



PRELIMINARY REPORT  
ON THE  
2008 OHIO  
ELECTIONS SUMMIT

by Lawrence Norden (chair of the Elections Summit)  
with Jessie Allen

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## PRELIMINARY REPORT

This “Preliminary Report” was drafted at the request of Secretary Brunner. Drafted with Jessie Allen (a former attorney at the Brennan Center), it aims to facilitate discussion at the March 12-13, 2009 elections summit by summarizing and organizing some of the data, concerns, and suggestions on election reform that surfaced at the first, December 2, 2008 elections summit, and in subsequent interviews. The sources for the information and ideas in this report include the statements of those who participated in the December summit; written testimony provided for the December summit; interviews conducted by Brennan Center staff with election officials, other Ohio public officials, voting rights advocates, members of the media, and Ohio voters;<sup>1</sup> and figures and analyses supplied in response to requests made to the Ohio Secretary of State’s office,<sup>2</sup> the Early Voting Information Center, the Pew Center for the States, and Professors Edward Foley, Paul Gronke, Candice Hoke, David Kimball, Quin Monson, Norman Robbins, and Dan Tokaji, among others.

This report does not advocate a particular agenda; the policy suggestions we present reflect the diversity of opinion amongst summit participants and interviewees and, as the reader may note, are occasionally conflicting. We hope that the ideas presented by this diverse group of stakeholders can assist in building an informed consensus for election reforms where they are needed.

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<sup>1</sup> A list of individuals we interviewed can be found in Appendix 1 of this report.

<sup>2</sup> A copy of our request to the Secretary of State’s Office, as well as a list of the data that was supplied can be found in Appendix 2 of this report.

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## Preface

By Lawrence Norden, Chair of the 2008 Ohio Elections Summit

Ohio's 2008 election has been widely hailed as a success.<sup>3</sup> Voting rights advocates, members of the press, county election officials, and academics point to a number of changes in 2008 that they believe improved election administration in Ohio. Though there was some disagreement about what changes were positive developments and what were not, the most commonly mentioned "improvements" were the following: the use of early in-person absentee voting and increase in mail-in voting, which many advocates, election officials and academics credited with reducing lines on Election Day; and permitting high school students to work on a limited basis, which some election officials believe improved operations at the polling place; pushing back the filing deadline for Statewide Initiatives, allowing county boards more time to prepare for elections; improved and standardized poll worker training, including the development of a poll worker flip chart; and the use of "error-notice" technology in every polling place in Ohio, which some academics believe cut down on the number of lost votes due to voter-error.<sup>4</sup>

To her substantial credit, Secretary of State Jennifer Brunner made clear soon after the election that despite its overall administrative success, she wanted to assess carefully what could be done better in future elections. She sought input about the 2008 election from a wide variety of observers on the question of how best to improve Ohio's election system. On December 2, 2008, Secretary Brunner convened a bipartisan group of election officials, academics, advocates, legislators, and concerned citizens from around Ohio for an all-day summit whose goal was "improv[ing] the election process for the voters of Ohio."<sup>5</sup>

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<sup>3</sup> Editorial, *A Well Run Election*, TOLEDO BLADE, Nov. 9, 2008; Jocelyn Travis, *Secretary of State Jennifer Brunner's election performance should put to rest calls for revamping vote process in Ohio*, Letters Unlimited, The Cleveland Plain Dealer (Nov. 18, 2008, 5:25 AM EST), [http://blog.cleveland.com/letters/2008/11/secretary\\_of\\_state\\_jennifer\\_br.html](http://blog.cleveland.com/letters/2008/11/secretary_of_state_jennifer_br.html); *This Election Was No Mickey Mouse Affair*, AKRON BEACON JOURNAL, Nov. 16, 2008; 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](http://www.dispatchpolitics.com/live/content/local_news/stories/2008/11/05/copy/election_problems.htm?sid=101); Michael Powell and Larry Rohter, *Across Ohio, Tough Battle Is Fought by Campaign Volunteers for Both Parties*, N.Y. TIMES, Nov. 5, 2008, at P8.

<sup>4</sup> E-mail from Daniel Tokaji, Associate Director, Election Law at Moritz College of Law (Mar. 3, 2009) (on file with the Brennan Center); E-mail from Sibley Arnebeck, Office Manager, Common Cause/Ohio (Feb. 27, 2009) (on file with the Brennan Center) [hereinafter *Sibley Arnebeck E-mail*]; E-mail from Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition (Feb. 23, 2009) (on file with the Brennan Center) [hereinafter *Norman Robbins E-mail*]; E-mail from Jane Platten, Director, Cuyahoga County Board of Elections (Mar. 3, 2009); E-mail from Catherine Turcer, Legislative Director, Ohio Citizen Action (Feb. 23, 2009) (on file with the Brennan Center) [hereinafter *Catherine Turcer E-mail*]; E-mail from Donita Judge, Staff Attorney, Advancement Project (Feb. 25, 2009) (on file with the Brennan Center) [hereinafter *Donita Judge E-mail*]; E-mail from Candice Hoke, Director, Center for Election Integrity (Feb. 25, 2009) [hereinafter *Candice Hoke E-mail*]; E-mail from Dale Fellows, Member, Lake County Board of Elections (Feb. 28, 2009) (on file with the Brennan Center) [hereinafter *Dale Fellows E-mail*].

<sup>5</sup> Mark Niquette, *Brunner Announces Bipartisan Summit to Study Election, Voting Process*, COLUMBUS DISPATCH, Nov. 7, 2008, available at [http://www.columbusdispatch.com/live/content/local\\_news/stories/2008/11/07/election\\_summit.html?sid=101](http://www.columbusdispatch.com/live/content/local_news/stories/2008/11/07/election_summit.html?sid=101).

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The December summit was intended to be an initial step in a longer process. Accordingly, Secretary Brunner has since announced a new election conference scheduled for March 12-13, 2009, which is intended to focus on some of the issues covered in the December summit in more depth. The March summit also aims to build greater consensus on some of the challenges and potential for improvement in Ohio elections.<sup>6</sup> Secretary Brunner has again called on some of the most prominent election officials, voting rights advocates, academics, and legislators in the state and nation to lead these discussions.

In order to draft this Preliminary Report in time for the March summit, we limited its scope. We were not, for example, able to cover every election issue discussed in the December summit. Rather, we focused on four areas of election administration issues that most interviewees listed among their highest priorities for reform in Ohio: the Statewide Voter Registration Database; Provisional Voting and Voter ID; Early In-Person and Mail-In Absentee Voting; and Poll Worker Recruitment and Training. Other important challenges facing Ohio that were discussed in the December summit -- including post-election audits and recounts, voting machine allocation, the use of paper ballots in DRE jurisdictions, and ballot access. These topics will be explored fully in the Final Report to Secretary Brunner.

Second, although we solicited comments for the report from as many people as we could, we did not have the opportunity to accept feedback from everyone who might have liked to review the report. As this is a preliminary version of the report, anyone can provide comments to be incorporated into the Final Report, which we hope to release in the coming weeks.

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<sup>6</sup> Press Release, Ohio Sec'y of State, Ohio Elections Conference Agenda Announced (Feb. 13, 2009), <http://www.sos.state.oh.us/SOS/PressReleases/2009/20090213.aspx>.

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## I. Introduction

This preliminary report has two, occasionally competing, goals. It aims to survey in some detail the policy concerns regarding Ohio's election system that emerged from the December summit. Additionally, it strives give coherent shape to the varied responses voiced by summit participants and subsequent interviewees. Our goal was to produce a document that faithfully records different points of view on Ohio election policy in an organized format that will be useful to election officials.

Substantively, the report is structured around four aspects of election administration; each emerged as an important focus for future election policy. The four subject areas are: the statewide voter registration databases (the "Statewide Database"), Provisional voting and voter ID, early in-person and mail-in absentee voting, and poll worker recruitment and training. Policy developments in these areas will shape Ohio's election system. There is not necessarily consensus on the direction of reform. There is, however, agreement: change is needed in each of these key areas.

This is not an advocacy document. It does not promote a particular policy agenda. Within each of its four main sections, however, the report reveals some areas of common concern, large and small, without obscuring existing differences in the views expressed. Moreover, it is possible to identify some broad principles for policy development that were articulated by many different voices, cutting across the different substantive topics and sometimes coming from opposing viewpoints on the content of needed reforms. There is value in articulating these general principles both because they highlight shared values that can foster cooperation, and because they function as a screening device that may help measure the viability and functionality of suggested reforms.

Five of these themes can be presented as general instructions for future policy development:

### ***1. Base decisions about election policy and practice on systematic data analysis.***

Summit participants and interviewees with otherwise very different perspectives voiced a common concern that election policy decisions be driven by systematic factual analysis. In many substantive contexts, election officials, advocates and academics all noted areas where more information was needed and where assumptions substituted for objective data, and noted instances in which more information was needed. For example, a deputy election board director noted that criminal convictions alone are not reliable indicators of election fraud; a political scientist proposed studies of counties and precincts with unusually high rates of provisional balloting and a number of participants called for a technical study of the Statewide Database's security, accuracy and reliability, analogous to research conducted previously on voting machines. At the end of each section, the report lists areas participants identified where additional research information would be fruitful.<sup>7</sup>

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<sup>7</sup> Note that those lists are not intended to indicate that no such research currently exists. We have not undertaken a comprehensive review of existing analyses. If readers of this report are aware of relevant studies, we welcome comments identifying them.

**2. *Consider carefully the impact of policy changes in the real world of election administration.***

The need to assess the real world impact of policy changes was a theme sounded in various contexts and from multiple ideological perspectives. County election officials expressed considerable frustration with the disruption caused by last minute changes in election policy. Whether they supported or derided voter ID requirements, advocates and election officials agreed that some of the current ID rules were so arcane and confusing that they almost guaranteed some misadministration. At the same time, while county officials appreciated statewide standards and wanted to clarify statewide election rules, they worried that sometimes one-size-fits-all rules increased inequities when applied in different contexts, or when they prevented responding in common sense pragmatic fashion.

**3. *Aim to count every vote cast by a person qualified to participate in that electoral contest.***

Of course this is a guiding principle, by definition, of voter protection advocates. But it is worth noting that to a person, election officials emphasized that they were personally committed to the same basic goal. Moreover, some differences of opinion about the value of existing election structures appear to come more from different understandings of their enfranchising or disenfranchising function than from any disagreement that the primary goal of election administration is to enfranchise eligible voters. So, for instance, some election officials' approval of Ohio's relatively high rate of provisional balloting is based on the perception that those provisional voters would otherwise be unable to vote at all, while advocates' and academics' concern that provisional ballot numbers are too high comes from the assumption that in states with lower provisional rates a greater proportion of the electorate is voting by regular ballots. Harking back to the first principle that policy should be based on systematic assessment, then, this is a difference of opinion that should be resolvable by empirical research — because the value of full enfranchisement cuts across the opposing viewpoints.

**4. *Recognize that election officials — including poll workers — take seriously their duty to make sure all eligible voters, and only eligible voters, are allowed to vote, and support and facilitate their performance of that dual obligation.***

Several participants stressed how important it is that policy makers recognize how seriously election officials – including poll workers – regard their work. For instance, one election official expressed the view that the new documentary voter ID requirements overlook poll workers' ability and desire to identify and prevent any attempted voting fraud. Based partly on that view, he supports a return to poll book signatures for identification. In contrast, an official who supports documentary ID suggested that a state policy aimed at providing consistent treatment of absentee voters who omit some identification information prevents local officials from contacting these voters by phone to resolve the problems, resulting in needless disenfranchisement. Recognizing their shared desire to let local election officials do their jobs in a common sense fashion is unlikely to make these two interviewees agree on what substantive reforms are needed, but it does clarify a very real criterion for effective policy — whichever substantive direction is ultimately chosen.

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## 5. *Make cost and funding an explicit part of election policy analysis.*

Local election officials repeatedly sounded this theme, as did academics and advocates. County boards are responsible for carrying out mandates from state and federal government, often without funding to support those mandates. One advocate expressed the view that financing is part of voting rights, and urged an advocacy campaign for federal funding.

Across the board, election officials felt that it was only good policy to factor in efficiency tradeoffs when changing local and statewide election practices. Clearly, Constitutional violations cannot be sustained in the name of cost savings. But election officials strongly felt that cost-benefit analysis should be included in analyses of possible ways to implement federal and state mandates. The cost of new initiatives and reforms, at a time of shrinking budgets and cutbacks, must be considered and weighed against the initiatives' potential benefits. If additional financial burdens are imposed on county boards without provision for additional resources or other cost savings, voters will frequently suffer: the reform will be poorly administered because of insufficient resources, or resources will have to be directed away from other critical functions.

\* \* \*

Recent (and not so recent) battles over changes to both Ohio's election law and election practices have been troubling to anyone who studies or works in elections and cares about the integrity and strength of our Democracy. Too often, these battles have either been motivated by partisanship, or perceived by large portions of the public to have been motivated by such concerns. Too frequently, big changes have been proposed without careful study of relevant data, or without consideration of the views of those who study elections most closely and implement the changes on the ground. Our hope is that this document — with a review of election data from 2008, as well as detailed descriptions of the challenges and policy proposals described by a diverse group of stakeholders who understand Ohio's election processes intimately — can assist in building an informed consensus for election reforms where they are needed.

## 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.<sup>8</sup> Ohio constructed its Statewide Database from the bottom up, working to link together its existing county databases.<sup>9</sup> When a new Ohio voter fills out a registration form, local officials input the data into their county systems. The record is then uploaded to the Statewide Database maintained by the Secretary of State’s Office.<sup>10</sup> 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 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.<sup>11</sup> Local election officials update their local voter databases regularly, both by flagging records of those no longer eligible to vote,<sup>12</sup> and by adding new registrants. For example, local county boards of elections identify ineligible 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.<sup>13</sup> 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.<sup>14</sup>

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

<sup>8</sup> 42 U.S.C. § 15483.

<sup>9</sup> 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.

