, 2008 POST-ELECTION PRELIMINARY ANALYSIS: OHIO 8 (2008) (annexed as Appendix 7).

⁴⁴ Norman Robbins Interview, *supra* note 36; Matthew Damschroder Interview, *supra* note 34; Patty Johns Interview, *supra* note 34; Marilyn Jacobcik Interview, *supra* note 12; Candice Hoke E-mail, *supra* note 34.

⁴⁵ GREATER CLEVELAND VOTER COALITION, ANALYSES OF VOTER DISQUALIFICATION, CUYAHOGA COUNTY, OHIO, NOVEMBER 2004, at 5 (2006), *available at* http://www.clevelandvotes.org/news/reports/Analyses_Full_Report.pdf [hereinafter GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT] (annexed as Appendix 8).

⁴⁶ *Id.*

⁴⁷ “Fatal Pending” is the status given to a record that is defective because it lacks full and accurate information. Spreadsheet from Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (annexed as Appendix 9).

⁴⁸ Norman Robbins Interview, *supra* note 36.

⁴⁹ *Id.*; Candice Hoke E-mail, *supra* note 23.

⁵⁰ GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 45.

⁵¹ *Id.*; Norman Robbins E-mail, *supra* note 35.

⁵² Norman Robbins Interview, *supra* note 36.

⁵³ See Ohio Sec’y of State, Directive 2008-80: Voter Identification Requirements, at 12 (Sept. 5, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-80.pdf>.

⁵⁴ Interview with Justin Levitt, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 23, 2009); Candice Hoke E-mail, *supra* note 23.

⁵⁵ Peg Rosenfield Interview, *supra* note 42; Telephone Interview with Paul Gronke, Director of the Early Voting Information Center at Reed College (Feb. 13, 2009) [hereinafter *Paul Gronke Interview*]; Candice Hoke E-mail, *supra* note 23. Norman Robbins offered the specific suggestion of highlighting all “required” or optional fields in yellow to make it easier for registering voters and others to determine whether any needed information was left blank. He agreed that it would be a good idea to usability test this suggestion before implementing it statewide. E-mail from Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (Mar. 31, 2009) [hereinafter *Norman Robbins E-mail III*].

⁵⁶ Norman Robbins Interview, *supra* note 36; Interview with Adam Skaggs, Counsel, Brennan Center for Justice at NYU School of Law (Jan. 9, 2009) [hereinafter *Adam Skaggs Interview*].

⁵⁷ Norman Robbins Interview, *supra* note 36; Adam Skaggs Interview, *supra* note 56; Marilyn Jacobcik, Deputy Director of the Lorain County Election Board, notes that for many counties with limited staffs this suggestion will be impractical. She notes that the “check” on data entry is the acknowledgement card mailed to the voter, who can notify the Board of Elections of errors upon receipt of the card or on Election Day. E-mail from Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections (Mar. 2, 2009) [hereinafter *Marilyn Jacobcik E-mail*].

⁵⁸ Norman Robbins Interview, *supra* note 36; Adam Skaggs Interview, *supra* note 56.

⁵⁹ Matthew Damschroder of Franklin County said that his county digitizes every voter registration card and attaches it to the voter record so that it can be viewed/printed at any time. Because most, if not all, counties have digitized signatures for poll books, he believes many counties are following the same procedure as

Franklin County. A survey is needed to quantify exactly how many counties are following this procedure. E-mail from Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Feb. 11, 2009) [hereinafter *Matthew Damschroder E-mail*].

⁶⁰ Some NCOA changes are temporary or only for mail and do not affect voter registration; this must be made clear in any notice to voters.

⁶¹ In fact, as discussed below, this is already mandated under the NVRA.

⁶² E-mail from Justin Levitt, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 17, 2009) [hereinafter *Justin Levitt E-mail*]; Michael Stinziano E-mail, *supra* note 35; Matthew Damschroder Interview, *supra* note 34.

⁶³ Matthew Damschroder Interview, *supra* note 34; Timothy Burke E-mail, *supra* note 35; Candice Hoke stressed that forms must be written in plain language, have a template that is vetted and tested among voters, and have the same accessibility and comprehensibility concerns as voter registration forms and ballots. Candice Hoke E-mail, *supra* note 23.

⁶⁴ Elizabeth Westfall of the Advancement Project noted that HAVA required some such voters to be “flagged” to produce ID before voting, though Ohio’s voter identification requirements may independently fulfill the federal mandate. E-mail from Elizabeth Westfall, Deputy Director, Voter Protection Program of the Advancement Project (Nov. 19, 2008). Professor Candice Hoke of the Center for Election Integrity stated that if such notification was required, it should be made clear to both voters and county election officials that failure to update this information would not be grounds for purging. Candice Hoke E-mail, *supra* note 23; Peg Rosenfield of the League of Women Voters of Ohio suggested that, at least for this final type of notification, a phone call and correction of information in-house would be the best option. E-mail from Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio (Jan. 20, 2009) [hereinafter *Peg Rosenfield E-mail II*].

⁶⁵ Adam Skaggs Interview, *supra* note 56; Candice Hoke E-mail, *supra* note 23.

⁶⁶ E-mail from Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (Mar. 26, 2009) (on file with the Brennan Center) [hereinafter *Norman Robbins E-mail II*].

⁶⁷ 42 U.S.C. § 1973gg(3)(d).

⁶⁸ OHIO REV. CODE ANN. § 3503.11 (West 2009).

⁶⁹ Comments of Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Mar. 12, 2009); Comments of Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio (Mar. 12, 2009).

⁷⁰ Telephone Interview with Anne Vitale, Associate Legal Counsel, Ohio Department of Public Safety (Mar. 31, 2009).

⁷¹ The Brennan Center has laid out best practices for determining whether records actually match. For a high degree of certainty, the following data, at a minimum, should be the same: last name, first name, middle name, prefix, suffix, date of birth and address or driver’s license number. MYRNA PÉREZ, VOTER PURGES 29 (Brennan Center for Justice ed. 2008), *available at* http://www.brennancenter.org/content/resource/voter_purges/ [hereinafter *VOTER PURGES REPORT*].

⁷² Matthew Damschroder Interview, *supra* note 34

⁷³ Justin Levitt E-mail, *supra* note 62; Candice Hoke E-mail, *supra* note 23.

⁷⁴ Adam Skaggs Interview, *supra* note 56; Interview with Myrna Pérez, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 17, 2009).

⁷⁵ GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 45.

⁷⁶ E-mail from Adam Skaggs, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 13, 2009) (on file with author).

⁷⁷ Norman Robbins Interview, *supra* note 36; *See also* ref. 31; Candice Hoke E-mail, *supra* note 23.

⁷⁸ This might require Ohio to identify forms by which groups submitted them; Norman Robbins Interview, *supra* note 36.

⁷⁹ This could also alert registration groups to increase their own quality control to check more carefully for incomplete or erroneous registrations. For instance, nearly 5,000 registrations submitted in Cuyahoga County in 2004 lacked a signature, which created a substantial amount of extra work for the county board. GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 45.

⁸⁰ Patty Johns Interview, *supra* note 34; Marilyn Jacobcik E-mail, *supra* note 57.

⁸¹ Norman Robbins Interview, *supra* note 36; Donita Judge E-mail, *supra* note 35.

⁸² In fact, in one case where such checks were carried out, over 1400 incorrectly deleted registrations were restored to the database. In another case, a BOE belatedly admitted that 624 provisional ballots were incorrectly rejected in 2004. GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 45.

Many advocates argue that findings like these show there is a greater public interest in release of such data than in the interest of keeping names, addresses, birthdates private (as such information is generally freely available on the internet) or whether a particular provisional ballot was rejected).

⁸³ Franklin, Hamilton, Lucas counties interpret HAVA in this way. HAVA section 42 U.S.C. § 15482(a) states in relevant part, “Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.”

⁸⁴ Ohio Sec’y of State, Advisory 2008-22: Privacy of Provisional Voter and Provisional Ballot Information, at 3-4 (Sept. 4, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/advisories/2008/Adv2008-22.pdf>.

⁸⁵ Norman Robbins agrees, with the exception of the State taking over data entry altogether. Norman Robbins E-mail, *supra* note 35; Matthew Damschroder Interview, *supra* note 34.

⁸⁶ Norman Robbins E-mail, *supra* note 35; Telephone Interview with Edward Foley, Director, Election Law at Moritz College of Law (Feb. 16, 2009) [hereinafter *Edward Foley Interview*]; Justin Levitt E-mail, *supra* note 62; E-mail from Jonah Goldman, Director, National Campaign for Fair Elections (Feb. 20, 2009).

⁸⁷ Patty Johns Interview, *supra* note 34.

⁸⁸ Telephone Interview with Donita Judge, Staff Attorney, Advancement Project (Mar. 25, 2009); Telephone Interview with Greg Moore, Executive Director, Nat’l Voter Fund of the NAACP (Mar. 31, 2009).

⁸⁹ Michael Stinziano E-mail, *supra* note 35; Matthew Damschroder Interview, *supra* note 34. Several Princeton University specialists in information technology policy have observed this type of data-searching difficulty in a number of government databases, and offer remedial recommendations. David Robinson *et al.*, *Government Data and the Invisible Hand*, 11 YALE J. LAW & TECHNOLOGY 160 (2008).

⁹⁰ Catherine Turcer E-mail, *supra* note 35.

⁹¹ Norman Robbins E-mail, *supra* note 35.

⁹² Marilyn Jacobcik Interview, *supra* note 12; Matthew Damschroder Interview, *supra* note 34; Jane Platten Interview, *supra* note 34.

⁹³ Jane Platten Interview, *supra* note 34; Candice Hoke E-mail, *supra* note 23; Justin Levitt E-mail, *supra* note 62; Matthew Damschroder Interview, *supra* note 34; Patty Johns Interview, *supra* note 34; E-mail from Jeff Wilkinson, Deputy Director, Richland County Board of Elections (Feb. 23, 2009) [hereinafter *Jeff Wilkinson E-mail*]; Telephone Interview with Dale Fellows, Member, Lake County Board of Elections (Feb. 11, 2009) [hereinafter *Dale Fellows Interview*].

⁹⁴ *See* Hoke & Jefferson, *supra* note 38, at Part III; Candice Hoke E-mail, *supra* note 23.

⁹⁵ The current public access portal to the Statewide Database is available at: <http://www.sos.state.oh.us/SOS/voterquery.aspx?page=361> (last visited Jan. 30, 2009).

⁹⁶ Justin Levitt E-mail, *supra* note 62; Catherine Turcer Interview, *supra* note 42; Candice Hoke E-mail, *supra* note 23; Peg Rosenfield Interview, *supra* note 42.