<sup>10</sup> Affidavit of Gus Maragos, Ohio Republican Party v. Brunner, No. 2:08CV913 (S.D. Ohio Oct. 8, 2008) (Doc. 44-2).

<sup>11</sup> *Id.*

<sup>12</sup> According to the Secretary of State’s Business Procedures Manual records are never physically deleted, but rather flagged as “removed.” OFFICE OF THE 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>.

<sup>13</sup> 42 U.S.C. § 1973gg-6(d)(1).

<sup>14</sup> *Id.*

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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, and 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.<sup>15</sup>

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 interviewees<sup>16</sup> 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.

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<sup>15</sup> 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*]; Telephone Interview with Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections (Feb. 10, 2009) [hereinafter *Marilyn Jacobcik Interview*].

<sup>16</sup> Matthew Damschroder Interview, *supra* note 15; Candice Hoke E-mail, *supra* note 4; E-mail from Peg Rosenfeld, Elections Specialist, Ohio League of Women Voters (Feb. 23, 2009) (on file with Brennan Center) [hereinafter *Peg Rosenfeld E-mail*]; Norman Robbins Email, *supra* note 4; E-mail from Michael Stinziano, Director, Franklin County Board of Elections (Feb. 23, 2009) (on file with Brennan Center) [hereinafter *Michael Stinziano -mail*]; Catherine Turcer Email, *supra* note 4; Interview with Wendy Weiser, Deputy Director, Brennan Center for Justice (Feb. 23, 2009); Donita Judge E-mail, *supra* note 4; 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) (on file with the Brennan Center) (hereinafter *Timothy Burke E-mail*).

- 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.<sup>17</sup> All agreed that there were several causes 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.<sup>18</sup> 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.”<sup>19</sup>

Several county election officials complained about the inefficiency and possible disenfranchisement caused by the current process for dealing with potential “duplicate” voters.<sup>20</sup> These officials estimated that they received tens of thousands of duplication notices, identifying potential duplicate entries, every year.<sup>21</sup> 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 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

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<sup>17</sup> Patty Johns Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15; 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 Rosenfeld E-mail, *supra* note 16.

<sup>18</sup> 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](http://www.votingindustry.com/Ohio_Corner/OhioCounties&Vendors.doc).

<sup>19</sup> 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 3)

<sup>20</sup> Matthew Damschroder said that although he finds the process inefficient, he does not believe it disenfranchises voters. Matthew Damschroder Interview, *supra* note 15; Patty Johns Interview, *supra* note 15.

<sup>21</sup> Jane Platten Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15; Patty Johns Interview, *supra* note 15.

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“State Database Query”), and found that their names were not listed.<sup>22</sup> 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.”<sup>23</sup> County election officials and advocates offered<sup>24</sup> at least three possible explanations for most of the reported discrepancies between the voter’s Election Day experience and actual election records were probably due to one of three major types of causes:

1. the fact that there is occasionally 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. occasional 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);<sup>25</sup> 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).<sup>26</sup>

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.”<sup>27</sup> Of these, about half were due to problems with the addresses supplied. At least 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,

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<sup>22</sup> Norman Robbins Interview, *supra* note 17; Telephone Interview with Catherine Turcer, Legislative Director, Ohio Citizen Action (Jan. 20, 2009) [hereinafter *Catherine Turcer Interview*]; Telephone Interview with Peg Rosenfeld, Elections Specialist, League of Women Voters of Ohio, (Feb. 3, 2009) [hereinafter *Peg Rosenfeld Interview*]; Candice Hoke Email, *supra* note 15.

<sup>23</sup> ELECTION PROTECTION, 2008 POST-ELECTION PRELIMINARY ANALYSIS: OHIO 8 (2008) (annexed as Appendix 4).

<sup>24</sup> Norman Robbins Interview, *supra* note 17; Matthew Damschroder Interview, *supra* note 15; Patty Johns Interview, *supra* note 15; Marilyn Jacobcik Interview, *supra* note 15; Candice Hoke Email, *supra* note 15.

<sup>25</sup> 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](http://www.clevelandvotes.org/news/reports/Analyses_Full_Report.pdf) [hereinafter GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT] (annexed as Appendix 5).

<sup>26</sup> *Id.*

<sup>27</sup> “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 6).

but might sometimes be caused by flaws in the county systems used to verify the legitimacy of street addresses.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

One advocate pointed to the nearly 39,000 provisional ballots 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.<sup>32</sup> 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.<sup>33</sup> 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 additional 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.<sup>34</sup>

***Redesign of voter registration forms.*** As already discussed above (p.12), 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

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<sup>28</sup> Norman Robbins Interview, *supra* note 17.

<sup>29</sup> *Id.*; Candice Hoke E-mail, *supra* note 4.

<sup>30</sup> Greater Cleveland Voter Coalition Cuyahoga Report, *supra* note 25.

<sup>31</sup> *Id.*; Norman Robbins E-mail, *supra* note 4.

<sup>32</sup> Norman Robbins Interview, *supra* note 17.

<sup>33</sup> 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>.

<sup>34</sup> Interview with Justin Levitt, Counsel, Brennan Center for Justice at NYU School of Law, (Feb. 23, 2009); Candice Hoke Email, *supra* note 15.

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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.<sup>35</sup>

***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.<sup>36</sup> 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 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 data entry protocol for local officials, to flag and address problems before attempting to match.*** 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.<sup>37</sup> 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.<sup>38</sup> This procedure has already been implemented in several counties.<sup>39</sup>

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<sup>35</sup> Peg Rosenfeld Interview, *supra* note 22; Telephone Interview with Paul Gronke, Director of the Early Voting Information Center at Reed College (Feb. 13, 2009) [hereinafter *Paul Gronke Interview*]; Candice Hoke Email, *supra* note 15.

<sup>36</sup> Norman Robbins Interview, *supra* note 17; Interview with Adam Skaggs, Counsel, Brennan Center for Justice at NYU School of Law (Jan. 9, 2009) [hereinafter *Adam Skaggs Interview*].

<sup>37</sup> Norman Robbins Interview, *supra* note 17; Adam Skaggs Interview, *supra* note 36; Marilyn Jacobcik, Deputy Director of the Lorraine 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, Lorraine County Board of Elections (Mar. 2, 2009) (on file with the Brennan Center) [hereinafter *Marilyn Jacobcik E-mail*].

<sup>38</sup> Norman Robbins Interview, *supra* note 17; Adam Skaggs Interview, *supra* note 36.

<sup>39</sup> 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-

***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,<sup>40</sup> or have updated their addresses with the BMV (for citizens at least 18 years only)<sup>41</sup> — and for providing such voters with the appropriate form.<sup>42</sup> Some election officials further supported notifying voters of the need to update their voter registration information when the actual date of birth, drivers license number, and/or social security number were not known or were known to be inaccurate or incomplete — and for providing the appropriate form to do so.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

***Use information from other databases to improve county and statewide voter records.*** At least one election official suggested that when it is certain<sup>46</sup> that a record in the Statewide

mail from Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Feb. 11, 2009) (on file with the Brennan Center) [hereinafter *Matthew Damschroder E-mail*].

<sup>40</sup> 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.

<sup>41</sup> In fact, this is already mandated under the NVRA. Any change of address form for BMV purposes should automatically change voter registration, unless the voter opts out. 42 U.S.C. § 1973gg-3(d). In Ohio, a voter may opt-in to a program that will make this happen automatically IF the registrar remembers to ask the voter “do you want to register to vote or update your registration?” This practice appears to be out of compliance with the NVRA.

<sup>42</sup> E-mail from Justin Levitt, Counsel, Brennan Center for Justice (Feb. 17, 2009) (on file with the Brennan Center) [hereinafter *Justin Levitt E-mail*]; Michael Stinziano E-mail, *supra* note 16; Matthew Damschroder Interview, *supra* note 15.

<sup>43</sup> Matthew Damschroder Interview, *supra* note 15; Timothy Burke E-mail, *supra* note 16; 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 Email, *supra* note 15.

<sup>44</sup> 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) (on file with the Brennan Center). 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 Email, *supra* note 15; Peg Rosenfeld of the Ohio League of Women Voters 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 Rosenfeld, Elections Specialist, Ohio League of Women Voters (Jan. 20, 2009) (on file with the Brennan Center).

<sup>45</sup> Adam Skaggs Interview, *supra* note 36; Candice Hoke Email, *supra* note 15.

<sup>46</sup> 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 PEREZ, BRENNAN CENTER FOR

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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.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

***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)<sup>50</sup> 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.<sup>51</sup>

***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.<sup>52</sup> 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,<sup>53</sup> so that errors or deletions could be corrected before a major election.<sup>54</sup> Some county election officials objected to these steps as creating unnecessary work.<sup>55</sup>

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JUSTICE AT NYU SCHOOL OF LAW, VOTER PURGES 29 (2008), *available at* [http://www.brennancenter.org/content/resource/voter\\_purges/](http://www.brennancenter.org/content/resource/voter_purges/) [hereinafter VOTER PURGES REPORT]

<sup>47</sup> Matthew Damschroder Interview, *supra* note 15

<sup>48</sup> Justin Levitt E-mail, *supra* note 42; Candice Hoke Email, *supra* note 15.

<sup>49</sup> Adam Skaggs Interview, *supra* note 36; Interview with Myrna Perez, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 17, 2009).

<sup>50</sup> GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note 25.

<sup>51</sup> E-mail from Adam Skaggs, Counsel, Brennan Center for Justice at NYU School of Law (Feb. 13, 2009) (on file with author).

<sup>52</sup> Norman Robbins Interview, *supra* note 17; *See also* ref. 12; Candice Hoke Email, *supra* note 15.

<sup>53</sup> This might require Ohio to identify forms by which groups submitted them; Norman Robbins Interview, *supra* note 17.

<sup>54</sup> 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 25.

<sup>55</sup> Patty Johns Interview, *supra* note 15; Marilyn Jacobcik E-mail, *supra* note 37.

***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,<sup>56</sup> so that independent groups could check for database or registration entry errors, to ensure that no provisional ballots were incorrectly required or rejected.<sup>57</sup> Other officials, and some advocates, however, interpret HAVA to preclude public access to this information.<sup>58</sup> 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.<sup>59</sup> (Issues relating to provisional ballots are more thoroughly discussed in the *Provisional ballots & Voter ID* section below).

***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.<sup>60</sup>

***Automatic and Portable Registration.*** 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 with information updated when they move.<sup>61</sup> The promise of such a system is that it would, among other benefits, eliminate the need to deal with "duplicate" registrations created when someone registers a second time after moving within the state, and rid county election officials of the responsibility of dealing with a crush of new registrations, often delivered by third-party registration groups, immediately before a high-turnout election. In addition, if election officials proactively updated voter address information, it would minimize the number of voters having to vote provisional ballots on Election Day because they moved without submitting a change of address form to election officials. Nevertheless, at least one

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<sup>56</sup> Norman Robbins Interview, *supra* note 17; Donita Judge E-mail, *supra* note 4.

<sup>57</sup> 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 25. 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).

<sup>58</sup> 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."

<sup>59</sup> 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>.

<sup>60</sup> Norman Robbins agrees, with the exception of the State taking over data entry altogether. Norman Robbins Email, *supra* note 4; Matthew Damschroder Interview, *supra* note 15.

<sup>61</sup> Norman Robbins Email, *supra* note 4; Telephone Interview with Edward Foley, Director, Election Law at Moritz College of Law (Feb. 16, 2009); Justin Levitt E-mail, *supra* note 42; E-mail from Jonah Goldman, Director, National Campaign for Fair Elections (Feb. 20, 2009) (on file with the Brennan Center).

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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.<sup>62</sup>

## 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.<sup>63</sup> 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,”<sup>64</sup> 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.<sup>65</sup>

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.<sup>66</sup>

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.<sup>67</sup> 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.<sup>68</sup>

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<sup>62</sup> Patty Johns Interview, *supra* note 15.

<sup>63</sup> Michael Stinziano E-mail, *supra* note 16; Matthew Damschroder Interview, *supra* note 15. 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 (2008).

<sup>64</sup> Catherine Turcer E-mail, *supra* note 4.

<sup>65</sup> Norman Robbins Email, *supra* note 4.

<sup>66</sup> Marilyn Jacobcik Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15; Jane Platten Interview, *supra* note 15.

<sup>67</sup> Jane Platten Interview, *supra* note 15; Candice Hoke Email, *supra* note 15; Justin Levitt E-mail, *supra* note 42; Matthew Damschroder Interview, *supra* note 15; Patty Johns Interview, *supra* note 15; E-mail from Jeff Wilkinson, Deputy Director, Richland County Board of Elections (Feb. 23, 2009) (on file with Brennan Center) [hereinafter *Jeff Wilkinson E-mail*]; Dale Fellows Email, *supra* note 4.

<sup>68</sup> See Hoke & Jefferson, *supra* note 19, at Part III; Candice Hoke Email, *supra* note 4.

**Create a More User-Friendly Database for Voters.** Advocates complained that the current website that voters use to check their registration<sup>69</sup> is both hard to find and too difficult to use; they further note that it cannot be used at all to notify the State or boards of elections of mistakes.<sup>70</sup> 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.<sup>71</sup> 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’s *Being Online is Not Enough*, annexed to this report as Appendix 7.<sup>72</sup>

**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.<sup>73</sup> 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 Bureau of Motor Vehicles (the “BMV”), so that they could attempt to contact the voter to update and/or complete the voter’s records.<sup>74</sup> 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 mistakes<sup>75</sup> and omissions that a list of “no matches” would only provide them with extra work.<sup>76</sup> In fact, a Social Security Administration report for year-to-date 2008 at the end of September 2008 showed a 31% failed match rate.<sup>77</sup> 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.<sup>78</sup>

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<sup>69</sup> 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).

<sup>70</sup> Justin Levitt E-mail, *supra* note 42; Catherine Turcer Interview, *supra* note 22; Candice Hoke Email, *supra* note 15; Peg Rosenfeld Interview, *supra* note 22.

<sup>71</sup> 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; Justin Levitt E-mail, *supra* note 42; Catherine Turcer Interview, *supra* note 22; Candice Hoke Email, *supra* note 15; Peg Rosenfeld Interview, *supra* note 22.

<sup>72</sup> 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](http://www.pewcenteronthestates.org/uploadedFiles/VIP_FINAL_101408_WEB.pdf).

<sup>73</sup> 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).

<sup>74</sup> Marilyn Jacobcik Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15. 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 15.

<sup>75</sup> 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](http://www.wired.com/politics/onlinerights/news/2008/09/voter_registration?currentPage=all).

<sup>76</sup> Patty Johns Interview, *supra* note 15.

<sup>77</sup> 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](http://graphics8.nytimes.com/packages/pdf/national/09voting_states.pdf), annexed as Appendix 8.

<sup>78</sup> E-mail from Peg Rosenfeld, Elections Specialist, League of Women Voters of Ohio (Jan. 20, 2009) (on file with author) [hereinafter *Peg Rosenfeld E-mail*]; Norman Robbins Email, *supra* note 4.

### 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.<sup>79</sup> 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.<sup>80</sup> Interviewees also expressed concern that, in the wrong hands, personal information on the database could lead to identity theft and other privacy abuses.<sup>81</sup> These concerns have been covered at length nationally in reports by organizations like the Association for Computing Machinery.<sup>82</sup>

Advocates and county election officials had little knowledge of the security practices currently in place at the Secretary of State's office.<sup>83</sup> 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 Statewide Database.*** 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.<sup>84</sup>

***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 either nefarious or innocent but misguided conduct.<sup>85</sup> To be

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<sup>79</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Email, *supra* note 4; E-mail from Matthew Damschroder, Deputy Director, Franklin County Board of Elections (Feb 23, 2009) [hereinafter *Matthew Damschroder E-mail*]

<sup>80</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Email, *supra* note 4.

<sup>81</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Email, *supra* note 4; Catherine Turcer E-mail, *supra* note 4.

<sup>82</sup> 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](http://www.acm.org/usacm/PDF/VRD_report.pdf) [hereinafter *ACM Report*], annexed as Appendix 9; 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](http://www.epic.org/privacy/voting/eac-8_23.pdf), annexed as Appendix 10.

<sup>83</sup> Candice Hoke Email, *supra* note 15; Telephone Interview with Jeff Wilkinson, Deputy Director, Richland County Board of Elections (Feb. 10, 2009) [hereinafter *Jeff Wilkinson E-mail*]; Peg Rosenfeld E-mail, *supra* note 16; Jeff Wilkinson E-mail, *supra* note 67; Timothy Burke E-mail, *supra* note 16; Matthew Damschroder E-mail, *supra* note 79.

<sup>84</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Email, *supra* note 4; 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 79.

<sup>85</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Email, *supra* note 4; the Brennan Center has recommended similar practices for monitoring purges of the registration lists. VOTER PURGES REPORT, *supra* note 46.

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.”<sup>86</sup>

***Conduct Audit Independent of the Database Activity to Achieve Public Accountability.*** As noted above (p.17), 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.<sup>87</sup>

***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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup>

## C. Examination of the Voter Registration System 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.<sup>91</sup> In particular, two ideas for study were suggested and supported (in some form) by a number of interviewees:

### 1. Types of Studies Needed

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<sup>86</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Interview, *supra* note 17; Peg Rosenfeld E-mail, *supra* note 16; Jeff Wilkinson E-mail, *supra* note 67.

<sup>87</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Interview, *supra* note 17.

<sup>88</sup> See, e.g., ACM Report, *supra* note 82 at 39-42.

<sup>89</sup> 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/program-areas/research-resources-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/research-resources-and-reports/2008_nov_voter_info_website_study/attachment_download/file), annexed as Appendix 11

<sup>90</sup> The ACM study includes numerous useful suggestions. ACM Report, *supra* note 82, at 28.; See also DEBRA S. HERRMANN, COMPLETE GUIDE TO SECURITY AND PRIVACY METRICS (Auerbach Publications) (2007); Candice Hoke Email, *supra* note 15; Peg Rosenfeld E-mail, *supra* note 16; Norman Robbins Email, *supra* note 4; Matthew Damschroder E-mail, *supra* note 79.

<sup>91</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Interview, *supra* note 17; Matthew Damschroder Interview, *supra* note 15; Peg Rosenfeld Interview, *supra* note 22; Telephone Interview with Daniel Tokaji, Associate Director, Election Law at Moritz College of Law (Jan. 7, 2009) [hereinafter *Daniel Tokaji Interview*].

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***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.<sup>92</sup> 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 groups<sup>93</sup> and election officials as a way of increasing voter participation, eliminating 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.<sup>94</sup>
- 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;<sup>95</sup>

***Independent Technical Study of 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).<sup>96</sup> 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.

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<sup>92</sup> Candice Hoke Email, *supra* note 15; Norman Robbins Interview, *supra* note 17; Matthew Damschroder Interview, *supra* note 15; Wendy Weiser Interview, *supra* note 16; Catherine Turcer Interview, *supra* note 22; Timothy Burke E-mail, *supra* note 16; Donita Judge E-mail, *supra* note 4; Ellis Jacobs E-mail, *supra* note 16; Peg Rosenfeld E-mail, *supra* note 16, Michael Stinziano E-mail, *supra* note 16.

<sup>93</sup> 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.

<sup>94</sup> See WENDY WEISER, RENÉE PARAIDS, AND MICHAEL WALDMAN, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, VOTER REGISTRATION MODERNIZATION (2008) (annexed as Appendix 12).

<sup>95</sup> 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> (Annexed as Appendix 13).

<sup>96</sup> See Hoke & Jefferson, *supra* note 19, at text accompanying note 103; Norman Robbins Email, *supra* note 4.

***Audits of 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 “disappearance” of legitimate voters from the Database, and for investigation of the differences and inconsistencies between BOE and SoS registration lists.<sup>97</sup> They hoped that based on this investigation, the Secretary of State could mandate routine corrective actions.

***Investigate extent of faulty registrations.*** Faulty registrations, not including duplicates, are those with missing information (e.g. birthdate, 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.<sup>98</sup>

***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 Statewide Database.*** Some advocates hoped 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.<sup>99</sup>

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<sup>97</sup> Peg Rosenfeld E-mail, *supra* note 16; Candice Hoke Email, *supra* note 15.

<sup>98</sup> Norman Robbins Interview, *supra* note 17.

<sup>99</sup> Peg Rosenfeld of the Ohio League of Women Voters 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 Rosenfeld E-mail, *supra* note 78.

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## 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.<sup>100</sup> 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.<sup>101</sup> HAVA also required documentary identification from a small subset of voters.<sup>102</sup> 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;<sup>103</sup>
- who have requested an absentee ballot but appear at the polls to vote;
- whose notice of registration was deemed undeliverable;<sup>104</sup>
- who are challenged by an election judge at the polls;
- who are subject to a pending challenge by another voter;<sup>105</sup>
- who have changed their name;<sup>106</sup> or
- who have moved to a new precinct.<sup>107</sup>

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.<sup>108</sup>

To vote by regular ballot, Ohio voters must present “a current and valid photo identification [issued by a government agency],<sup>109</sup> 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.”<sup>110</sup>

There are some longstanding conflicts among election officials, advocates and academics about key issues driving both provisional balloting and ID in Ohio. Despite these

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<sup>100</sup> 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.

<sup>101</sup> 42 U.S.C. § 15483.

<sup>102</sup> 42 U.S.C. § 15483(b).

<sup>103</sup> OHIO REV. CODE ANN. § 3505.18

<sup>104</sup> OHIO REV. CODE ANN. § 3505.19

<sup>105</sup> OHIO REV. CODE ANN. § 3503.24

<sup>106</sup> OHIO REV. CODE ANN. § 3503.16

<sup>107</sup> *Id.*

<sup>108</sup> OHIO REV. CODE ANN. § 3505.181.

<sup>109</sup> OHIO REV. CODE ANN. § 3501.01 (definitions).

<sup>110</sup> OHIO REV. CODE ANN. § 3505.18(A)(1).

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 206,155 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.<sup>111</sup> In 2006, only 5 states had higher rates of provisional voting than Ohio.<sup>112</sup> 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.<sup>113</sup> 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%.)<sup>114</sup> In 2006, only 10 states had higher rates of counting provisional ballots.<sup>115</sup>

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%.<sup>116</sup> Thus

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<sup>111</sup> 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); Ohio Sec'y of State, Provisional Ballots – General Election 2000 (unpublished data table) (on file with the Brennan Center) (annexed as Appendix 25).

<sup>112</sup> 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 14).

<sup>113</sup> 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 25).

<sup>114</sup> UNITED STATES ELECTION ASSISTANCE COMMISSION, 2004 ELECTION DAY SURVEY REPORT, PART 2 SURVEY RESULTS, at 6-9 (2005) (annexed as Appendix 15).

<sup>115</sup> EAC 2006 Survey, *supra* note 112, at 19.

<sup>116</sup> See Sarah D. Wire, *Statewide Voter Turnout Records Set in Missouri*, THE COLUMBIAN MISSOURIAN, (Nov. 5, 2008), available at <http://www.columbiainmissourian.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,

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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.

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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup> 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.<sup>120</sup>

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.<sup>121</sup>

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.<sup>122</sup> Election officials also stressed that, contrary to what advocates sometimes

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November 2008 Election Results, [https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/95\\_s.shtml](https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/95_s.shtml) (annexed as Appendix 16).

<sup>117</sup> Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections, Remarks at the Ohio Elections Summit (Dec. 2, 2008)

[http://www.ohiochannel.org/multimedia/people/media\\_archive.cfm?person\\_id=96806&file\\_type=Flash%20Video&clear\\_media\\_archive\\_search=t](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*]; Telephone Interview with Dale Fellows, Member, Lake County Board of Elections (Feb. 11, 2009) [hereinafter *Dale Fellows Interview*].

<sup>118</sup> 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>.

<sup>119</sup> Dale Fellows Interview, *supra* note 117.

<sup>120</sup> Telephone Interview with Jane Platten, *supra* note 15; Matthew Damschroder Interview, *supra* note 15; Telephone Interview with Dale Fellows, Member, Lake County Board of Elections (Feb. 11, 2009).

<sup>121</sup> Edward Foley, Director, Election Law at Moritz College of Law, Remarks at the 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](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*].

<sup>122</sup> Telephone Interview with Timothy Burke, Member, Hamilton County Board of Elections (Feb. 12, 2009) [hereinafter *Timothy Burke Interview*]

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seemed to presume, election boards want to count every provisional ballot they can under the law.<sup>123</sup> 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.<sup>124</sup>

Some uncertainty and delay necessarily accompany high rates of provisional voting. 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.<sup>125</sup> 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.

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 may be counted in the official tally. The regular ballots created the election's political results, and provisional ballots are a kind of symbolic 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."<sup>126</sup>

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 1,000 provisional ballots cast by eligible voters in Franklin County must be disqualified under Ohio law solely because of errors in the way voters printed or signed their names on the ballot envelopes.<sup>127</sup> 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.

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<sup>123</sup> *Id.*; Telephone Interview with Eben "Sandy" McNair, Member, Cuyahoga County Board of Elections (Feb. 12, 2009); Matthew Damschroder Interview, *supra* note 15; Dale Fellows Interview, *supra* note 117.

<sup>124</sup> Telephone Interview with Eben "Sandy" McNair, Member, Cuyahoga County Board of Elections (Feb. 12, 2009) [hereinafter *Sandy McNair Interview*]; Timothy Burke Interview, *supra* note 122; Matthew Damschroder Interview, *supra* note 15.

<sup>125</sup> Edward Foley Remarks, *supra* note 121.

<sup>126</sup> Telephone interview with Donita Judge, Staff Attorney, Advancement Project (Feb. 12, 2009) [hereinafter *Donita Judge Interview*].

<sup>127</sup> State ex rel. Skaggs v. Brunner, 549 F.3d 468 (2008).

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Finally, as one election official noted, provisional balloting creates a great deal of additional work and is resource intensive.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> However, a certain but unknown subset are from individuals who attempted to register, but did not appear on the rolls. Registration verification procedures reveal that some percentage of valid registration applications in Ohio is lost in the process of database entry.<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup> 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.<sup>136</sup> The earlier expense could save

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<sup>128</sup> Matthew Damschroder Interview, *supra* note 15.

<sup>129</sup> Dale Fellows Interview, *supra* note 117; Marilyn Jacobcik Remarks, *supra* note 117; Timothy Burke Interview, *supra* note 122.

<sup>130</sup> Marilyn Jacobcik Remarks, *supra* note 117.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*; Matthew Damschroder Interview, *supra* note 15.

<sup>133</sup> Norman Robbins Interview, *supra* note 17.

<sup>134</sup> Matthew Damschroder Interview, *supra* note 15.

<sup>135</sup> Norman Robbins, Study Leader, Greater Cleveland Voter Coalition, Remarks at the 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](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 Rosenfeld Interview, *supra* note 22.

<sup>136</sup> Telephone Interview with Steven Harsman, Director, Montgomery County Board of Elections, (Feb. 11, 2009) [hereinafter *Steven Harsman Interview*].

election board time and resources later, however, by reducing the number of provisional ballots they must process, and some election officials liked the idea.<sup>137</sup>

***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.<sup>138</sup> 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.<sup>139</sup>

***Allow counties to offer all voters the option of voting by regular ballot at a satellite vote center.*** One official suggested that counties be allowed to direct voters who were not on the rolls at their assigned precinct, or the precinct where they turned out, to a satellite location.<sup>140</sup> 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.<sup>141</sup> 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.<sup>142</sup> 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.<sup>143</sup>

***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

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<sup>137</sup> Timothy Burke Interview, *supra* note 122; Telephone Interview with Betty McGary, Director, Butler County Board of Elections (Feb. 13, 2009) [hereinafter *Betty McGary Interview*].