⁹⁷ Professor Candice Hoke and others note that for security reasons, it is essential that voters not be able to access the live database and make changes themselves. In 2008, the EAC released a report with recommendations for a number of best practices to protect both data and reliability of the voter information website. Candice Hoke E-mail, *supra* note 23; Justin Levitt E-mail, *supra* note 62; Catherine Turcer Interview, *supra* note 42; Peg Rosenfield Interview, *supra* note 42.

⁹⁸ BEING ONLINE REPORT, *supra* note 8.

⁹⁹ *Washington Ass’n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash. 2006); *but see* *Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2007).

¹⁰⁰ Marilyn Jacobcik Interview, *supra* note 12; Matthew Damschroder Interview, *supra* note 34. Jane Platten, Director of the Cuyahoga County Board of Elections, said that no match records should be provided as a resource of information for ongoing maintenance of the registration rolls. Jane Platten Interview, *supra* note 34.

¹⁰¹ The Social Security Administration has acknowledged that matches between its database and voter-registration records have yielded a 28.5 percent error rate. Kim Zetter, *Voter Database Glitches Could Disenfranchise Thousands*, WIRED, Sept. 17, 2008,

http://www.wired.com/politics/onlinerights/news/2008/09/voter_registration?currentPage=all.

¹⁰² Patty Johns Interview, *supra* note 34.

¹⁰³ Spreadsheet of States’ Use of Social Security Database, Oct. 2007 – Sept. 2008, N.Y. TIMES, http://graphics8.nytimes.com/packages/pdf/national/09voting_states.pdf, annexed as Appendix 10.

¹⁰⁴ Peg Rosenfield E-mail II, *supra* note 64; Norman Robbins E-mail, *supra* note 35.

- ¹⁰⁵ Candice Hoke E-mail, *supra* note 23; Norman Robbins E-mail, *supra* note 35; E-mail from Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Feb 23, 2009) [hereinafter *Matthew Damschroder E-mail III*].
- ¹⁰⁶ Candice Hoke E-mail, *supra* note 23; Norman Robbins E-mail, *supra* note 35.
- ¹⁰⁷ Candice Hoke E-mail, *supra* note 23; Norman Robbins E-mail, *supra* note 35; Catherine Turcer E-mail, *supra* note 35.
- ¹⁰⁸ ASSOCIATION FOR COMPUTING MACHINERY, STATEWIDE DATABASES OF REGISTERED VOTERS: STUDY OF ACCURACY, PRIVACY, USABILITY, SECURITY, AND RELIABILITY ISSUES (2006), available at http://www.acm.org/usacm/PDF/VRD_report.pdf [hereinafter *ACM Report*], annexed as Appendix 11; Lillie Coney, Senior Policy Analyst, The Electronic Policy Information Center, Testimony to Election Assistance Commission (Aug. 23, 2005), available at http://www.epic.org/privacy/voting/eac-8_23.pdf, annexed as Appendix 12.
- ¹⁰⁹ Candice Hoke E-mail, *supra* note 23; Telephone Interview with Jeff Wilkinson, Deputy Director, Richland County Board of Elections (Feb. 10, 2009) [hereinafter *Jeff Wilkinson Interview*]; Peg Rosenfield E-mail, *supra* note 35; Jeff Wilkinson E-mail, *supra* note 93; Timothy Burke E-mail, *supra* note 35; Matthew Damschroder E-mail II, *supra* note 105.
- ¹¹⁰ Candice Hoke E-mail, *supra* note 23; Norman Robbins E-mail, *supra* note 35. Matthew Damschroder said that with limitations, he would endorse the rule. Specifically, there possibly should be some restrictions on which employees can make changes, view Social Security numbers, etc., but there should be no preclearance to view a voter's name, address, birth year, voting history, etc. Matthew Damschroder E-mail, *supra* note 105.
- ¹¹¹ Candice Hoke E-mail, *supra* note 23; Norman Robbins E-mail, *supra* note 35; the Brennan Center has recommended similar practices for monitoring purges of the registration lists. VOTER PURGES REPORT, *supra* note 71.
- ¹¹² Candice Hoke E-mail, *supra* note 23; Norman Robbins Interview, *supra* note 36; Peg Rosenfield E-mail, *supra* note 35; Jeff Wilkinson E-mail, *supra* note 93.
- ¹¹³ Candice Hoke E-mail, *supra* note 23; Norman Robbins Interview, *supra* note 36.
- ¹¹⁴ See, e.g., ACM Report, *supra* note 108, at 39-42.
- ¹¹⁵ UNITED STATES ELECTION ASSISTANCE COMMISSION, VOTER INFORMATION WEBSITES STUDY (Nov. 2005), available at [http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/2008_nov_voter_info_website_study/attachment_download/file.](http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/program-areas-and-research-resources-and-reports/2008_nov_voter_info_website_study/attachment_download/file.), annexed as Appendix 13.
- ¹¹⁶ The ACM study includes numerous useful suggestions. ACM Report, *supra* note 108, at 28.; See also DEBRA S. HERRMANN, COMPLETE GUIDE TO SECURITY AND PRIVACY METRICS (Auerbach Publications 2007); Candice Hoke E-mail, *supra* note 23; Peg Rosenfield E-mail, *supra* note 35; Norman Robbins E-mail, *supra* note 35; Matthew Damschroder E-mail II, *supra* note 105.
- ¹¹⁷ Candice Hoke E-mail, *supra* note 23; Norman Robbins Interview, *supra* note 36; Matthew Damschroder Interview, *supra* note 34; Peg Rosenfield Interview, *supra* note 42; Telephone Interview with Daniel Tokaji Interview, *supra* note 23.
- ¹¹⁸ Candice Hoke E-mail, *supra* note 23; Norman Robbins Interview, *supra* note 36; Matthew Damschroder Interview, *supra* note 34; Wendy Weiser Interview, *supra* note 35; Catherine Turcer Interview, *supra* note 42; Timothy Burke E-mail, *supra* note 35; Donita Judge E-mail, *supra* note 35; Ellis Jacobs E-mail, *supra* note 35; Peg Rosenfield E-mail, *supra* note 35, Michael Stinziano E-mail, *supra* note 35.
- ¹¹⁹ Advocacy groups that promote automatic and portable registration are: the Brennan Center for Justice at NYU School of Law, the Lawyers Committee for Civil Rights Under Law, Ohio Votes, etc.
- ¹²⁰ See WENDY WEISER, RENÉE PARADIS & MICHAEL WALDMAN, VOTER REGISTRATION MODERNIZATION (Brennan Center for Justice ed. 2008) (annexed as Appendix 14).
- ¹²¹ Daniel Tokaji, *A New Absentee Voting Directive in Ohio*, Equal Vote-Moritz College of Law (Nov. 3, 2008, 22:13 EST), <http://moritzlaw.osu.edu/blogs/tokaji/2008/11/new-absentee-voting-directive-in-ohio.html> [hereinafter *Tokaji*] (annexed as Appendix 15).
- ¹²² Interview with Bryan Clark, Policy and Planning Coordinator, Ohio Sec'y of State (Mar. 26, 2009).
- ¹²³ See Hoke & Jefferson, *supra* note 38, at text accompanying note 103; Norman Robbins E-mail, *supra* note 35.
- ¹²⁴ Peg Rosenfield E-mail, *supra* note 35; Candice Hoke E-mail, *supra* note 23.
- ¹²⁵ Norman Robbins Interview, *supra* note 36.
- ¹²⁶ Peg Rosenfield of the League of Women Voters of Ohio notes that the Columbus League already has access to both the Franklin County and Statewide Databases on Election Day at their phone bank, and believes all

that would be necessary to implement this suggestion would be to have one or more laptop computers with access to the Databases at each precinct. Peg Rosenfield E-mail II, *supra* note 64.

¹²⁷ 42 U.S.C. § 15482. A more limited form of provisional voting previously allowed registered Ohio voters who moved to update their registration on Election Day. 42 U.S.C. § 15482.

¹²⁸ 42 U.S.C. § 15483.

¹²⁹ 42 U.S.C. § 15483(b).

¹³⁰ OHIO REV. CODE ANN. § 3505.18 (West 2009).

¹³¹ OHIO REV. CODE ANN. § 3505.19 (West 2009).

¹³² OHIO REV. CODE ANN. § 3503.24 (West 2009).

¹³³ OHIO REV. CODE ANN. § 3503.16 (West 2009).

¹³⁴ *Id.*

¹³⁵ OHIO REV. CODE ANN. § 3505.181 (West 2009).

¹³⁶ OHIO REV. CODE ANN. § 3501.01 (definitions) (West 2009).

¹³⁷ OHIO REV. CODE ANN. § 3505.18(A)(1) (West 2009).

¹³⁸ Prior to HAVA, Ohio's use of provisional voting was still significant, though more confined. In both the 1996 and 2000 general elections, provisional ballots constituted just 2.1% of total ballots cast. Ohio Sec'y of State, Provisional Ballots – General Election 1996 (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 16); Ohio Sec'y of State, Provisional Ballots – General Election 2000 (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 17).

¹³⁹ They were Alaska (6.46%), Arizona (9.68%), California (5.22%), Colorado (3.77%), and Washington (8.31%). Voters in the District of Columbia cast provisional ballots at a rate of 3.67%. UNITED STATES ELECTION ASSISTANCE COMMISSION, 2006 ELECTION ADMINISTRATION AND VOTING SURVEY 19 (2007) [hereinafter *EAC 2006 Survey*] (annexed as Appendix 18).

¹⁴⁰ Ohio Sec'y of State, Absentee and Provisional Ballot Report: November 4, 2008, <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/absentProv110408.aspx> [hereinafter *Secretary of State 2008 Absentee and Provisional Report*] (annexed as Appendix 19).

¹⁴¹ UNITED STATES ELECTION ASSISTANCE COMMISSION, 2004 ELECTION DAY SURVEY REPORT, PART 2 SURVEY RESULTS, at 6-9 (2005) (annexed as Appendix 20).

¹⁴² EAC 2006 Survey, *supra* note 139, at 19.

¹⁴³ See Sarah D. Wire, *Statewide Voter Turnout Records Set in Missouri*, COLUMBIA MISSOURIAN, Nov. 5, 2008, available at <http://www.columbiamissourian.com/stories/2008/11/05/missouri-sees-record-number-voters/> (estimating 7,000 provisional ballots for a 2.9 million voter turnout); Virginia State Board of Elections, November 2008 Election Results, https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/95_s.shtml (annexed as Appendix 21).

¹⁴⁴ E-mail from Edward Foley, Director, Election Law at Moritz College of Law (Mar. 11, 2009).

¹⁴⁵ EAC 2006 Survey, *supra* note 139, at 19 (table C).