<sup>138</sup> Telephone Interview with Edward Foley, Director, Election Law at Moritz College of Law (Jan. 7, 2009) [hereinafter *Edward Foley Interview*], Telephone Interview with David Kimball, Associate Professor, Political Science at U. of Missouri-St. Louis (Feb. 3, 2009) [hereinafter *David Kimball Interview*].

<sup>139</sup> Marilyn Jacobcik Remarks, *supra* note 117.

<sup>140</sup> Dale Fellows Interview, *supra* note 117.

<sup>141</sup> Jane Platten Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15.

<sup>142</sup> Donita Judge Interview, *supra* note 126, Peg Rosenfeld Interview, *supra* note 22; Timothy Burke Interview, *supra* note 122.

<sup>143</sup> Dale Fellows Interview, *supra* note 117.

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the jurisdictions where it is most extreme.<sup>144</sup> 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.<sup>145</sup> 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.<sup>146</sup>

***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.<sup>147</sup>

## 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.<sup>148</sup> 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."<sup>149</sup> On the other hand, the principles of equal protection require standard procedures for using and counting provisional ballots.<sup>150</sup> 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.<sup>151</sup>

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 17. Rates of provisional balloting in Ohio's 2008 election varied from 1.3% in Coshocton County to 4.9% 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

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<sup>144</sup> David Kimball Interview, *supra* note 138.

<sup>145</sup> *Id.*

<sup>146</sup> Jane Platten Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15.

<sup>147</sup> Daniel Tokaji Interview, *supra* note 91, Peg Rosenfeld Interview, *supra* note 22.

<sup>148</sup> 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 19).

<sup>149</sup> Marilyn Jacobcik remarks, *supra* note 117.

<sup>150</sup> E-mail from Edward Foley, Director, Election Law at Moritz College of Law (Feb. 15, 2009) (on file with the Brennan Center) [hereinafter *Edward Foley E-mail*].

<sup>151</sup> David Kimball Interview, *supra* note 138, ADVANCEMENT PROJECT REPORT, *supra* note 148; Norman Robbins Interview, *supra* note 17.

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Athens County voters cast a provisional ballot.<sup>152</sup> Among Ohio's five urban counties, differences in provisional voting rates are not as dramatic, but still apparent. Four have rates above the statewide average of 3.6%. They are Cuyahoga (4.4%), Hamilton (4.6%), Lucas (4.7%), and Franklin (4.8%). 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 0% in Monroe County to 44% in Brown County. Notably, several of the more populous counties had rejection rates near the high end of the state continuum. Only eight counties rejected provisional ballots at a higher rate than Cuyahoga, which disqualified 27.5% of provisional ballots cast there. Nearby Lorain County rejected 26% and Lucas County 23%. Franklin County, however, which encompasses another major urban center, had a rejection rate of only 15.4%.<sup>153</sup>

A chart prepared by Professor David Kimball, and annexed as Appendix 20, 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 21. An advocacy group's analysis of provisional ballot rejection rates in Cuyahoga County in November 2004 also found such a correlation.<sup>154</sup> Some advocates believe that high rates of provisional ballot use and rejection are correlated with high numbers of low income voters.<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup> Whatever the causes of the local differences, they tend to be stable over time. As Professor David Kimball pointed out, with occasional variations, counties generally post relatively high or low provisional balloting rates election after election.<sup>158</sup> Again, however, 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.<sup>159</sup>

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 going on locally.

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<sup>152</sup> David Kimball, Associate Professor of Political Science, U. 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 17); *Provisional Voting in Ohio* scatter plot charts appended as Appendix 18.

<sup>153</sup> Secretary of State 2008 Absentee and Provisional Report, *supra* note 113; 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 23).

<sup>154</sup> GREATER CLEVELAND VOTER COALITION CUYAHOGA REPORT, *supra* note, 25.

<sup>155</sup> Norman Robbins Interview, *supra* note 17, Donita Judge Interview, *supra* note 126.

<sup>156</sup> Donita Judge Interview, *supra* note 126.

<sup>157</sup> Jane Platten Interview, *supra* note 15, Matthew Damschroder Interview, *supra* note 15.

<sup>158</sup> David Kimball Interview, *supra* note 138.

<sup>159</sup> *Id.*

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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.<sup>160</sup>

***Follow up with data on the reasons why provisional ballots were used and rejected.*** 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.<sup>161</sup>

***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.<sup>162</sup>

***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.<sup>163</sup> In 2007, in response to public record requests for this

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<sup>160</sup> David Kimball Interview, *supra* note 138; Norman Robbins Interview, *supra* note 17; Donita Judge Interview, *supra* note 126.

<sup>161</sup> Donita Judge Interview, *supra* note 126; Norman Robbins Interview, *supra* note 17; Peg Rosenfeld E-mail, *supra* note 16.

<sup>162</sup> David Kimball Interview, *supra* note 138; Norman Robbins Interview, *supra* note 17.

<sup>163</sup> 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 birthdate 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 126; League of Women Voters of

information, some election officials treated such information as public records.<sup>164</sup> 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.<sup>165</sup> 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.<sup>166</sup>

### 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."<sup>167</sup> 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.<sup>168</sup> 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;"<sup>169</sup>
3. a voter does not have or does not provide proper identification;
4. a voter voted by absentee ballot;
5. a voter's registration notification was returned as undeliverable;
6. a voter changed his address;
7. a voter changed his name;
8. a voter was challenged without resolution; or
9. the challenged voter's hearing was postponed.<sup>170</sup>

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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 148 at 12.

<sup>164</sup> In response to a public records request, Cuyahoga County election officials produced provisional ballot envelopes. ADVANCEMENT PROJECT REPORT, *supra* note 148 at 12.

<sup>165</sup> 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."

<sup>166</sup> 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>.

<sup>167</sup> State ex. rel. Skaggs v. Brunner, 2008 WL 5157872 (Dec. 5, 2008), at 10.

<sup>168</sup> Jane Platten Interview, *supra* note 15; Steven Harsman Interview, *supra* note 136.

<sup>169</sup> 42 U.S.C. § 15482 (a)(2002); *See also* OHIO REV. CODE ANN. § 3505.18(A)(7) (LexisNexis 2007).

<sup>170</sup> OHIO REV. CODE ANN. § 3505.181(A) (LexisNexis 2007).

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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.<sup>171</sup> The poll worker is supposed to determine where an individual is eligible to vote on the basis of the "precinct voting location guide,"<sup>172</sup> 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."<sup>173</sup>

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.<sup>174</sup> 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 1000 otherwise valid provisional ballots because voters had filled out their ballot affirmations incorrectly.<sup>175</sup>

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.<sup>176</sup> 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.<sup>177</sup> 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.<sup>178</sup> 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 register to vote.

A central question is whether, and to what extent voters are disenfranchised due to confusing and complex identification requirements.<sup>179</sup> Research into Indiana's 2008 primary election showed that 14% of provisional ballots cast were due to lack of required ID (399, or 14%) of a total 2,770 ballots. The rejection rate for the identification inspired ballots (80%)

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<sup>171</sup> OHIO REV. CODE ANN. § 3505.181(C)(1) (West 2009).

<sup>172</sup> *Id.*

<sup>173</sup> OHIO REV. CODE ANN. § 3505.181(E)(2) (West 2009).

<sup>174</sup> OHIO REV. CODE ANN. § 3505.183(B)(1) (West 2009).

<sup>175</sup> *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.

<sup>176</sup> OHIO REV. CODE ANN. § 3505.18 (A)(2)-(6) (West 2009).

<sup>177</sup> Jane Platten Interview, *supra* note 15; Peg Rosenfeld Interview, *supra* note 22.

<sup>178</sup> Written Statement of Karen Neuman and Sarah Brannon, Fair Elections Legal Network 1-2 (on file with the Brennan Center and annexed as Appendix 24).

<sup>179</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148.

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was somewhat higher than that of provisional ballots overall (73%).<sup>180</sup> One advocate pointed out that elderly people, as a group, are disadvantaged by current requirements.<sup>181</sup> 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.<sup>182</sup> Some election officials, however, said that based on their own experience in their counties few voters were disenfranchised for lack of identification.<sup>183</sup>

Election officials and advocates pointed out that complex rules governing both ID and provisional ballots are particularly problematic for poll workers.<sup>184</sup> These volunteers administer elections only once or twice a year.<sup>185</sup> 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 Lorraine 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."<sup>186</sup> 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.<sup>187</sup> 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."<sup>188</sup> 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.<sup>189</sup>

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,

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<sup>180</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1287735).

<sup>181</sup> Peg Rosenfeld Interview, *supra* note 22.

<sup>182</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148, Norman Robbins Interview, *supra* note 17.

<sup>183</sup> Marilyn Jacobcik Remarks, *supra* note 117; Steven Harsman Interview, *supra* note 136, Dale Fellows Interview, *supra* note 117.

<sup>184</sup> Jane Platten Interview, *supra* note 15; Steven Harsman Interview, *supra* note 136.

<sup>185</sup> Peg Rosenfeld Interview, *supra* note 22; Marilyn Jacobcik Remarks, *supra* note 117.

<sup>186</sup> Marilyn Jacobcik Remarks, *supra* note 117.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*; Remarks of Brian Shinn, Assistant General Counsel, Ohio Sec'y of State at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t).

<sup>189</sup> Remarks of Brian Shinn, Assistant General Counsel, Ohio Sec'y of State at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t).

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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.”<sup>190</sup> While some election officials believe the new voter identification requirements are a natural outgrowth of twenty-first century technology and culture,<sup>191</sup> others view the move to documentary identification as unnecessary and wrongheaded.<sup>192</sup> 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 drivers license with an obsolete address is sufficient.<sup>193</sup> 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.<sup>194</sup> Moving away from the address requirement would also allow inclusion of another common form of identification, the student ID. One 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.<sup>195</sup>

***Return to signature identification.*** Several advocates<sup>196</sup> and some election officials<sup>197</sup> 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.<sup>198</sup> 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

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<sup>190</sup> See ADVANCEMENT PROJECT REPORT, *supra* note 148.

<sup>191</sup> Marilyn Jacobcik Remarks, *supra* note 117; Dale Fellows Interview, *supra* note 117, Steven Harsman Interview, *supra* note 136. These officials regard the basic requirement that voters produce ID documents as reasonable.

<sup>192</sup> Timothy Burke Interview, *supra* note 122, Eben “Sandy” McNair Interview, *supra* note 123. Advocates also view the move to documentary identification as unnecessary. ADVANCEMENT PROJECT REPORT, *supra* note 148; Peg Rosenfeld Interview, *supra* note 22, Telephone Interview with Norman Robbins, *supra* note 17.

<sup>193</sup> Jane Platten Interview, *supra* note 15.

<sup>194</sup> *Id.*; Matthew Damschroder Interview, *supra* note 15; Timothy Burke Interview, *supra* note 122; Eben “Sandy” McNair Interview, *supra* note 123.

<sup>195</sup> Written Statement of Karen Neuman and Sarah Brannon, *supra* note 178.

<sup>196</sup> Donita Judge Interview, *supra* note 126; Peg Rosenfeld Interview, *supra* note 22; Norman Robbins Interview, *supra* note 17.

<sup>197</sup> Timothy Burke Interview, *supra* note 122; Eben “Sandy” McNair Interview, *supra* note 123.

<sup>198</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148; Timothy Burke Interview, *supra* note 122; Eben “Sandy” McNair Interview, *supra* note 123; Peg Rosenfeld Interview, *supra* note 22.

signature's authenticity, the poll worker may challenge the voter.<sup>199</sup> 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.<sup>200</sup>

***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.<sup>201</sup> 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?<sup>202</sup>

***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.<sup>203</sup>

***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.<sup>204</sup> Election officials emphasized that the goal of those rules should be to count as many eligible votes as possible.<sup>205</sup> 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.<sup>206</sup>

***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.<sup>207</sup> 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.

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<sup>199</sup> *Id.*

<sup>200</sup> Timothy Burke Interview, *supra* note 122; Eben "Sandy" McNair Interview, *supra* note 123.

<sup>201</sup> Marilyn Jacobcik Remarks, *supra* note 117; Dale Fellows Interview, *supra* note 67.

<sup>202</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148; Peg Rosenfeld Interview, *supra* note 22, Norman Robbins Interview, *supra* note 17.

<sup>203</sup> Peg Rosenfeld Interview, *supra* note 22.

<sup>204</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148; Matthew Damschroder Interview, *supra* note 15.

<sup>205</sup> *Id.*

<sup>206</sup> Marilyn Jacobcik Remarks, *supra* note 117.

<sup>207</sup> Steven Harsman Interview, *supra* note 136; Dale Fellows Interview, *supra* note 67; Timothy Burke Interview, *supra* note 122; Eben "Sandy" McNair Interview, *supra* note 123; ADVANCEMENT PROJECT REPORT, *supra* note 148; Betty McGary Interview, *supra* note 137.

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## 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.<sup>208</sup> 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 (6<sup>th</sup> 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."<sup>209</sup> Sixty-one percent of those discarded provisional ballots were cast in Cuyahoga, Franklin, Hamilton, Lucas, Montgomery and Summit counties.<sup>210</sup> 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.<sup>211</sup> 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.<sup>212</sup> In Ohio's other large urban counties, rejection rates were as follows: Hamilton – 10%, Lucas – 13%, Montgomery – 9%, and Summit – 7%.<sup>213</sup>

Nearly every election official and advocate we interviewed believes that the current practice of rejecting provisional ballots merely because they were cast in the wrong precinct needs to be re-examined.<sup>214</sup> Some election officials and all the advocates and academics we interviewed 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.<sup>215</sup> 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.<sup>216</sup>

One advocate 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

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<sup>208</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148 at 7.

<sup>209</sup> Ohio Secretary of State's Office, 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.

<sup>210</sup> *Id.* By way of comparison, these counties accounted for 54% of provisional ballots issued at the polls on Election Day.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* In Cuyahoga County, wrong precinct rejections made up 46% of total rejected provisional ballots; in Franklin, that figure was just 22%.