¹⁴⁶ Remarks of Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Marilyn Jacobcik Remarks*]; Dale Fellows Interview, *supra* note 93.

¹⁴⁷ Ohio Sec'y of State, Directive 2008-81: Guidelines for Provisional Voting, at 7 (Sept. 5, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-81.pdf>.

¹⁴⁸ Dale Fellows Interview, *supra* note 93.

¹⁴⁹ Telephone Interview with Jane Platten, *supra* note 34; Matthew Damschroder Interview, *supra* note 34; Dale Fellows Interview, *supra* note 93.

¹⁵⁰ Remarks of Edward Foley, Director, Election Law at Moritz College of Law, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Edward Foley Remarks*].

¹⁵¹ Telephone Interview with Timothy Burke, Member, Hamilton County Board of Elections (Feb. 12, 2009) [hereinafter *Timothy Burke Interview*].

¹⁵² *Id.*; Telephone Interview with Eben “Sandy” McNair, Member, Cuyahoga County Board of Elections (Feb. 12, 2009) [hereinafter *Eben “Sandy” McNair Interview*]; Matthew Damschroder Interview, *supra* note 34; Dale Fellows Interview, *supra* note 93.

- ¹⁵³ Eben “Sandy” McNair Interview, *supra* note 152; Timothy Burke Interview, *supra* note 151; Matthew Damschroder Interview, *supra* note 34.
- ¹⁵⁴ Edward Foley Remarks, *supra* note 150.
- ¹⁵⁵ Dennis J. Willard, *Ohio Needs to Overhaul Weak Voting System Now*, BEACON JOURNAL, Jan. 25, 2009, available at <http://www.ohio.com/news/38289469.html>.
- ¹⁵⁶ Telephone Interview with Donita Judge, Staff Attorney, Advancement Project (Feb. 12, 2009) [hereinafter *Donita Judge Interview*].
- ¹⁵⁷ State ex rel. Skaggs v. Brunner, 549 F.3d 468 (2008).
- ¹⁵⁸ Matthew Damschroder Interview, *supra* note 34.
- ¹⁵⁹ Dale Fellows Interview, *supra* note 93; Marilyn Jacobcik Remarks, *supra* note 146; Timothy Burke Interview, *supra* note 151.
- ¹⁶⁰ Marilyn Jacobcik Remarks, *supra* note 146.
- ¹⁶¹ Ohio Sec’y of State, 2000-2008 Provisional Ballot Data (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 17).
- ¹⁶² Marilyn Jacobcik Remarks, *supra* note 146.
- ¹⁶³ *Id.*; Matthew Damschroder Interview, *supra* note 34.
- ¹⁶⁴ Norman Robbins Interview, *supra* note 36.
- ¹⁶⁵ Matthew Damschroder Interview, *supra* note 34.
- ¹⁶⁶ Remarks of Norman Robbins, Study Leader, Greater Cleveland Voter Coalition, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Norman Robbins Remarks*]; Peg Rosenfield Interview, *supra* note 42.
- ¹⁶⁷ Telephone Interview with Steven Harsman, Director, Montgomery County Board of Elections, (Feb. 11, 2009) [hereinafter *Steven Harsman Interview*].
- ¹⁶⁸ Timothy Burke Interview, *supra* note 151; Telephone Interview with Betty McGary, Director, Butler County Board of Elections (Feb. 13, 2009) [hereinafter *Betty McGary Interview*].
- ¹⁶⁹ Telephone Interview with Edward Foley, Director, Election Law at Moritz College of Law (Jan. 7, 2009) [hereinafter *Edward Foley Interview II*], Telephone Interview with David Kimball, Associate Professor, Political Science at University of Missouri-St. Louis (Feb. 3, 2009) [hereinafter *David Kimball Interview*].
- ¹⁷⁰ Marilyn Jacobcik Remarks, *supra* note 146.
- ¹⁷¹ Dale Fellows Interview, *supra* note 93.
- ¹⁷² Jane Platten Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34.
- ¹⁷³ Donita Judge Interview, *supra* note 156, Peg Rosenfield Interview, *supra* note 42; Timothy Burke Interview, *supra* note 151.
- ¹⁷⁴ Dale Fellows Interview, *supra* note 93.
- ¹⁷⁵ Edward Foley Interview, *supra* note 86; Peg Rosenfield Interview, *supra* note 42.
- ¹⁷⁶ David Kimball Interview, *supra* note 169.
- ¹⁷⁷ *Id.*
- ¹⁷⁸ Jane Platten Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34.
- ¹⁷⁹ Daniel Tokaji Interview, *supra* note 23, Peg Rosenfield Interview, *supra* note 42.
- ¹⁸⁰ E-mail from Scott Novakowski, Senior Policy Analyst, Demos (Mar. 24, 2009).
- ¹⁸¹ IOWA SEC’Y OF STATE, IOWA SEC’Y OF STATE 2008 REPORT at 6, available at <http://www.sos.state.ia.us/pdfs/2008report.pdf>.
- ¹⁸² See ADVANCEMENT PROJECT REPORT, *supra* note 11.
- ¹⁸³ Marilyn Jacobcik Remarks, *supra* note 146.
- ¹⁸⁴ E-mail from Edward Foley, Director, Election Law at Moritz College of Law (Feb. 15, 2009) [hereinafter *Edward Foley E-mail II*].
- ¹⁸⁵ David Kimball Interview, *supra* note 169, ADVANCEMENT PROJECT REPORT, *supra* note 11; Norman Robbins Interview, *supra* note 36.
- ¹⁸⁶ David Kimball, Associate Professor of Political Science, University of Missouri-St. Louis, Chart detailing rates of provisional voting and counting in Ohio’s 2008 general election (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 22); *Provisional Voting in Ohio* scatter plot charts appended as Appendix 23.

¹⁸⁷ Secretary of State 2008 Absentee and Provisional Report, *supra* note 140; Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition, Provisional and Absentee Ballot Rejections (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 26).

¹⁸⁸ Appendix 24 also includes a chart detailing provisional voting rates by age and race. Data provided by David Kimball, Associate Professor of Political Science at University of Missouri-St. Louis.

¹⁸⁹ GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 45.

¹⁹⁰ Norman Robbins Interview, *supra* note 36; Donita Judge Interview, *supra* note 156.

¹⁹¹ Donita Judge Interview, *supra* note 156.

¹⁹² Jane Platten Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34.

¹⁹³ *Id.*

¹⁹⁴ 2000-2008 Provisional Ballot Data, *supra* note 161.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ David Kimball Interview, *supra* note 169; Norman Robbins Interview, *supra* note 36; Donita Judge Interview, *supra* note 156.

¹⁹⁸ Donita Judge Interview, *supra* note 156; Norman Robbins Interview, *supra* note 36; Peg Rosenfield E-mail, *supra* note 35.

¹⁹⁹ David Kimball Interview, *supra* note 169; Norman Robbins Interview, *supra* note 36.

²⁰⁰ Ohio's public records law provides that governmental records are available to the public. *See* OHIO REV. CODE ANN. § 149.011(G) (West 2009). Generally, a registered voter's name, address, and birth date are public information on the voter files. Voting history — that is, whether or not a voter has voted in an election, not *how* that person voted — is similarly public in many states. Information from provisional ballots, however, is further governed by HAVA, which mandates the establishment of

a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted (42 U.S.C. § 15482.5(B))

and further, that

the appropriate state or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

There are differences of opinion on what information is protected under these sections of HAVA (implemented in OHIO REV. CODE ANN. § 3505.181(B)(5)(b) (West 2009)). Some believe the laws restrict access only to confidential identification numbers that provisional voters must provide, out of a concern for identify theft, and the contents of provisional ballots themselves, in order to protect the secrecy of the ballot and urge release of other information. Donita Judge Interview, *supra* note 156; League of Women Voters of Ohio, *The Four Rs of Election Reform*, submitted in connection with the Dec. 2, 2008 Summit (on file with the Brennan Center). Others, including Secretary Brunner (*see* Advisory 2008-22), and election officials in Franklin, Hamilton & Lucas Counties read the laws to prevent releasing voters' contact information as well as whether their votes were counted. *See also* ADVANCEMENT PROJECT REPORT, *supra* note 11, at 12.

²⁰¹ In response to a public records request, Cuyahoga County election officials produced provisional ballot envelopes. ADVANCEMENT PROJECT REPORT, *supra* note 11, at 12.

²⁰² HAVA provision 42 U.S.C. § 15482(a) states in relevant part: "Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot."

²⁰³ Ohio Sec'y of State, Advisory 2008-22, Privacy of Provisional Voter and Provisional Ballot Information (Sept. 4, 2008), <http://www.sos.state.oh.us/SOS/Upload/elections/advisories/2008/Adv2008-22.pdf>.

²⁰⁴ Norman Robbins E-mail III, *supra* note 55.

²⁰⁵ State ex. rel. Skaggs v. Brunner, 2008 WL 5157872 (Dec. 5, 2008), at 10.