<sup>213</sup> *Id.*

<sup>214</sup> Norman Robbins Interview, *supra* note 17; Peg Rosenfeld Interview, *supra* note 22; Catherine Turcer E-mail, *supra* note 4; Marilyn Jacobcik Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15; Jane Platten Interview, *supra* note 15; Dale Fellows Interview, *supra* note 67.

<sup>215</sup> Steven Harsman Interview, *supra* note 136; Dale Fellows Interview, *supra* note 67; Timothy Burke Interview, *supra* note 122; Donita Judge Interview, *supra* note 126; Norman Robbins Interview, *supra* note 17; Peg Rosenfeld Interview, *supra* note 22.

<sup>216</sup> Jane Platten Interview, *supra* note 15; ADVANCEMENT PROJECT REPORT, *supra* note 148; Norman Robbins Interview, *supra* note 17.

wrong precinct.<sup>217</sup> 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.<sup>218</sup> 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.<sup>219</sup>

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.

***Repeal the wrong precinct rule.*** Election officials we interviewed supported the legislative removal of the wrong precinct rule.<sup>220</sup> Fifteen states count provisional ballots cast outside a voter’s home precinct.<sup>221</sup> That is, they 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.<sup>222</sup>

***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.<sup>223</sup> This is the policy followed in Missouri.

***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

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<sup>217</sup> Donita Judge Interview, *supra* note 126; Eben “Sandy” McNair Interview, *supra* note 123. OHIO REV. CODE § 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 § 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 148.

<sup>218</sup> Timothy Burke Interview, *supra* note 122; Dale Fellows Interview, *supra* note 67; Steven Harsman Interview, *supra* note 136.

<sup>219</sup> Donita Judge Interview, *supra* note 126.

<sup>220</sup> Timothy Burke Interview, *supra* note 122; Dale Fellows Interview, *supra* note 67; Steven Harsman Interview, *supra* note 136; Eben “Sandy” McNair Interview, *supra* note 123; Betty McGary, *supra* note 137.

<sup>221</sup> ELECTION ASSISTANCE COMMISSION 2006 REPORT, *supra* note 209 at 20.

<sup>222</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148.

<sup>223</sup> This is the policy followed in the Missouri Election Code. MO. REV. STAT. § 115.430.2; Telephone Jane Platten Interview, *supra* note 15.

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cast in the wrong precinct because poll workers failed to issue the proper instructions.<sup>224</sup> (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.<sup>225</sup>) 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.<sup>226</sup> 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.<sup>227</sup> 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.<sup>228</sup>

***Document poll workers' fulfillment of the duty to direct voters to the correct voting location.*** If the wrong precinct rule remains in force, some interviewees supported adding a line or box to the provisional ballot envelope that would reflect the proper precinct, and whether the voter was directed to the correct voting location for that precinct.<sup>229</sup> The space would be filled in by the poll worker and signed by the voter, indicating that the poll worker directed the voter to the precinct the worker determined was the voter's assigned voting location, and whether the voter refused to go. If the envelope indicates that the poll worker directed the voter to the right location and that the voter refused to go, the ballot should be disqualified. But if the envelope indicates that the poll worker directed the voter to the wrong location, or if the field is left blank, the ballot should count even if it was cast in the wrong location or cast on the wrong precinct's ballot style.<sup>230</sup>

***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.<sup>231</sup> At least one election official, however, believes this is not practicable.<sup>232</sup> Under the current election code, poll workers should have

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<sup>224</sup> Donita Judge Interview, *supra* note 126; Norman Robbins Interview, *supra* note 17; Peg Rosenfeld Interview, *supra* note 22; Betty McGary, *supra* note 137; Timothy Burke Interview, *supra* note 122.

<sup>225</sup> Donita Judge Interview, *supra* note 126; Norman Robbins Interview, *supra* note 17; Peg Rosenfeld Interview, *supra* note 22; Eben "Sandy" McNair Interview, *supra* note 123.

<sup>226</sup> Steven Harsman Interview, *supra* note 136; Eben "Sandy" McNair Interview, *supra* note 123; ADVANCEMENT PROJECT REPORT, *supra* note 148.

<sup>227</sup> Steven Harsman Interview, *supra* note 136.

<sup>228</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148. 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).

<sup>229</sup> Donita Judge Interview, *supra* note 126; Eben "Sandy" McNair Interview, *supra* note 123; Peg Rosenfeld Interview, *supra* note 22; Timothy Burke Interview, *supra* note 122; Steven Harsman Interview, *supra* note 136; Norman Robbins Interview, *supra* note 17.

<sup>230</sup> Donita Judge Interview, *supra* note 126; Timothy Burke, Member of the Hamilton County Board of Elections agrees that this made sense. Timothy Burke Interview, *supra* note 122. 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 67.

<sup>231</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148.

<sup>232</sup> Matthew Damschroder E-mail, *supra* note 39.

the ability to check for the voter's assigned precinct,<sup>233</sup> preferably with a computer or handheld device that has access to statewide information.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup> This practice is discussed in greater detail on pp \_\_\_ 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.<sup>237</sup>

***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.<sup>238</sup>

***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.<sup>239</sup> 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.<sup>240</sup> 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

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<sup>233</sup> See OHIO REV. CODE ANN. § 3505.181C(1).

<sup>234</sup> Donita Judge Interview, *supra* note 12656.

<sup>235</sup> *Id.*

<sup>236</sup> Betty McGary Interview, *supra* note 137.

<sup>237</sup> ADVANCEMENT PROJECT REPORT, *supra* note 148; Daniel Tokaji Interview, *supra* note 91; Edward Foley Remarks, *supra* note 121.

<sup>238</sup> Donita Judge Interview, *supra* note 126.

<sup>239</sup> David Kimball Interview, *supra* note 138.

<sup>240</sup> *Id.*

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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.<sup>241</sup>

***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.<sup>242</sup> 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?

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<sup>241</sup> David Kimball Interview, *supra* note 138; Donita Judge Interview, *supra* note 126; Norman Robbins Interview, *supra* note 17 ; Matthew Damschroder E-mail, *supra* note 39.

<sup>242</sup> Daniel Tokaji Interview, *supra* note 91.

#### 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. The recent changes to Ohio's absentee voting laws are generally seen in a positive light, by both voting rights advocates and election officials. 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.<sup>243</sup> In 2008, the number of absentee ballots cast was nearly 3 times the number of absentee ballots cast in 2004.<sup>244</sup> Ohio ranks 25th in the country in the rate of in-person absentee voting. It experienced the fifth highest growth rate in in-person absentee voting, compared to the percentage of early voters in 2004.<sup>245</sup>

##### 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.<sup>246</sup> In addition to expanding "vote by mail" to all Ohioans who choose it, this change, in effect, dramatically expanded pre-Election Day, in-person voting. The result is somewhat similar to what other states call "early voting," because 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."<sup>247</sup>

##### 2. *Consensus on Need for Refining 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:

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<sup>243</sup> Ohio Sec'y of the State's Office, Data of Absentee Ballots Cast and Counted 2000-2008 (on file with the Brennan Center) (annexed as Appendix 26).

<sup>244</sup> 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.

<sup>245</sup> Michael McDonald, United States Election Project, 2008 Early Voting Statistics, [http://elections.gmu.edu/early\\_vote\\_2008.html](http://elections.gmu.edu/early_vote_2008.html).

<sup>246</sup> Mark Niquette, *Primary Voting Begins Tuesday; Relaxed Absentee Ballot Rules Will Be Put to Test*, COLUMBUS DISPATCH, Mar. 27, 2006, at 1C.

<sup>247</sup> OHIO REV. CODE ANN. § 3509.01 -.02 (West 2009)

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- 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

In-person absentee voting and mail-in absentee voting are covered by the same sections of the Ohio election code.<sup>248</sup> Because they present such different challenges, interviewees generally discussed them separately, as we do below.

### 1. *Early In-Person Absentee Voting*

#### Long Lines for In-Person Absentee Voting

Elections officials, advocates and academics praised the creation of what is, in effect, in-person absentee voting at one location in every county in Ohio.<sup>249</sup> 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 who voted in-person would ultimately have their votes counted (the reasons for this are discussed below, in *Mail-In Absentee Voting* at p.52).

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.<sup>250</sup> 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.<sup>251</sup> This would require a change to Ohio's current law.<sup>252</sup>

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

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<sup>248</sup> OHIO REV. CODE ANN. § 3509.01-.09 (West 2009).

<sup>249</sup> See, e.g., remarks of Dan Tokaji, Associate Director of Election Law at Moritz College of Law at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t;); Remarks of Greg Moore, Executive Director of the Nat'l Voter Fund of the NAACP at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t); Catherine Turcer Interview, *supra* note 22; Matthew Damschroder Interview, *supra* note 15.

<sup>250</sup> Niquette, *supra* note 4.

<sup>251</sup> Norman Robbins E-mail, *supra* note 16; Candice Hoke Email, *supra* note 15.

<sup>252</sup> 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).

and partisan manipulation of that selection process. Those concerned about this 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.<sup>253</sup> 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 did not.<sup>254</sup>

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.<sup>255</sup> The Director of one County Board of Elections noted that in-person absentee voting was extremely expensive for her county.<sup>256</sup> 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.<sup>257</sup> 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.<sup>258</sup>

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.<sup>259</sup> 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.<sup>260</sup>

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 2008 until the next presidential election, though some argued that the

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<sup>253</sup> Peg Rosenfeld Interview, *supra* note 22; Matthew Damschroder Interview, *supra* note 15; Jane Platten Interview, *supra* note 15; 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 27.

<sup>254</sup> Daniel Tokaji Remarks, *supra* note 249.

<sup>255</sup> Jane Platten Interview, *supra* note 15; Telephone Interview with Dan Troy, past President, County Commissioners' Association of Ohio (Jan. 8, 2009).

<sup>256</sup> Jane Platten Interview, *supra* note 15.

<sup>257</sup> *Id.*

<sup>258</sup> Dan Troy, past President, County Commissioners' Association of Ohio, Remarks at the 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t).

<sup>259</sup> Matthew Damschroder E-mail, *supra* note 39.

<sup>260</sup> *Id.*

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2010 general election might generate heavy in-person absentee voting, particularly if one of the statewide contests was perceived as being close.<sup>261</sup>

### 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 agreed that it was not necessary to require a larger number of absentee voting sites in every county.<sup>262</sup> Several smaller counties reported that they did not have long lines during the absentee voting period.<sup>263</sup> 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 also 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.<sup>264</sup> 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.<sup>265</sup>

***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.<sup>266</sup> 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.<sup>267</sup> 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.<sup>268</sup> 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.<sup>269</sup> Some states provide that counties should make these decisions,

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<sup>261</sup> Jane Platten Interview, *supra* note 15; Paul Gronke Interview, *supra* note 35.

<sup>262</sup> Norman Robbins E-mail, *supra* note 16; Candice Hoke Email, *supra* note 15.

<sup>263</sup> 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).

<sup>264</sup> Jonah Goldman E-mail, *supra* note 61.

<sup>265</sup> Paul Gronke Interview, *supra* note 35.

<sup>266</sup> *Id.*

<sup>267</sup> 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.

<sup>268</sup> Peg Rosenfeld Interview, *supra* note 22, Paul Gronke Interview, *supra* note 35, Matthew Damschroder Interview, *supra* note 15; Jane Platten Interview, *supra* note 15.

<sup>269</sup> *Id.*

but allow for an appeal process in the case of disagreements.<sup>270</sup> Other states have addressed this problem by requiring a unanimous or majority vote rule for placement of absentee voting sites.<sup>271</sup> 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).<sup>272</sup> 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.<sup>273</sup>

***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.<sup>274</sup> 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).<sup>275</sup>

### **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.<sup>276</sup> Suggestions for expanding mail-in absentee voting are discussed in detail at p.57 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 1436 to 1100.<sup>277</sup> 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

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<sup>270</sup> See, e.g., NORTH CAROLINA NC 163-227-2.

<sup>271</sup> Chart provided by Early Voting Information Center attached as Appendix 27.

<sup>272</sup> Paul Gronke Interview, *supra* note 35; Justin Levitt E-mail, *supra* note 42.

<sup>273</sup> Justin Levitt E-mail, *supra* note 42.

<sup>274</sup> Paul Gronke Interview, *supra* note 35.

<sup>275</sup> Jane Platten Interview, *supra* note 15.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

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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.<sup>278</sup> 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.<sup>279</sup>

***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.<sup>280</sup> 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?<sup>281</sup> A number of interviewees also acknowledged Republican 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, and in which 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.<sup>282</sup> Advocates pointed out that

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<sup>278</sup> Daniel Tokaji Interview, *supra* note 91; Telephone interview with Jocelyn Travis, Director, Ohio Votes, (Feb. 17, 2009); Jonah Goldman E-mail, *supra* note 61; Catherine Turcer E-mail, *supra* note 4; Donita Judge E-mail, *supra* note 4.

<sup>279</sup> Paul Gronke Interview, *supra* note 35. 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, *supra* note 150.

<sup>280</sup> Dale Fellows, Member, Lake County Board of Elections (Feb. 28, 2009) (on file with the Brennan Center); Matthew Damschroder E-mail, *supra* note 39.

<sup>281</sup> Daniel Tokaji Remarks, *supra* note 249; Steve Hoffman, Editorial Writer for the Akron Beacon Journal, Remarks at the 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t).

<sup>282</sup> 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](http://seattlepi.nwsourc.com/opinion/381501_murdockonline03.html); Amy Merrick, *Ohio’s Battle Over Early Voting*, WALL ST. J. Sep 25, 2008, *available at* <http://blogs.wsj.com/washwire/2008/09/25/ohios-battle-over-early-voting/>.

there was little evidence of fraud during the 2008 Golden Week.<sup>283</sup> 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.<sup>284</sup> 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 the 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.<sup>285</sup> 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.<sup>286</sup>

***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.<sup>287</sup> Some have proposed shortening Ohio's early voting period to 15 days.<sup>288</sup> 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

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<sup>283</sup> 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 22; Norman Robbins Interview, *supra* note 17; Greg Moore Remarks, *supra* note 249.