- ²⁰⁶ E-mail from Bryan Clark, Policy and Planning Coordinator, Ohio Secretary of State (Mar. 3, 2009) [hereinafter *Bryan Clark E-mail*].
- ²⁰⁷ Jane Platten Interview, *supra* note 34; Steven Harsman Interview, *supra* note 167.
- ²⁰⁸ 42 U.S.C. § 15482 (a)(2002); *See also* OHIO REV. CODE ANN. § 3505.18(A)(7) (LexisNexis 2007).
- ²⁰⁹ OHIO REV. CODE ANN. § 3505.181(A) (LexisNexis 2007).
- ²¹⁰ OHIO REV. CODE ANN. § 3505.181(C)(1) (West 2009).
- ²¹¹ *Id.*
- ²¹² OHIO REV. CODE ANN. §.3505.181(E)(2) (West 2009).
- ²¹³ OHIO REV. CODE ANN. § 3505.183(B)(1) (West 2009).
- ²¹⁴ Skaggs v. Brunner, 2008 WL 5157872 (Dec. 5, 2008); *but see*, Northeast Ohio Coalition for the Homeless v. Brunner, Case No. C2-06-896, order of Oct. 27, 2008.
- ²¹⁵ OHIO REV. CODE ANN. § 3505.18 (A)(2)-(6) (West 2009).
- ²¹⁶ Jane Platten Interview, *supra* note 34; Peg Rosenfield Interview, *supra* note 42.
- ²¹⁷ Written Statement of Karen Neuman and Sarah Brannon, Fair Elections Legal Network, at 1-2 (on file with the Brennan Center and annexed as Appendix 27) [hereinafter *Written Statement of Neuman & Brannon*].
- ²¹⁸ ADVANCEMENT PROJECT REPORT, *supra* note 11.
- ²¹⁹ Michael J. Pitts, *Empirically Assessing the Impact of Photo Identification at the Polls*, J. L. & POL. (forthcoming 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1287735.
- ²²⁰ Peg Rosenfield Interview, *supra* note 42.
- ²²¹ ADVANCEMENT PROJECT REPORT, *supra* note 11, Norman Robbins Interview, *supra* note 36.
- ²²² Marilyn Jacobcik Remarks, *supra* note 146; Steven Harsman Interview, *supra* note 167, Dale Fellows Interview, *supra* note 93.
- ²²³ 2000-2008 Provisional Ballot Data, *supra* note 161.
- ²²⁴ *Id.*
- ²²⁵ *Id.*
- ²²⁶ Jane Platten Interview, *supra* note 34; Steven Harsman Interview, *supra* note 93.
- ²²⁷ Peg Rosenfield Interview, *supra* note 42; Marilyn Jacobcik Remarks, *supra* note 146.
- ²²⁸ Marilyn Jacobcik Remarks, *supra* note 146.
- ²²⁹ *Id.*
- ²³⁰ *Id.*; Remarks of Brian Shinn, Assistant General Counsel, Ohio Sec’y of State, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Brian Shinn Remarks II*].
- ²³¹ Brian Shinn Remarks II, *supra* note 230.
- ²³² *See* ADVANCEMENT PROJECT REPORT, *supra* note 11.
- ²³³ Marilyn Jacobcik Remarks, *supra* note 146; Dale Fellows Interview, *supra* note 93, Steven Harsman Interview, *supra* note 167. These officials regard the basic requirement that voters produce ID documents as reasonable.
- ²³⁴ Timothy Burke Interview, *supra* note 151, Eben “Sandy” McNair Interview, *supra* note 152. Advocates also view the move to documentary identification as unnecessary. ADVANCEMENT PROJECT REPORT, *supra* note 11; Peg Rosenfield Interview, *supra* note 42, Telephone Interview with Norman Robbins, *supra* note 36.
- ²³⁵ Jane Platten Interview, *supra* note 34.
- ²³⁶ *Id.*; Matthew Damschroder Interview, *supra* note 34; Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152.
- ²³⁷ Bryan Clark E-mail, *supra* note 206.
- ²³⁸ Norman Robbins E-mail, *supra* note 55.
- ²³⁹ Written Statement of Neuman and Brannon, *supra* note 217.
- ²⁴⁰ Donita Judge Interview, *supra* note 156; Peg Rosenfield Interview, *supra* note 42; Norman Robbins Interview, *supra* note 36.
- ²⁴¹ Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152.
- ²⁴² ADVANCEMENT PROJECT REPORT, *supra* note 11; Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152; Peg Rosenfield Interview, *supra* note 42.
- ²⁴³ *Id.*
- ²⁴⁴ Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152.
- ²⁴⁵ Marilyn Jacobcik Remarks, *supra* note 146; Dale Fellows Interview, *supra* note 93.

²⁴⁶ ADVANCEMENT PROJECT REPORT, *supra* note 11; Peg Rosenfield Interview, *supra* note 42, Norman Robbins Interview, *supra* note 36.

²⁴⁷ Peg Rosenfield Interview, *supra* note 42.

²⁴⁸ Bryan Clark E-mail, *supra* note 206.

²⁴⁹ ADVANCEMENT PROJECT REPORT, *supra* note 11; Matthew Damschroder Interview, *supra* note 34.

²⁵⁰ *Id.*

²⁵¹ Marilyn Jacobcik Remarks, *supra* note 146.

²⁵² Steven Harsman Interview, *supra* note 167; Dale Fellows Interview, *supra* note 93; Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152; ADVANCEMENT PROJECT REPORT, *supra* note 11; Betty McGary Interview, *supra* note 168.

²⁵³ ADVANCEMENT PROJECT REPORT, *supra* note 11, at 7.

²⁵⁴ Ohio Sec’y of State, Election Results, General Election 2008, Provisional Ballot Statistics, <http://www.sos.state.oh.us/sos/upload/elections/2008/gen/provisionals.pdf>. Note that this number, and calculations in this section generally, include ballots cast in the wrong county because the data compiled by the Secretary’s office do not isolate ballots cast in the wrong precinct but the correct county.

²⁵⁵ *Id.* By way of comparison, these counties accounted for 54% of provisional ballots issued at the polls on Election Day.

²⁵⁶ *Id.*

²⁵⁷ *Id.* In Cuyahoga County, wrong precinct rejections made up 46% of total rejected provisional ballots; in Franklin, that figure was just 22%.

²⁵⁸ *Id.*

²⁵⁹ Norman Robbins Interview, *supra* note 36; Peg Rosenfield Interview, *supra* note 42; Catherine Turcer E-mail, *supra* note 35; Marilyn Jacobcik Interview, *supra* note 34; Matthew Damschroder Interview, *supra* note 34; Jane Platten Interview, *supra* note 34; Dale Fellows Interview, *supra* note 93.

²⁶⁰ Steven Harsman Interview, *supra* note 167; Dale Fellows Interview, *supra* note 93, Timothy Burke Interview, *supra* note 151, Donita Judge Interview, *supra* note 156; Norman Robbins Interview, *supra* note 36; Peg Rosenfield Interview, *supra* note 42.

²⁶¹ Jane Platten Interview, *supra* note 34; ADVANCEMENT PROJECT REPORT, *supra* note 11; Norman Robbins Interview, *supra* note 36.

²⁶² Donita Judge Interview, *supra* note 156; Eben “Sandy” McNair Interview, *supra* note 152. OHIO REV. CODE ANN. § 3505.181(C)(1) provides that if a poll worker determines that a voter is not eligible to vote at the polling place where the voter appeared, the poll worker “shall direct the individual to the polling place for the jurisdiction in which the individual appears to be eligible to vote.” In *Northeast Ohio Homeless Coalition*, the court ruled that “no provisional ballot cast by an eligible elector should be rejected because of a poll worker’s failure to comply with duties mandated by OHIO REV. CODE ANN. § 3505.181, which governs the procedure for casting a provisional ballot.” It is unclear, however, whether the court intended this ruling to extend to provisional ballots cast in the wrong precinct due to poll worker error — or what the standard of proof might be for determining whether poll worker error was at fault. An earlier order in the same case had adopted and annexed a directive by Secretary Brunner providing that “a board of elections shall neither open nor count the provisional ballot” if the voter “is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.” The court’s ruling that no ballot should be rejected due to poll worker error refers to that earlier order but does not discuss how, or whether, it is affected by the new order forbidding disqualification due to poll worker error; ADVANCEMENT PROJECT REPORT, *supra* note 11.

²⁶³ Timothy Burke Interview, *supra* note 151; Dale Fellows Interview, *supra* note 93; Steven Harsman Interview, *supra* note 167.

²⁶⁴ Donita Judge Interview, *supra* note 156.

²⁶⁵ Timothy Burke Interview, *supra* note 151; Dale Fellows Interview, *supra* note 93; Steven Harsman Interview, *supra* note 167; Eben “Sandy” McNair Interview, *supra* note 152; Betty McGary, *supra* note 168.

²⁶⁶ ADVANCEMENT PROJECT REPORT, *supra* note 11.

²⁶⁷ This is the policy followed in the Missouri Election Code. MO. REV. STAT. § 115.430.2; Telephone Jane Platten Interview, *supra* note 34.

²⁶⁸ ADVANCEMENT PROJECT REPORT, *supra* note 11 at 14.

²⁶⁹ E-mail from Sally Krisel, Director, Hamilton County Board of Elections (Mar.24, 2009).

²⁷⁰ Donita Judge Interview, *supra* note 156, Norman Robbins Interview, *supra* note 36, Peg Rosenfield Interview, *supra* note 42; Betty McGary, *supra* note 168; Timothy Burke Interview, *supra* note 151.

- ²⁷¹ Donita Judge Interview, *supra* note 156, Norman Robbins Interview, *supra* note 36, Peg Rosenfield Interview, *supra* note 42; Eben “Sandy” McNair Interview, *supra* note 152.
- ²⁷² Steven Harsman Interview, *supra* note 167; Eben “Sandy” McNair Interview, *supra* note 152; ADVANCEMENT PROJECT REPORT, *supra* note 11.
- ²⁷³ Steven Harsman Interview, *supra* note 167.
- ²⁷⁴ ADVANCEMENT PROJECT REPORT, *supra* note 11. This was the approach taken by a federal court in Missouri when called upon to determine whether such ballots should be counted under that state’s rule against counting provisional votes cast in the wrong polling place. *See* Hawkins v. Blunt, No. 04-4177-CV-C-RED (W.D. Mo. Oct 12, 2004) (unpublished).
- ²⁷⁵ Donita Judge Interview, *supra* note 156. Eben “Sandy” McNair Interview, *supra* note 152; Peg Rosenfield Interview, *supra* note 42; Timothy Burke Interview, *supra* note 151; Steven Harsman Interview, *supra* note 167; Norman Robbins Interview, *supra* note 36.
- ²⁷⁶ Donita Judge Interview, *supra* note 156; Timothy Burke, Member of the Hamilton County Board of Elections agrees that this made sense. Timothy Burke Interview, *supra* note 151. Dale Fellows, Member of Lake County Board of Elections suggested that rather than changing the ballot envelope, which is mostly filled out by the voter, that poll workers affix a separate sticker to the envelope with this information. Dale Fellows Interview, *supra* note 93.
- ²⁷⁷ ADVANCEMENT PROJECT REPORT, *supra* note 11.
- ²⁷⁸ Matthew Damschroder E-mail, *supra* note 59.
- ²⁷⁹ *See* OHIO REV. CODE ANN. § 3505.181C(1) (West 2009).
- ²⁸⁰ Donita Judge Interview, *supra* note 156.
- ²⁸¹ *Id.*
- ²⁸² Betty McGary Interview, *supra* note 168.
- ²⁸³ ADVANCEMENT PROJECT REPORT, *supra* note 11; Daniel Tokaji Interview, *supra* note 23; Edward Foley Remarks, *supra* note 150.
- ²⁸⁴ Donita Judge Interview, *supra* note 156.
- ²⁸⁵ David Kimball Interview, *supra* note 169.
- ²⁸⁶ *Id.*
- ²⁸⁷ David Kimball Interview, *supra* note 169; Donita Judge Interview, *supra* note 156; Norman Robbins Interview, *supra* note 36 ; Matthew Damschroder E-mail, *supra* note 59.
- ²⁸⁸ Daniel Tokaji Interview, *supra* note 23.
- ²⁸⁹ Ohio Sec’y of State, Data of Absentee Ballots Cast and Counted 2000-2008 (on file with the Brennan Center) (annexed as Appendix 28).
- ²⁹⁰ The number of absentee ballots in odd years also increased over the past decade, though at not quite as dramatic a rate. Not surprisingly, the number of absentee ballots cast in odd years is significantly lower than federal election year numbers; in 2007, the number of absentee ballots cast barely topped 250,000.
- ²⁹¹ Michael McDonald, United States Election Project, 2008 Early Voting Statistics, http://elections.gmu.edu/early_vote_2008.html.
- ²⁹² Mark Niquette, *Primary Voting Begins Tuesday; Relaxed Absentee Ballot Rules Will Be Put to Test*, COLUMBUS DISPATCH, Mar. 27, 2006, at 1C [hereinafter *Niquette*].
- ²⁹³ OHIO REV. CODE ANN. § 3509.01-.02 (West 2009).
- ²⁹⁴ OHIO REV. CODE ANN. § 3509.01-.09 (West 2009).
- ²⁹⁵ *See, e.g.*, Remarks of Daniel Tokaji, Associate Director of Election Law at Moritz College of Law, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Daniel Tokaji Remarks*]; Remarks of Greg Moore, Executive Director of the Nat’l Voter Fund of the NAACP, at the 2008 Ohio Elections Summit (Dec. 2, 2008) *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Greg Moore Remarks*]; Catherine Turcer Interview, *supra* note 42; Matthew Damschroder Interview, *supra* note 34.
- ²⁹⁶ Niquette, *supra* note 292.
- ²⁹⁷ Norman Robbins E-mail, *supra* note 35; Candice Hoke E-mail, *supra* note 23.
- ²⁹⁸ Ohio law permits only one site to be established on any day on which an elector may vote in person at the board office. OHIO REV. CODE ANN. § 3501.11(Z) (West 2009).

²⁹⁹ Peg Rosenfield Interview, *supra* note 42; Matthew Damschroder Interview, *supra* note 34; Jane Platten Interview, *supra* note 34; Information collected by the Early Voting Information Center indicates that there is no standardized procedure by which satellite centers are established. Some states leave this choice up to local election officials or boards, while others place either ceilings (e.g., Kansas) or floors (e.g., Texas) based on population. Details of the Early Voting Information Center’s findings regarding state practices in this area are annexed to this report as Appendix 29.

³⁰⁰ Daniel Tokaji Remarks, *supra* note 295.

³⁰¹ Jane Platten Interview, *supra* note 34; Telephone Interview with Dan Troy, past President, County Commissioners’ Association of Ohio (Jan. 8, 2009).

³⁰² Jane Platten Interview, *supra* note 34.

³⁰³ *Id.*

³⁰⁴ Remarks of Dan Troy, past President, County Commissioners’ Association of Ohio, at the 2008 Ohio Elections Summit (Dec. 2, 2008) *video available at*

http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t.

³⁰⁵ Matthew Damschroder E-mail, *supra* note 59.

³⁰⁶ *Id.*

³⁰⁷ Jane Platten Interview, *supra* note 34; Paul Gronke Interview, *supra* note 55.

³⁰⁸ Norman Robbins E-mail, *supra* note 35; Candice Hoke E-mail, *supra* note 23.

³⁰⁹ Telephone Interview with Wayne Olsson, Director, Defiance County Board of Elections (Feb. 10, 2009); Telephone Interview with Kim Rudd, Deputy Director, Crawford Board of Elections (Feb. 10, 2009).

³¹⁰ Jonah Goldman E-mail, *supra* note 86.

³¹¹ Paul Gronke Interview, *supra* note 55.

³¹² Norman Robbins E-mail II, *supra* note 66.

³¹³ *Id.*

³¹⁴ Collectively, certain counties in eighteen states (AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, NV, NM, NC, ND, UT, WY) establish early in-person voting locations at their city halls and county courthouses, administration buildings, senior citizen and community centers, family care and medical centers, schools, municipal airports and shopping malls.

³¹⁵ Peg Rosenfield Interview, *supra* note 42, Paul Gronke Interview, *supra* note 55, Matthew Damschroder Interview, *supra* note 34; Jane Platten Interview, *supra* note 34.

³¹⁶ *Id.*

³¹⁷ *See, e.g.*, North Carolina. N.C. GEN. STAT. § 163-227.2 (West 2009).

³¹⁸ Chart provided by Early Voting Information Center, *supra* note 299.

³¹⁹ Paul Gronke Interview, *supra* note 55; Justin Levitt E-mail, *supra* note 62.

³²⁰ Justin Levitt E-mail, *supra* note 62.

³²¹ Paul Gronke Interview, *supra* note 55.

³²² Jane Platten Interview, *supra* note 34.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ Daniel Tokaji Interview, *supra* note 23; Telephone Interview with Jocelyn Travis, Director, Ohio Votes, (Feb. 17, 2009) [hereinafter *Jocelyn Travis Interview*]; Jonah Goldman E-mail, *supra* note 86; Catherine Turcer E-mail, *supra* note 35; Donita Judge E-mail, *supra* note 35.

³²⁶ Paul Gronke Interview, *supra* note 55. Professor Edward Foley suggests using public libraries for early voting centers, noting that librarians could be trained in “poll worker” type responsibilities. Edward Foley E-mail II, *supra* note 184.

³²⁷ Telephone Interview with Dale Fellows, Member, Lake County Board of Elections (Feb. 28, 2009) [hereinafter *Dale Fellows Interview II*]; Matthew Damschroder E-mail, *supra* note 59.

³²⁸ Daniel Tokaji Remarks, *supra* note 295; Remarks of Steve Hoffman, Editorial Writer for the Akron Beacon Journal, at the 2008 Ohio Elections Summit (Dec. 2, 2008) *video available at*

http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t.

³²⁹ Deroy Murdock, *Boon for Voter Fraud, Bust for Democracy*, SEATTLE POST-INTELLIGENCER, Oct. 2, 2008, *available at* http://seattlepi.nwsourc.com/opinion/381501_murdockonline03.html; Amy Merrick, *Ohio’s Battle*

Over Early Voting, Washington Wire Blog, WALL ST. J., Sep 25, 2008, available at <http://blogs.wsj.com/washwire/2008/09/25/ohios-battle-over-early-voting/>.

³³⁰ Kimball Perry, *Only One Voter Fraud Case Found*, CINCINNATI ENQUIRER, Jan. 27, 2009, available at <http://news.cincinnati.com/article/20090127/NEWS01/301270059>; Stephen Majors, *Ohio GOP Plays Voter Fraud Card*, LEGAL TIMES, Oct. 13, 2008, available at <http://www.law.com/jsp/article.jsp?id=1202425227082>; Catherine Turcer Interview, *supra* note 42; Norman Robbins Interview, *supra* note 36; Greg Moore Remarks, *supra* note 295.

³³¹ Ohio Sec’y of State, Ohio Absentee Voting Report 2008 (on file with the Brennan Center).

³³² *Id.*

³³³ Jonah Goldman E-mail, *supra* note 86; During North Carolina’s early voting period in the presidential primary in 2008, over 261,505 people voted in advance of their May 6 primary and almost 9 percent of those (22,505) took advantage of the opportunity to register at the same time. E-mail from Steve Carbo, Senior Program Director, Demos (Aug. 14, 2008).

³³⁴ Norman Robbins E-mail II, *supra* note 66.

³³⁵ Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Kansas, North Dakota, Oklahoma, and Utah have in-person early voting periods of 15 days or less. The Early Voting Information Center provided details of early voting practices in each state. They can be found in Appendix 29 of this report.

³³⁶ Professor Foley, for instance, advocates a longer period of time for mail-in voting (perhaps three weeks), but only one week for well-staffed in person voting. Edward Foley E-mail II, *supra* note 184; Matthew Damschroder E-mail, *supra* note 59.

³³⁷ Early and Absentee Voting in the 2008 General Election chart annexed as Appendix 30. E-mail from Paul Gronke, Director, Early Voting Information Center at Reed College (Feb. 13, 2009) [hereinafter *Paul Gronke E-mail*].

³³⁸ Jeff Wilkinson Interview, *supra* note 109; Marilyn Jacobcik Interview, *supra* note 12; Matthew Damschroder Interview, *supra* note 34.

³³⁹ Arkansas, Florida, Illinois, Louisiana, North Carolina, Tennessee, Texas, and West Virginia are the states with laws specifying a set amount of days to end early voting. While Florida ends early voting two days before Election Day, Louisiana ends early voting 7 days prior to Election Day. National Conference of State Legislatures, Absentee and Early Voting, <http://www.ncsl.org/programs/legismgt/elect/absentearly.htm> (last updated in full Oct. 27, 2004; last updated in part Oct. 30, 2008).

³⁴⁰ Jonah Goldman E-mail, *supra* note 86; Edward Foley E-mail II, *supra* note 184; Paul Gronke Interview, *supra* note 55; Peg Rosenfield E-mail, *supra* note 35; Telephone Interview with Greg Moore, Executive Director of the Nat’l Voter Fund of the NAACP (Feb. 26, 2009).

³⁴¹ *Id.*

³⁴² Jonah Goldman E-mail, *supra* note 86.

³⁴³ Data analysis from Norman Robbins, Study Leader of the Greater Cleveland Voter Coalition (on file with author); Ohio Sec’y of State, Absentee and Provisional Ballot Report: November 4, 2008, <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/absentProv110408.aspx>.

³⁴⁴ Jonathan W. Chipman, Michael C. Herron & Jeffrey B. Lewis, *Residual Votes in the 2008 Minnesota Senate Race* (working paper draft Nov. 15, 2008), available at <http://www.dartmouth.edu/~herron/mn.pdf>; Stephen Ansolabehere & Charles Stewart III, *Residual Votes Attributable to Technology*, 67 J. POL. 365 (2005), available at http://journals.cambridge.org/download.php?file=%2FJOP%2FJOP67_02%2FS0022381600006617a.pdf&code=2eacab2114a9a863954f7b01a59f9543; Niquette, *supra* note 292.

³⁴⁵ Daniel Tokaji Interview, *supra* note 23; David Kimball Interview, *supra* note 169.

³⁴⁶ Candice Hoke E-mail, *supra* note 23; Jocelyn Travis Interview, *supra* note 325; Justin Levitt E-mail, *supra* note 62.

³⁴⁷ Justin Levitt E-mail, *supra* note 62; Marcus K. Garner, *Fulton County: 2,500 Absentee Votes Jeopardized*, ATLANTA J.-CONST., Nov. 14, 2008, at 1C; Ryan Lengrich, *Absentee Ballots Mailed to Wrong Lee Residences*, NEWS-PRESS, Jan. 9, 2008, available at <http://www.newspress.com/apps/pbcs.dll/article?AID=/20080109/NEWS0107/80109033>; Heath Haussamen, *Doña Ana County Discusses Absentee Ballot Problems*, Heath Haussamen on New Mexico Politics (Nov. 12, 2008, 14:00 MST), <http://haussamen.blogspot.com/2008/11/doa-ana-county-discusses-absentee.html>.