<sup>284</sup> Ohio Sec'y of the State's Office, Ohio Absentee Voting Report 2008 (on file with the Brennan Center).

<sup>285</sup> *Id.*

<sup>286</sup> Jonah Goldman E-mail, *supra* note 61; 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) (on file with the Brennan Center).

<sup>287</sup> AK, AR, CO, FL, CA, ND, UT, OK, KS, HI, GA 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 27 of this report.

<sup>288</sup> 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, *supra* note 279; Matthew Damschroder E-mail, *supra* note 39.

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period were received prior to the final two weeks).<sup>289</sup> 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 who traditionally do not vote.

### ***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.<sup>290</sup> 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.<sup>291</sup> 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.<sup>292</sup> 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.<sup>293</sup> The Lawyers’ Committee was not opposed to ending the early voting period earlier, as long as the state adopted an early voting program that allowed voters to register during that period, as is done in North Carolina.<sup>294</sup>

## **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.<sup>295</sup> 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

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<sup>289</sup> E-mail from Paul Gronke, Director of the Early Voting Information Center at Reed College (Feb. 13, 2009).

<sup>290</sup> Jeff Wilkinson Interview, *supra* note 83; Marilyn Jacobcik Interview, *supra* note 15; Matthew Damschroder Interview, *supra* note 15.

<sup>291</sup> FL, WV, TX, IL, TN, NC, AR, and LA are the states with laws specifying a set amount of days to end early voting. While FL ends early voting two days before Election Day, LA ends early voting 7 days prior to Election Day. Information collected from the National Conference of State Legislatures, Absentee and Early Voting, <http://www.ncsl.org/programs/legismgt/elect/absentearly.htm> (last visited Feb. 18, 2009).

<sup>292</sup> Jonah Goldman E-mail, *supra* note 61; Edward Foley E-mail, *supra* note 279; Paul Gronke Interview, *supra* note 35; Peg Rosenfeld E-mail, *supra* note 16; Telephone Interview with Greg Moore, Executive Director of the Nat’l Voter Fund of the NAACP (Feb. 26, 2009).

<sup>293</sup> *Id.*

<sup>294</sup> Jonah Goldman E-mail, *supra* note 61.

<sup>295</sup> Data analysis from Norman Robbins, Study Leader of the Greater Cleveland Voter Coalition (on file with author); Ohio Sec’y of the State’s Office, Absentee and Provisional Ballot Report: November 4, 2008, <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/absentProv110408.aspx>.

contests.<sup>296</sup> 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.<sup>297</sup> In addition, some interviewees pointed to privacy and security issues associated with expanding vote by mail.<sup>298</sup> They also noted other potential problems if voting by mail in any way replaces in-person or in-precinct voting. Several other states have experienced big problems with absentee ballot delivery,<sup>299</sup> and receiving and sending ballots by mail is going to be particularly difficult for poorer, more transient voters.<sup>300</sup>

### 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).

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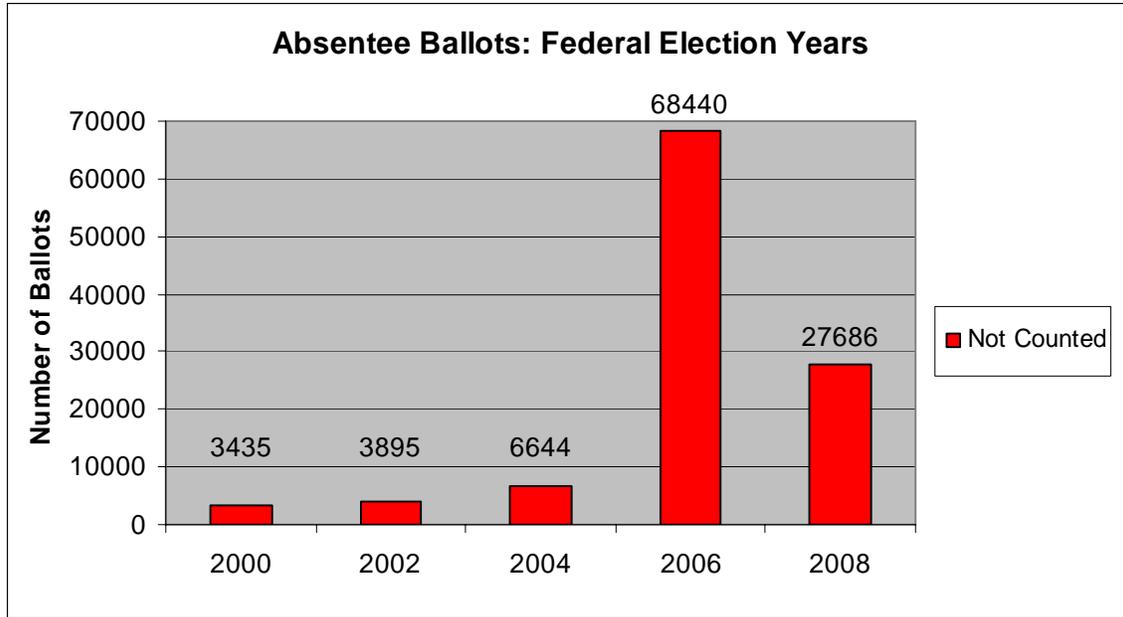
<sup>296</sup> Jonathan W. Chipman, Michael C. Herron, and Jeffrey B. Lewis, *Residual Votes in the 2008 Minnesota Senate Race* (Nov. 15, 2008) (Working paper, available at <http://www.dartmouth.edu/~herron/mn.pdf>); Stephen Ansolabehere, Charles Stewart, *Residual Votes Attributable to Technology* J. Pol. 67:2 (2005); Niquette, *supra* note 4.

<sup>297</sup> Daniel Tokaji Interview, *supra* note 91; David Kimball Interview, *supra* note 138.

<sup>298</sup> Candice Hoke Email, *supra* note 15; Jocelyn Travis Interview, *supra* note 278; Justin Levitt E-mail, *supra* note 42.

<sup>299</sup> Justin Levitt E-mail, *supra* note 42; Marcus K. Garner, *Fulton County: 2,500 absentee votes jeopardized*, THE ATLANTA JOURNAL-CONSTITUTION, Nov. 14, 2008, at 1C; Ryan Lengrich, *Absentee Ballots mailed to wrong Lee residences*, THE 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>.

<sup>300</sup> Jocelyn Travis Interview, *supra* note 278.



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 needed 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.<sup>301</sup> 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 29). 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.<sup>302</sup> They argued that simpler wording and

<sup>301</sup> Peg Rosenfeld E-mail, *supra* note 16; Marilyn Jacobcik Interview, *supra* note 15; E-mail from Dana Chisnell, Usability and User Research Consultant, UsabilityWorks (Feb. 2, 2009) (on file with the Brennan Center); E-mail from Josephine Scott, Usability Engineer, Usability Professionals’ Association-Michigan (Jan. 30, 2009)(on file with the Brennan Center); E-mail from Whitney Quesenberry, Independent Usability Expert (Jan. 30, 2009)(on file with the Brennan Center).

<sup>302</sup> Peg Rosenfeld E-mail, *supra* note 16; E-mail from Dana Chisnell, Usability and User Research Consultant, UsabilityWorks (Feb. 2, 2009)(on file with author); E-mail from Josephine Scott, Usability Engineer, Usability

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.<sup>303</sup>

***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.<sup>304</sup> At the same time, a number of election officials and advocates were critical of the directive, arguing that it actually impaired the ability of officials to correct mistakes and disenfranchised voters who were unable to appear at county election offices in person.<sup>305</sup> 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 deficiencies . . . .<sup>306</sup>

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.<sup>307</sup> 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.<sup>308</sup>

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.<sup>309</sup>

Professionals’ Association-Michigan (Jan. 30, 2009)(on file with author); E-mail from Whitney Quesenberry, Independent Usability Expert (Jan. 30, 2009)(on file with author).

<sup>303</sup> *Id.*

<sup>304</sup> See, e.g., Daniel Tokaji, *supra* note 94.

<sup>305</sup> Marilyn Jacobcik Interview, *supra* note 15; Jeff Wilkinson Interview, *supra* note 83. Peg Rosenfeld said that although she likes the idea, she does not favor the details of the directive’s implementation. Peg Rosenfeld E-mail, *supra* note 16.

<sup>306</sup> 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>.

<sup>307</sup> Jane Platten Interview, *supra* note 15.

<sup>308</sup> See E-mail from Bryan Clark, Policy and Planning Coordinator, Ohio Secretary of State (Mar. 3, 2009) (on file with the Brennan Center); OHIO REV. CODE 3509.05(A).

<sup>309</sup> Daniel Tokaji Interview, *supra* note 91; Edward Foley Interview, *supra* note 138, Peg Rosenfeld E-mail, *supra* note 16; Norman Robbins Email, *supra* note 4; Donita Judge E-mail, *supra* note 4.

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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 “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.”<sup>310</sup>

### 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).<sup>311</sup> 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.<sup>312</sup>

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.

***Manual Review of Ballots.*** Professors Paul Gronke<sup>313</sup> and Doug Jones<sup>314</sup> 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

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<sup>310</sup> Written Statement from Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections 2-3 (on file with the Brennan Center) and annexed hereto Appendix 30.

<sup>311</sup> 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*, THE COLUMBUS DISPATCH, Dec. 25, 2008, available at [http://www.dispatchpolitics.com/live/content/local\\_news/stories/2008/12/26/copy/GOOFY\\_VOTES.ART\\_ART\\_12-26-08\\_A1\\_4LCBH8R.html?sid=101](http://www.dispatchpolitics.com/live/content/local_news/stories/2008/12/26/copy/GOOFY_VOTES.ART_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*).

<sup>312</sup> Stephen Ansolabehere & Charles Stewart III, *supra* note 296; 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>.

<sup>313</sup> Paul Gronke Interview, *supra* note 35.

<sup>314</sup> E-mail from Doug Jones, Professor, University of Iowa (Feb. 10, 2009) (on file with the Brennan Center).

agreement on voter intent — counts 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 31.

### Expanding Mail-In Absentee Voting

Some interviewees expressed hope that the state would expand mail-in voting even further.<sup>315</sup> 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 who 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.<sup>316</sup> 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.<sup>317</sup>

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

***Permit voters to apply once 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 every election.<sup>318</sup> 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.<sup>319</sup> Again, advocates and academics who raised concerns about mail-in voting were cautious about such a move, arguing that it should first

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<sup>315</sup> Jane Platten Interview, *supra* note 15; Peg Rosenfeld E-mail, *supra* note 22.

<sup>316</sup> Daniel Tokaji Remarks, *supra* note 249; Jocelyn Travis Interview, *supra* note 278; Donita Judge E-mail, *supra* note 4.

<sup>317</sup> 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](http://projectvote.org/fileadmin/ProjectVote/Policy_Briefs/PB13-Vote_by_Mail.pdf) [hereinafter *Project Vote Report*].

<sup>318</sup> Peg Rosenfeld Interview, *supra* note 22; Jane Platten Interview, *supra* note 15.

<sup>319</sup> Remarks of David Farrell, Deputy Assistant Secretary of State, Ohio Secretary of State’s Office, at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t).

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be tried in just one or two such elections, in specific locations, and the results of such efforts carefully scrutinized.<sup>320</sup>

***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.<sup>321</sup> Another advocate noted that Cuyahoga 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.<sup>322</sup>

***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.<sup>323</sup>

### Developing Best Practices for Vote By Mail Security

While there is little substantiated evidence of voter fraud in the United States,<sup>324</sup> where fraud has occurred, it has most often takes place through absentee ballots.<sup>325</sup> 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.<sup>326</sup> 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

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<sup>320</sup> Project Vote Report, *supra* note 317; Daniel Tokaji Remarks, *supra* note 249; Jocelyn Travis Interview, *supra* note 278.

<sup>321</sup> Peg Rosenfeld E-mail, *supra* note 78.

<sup>322</sup> Norman Robbins Email, *supra* note 4; Jocelyn Travis Interview, *supra* note 278. The 60 day notice of election requirement expired after the 2008 general election.

<sup>323</sup> Peg Rosenfeld E-mail, *supra* note 78; Jocelyn Travis Interview, *supra* note 278; Catherine Turcer E-mail, *supra* note 4; Sibley Arnebeck Email, *supra* note 4.

<sup>324</sup> JOB SEREBROV AND 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](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 BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, THE TRUTH ABOUT VOTER FRAUD (2007), *available at* <http://www.brennancenter.org/content/resource/truthaboutvoterfraud/>.

<sup>325</sup> 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](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](http://moritzlaw.osu.edu/electionlaw/docs/50Q_for_PA.pdf)

<sup>326</sup> Paul Gronke Interview, *supra* note 35; Candice Hoke Email, *supra* note 15; 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).

for the Secretary of State to develop “best security practices” for absentee ballots, which they could then adapt to their particular systems.<sup>327</sup> 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 31.

### 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” early 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 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 potentially 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.<sup>328</sup>

#### ***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

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<sup>327</sup> Marilyn Jacobcik Interview, *supra* note 15; Jane Platten Interview, *supra* note 15; Michael Stinziano Interview, *supra* note 17.

<sup>328</sup> E-mail from Paul Gronke, Director of the Early Voting Information Center at Reed College (Mar. 2, 2009).

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should also examine whether new ballot design issues are raised by no-excuse absentee balloting, and whether new designs can reduce voter error.

### ***Study the Impact of No-Excuse Absentee Balloting on Turnout***

Most studies have shown that early 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.<sup>329</sup> The state could 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 to early voting 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 have to 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.<sup>330</sup> 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.