³⁴⁸ Jocelyn Travis Interview, *supra* note 325.

³⁴⁹ Peg Rosenfield E-mail, *supra* note 35; Marilyn Jacobcik Interview, *supra* note 34; E-mail from Dana Chisnell, Usability & User Research Consultant, UsabilityWorks (Feb. 2, 2009) [hereinafter *Dana Chisnell E-mail*]; E-mail

from Josephine Scott, Usability Engineer, Usability Professionals' Association-Michigan (Jan. 30, 2009) [hereinafter *Josephine Scott E-mail*]; E-mail from Whitney Quesenbery, Independent Usability Expert (Jan. 30, 2009) [hereinafter *Whitney Quesenbery E-mail*].

³⁵⁰ Peg Rosenfield E-mail, *supra* note 35; Dana Chisnell E-mail, *supra* note 349; Josephine Scott E-mail, *supra* note 349; Whitney Quesenbery E-mail, *supra* note 349.

³⁵¹ *Id.*

³⁵² See, e.g., Tokaji, *supra* note 121.

³⁵³ Marilyn Jacobcik Interview, *supra* note 12; Jeff Wilkinson Interview, *supra* note 109. Peg Rosenfield said that although she likes the idea, she does not favor the details of the directive's implementation. Peg Rosenfield E-mail, *supra* note 35.

³⁵⁴ Ohio Sec'y of State, Directive 2008-109: Notifying Voters of Absentee Ballot ID Envelope Errors (Nov. 3, 2008), available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-109.pdf>.

³⁵⁵ Jane Platten Interview, *supra* note 34.

³⁵⁶ See Bryan Clark E-mail, *supra* note 206; OHIO REV. CODE ANN. § 3509.05(A) (West 2009).

³⁵⁷ Daniel Tokaji Interview, *supra* note 117; Edward Foley Interview II, *supra* note 169; Peg Rosenfield E-mail, *supra* note 35; Norman Robbins E-mail, *supra* note 35; Donita Judge E-mail, *supra* note 35.

³⁵⁸ Written Statement from Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections, at 2-3 (on file with the Brennan Center and annexed as Appendix 32).

³⁵⁹ For instance, an election night tally of votes in Franklin County appeared to show that voters who used paper ballots (mostly absentee and provisional ballots, for which there was no precinct counter to alert voters that they had overvoted) were 2/12 times more likely not to have their presidential vote counted as those who used electronic touch-screens. Officials attributed this to the paper ballot "double bubble," where voters filled in the bubble next to a presidential candidate's name and then wrote in the name on the space reserved for write-in candidates. These were initially read by machines as overvotes; ultimately they were counted, in keeping with the state's policy of determining voter intent. Darrel Rowland, *Rejected Ballots Get Sorted Out*, COLUMBUS DISPATCH, Dec. 25, 2008, available at http://www.dispatchpolitics.com/live/content/local_news/stories/2008/12/26/copy/GOOFY_VOTES.AR_T_ART_12-26-08_A1_4LCBH8R.html?sid=101. Unfortunately, sometimes design flaws will result in errors that will make it impossible to determine voter intent (an obvious example is the butterfly ballot in Palm Beach County in 2000, but there are many others. See generally BETTER BALLOTS, *supra* note 17).

³⁶⁰ Stephen Ansolabehere & Charles Stewart III, *supra* note 344; David Kimball & Martha Kropf, *Early and Absentee Voting and Unrecorded Votes in the 2002 Midterm Election* (paper presented at the Annual Meeting of the Midwest Political Science Association, 2004), available at <http://www.umsl.edu/~kimball/mpsa04kk.pdf>.

³⁶¹ They were Ashtabula, Athens, Auglaize, Champaign, Lawrence, Logan, Madison, Ottawa, Seneca and Shelby. A memo sent by the Brennan Center and other organizations to Secretary Brunner (which was subsequently forwarded to all counties by the Secretary's office) describing why this could be a problem is annexed as Appendix 41.

³⁶² E-mail from David Kimball, Associate Professor of Political Science, University of Missouri-St. Louis (Mar. 8, 2009) [hereinafter *David Kimball E-mail II*].

³⁶³ Paul Gronke Interview, *supra* note 55.

³⁶⁴ E-mail from Doug Jones, Professor, University of Iowa (Feb. 10, 2009).

³⁶⁵ Norman Robbins E-mail III, *supra* note 54.

³⁶⁶ Jane Platten Interview, *supra* note 34; Peg Rosenfield E-mail, *supra* note 42.

³⁶⁷ Daniel Tokaji Remarks, *supra* note 295; Jocelyn Travis Interview, *supra* note 325; Donita Judge E-mail, *supra* note 35.

³⁶⁸ PROJECT VOTE, YOUR BALLOT'S IN THE MAIL: VOTE BY MAIL AND ABSENTEE VOTING 6-7 (July 9, 2007), available at http://projectvote.org/fileadmin/ProjectVote/Policy_Briefs/PB13-Vote_by_Mail.pdf [hereinafter *Project Vote Report*].

³⁶⁹ Peg Rosenfield Interview, *supra* note 42; Jane Platten Interview, *supra* note 34.

³⁷⁰ Remarks of David Farrell, Deputy Assistant Secretary of State, Ohio Secretary of State's Office, at the 2008 Ohio Elections Summit (Dec. 2, 2008), video available at http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t.

³⁷¹ Project Vote Report, *supra* note 368; Daniel Tokaji Remarks, *supra* note 295; Jocelyn Travis Interview, *supra* note 325.

- ³⁷² Peg Rosenfield E-mail, *supra* note 64.
- ³⁷³ Norman Robbins E-mail, *supra* note 35; Jocelyn Travis Interview, *supra* note 325. The 60 day notice of election requirement expired after the 2008 general election.
- ³⁷⁴ Peg Rosenfield E-mail, *supra* note 64; Jocelyn Travis Interview, *supra* note 325; Catherine Turcer E-mail, *supra* note 35; E-mail from Sibley Arnebeck, Office Manager, Common Cause/Ohio (Feb. 27, 2009) [hereinafter *Sibley Arnebeck E-mail*].
- ³⁷⁵ JOB SEREBROV & TOVA WANG, VOTING FRAUD AND VOTER INTIMIDATION: REPORT TO THE U.S. ELECTION ASSISTANCE COMMISSION (2007), available at http://graphics8.nytimes.com/packages/pdf/national/20070411voters_draft_report.pdf; MICHAEL ALVAREZ & THAD E. HALL, POINT, CLICK AND VOTE: THE FUTURE OF INTERNET VOTING 90 (Brookings Institution Press 2004); JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD (Brennan Center for Justice ed. 2007), available at <http://www.brennancenter.org/content/resource/truthaboutvoterfraud/>.
- ³⁷⁶ See JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY (Encounter Books 2004); Mireya Navarro, *Fraud Ruling Invalidates Miami Mayoral Election*, N.Y. Times, Mar. 5, 1998, at A1; See NATHAN CEMENSKA, KEY QUESTIONS FOR KEY STATES—FLORIDA, ELECTION LAW AT MORITZ COLLEGE OF LAW 11 (Jun. 20, 2008), available at http://moritzlaw.osu.edu/electionlaw/docs/50Q_for_FL.pdf; see NATHAN CEMENSKA, KEY QUESTIONS FOR KEY STATES—PENNSYLVANIA, ELECTION LAW AT MORITZ COLLEGE OF LAW 8 (Jun. 20, 2008), available at http://moritzlaw.osu.edu/electionlaw/docs/50Q_for_PA.pdf.
- ³⁷⁷ Paul Gronke Interview, *supra* note 55; Candice Hoke E-mail, *supra* note 23; See also Joaquin G. Avila, *The Washington 2004 Gubernatorial Election Crisis: The Necessity of Restoring Public Confidence in the Electoral Process*, 29 SEATTLE U. L. REV. 313 (2005).
- ³⁷⁸ Marilyn Jacobcik Interview, *supra* note 34; Jane Platten Interview, *supra* note 34; Michael Stinziano Interview, *supra* note 36.
- ³⁷⁹ E-mail from Paul Gronke, Director of the Early Voting Information Center at Reed College (Mar. 2, 2009) [hereinafter *Paul Gronke E-mail II*].
- ³⁸⁰ *Id.*
- ³⁸¹ *Id.*
- ³⁸² Telephone Interview with J. Quin Monson, Assistant Professor of Political Science, Brigham Young University (Feb. 11, 2009) [hereinafter *J. Quin Monson Interview*]; see also Thad E. Hall, J. Quin Monson & Kelly D. Patterson, *The Human Dimension of Elections: How Poll Workers Shape Public Confidence in Elections*, POL. RES. Q. (Oct. 2008).
- ³⁸³ Ryan L. Claassen, David B. Magleby, J. Quin Monson & Kelly D. Patterson, “At Your Service”: Voter Evaluations of Poll Worker Performance, 36 AM. POLITICS RES. 612, 628 (2008) [hereinafter *Claassen et al.*]
- ³⁸⁴ Stephen T. Mockabee, J. Quin Monson & Kelly D. Patterson, *Evaluating On-line Training: A Study of Poll Worker Training in Butler and Delaware Counties, Ohio for the March 4, 2008 Presidential Primary Election* (forthcoming, Pew Center on the States) (on file with the Brennan Center) [hereinafter *Mockabee et al.*]; J. Quin Monson Interview, *supra* note 382.
- ³⁸⁵ Dale Fellows Interview, *supra* note 146.
- ³⁸⁶ UNITED STATES ELECTION ASSISTANCE COMMISSION, COMPENDIUM OF STATE POLL WORKER REQUIREMENTS 117 (Aug. 2007) (citing OHIO REV. CODE ANN. § 3501.27 (A), (B), (C)).
- ³⁸⁷ Jeff Wilkinson Interview, *supra* note 109.
- ³⁸⁸ See, e.g., ADVANCEMENT PROJECT, PLIGHT OF THE POLL WORKER: EFFORT TO IMPROVE TRAINING AND SUPPORT FOR POLL WORKERS IN OHIO, PENNSYLVANIA, MARYLAND, FLORIDA, AND MICHIGAN (Sept. 2008) [hereinafter ADVANCEMENT PROJECT POLL WORKER REPORT]; Hall, Monson & Patterson, *supra* note 382.
- ³⁸⁹ Jeff Wilkinson Remarks, *supra* note 22; Peg Rosenfield Interview, *supra* note 42; Jane Platten Interview, *supra* note 34.
- ³⁹⁰ Jeff Wilkinson Remarks, *supra* note 22.
- ³⁹¹ Jeff Wilkinson Interview, *supra* note 109; Peg Rosenfield Interview, *supra* note 42; Matthew Damschroder Interview, *supra* note 34; Timothy Burke Interview, *supra* note 151; Eben “Sandy” McNair Interview, *supra* note 152.
- ³⁹² Betty McGary Interview, *supra* note 168.
- ³⁹³ Remarks during Poll Worker panel, 2009 Ohio Elections Conference (Mar. 12, 2009), video available at <http://www.ohiochannel.org>.
- ³⁹⁴ Claassen *et al.*, *supra* note 383.

- ³⁹⁵ Dale Fellows Interview II, *supra* note 327; Timothy Burke Interview, *supra* note 151; Donita Judge Interview, *supra* note 156. Peg Rosenfield E-mail, *supra* note 35; Catherine Turcer E-mail, *supra* note 35.
- ³⁹⁶ Claassen *et al.*, *supra* note 383.
- ³⁹⁷ UNITED STATES ELECTION ASSISTANCE COMMISSION, SUCCESSFUL PRACTICES FOR POLL WORKER RECRUITMENT (July 2007), *available at* <http://www.eac.gov/files/BPPollWorker/Section%201%20Recruitment.pdf>.
- ³⁹⁸ Timothy Burke Interview, *supra* note 151.
- ³⁹⁹ OHIO REV. CODE ANN. § 3501.22 (D), as amended by Am. Oh. Sub. H.B. 350; *See* Ohio Sec’y of State, Advisory 2008-15: 17-year old Poll Workers – R.C. 3501.22 as amended by Am. Sub. H.B. 350 (Aug. 7, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/advisories/2008/Adv2008-15.pdf>.
- ⁴⁰⁰ Jane Platten, Director of the Cuyahoga County Board of Elections noted that in addition to serving as the “first line of defense” in getting persons to the correct precincts, high schoolers were fully trained as poll workers and filled in where needed. Jane Platten Interview, *supra* note 34.
- ⁴⁰¹ Timothy Burke Interview, *supra* note 151; Dale Fellows Interview II, *supra* note 327.
- ⁴⁰² Dale Fellows Interview, *supra* note 93.
- ⁴⁰³ Donita Judge Interview, *supra* note 156.
- ⁴⁰⁴ Dale Fellows Interview, *supra* note 327.
- ⁴⁰⁵ Matthew Damschroder Interview, *supra* note 34; Dale Fellows Interview, *supra* note 146; Donita Judge Interview, *supra* note 156; Peg Rosenfield E-mail, *supra* note 35; Catherine Turcer said that special pins for long-term poll workers or split-shifts might be ways to more easily recruit and retain workers. Catherine Turcer E-mail, *supra* note 35; Sibley Arnebeck E-mail, *supra* note 374.
- ⁴⁰⁶ Dale Fellows Interview, *supra* note 93.
- ⁴⁰⁷ Donita Judge Interview, *supra* note 156.
- ⁴⁰⁸ Telephone Interview with Norman Robbins, Former Study Leader of the Greater Cleveland Voter Coalition (Feb. 16, 2009) [hereinafter *Norman Robbins Interview II*].
- ⁴⁰⁹ Donita Judge Interview, *supra* note 156; *See* ADVANCEMENT PROJECT POLL WORKER REPORT, *supra* note 388.
- ⁴¹⁰ Jane Platten Interview, *supra* note 34; Jeff Wilkinson Interview, *supra* note 109; Dale Fellows Interview II, *supra* note 327; Betty McGary Interview, *supra* note 168.
- ⁴¹¹ Betty McGary Interview, *supra* note 168, Mockabee *et al.*, *supra* note 384.
- ⁴¹² Matthew Damschroder Interview, *supra* note 34; Dale Fellows Interview, *supra* note 146; Betty McGary Interview, *supra* note 168.
- ⁴¹³ Matthew Damschroder Interview, *supra* note 34.
- ⁴¹⁴ Mockabee *et al.*, *supra* note 384; J. Quin Monson Interview, *supra* note 382.
- ⁴¹⁵ Jeff Wilkinson Interview, *supra* note 109.
- ⁴¹⁶ *See e.g.*, ADVANCEMENT PROJECT POLL WORKER REPORT, *supra* note 388; Donita Judge Interview, *supra* note 156.
- ⁴¹⁷ Jane Platten Interview, *supra* note 34; Betty McGary Interview, *supra* note 168.
- ⁴¹⁸ *Id.*
- ⁴¹⁹ Matthew Damschroder Interview, *supra* note 34.
- ⁴²⁰ *Id.*
- ⁴²¹ *Id.*; Betty McGary Interview, *supra* note 168; Dale Fellows Interview, *supra* note 93; Peg Rosenfield E-mail, *supra* note 35; Catherine Turcer E-mail, *supra* note 35; Sibley Arnebeck E-mail, *supra* note 374.
- ⁴²² Matthew Damschroder Interview, *supra* note 34.
- ⁴²³ *Id.*; Michael Stinziano Interview, *supra* note 36.
- ⁴²⁴ Donita Judge Interview, *supra* note 156.
- ⁴²⁵ Remarks during Poll Worker panel, *supra* note 394.
- ⁴²⁶ Voter Classification Diagram and Poll Worker Errors Charts annexed as Appendix 34. Betty McGary Interview, *supra* note 168.
- ⁴²⁷ J. Quin Monson Interview, *supra* note 382.
- ⁴²⁸ GREATER CLEVELAND VOTER COALITION, RESULTS OF EXIT POLLS ON MAY 2, 2006, *available at* <http://www.clevelandvotes.org/news/reports/ExitPollReport.pdf>.
- ⁴²⁹ Daniel Tokaji Interview, *supra* note 23.
- ⁴³⁰ *Id.*

⁴³¹ THEODORE ALLEN, MIKHAIL BERNSHTEYN & CHRIS ROCKWELL, HELPING FRANKLIN COUNTY VOTE IN 2008: WAITING LINES 2 (2008), *available at* <http://vote.franklincountyohio.gov/boe/assets/pdf/2008/general/gen2008-voting-machine-allocation.pdf> [hereinafter WAITING LINES REPORT] (annexed as Appendix 35).

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Stephen Majors, *Paper Ballots Hold Up Count in Ohio Counties*, THE GUARDIAN, Nov. 8, 2008, *available at* <http://www.guardian.co.uk/us/latest/story/0,,7996898,00.html?gusrc=gpd>; Claudia Cruz, *Long Lines Early, But No Lines Now*, *Ohio Dispatch*, HUFFINGTON POST, Nov. 4, 2008, *available at* http://www.huffingtonpost.com/claudia-cruz/ohio-dispatch-long-lines_b_140930.html.

⁴³⁵ Mark Niquette, *Election Problems? Not in Ohio*, COLUMBUS DISPATCH, Nov. 5, 2008, *available at* http://www.dispatchpolitics.com/live/content/local_news/stories/2008/11/05/copy/election_problems.htm?sid=101; Todd R. Weiss, *Post-Election Advice: Vote Early*, COMPUTERWORLD, Nov. 8, 2008, *available at* http://www.pcworld.com/businesscenter/article/153546/postelection_advice_vote_early.html.

⁴³⁶ *See generally* Bob Driehaus, *Ohio Officials at Odds Over Paper Ballot*, N.Y. TIMES, Feb. 10, 2008, *available at* <http://www.nytimes.com/2008/02/10/us/politics/10ohio.html>; Dean Narciso, *Paper Ballots Put on Standby*, COLUMBUS DISPATCH, Nov. 4, 2008, *available at* http://www.dispatchpolitics.com/live/content/local_news/stories/2008/11/04/copy/paperwait.ART_ART_11-04-08_A1_HDBPPLJ.html?sid=101.

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ ADVANCEMENT PROJECT, END OF THE LINE? PREPARING FOR A SURGE IN VOTER TURNOUT IN THE NOVEMBER 2008 GENERAL ELECTION, *available at*

www.advancementproject.org [hereinafter END OF THE LINE REPORT] (annexed as Appendix 36).

⁴⁴⁰ Data of Absentee Ballots Cast and Counted 2000-2008, *supra* note 289.

⁴⁴¹ WAITING LINES REPORT, *supra* note 431.

⁴⁴² Remarks of Jane Platten, Director, Cuyahoga County Board of Elections, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Jane Platten Remarks*].

⁴⁴³ E-mail from Bryan Clark, Policy & Planning Coordinator, Ohio Sec'y of State (Apr. 1, 2009).

⁴⁴⁴ Sub. H.B. 3, 126th Gen. Assem., Reg. Sess. (Oh. 2005), made effective on May 2, 2006.

⁴⁴⁵ Remarks of Theodore Allen, Professor, Ohio State University, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Theodore Allen Remarks*].

⁴⁴⁶ *See e.g.*, *80% of Ohio's Eligible Voters Likely to Cast Ballots*, ASSOCIATED PRESS, Oct. 28, 2008, *available at* <http://www.vindy.com/news/2008/oct/28/80-of-ohio8217s-eligible-voters-likely-to-cast/>.

⁴⁴⁷ Remarks of Bruce Burnworth, Delaware County Presiding Judge, Remarks, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t; Telephone interview with Jocelyn Travis, Director, Ohio Votes (Feb. 17, 2009).

⁴⁴⁸ Bryan Clark E-mail, *supra* note 443.

⁴⁴⁹ Daniel Tokaji Remarks, *supra* note 295.

⁴⁵⁰ Dan Troy Remarks, *supra* note 304.

⁴⁵¹ *Id.*

⁴⁵² Jane Platten, *supra* note 442.

⁴⁵³ Daniel Tokaji Remarks, *supra* note 295; Adam J. Berinsky, Nancy Burns & Michael W. Traugott, *Who Votes By Mail? A Dynamic Model of the Individual-Level Consequences of Voting-By-Mail Systems*, 65 PUB. OPINION Q. 178 (2001); Adam J. Berinsky, *The Perverse Consequences of Electoral Reform in the United States*, 33 AM. POL. RES. 471 (2005).

⁴⁵⁴ *Id.*

⁴⁵⁵ Greg Moore Remarks, *supra* note 295.