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<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

## 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.<sup>331</sup> 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.<sup>332</sup> Additional training improves both poll worker confidence and voters' perceptions of poll workers' competence.<sup>333</sup> 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.”<sup>334</sup>

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.<sup>335</sup> 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.<sup>336</sup> 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

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<sup>331</sup> 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*, POLITICAL RESEARCH QUARTERLY (Oct. 2008) [hereinafter *Hall & Monson*].

<sup>332</sup> Ryan L. Claassen, David B. Magleby, J. Quin Monson & Kelly D. Patterson, “At Your Service”: *Voter Evaluations of Poll Worker Performance*, 36 AMERICAN POLITICS RESEARCH 612, 628 (2008) [hereinafter *Claassen, et. al.*]

<sup>333</sup> J. Quin Monson, Ohio poll worker study (forthcoming PEW RESEARCH CENTER) (on file with the Brennan Center) [hereinafter *Monson Poll Worker Study*]; J. Quin Monson Interview, *supra* note 331.

<sup>334</sup> Dale Fellows Interview, *supra* note 117.

<sup>335</sup> UNITED STATES ELECTION ASSISTANCE COMMISSION, COMPENDIUM OF STATE POLL WORKER REQUIREMENTS 117 (Aug. 2007) (citing OHIO REV. CODE ANN. § 3501.27 (A), (B), (C)).

<sup>336</sup> Jeff Wilkinson Interview, *supra* note 83.

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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.<sup>337</sup>

## 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.<sup>338</sup> At least one official felt that frustration with constantly changing and increasingly complicated election procedures also led to problems recruiting and retaining poll workers.<sup>339</sup> In the face of those challenges, the following suggestions emerged for improving poll worker recruitment and training:

### 1. Recruitment

**Include poll worker applications in mailings to voters.** 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 pool of back up poll workers.<sup>340</sup> 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.

**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.<sup>341</sup> Advocates and some election officials would like to see expanded recruitment of workers and students.<sup>342</sup> 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.”<sup>343</sup> 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

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<sup>337</sup> 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, *supra* note 331.

<sup>338</sup> Remarks of Jeff Wilkinson, Director, Richland County Board of Elections at 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](http://www.ohiochannel.org/multimedia/people/media_archive.cfm?person_id=96806&file_type=Flash%20Video&clear_media_archive_search=t) [hereinafter *Jeff Wilkinson Remarks*]; Peg Rosenfeld Interview, *supra* note 22; Jane Platten Interview, *supra* note 15.

<sup>339</sup> Jeff Wilkinson Remarks, *supra* note 338.

<sup>340</sup> Betty McGary Interview, *supra* note 137.

<sup>341</sup> Claassen *et al.*, *supra* note 332.

<sup>342</sup> Dale Fellows Interview, *supra* note 117; Timothy Burke Interview, *supra* note 122; Donita Judge Interview, *supra* note 126. Peg Rosenfeld E-mail, *supra* note 16; Catherine Turcer E-mail, *supra* note 4.

<sup>343</sup> Claassen *et al.*, *supra* note 332.

Commission provides information and suggestions on recruitment practices.<sup>344</sup> One election official suggested recruiting election protection advocates.<sup>345</sup>

***Increase the use of high school students as poll workers.*** Ohio law allows one high school senior to serve in each polling place in any capacity other than as a presiding judge.<sup>346</sup> The students must be given time off to serve. In November 2008, Cuyahoga County deployed 1900 seniors as greeters at the polls, arming them with maps and voter lists, to help direct voters to the correct voting location.<sup>347</sup> Hamilton and Lake Counties recruit high school students and use them in all poll worker jobs (except as presiding judges).<sup>348</sup> These counties have found that the infusion of new young blood has been a “huge plus.”<sup>349</sup> 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.<sup>350</sup> The Election Assistance Commission provides information and suggestions on recruitment of High School students.<sup>351</sup>

***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.”<sup>352</sup> 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.<sup>353</sup> One official suggested that being able to pay workers to do additional training would be particularly beneficial.<sup>354</sup> 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.<sup>355</sup>

***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

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<sup>344</sup> 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>.

<sup>345</sup> Timothy Burke Interview, *supra* note 122.

<sup>346</sup> UNITED STATES ELECTION ASSISTANCE COMMISSION, COMPENDIUM OF STATE POLL WORKER REQUIREMENTS 118 (Aug. 2007), citing (OHIO REV. CODE § 3501.22 (C)-(D)).

<sup>347</sup> 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 15.

<sup>348</sup> Timothy Burke Interview, *supra* note 122; Dale Fellows Interview, *supra* note 117.

<sup>349</sup> Dale Fellows Interview, *supra* note 116.

<sup>350</sup> Donita Judge Interview, *supra* note 126.

<sup>351</sup> U.S. ELECTION ASSISTANCE COMMISSION, SUCCESSFUL PRACTICES FOR POLL WORKER RECRUITMENT (July 2007), *available at* <http://www.eac.gov/files/BPPollWorker/Section%201%20Recruitment.pdf>.

<sup>352</sup> Dale Fellows Interview, *supra* note 117.

<sup>353</sup> Matthew Damschroder Interview, *supra* note 15; Dale Fellows Interview, *supra* note 117; Donita Judge Interview, *supra* note 126; Peg Rosenfeld E-mail, *supra* note 16; 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 4; Sibley Arnebeck Email, *supra* note 4.

<sup>354</sup> Dale Fellows Interview, *supra* note 117.

<sup>355</sup> Donita Judge Interview, *supra* note 126.

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day now required of all poll workers.<sup>356</sup> Experiments with recruitment of some poll workers for 7-hour shifts would determine whether quality of poll worker performance would improve under these circumstances.

## 2. *Training*

***Simplify election procedures.*** 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.<sup>357</sup>

***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.<sup>358</sup> 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.<sup>359</sup> In Butler County, during training every poll worker fills out a provisional ballot envelope.<sup>360</sup>

***Make online training available earlier and publicize its availability.*** County officials appreciated the Secretary’s new online poll worker training materials.<sup>361</sup> One county indicated that these resources would have been more helpful if they had been available earlier.<sup>362</sup> 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.<sup>363</sup>

***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

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<sup>356</sup> Telephone Interview with Norman Robbins, Former Study Leader of the Greater Cleveland Voter Coalition (Feb. 16, 2009).

<sup>357</sup> Jeff Wilkinson Interview, *supra* note 83; Peg Rosenfeld Interview, *supra* note 22; Matthew Damschroder Interview, *supra* note 15; Timothy Burke Interview, *supra* note 122; Eben “Sandy” McNair Interview, *supra* note 124.

<sup>358</sup> Donita Judge Interview, *supra* note 126; *See* 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).

<sup>359</sup> Jane Platten Interview, *supra* note 15; Jeff Wilkinson Interview, *supra* note 83; Dale Fellows Interview, *supra* note 117; Betty McGary Interview, *supra* note 137.

<sup>360</sup> Betty McGary Interview, *supra* note 137, Monson Poll Worker Study, *supra* note 333.

<sup>361</sup> Matthew Damschroder Interview, *supra* note 15; Dale Fellows Interview, *supra* note 117; Betty McGary Interview, *supra* note 137.

<sup>362</sup> Matthew Damschroder Interview, *supra* note 15.

<sup>363</sup> Monson Poll Worker Study, *supra* note 333; J. Quin Monson Interview, *supra* note 318.

the procedures the training would cover. Poll workers came to training prepared to learn changes.<sup>364</sup>

***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.<sup>365</sup> 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.<sup>366</sup> When poll workers are deployed, officials make sure that polling places are staffed with workers with different grades.<sup>367</sup> One election official suggested creating a certification program to make sure presiding judges were competent.<sup>368</sup> 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.<sup>369</sup>

***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.<sup>370</sup> 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.<sup>371</sup>

***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.<sup>372</sup> 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.<sup>373</sup>

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

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<sup>364</sup> Jeff Wilkinson Interview, *supra* note 83.

<sup>365</sup> *See e.g.*, ADVANCEMENT PROJECT POLL WORKER REPORT, *supra* note 337; Donita Judge Interview, *supra* note 126.

<sup>366</sup> Jane Platten Interview, *supra* note 15; Betty McGary Interview, *supra* note 137359.

<sup>367</sup> *Id.*

<sup>368</sup> Matthew Damschroder Interview, *supra* note 15.

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*; Betty McGary Interview, *supra* note 137359; Dale Fellows Interview, *supra* note 116; Peg Rosendeld E-mail, *supra* note 16; Catherine Turcer E-mail, *supra* note 4; Sibley Arnebeck Email, *supra* note 4.

<sup>371</sup> Matthew Damschroder Interview, *supra* note 15.

<sup>372</sup> *Id.*; Michael Stinziano Interview, *supra* note 17.

<sup>373</sup> Donita Judge Interview, *supra* note 126.

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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%.<sup>374</sup>

***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.”<sup>375</sup> 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.<sup>376</sup> One official suggested that being able to pay workers to do additional training would be particularly beneficial.<sup>377</sup> 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.<sup>378</sup>

***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.<sup>379</sup> Experiments with recruitment of some poll workers for 7-hour shifts would determine whether quality of poll worker performance would improve under these circumstances.

### 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.<sup>380</sup> 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.<sup>381</sup>

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<sup>374</sup> Voter Classification Diagram and Poll Worker Errors Charts annexed as Appendix 32. Betty McGary Interview, *supra* note 137.

<sup>375</sup> Dale Fellows Interview, *supra* note 117.

<sup>376</sup> Matthew Damschroder Interview, *supra* note 15; Dale Fellows Interview, *supra* note 117; Donita Judge Interview, *supra* note 126; Peg Rosenfeld E-mail, *supra* note 16; 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 4; Sibley Arnebeck Email, *supra* note 4.

<sup>377</sup> Dale Fellows Interview, *supra* note 117.

<sup>378</sup> Donita Judge Interview, *supra* note 126.

<sup>379</sup> Telephone Interview with Norman Robbins, Former Study Leader of the Greater Cleveland Voter Coalition (Feb. 16, 2009).

<sup>380</sup> J. Quin Monson Interview, *supra* note 331.

<sup>381</sup> GREATER CLEVELAND VOTER COALITION, RESULTS OF EXIT POLLS ON MAY 2, 2006, *available at* <http://www.clevelandvotes.org/news/reports/ExitPollReport.pdf>.

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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 Dan 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.<sup>382</sup>

***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.<sup>383</sup>

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<sup>382</sup> Daniel Tokaji Interview, *supra* note 91.

<sup>383</sup> *Id.*

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Appendix 32: *Voter Classification Diagram* and *Pollworker Errors by Election*, provided by Betty  
McGary, Director, Butler County Board of Elections

## Appendix 1: List of Interviewees

## **LIST OF INTERVIEWEES**

Theodore Allen, Associate Professor of Industrial and Systems Engineering, Ohio State University

Timothy Burke, Member, Hamilton County Board of Elections

Dana Chisnell, Usability and User Research Consultant, UsabilityWorks

Jon Craig, Reporter, Cincinnati Enquirer

Keith Cunningham, Director, Allen County Board of Elections

Matthew Damschroder, Deputy Director, Franklin County Board of Elections

Dale Fellows, Member, Lake County Board of Elections

Edward Foley, Director, Election Law at Moritz College of Law

Jonah Goldman, Director, National Campaign for Fair Elections

Paul Gronke, Director of the Early Voting Information Center at Reed College

Steven Harsman, Director, Montgomery County Board of Elections

Steve Hoffman, Reporter, Akron Beacon Journal

Candice Hoke, Director, Center for Election Integrity

Linda Howe, Director, Lucas County Bd. of Elections

Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections

Ellis Jacobs, Board President, Ohio Citizen Action Education Fund and attorney at Advocates for Basic Legal Equality

Patty Johns, Director, Wayne County Board of Elections

Doug Jones, Professor, University of Iowa

Donita Judge, Staff Attorney, Advancement Project

David Kimball, Associate Professor, Political Science at U. of Missouri-St. Louis

Justin Levitt, Counsel, Brennan Center for Justice

Michael McDonald, Director, United States Elections Project

Betty McGary, Director, Butler County Board of Elections

Eben “Sandy” McNair, Member, Cuyahoga County Board of Elections

Greg Moore, Executive Director of the Nat’l Voter Fund of the NAACP

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

Wayne Olsson, Director, Defiance County Board of Elections

Myrna Perez, Counsel, Brennan Center for Justice

Jane Platten, Director, Cuyahoga County Board of Elections

Whitney Quesenberry, Independent Usability Expert

Norman Robbins, Former Study Leader, Greater Cleveland Voter Coalition

Peg Rosenfeld, Elections Specialist, League of Women Voters of Ohio

Kim Rudd, Deputy Director, Crawford Board of Elections

Josephine Scott, Usability Engineer, Usability Professionals’ Association-Michigan

Adam Skaggs, Counsel, Brennan Center for Justice at NYU School of Law

Michael Stinziano, Director, Franklin County Board of Elections

Daniel Tokaji, Associate Director, Election Law at Moritz College of Law

Jocelyn Travis, Director, Ohio Votes

Dan Troy, past President, County Commissioners’ Association of Ohio

Catherine Turcer, Legislative Director, Ohio Citizen Action

Jeff Wilkinson, Deputy Director, Richland County Board of Elections

Jill Zimon Miller, Blogger, Writeslikeshetalks.com

Appendix 2: Data Request to Ohio  
Secretary of State's Office  
and Listing of Data Supplied

## **DATA REQUESTED FROM OHIO SECRETARY OF STATE'S OFFICE**

### Provisionals

- Rates of casting and counting provisional ballots, including break-down of early voting provisionals (by county and precinct)
- Rates of casting and counting provisional ballots pre-HAVA (by county and precinct)
- Reasons why provisional ballots were both cast and, where applicable, rejected (by county and precinct)
- For provisional ballots counted, how its questionable status was resolved in its favor (by county and precinct)
- Methods counties use to check the registration status of a provisional voter; methods counties use in general to evaluate provisional ballots

### Absentees

- Number of absentee ballot applications received and rejected, including reasons for rejection (by county and precinct)
- Number of voters whose absentee ballot applications were rejected who still were able to vote either absentee or on election day (by county and precinct)
- Number of absentee ballots cast and counted, both by mail and in-person, including reasons why absentee ballots weren't counted (by county and precinct)
- Number of rejected absentee voters who took advantage of new notice opportunity to correct mistakes (by county and precinct)
- methods counties used for evaluating the eligibility of an absentee ballot to be counted

### Voting Technology

- Percentage of voters in DRE counties who requested paper ballots, excluding provisionals (by county and precinct)
- Undervoted ballots broken down by early voting period and election day and by voting technology (by county and precinct)
- Average wait time on election day and during early voting (by county and precinct)

### "Golden Week"

- Voter turnout broken down by "golden week," regular early voting, and election day (by county and precinct)
- Number/percentage of "golden week" new voters whose ballots were not counted due to ineligibility (by county and precinct)

### Database Matching

- Number of no-match hits returned from Social Security Database and the number of records checked (by county and precinct)
- Number of no-match hits returned from the Ohio BMV Database, and the number of records checked (by county and precinct)

## **DATA PROVIDED BY OHIO SECRETARY OF STATE'S OFFICE**

### Provisionals

- Data tables showing the rates of casting and counting provisional ballots, by county, 1996-2008

### Absentees

- Data tables showing the rates of casting and absentee provisional ballots, by county, 1996-2008
- Data table showing the number of in-person absentee voters, new registrants who voted in-person absentee, and mailed absentee ballots cast during the September 30<sup>th</sup> to October 6<sup>th</sup> "Golden Week" period.