- ⁴⁵⁶ Ohio Sec’y of State, Directive 2008-59: Optical Scan Ballots for Voters in Counties Using DRE Voting Machines (Jul. 25, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-59.pdf>.
- ⁴⁵⁷ Ohio Sec’y of State, Directive 2008-65: Precinct Polling Location Arrangement and Diagram for Counties Using DREs (Aug. 13, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-65.pdf>.
- ⁴⁵⁸ WAITING LINES REPORT, *supra* note 431.
- ⁴⁵⁹ Comments of Al Siegal, Presiding Judge, Delaware County, at the 2008 Ohio Elections Summit (Dec. 2, 2008) *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t.
- ⁴⁶⁰ Bryan Clark E-mail, *supra* note 443.
- ⁴⁶¹ Jeff Wilkinson Remarks, *supra* note 22; Dale Fellows Interview, *supra* note 93.
- ⁴⁶² Jeff Wilkinson Remarks, *supra* note 22.
- ⁴⁶³ Dan Troy Interview, *supra* note 301.
- ⁴⁶⁴ David Farrell Remarks, *supra* note 370.
- ⁴⁶⁵ Remarks of Dale Fellows, Director, Lake County Board of Elections, at the 2008 Ohio Elections Summit (Dec. 2, 2008) *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t [hereinafter *Dale Fellows Remarks*]; Dale Fellows Interview, *supra* note 93.
- ⁴⁶⁶ Chipman, Herron & Lewis, *supra* note 346; Ansolabehere & Stewart, *supra* note 346.
- ⁴⁶⁷ E-mail from Candice Hoke, *supra* note 23; Telephone Interview with Daniel Tokaji, *supra* note 23; Telephone Interview with David Kimball, *supra* note 23.
- ⁴⁶⁸ David Farrell Remarks, *supra* note 370.
- ⁴⁶⁹ NAACP-SCP v. Cortes, 2:08-CV-05048 (2009); Illinois and Indiana require that emergency ballots be kept at their polling places.
- ⁴⁷⁰ WAITING LINES REPORT, *supra* note 431.
- ⁴⁷¹ *Id.*
- ⁴⁷² END OF THE LINE REPORT, *supra* note 439.
- ⁴⁷³ Remarks of Donnie Lenchard, public participant, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* <http://www.ohiochannel.org>.
- ⁴⁷⁴ Donita Judge E-mail, *supra* note 35; Betty McGary Interview, *supra* note 168.
- ⁴⁷⁵ Remarks of Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio, at the 2008 Ohio Elections Summit (Dec. 2, 2008), *video available at* http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t.
- ⁴⁷⁶ Dale Fellows Interview, *supra* note 93.
- ⁴⁷⁷ After facing numerous problems on Election Day 2006, the city and county of Denver moved away from local voting precincts to a model of fewer regional voting centers. Todd R. Weiss, *States Ready E-Voting Systems as Election Day Approaches*, COMPUTERWORLD, Oct. 2, 2008, <http://www.verifiedvotingfoundation.org/article.php?id=6621>.
- ⁴⁷⁸ Daniel Tokaji commented that permanent absentee voting is good for the elderly, but otherwise, it become troublesome due to voter fraud. He noted that voter fraud may or may not be a widespread issue, but it is a concern when you start talking about expanding mail. Daniel Tokaji Remarks, *supra* note 295.
- ⁴⁷⁹ *Id.*
- ⁴⁸⁰ Deborah Radcliffe, *Q&A: For e-voting, Holt Looks to Undo HAVA's Havoc*, COMPUTERWORLD-SECURITY, http://www.computerworld.com/action/article.do?command=viewArticleBasic&taxonomyName=standards_and_legal_issues&articleId=9060158&taxonomyId=146&intsrc=kc_feat.
- ⁴⁸¹ OHIO REV. CODE ANN. § 3506.10 (West 2009).
- ⁴⁸² Candice Hoke E-mail, *supra* note 23.
- ⁴⁸³ LAWRENCE NORDEN & ERIC LAZARUS, *THE MACHINERY OF DEMOCRACY: PROTECTING ELECTIONS IN AN ELECTRONIC WORLD* (Academy Chicago Press 2007).
- ⁴⁸⁴ Information taken from Verified Voting Map: Mandatory Manual Audits of Voter-Verified Paper Records, <http://www.verifiedvoting.org/downloads/StateManualAuditProvisions-10-16-08.pdf>.

- ⁴⁸⁵ In January 2009, Montana Senator Mike Cooney sponsored S.B. 155, a bill requiring post-election audits of voting machines. *Montana Legislation to Support Post-Election Audits of Voting Machines*, GOVERNMENT TECHNOLOGY, Jan. 20, 2009, <http://www.govtech.com/gt/588538>; E-mail from Sean Flaherty, Researcher, Verified Voting (Mar. 2, 2009).
- ⁴⁸⁶ Ohio Sec’y of State, Directive 2008-113: Post-Election Audits for November 4, 2008 (Nov. 14, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-113.pdf>; Ohio Sec’y of State, Directive 2008-39: Post-Election Audits (Mar. 21, 2008), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-39.pdf>.
- ⁴⁸⁷ Steven Harsman Interview, *supra* note 167; Matthew Damschroder Interview, *supra* note 34.
- ⁴⁸⁸ Lynn Hulsey, *Audit Shows Issues With Area Voting Machines*, DAYTON DAILY NEWS, Dec. 17, 2008, *available at* <http://www.daytondailynews.com/n/content/oh/story/news/local/2008/12/17/ddn121708votingmachine.html> (Montgomery County reported problems with some voting machines’ paper records and with scanners that read paper ballots, as well as the issue of five ballots missing from one machine’s memory card in); Press Release, Ohio Sec’y of State, Ohio Secretary of State Files Counterclaim in Lawsuit with Premier Election Solutions (Aug. 6, 2008), *available at* <http://www.sos.state.oh.us/SOS/News/UI/Default.aspx?page=9493&AspxAutoDetectCookieSupport=1> (The Butler County Board of Elections reported ‘a serious equipment malfunction’ that took place during the primary election).
- ⁴⁸⁹ Jane Platten Interview, *supra* note 34.
- ⁴⁹⁰ Telephone Interview with Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Mar. 4 2009) [hereinafter *Matthew Damschroder Interview II*]; Telephone Interview with Ron Olson, Steering Committee Member, C.A.S.E. (Mar 5, 2009) [hereinafter *Ron Olson Interview*].
- ⁴⁹¹ *Id.*; Jane Platten Interview, *supra* note 34; Remarks made during Post-Election Audits panel during the 2009 Ohio Elections Conference (Mar 12, 2009), *video available at* <http://www.ohiochannel.org>; Telephone Interview with Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections (Mar. 17, 2009) [hereinafter *Marilyn Jacobcik Interview II*]; Interview with Karla Herron, Deputy Director, Union County Board of Elections (Mar. 25, 2009); Remarks of Ron Olson, Steering Committee Member, C.A.S.E., at the 2009 Ohio Elections Conference (Mar. 12, 2009), *video available at* <http://www.ohiochannel.org>; Remarks of Pamela Smith, President, Verified Voting, at the 2009 Ohio Elections Conference (Mar. 12, 2009), *video available at* <http://www.ohiochannel.org>; Matt Damschroder Interview, *supra* note 34.
- ⁴⁹² Libertarian Party of Ohio, et al. v. Blackwell, 462 F.3d 579 (6th Cir. 2006).
- ⁴⁹³ Libertarian Party of Ohio, et al. v. Brunner, 567 F.Supp.2d 1006 (S.D. Ohio 2008).
- ⁴⁹⁴ OHIO REV. CODE ANN. § 3517.01(1)(A) (West 2009).
- ⁴⁹⁵ Ohio Sec’y of State, Directive 2007-09: Access of Political Parties to the Ballot in Ohio (May 21, 2007), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2007/Dir2007-09.pdf> [hereinafter *Directive 2007-09*]; OHIO REV. CODE ANN. §§ 3517.01(1)(A), 3517.12 (West 2009).
- ⁴⁹⁶ OHIO REV. CODE ANN. § 3501.01(E) (West 2009).
- ⁴⁹⁷ Libertarian Party of Ohio, et al. v. Blackwell, 462 F.3d 579 (6th Cir. 2006).
- ⁴⁹⁸ *Id.*
- ⁴⁹⁹ Directive 2007-09, *supra* note 495.
- ⁵⁰⁰ *Id.*
- ⁵⁰¹ Libertarian Party of Ohio, et al. v. Brunner, 567 F.Supp.2d 1006 (S.D. Ohio 2008).
- ⁵⁰² Brian Shinn Remarks, *supra* note 13.
- ⁵⁰³ *Id.*
- ⁵⁰⁴ OHIO CONST. ART. V, § 7.
- ⁵⁰⁵ Remarks of Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio, at the 2009 Ohio Elections Conference (Mar. 12, 2009), *video available at* <http://www.ohiochannel.org>.
- ⁵⁰⁶ Remarks of Kevin Knedler, Chair, Ohio Libertarian Party, at the 2009 Ohio Elections Conference (Mar. 12, 2009) [hereinafter *Kevin Knedler Remarks*].
- ⁵⁰⁷ Brian Shinn Remarks, *supra* note 13.
- ⁵⁰⁸ Those six states are: California, Hawaii, Mississippi, North Dakota, Oklahoma, and Tennessee.
- ⁵⁰⁹ Libertarian Party of Ohio, et al. v. Blackwell, 462 F.3d 579, 583 (6th Cir. 2006).
- ⁵¹⁰ Directive 2007-09, *supra* note 495.
- ⁵¹¹ Libertarian Party of Ohio, et al. v. Blackwell, 462 F.3d 579 (6th Cir. 2006); Libertarian Party of Ohio, et al. v. Brunner, 567 F.Supp.2d 1006 (S.D. Ohio 2008).

- ⁵¹² Comments of Don Elijah Eckhart, Ohio independent candidate, at the 2009 Ohio Elections Conference (Mar. 12, 2009). Additional comments provided by Don Eckhart are annexed as Appendix 40.
- ⁵¹³ Remarks made during Ballot Access panel during the 2009 Ohio Elections Conference (Mar. 12, 2009), *video available at* <http://www.ohiochannel.org>.
- ⁵¹⁴ *Libertarian Party of Ohio, et al. v. Blackwell*, 462 F.3d 579 (6th Cir. 2006).
- ⁵¹⁵ Brian Shinn Remarks, *supra* note 13.
- ⁵¹⁶ Remarks of Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections, at the 2009 Ohio Elections Conference (Mar. 12, 2009) [hereinafter *Marilyn Jacobcik Remarks II*].
- ⁵¹⁷ The Libertarian Party of Ohio has prepared draft legislation that proposes many of the changes described in this section. A copy of that legislation is annexed as Appendix 39.
- ⁵¹⁸ Kevin Knedler Remarks, *supra* note 506. In *Libertarian Party of Ohio, et al. v. Blackwell*, Richard Winger prepared a chart listing the ballot access maintenance requirements in all the states.
- ⁵¹⁹ Kevin Knedler Remarks, *supra* note 506.