### Other

- Preliminary Incident Report

Appendix 3: Candice Hoke & David  
Jefferson, *Voting and  
Registration Technology  
Issues, Lessons from 2008,*  
Part III

## **Chapter Three**

### **Voting and Registration Technology Issues: Lessons from 2008**

**Candice Hoke and David Jefferson**

After the 2000 presidential election exposed flawed technologies for vote recording and tabulation and for maintaining voter registration files,<sup>1</sup> Congress appropriated more than \$3 billion in an effort to upgrade these systems nationwide, usually to state-of-the-art, computer-based equipment. The massive Help America Vote Act of 2002 (HAVA)<sup>2</sup> described the functional features the new technologies should attain<sup>3</sup> but did not articulate or provide a process by which any mandatory federal technical standards would issue. Nor did it require a compliance system for ensuring that voting equipment and voter registration systems would satisfy the statutory standards. HAVA did require, however, a relatively rapid timetable for purchase and deployment of the new systems.<sup>4</sup> Underlying this rapid move to computer-based voting and voter registration lay a critically unexamined assumption: technologies (such as automatic tellers and accounting software) used for many years in other industries could be quickly adapted by vendors to bring voting into the twenty-first century. Further, the Act reflected the prevailing congressional belief in the capacity of market forces to produce high quality products at lower prices than a scheme of mandatory federal regulation.

HAVA created a new federal election administrative agency, the U.S. Election Assistance Commission (EAC),<sup>5</sup> to disburse funds and to implement other sections of the Act that federally mandated new state efforts in election administration. Before HAVA, many states had left election administration within the domain of local officials, who had little state supervision or involvement.<sup>6</sup> Partly from displeasure with the Federal Election Commission's exercise of its mandatory regulatory authority,<sup>7</sup> and partly in response to the traditional roles of state governments in conducting elections, Congress generally chose not to delegate to the EAC

mandatory regulatory power over election administration.<sup>8</sup> Instead, Congress charged the EAC predominantly with the role of providing “guidance” via “best practices” and “voluntary” standards for state election officials.<sup>9</sup>

Given that by 2008, most local election offices had acquired at least two years’ experience with their new voting technologies, some may have tacitly assumed that the voting technology issues of prior years would not resurface in the 2008 presidential cycle. Vendors had previously dismissed technical malfunctions as attributable to human error by poll workers, voters, or election officials,<sup>10</sup> who presumably had learned from prior mistakes. The empirical record that has been generated during the entire 2008 election cycle, however, documents a wide range of technical issues with voting systems, and to a somewhat lesser degree, with the statewide voter-registration databases. When the record is taken as a whole, and in conjunction with the comprehensive, independent scientific assessments,<sup>11</sup> the technical “incidents” that interfere with the conduct of an election are increasingly understood to relate to the equipment’s design, its engineering-manufacturing, and its documentation in operational manuals. The issues cannot be attributed simply to operator or human error.

By mid-2007, the federal HAVA disbursements to states had totaled nearly \$3 billion in four years.<sup>12</sup> In appropriating these funds, core congressional statutory objectives included improving the voting experience, increasing accessibility for disabled voters,<sup>13</sup> augmenting voter confidence in the democratic process,<sup>14</sup> and reducing the voting machine error rates from the 2 percent average of punch-card systems to a fraction of their former levels.<sup>15</sup> But achievement of each of these objectives appears more elusive as questions of the accuracy, reliability, and security of the current generation of voting systems and of the voter registration databases have become increasingly serious and scientifically documented. The apparent achievement of significantly reduced incidence of balloting errors,<sup>16</sup> particularly “overvotes” and unintended “undervotes,” is more questionable when the voting system’s performance does not comply with

scientific and engineering standards for assuring high accuracy, security, and reliability.

This chapter reviews the 2008 election performance and scientific assessment records of the two major HAVA-promoted election technologies considered here, the voting systems themselves and, to a lesser extent, the statewide voter-registration databases, to delineate both their performance records and the statutory and regulatory apparatus that produced the technological shift. Perhaps surprisingly, HAVA's role in generating each of these election technologies is quite different. While HAVA mandated and constituted the originating impetus for most of the statewide voter-registration systems that were in use for the 2008 election cycle, and provided major financial incentives for the shift to computer-based voting, HAVA did not generate and was not the source for the regulatory and certification testing apparatus that approved voting systems for 2008 usage. Development and implementation of the HAVA-mandated voting system guidelines and its testing apparatus consumed significant time, effectively leaving in place the prior standards and certifications under the Federal Election Commission.<sup>17</sup>

In searching for the reasons behind national deployment of voting and database technologies whose reliability, security, and other technical properties were profoundly deficient, at least four major reasons can be adduced. First, the HAVA-mandated regulatory activities were not sequenced properly for the best use of the federal monies. Second, the timetable for purchase and initial launch of the technologies was far too ambitious for developing voting equipment that would function at high standards of accuracy, security, and reliability. Third, HAVA dedicated far too little attention to the regulatory, managerial, and technological infrastructure at both the federal and state levels that was needed to support the dramatic systems shift, instead apparently assuming the market would satisfy the technical needs.<sup>18</sup> Fourth, the Act's faith in the market to produce exemplary election equipment was misplaced, especially in light of the rapid pace of procurement and deployment the Act mandated.

## **I. The 2008 Performance Record of Digital Voting Systems**

By 2008 most states had shifted a large proportion of their voters to electronic voting systems, using HAVA funds for new procurements. The new computer-based equipment was designed to generate ballots, record votes, tabulate results, and produce reports of election results.

### ***A. The Scientific Assessments of Voting Systems***

HAVA funding that states used for replacing punch-card and lever systems could only be expended on voting systems that met minimum statutory criteria for functionality.<sup>19</sup> This set of restrictions led predominantly to purchases of three kinds of systems: (a) optical scanners for reading paper ballots (both the portable, low capacity, precinct-based scanners and the high speed, high capacity, centralized scanners), (b) direct recording electronic (DRE) machines that usually feature a touch screen for selecting ballot choices (often conceptualized as an ATM-like voting device), and (c) computerized ballot-marking devices designed primarily for disability access.<sup>20</sup> If a jurisdiction selected paper ballots and scanning systems,<sup>21</sup> then a single technology would suffice for both absentee voting and precinct voting on Election Day, but precincts would also have to be supplied with ballot-marking devices to support the visually impaired. If a jurisdiction chose DRE devices for precinct balloting, the jurisdictions expected it to support both able-bodied and most disabled voters, as vendor marketing suggested.<sup>22</sup> DRE deployment, however, necessitated some additional absentee-balloting technology. Most vendors provide software that helps design digital ballots for both optical scanning and display on DRE devices, and then later tabulates and reports the election totals from both technologies in one omnibus election results report.

The vigorous debate over DRE accuracy, security, and reliability began in 2003 with a report from several prominent computer scientists who are software security experts. They reviewed the source code of a major DRE system (the Diebold TS) that was deployed statewide in both Georgia and Maryland, and also widely in other jurisdictions around the country,<sup>23</sup> identifying numerous serious deficiencies especially related to security. Computers that lack security protections appropriate for their particular application are vulnerable to attacks that can subvert their intended purpose, in this case accurate election results. Attacks on voting systems might render the machines inoperable,<sup>24</sup> or cause them to lose data, or compromise ballot secrecy, or systematically change vote totals in completely undetectable and uncorrectable ways. For this reason computer security experts conclude that security- and mission-critical equipment such as voting systems require “high assurance,” i.e., a convincing argument or proof, going beyond simple testing, that the system will *always* do what it is supposed to do *and also* never do what it is not supposed to do.<sup>25</sup>

Following the independent academic report, Maryland commissioned the first of several technical and risk assessments of the same electronic voting system, and other states also initiated voting systems studies of various types. By the 2006 election cycle, at least six major studies had documented a broad range of serious security and reliability deficiencies in systems sold by various vendors.<sup>26</sup> Candidates for Secretary of State in California and Ohio campaigned in part on a promise to initiate closer examinations of their voting systems. In California, newly elected Secretary of State Debra Bowen began planning the independent study of voting systems used in the state immediately after taking office. The new Secretary of State in Ohio, Jennifer Brunner, issued an RFP for a separate study.

Two distinguished computer scientist professors with expertise in both computer security and voting systems led the California “Top to Bottom Review” (TTBR), which the University of California managed. As Secretary Bowen directed, the lead scientists convened four separate

teams: software code assessment; “red team”/penetration assessments; documentation review, including of all testing lab reports and vendor manuals; and accessibility assessments. Despite receiving commitments to participate in the TTBR from all four vendors of California-certified voting systems, only three (Sequoia, Diebold (now Premier), and Hart InterCivic) complied with the project’s calendar sufficiently to be reviewed. ES&S did not meet the deadline.

The TTBR reports documented a wide range of grave deficiencies in basic security, reliability, accessibility, usability, and ballot secrecy design and implementation.<sup>27</sup> In later reviews convened in California and also in the Ohio EVEREST risk assessment,<sup>28</sup> the reports documented a similar set of serious deficiencies in the ES&S voting systems using similar criteria.<sup>29</sup> Perhaps the area of greatest concern lay in security, as the vendors had not included high security among the core design criteria, or at least had not achieved it. If security considerations are not included at the design level, post-production corrections are rarely effective.<sup>30</sup>

Some local election officials publicly criticized the voting system studies, arguing that because the security vulnerabilities were identified in a controlled laboratory setting rather than as truly deployed with numerous procedural safeguards in a real election, the conclusions were invalid.<sup>31</sup> By contrast, other officials welcomed the assessments and suggested further efforts.<sup>32</sup>

In 2008, the vast majority of U.S. voters cast their ballots on voting systems designed and marketed by the same four vendors whose voting systems had been shown to be seriously deficient. The uneven performance of these voting systems in real elections was predictable in light of the constellation of technical issues that the published independent studies had documented.

### ***B. The Voting Systems’ 2008 Performance Record***

From the inception of the 2008 presidential election cycle, local jurisdictions experienced

both apparent successes in using the HAVA-funded voting systems as well as notable calamities. A number of national and local advocacy organizations concerned with election accuracy, often known as “election integrity” groups, assumed the role of citizen technology and security monitors. They communicated voting system technical problems to reporters, questioned election officials at public meetings, and vigorously advocated for auditable voting technology. National research and advocacy nonprofit organizations that focus on technical issues produced major reports.<sup>33</sup> These national organizations, including Common Cause, the Verified Voting Foundation, and the Brennan Center for Justice, published major research and policy recommendations for managing voting technology issues.<sup>34</sup>

With government studies, independent academics, and major research organizations having legitimized the previously dismissed concerns, and with the pressure for riveting stories from the campaign trail, the media became far more active in reporting voting system equipment problems. Because the technical problems were widespread throughout the election cycle, the following review is perforce illustrative rather than exhaustive. In January 2008, South Carolina set the course with malfunctioning DRE touch screens that caused hundreds of primary voters to have to vote on paper towels and other scraps of paper. Officials later identified the cause to be a date programming error that affected voters in two populous counties.<sup>35</sup> Within the same month, several major Florida counties experienced significant interruptions in voting, with reliability issues affecting equipment by the four vendors whose similar (but not identical) voting systems had been evaluated in the California TTBR study. Florida’s technical issues included software bugs that impaired vote tabulation accuracy, DRE units that would not boot, memory card and DRE activator card errors, and ballot scanner malfunctions.

On February 5, 2008 and succeeding days, the primary elections on Super Tuesday<sup>36</sup> produced a lengthy list of voting system equipment failures that impeded voting. Several Atlanta polling locations sustained long lines, and some voters departed without voting because the

DREs were not functioning. In New Jersey's primary, in some counties using Sequoia Advantage DREs without a voter verification system, election officials discovered a mysterious ballot-counting anomaly. After months of legal wrangling between citizen plaintiffs, the vendor, and the state government, a state court ordered a forensics assessment by computer security scientist Andrew Appel of Princeton University. His research team's October 2008 report concluded that software programming errors were responsible for the anomaly. The team also found that New Jersey's Sequoia Advantage DREs suffered from software and physical security deficiencies similar to those reported in earlier studies of DRE systems.<sup>37</sup>

In advance of the primary election, officials in Sacramento County, California, announced their plan not to use M100 ES&S precinct scanners owing to failures in their logic and accuracy tests. The county moved to a contingency plan, scanning all ballots in the central office. While California's voting technology produced a more positive track record than many other Super Tuesday states, a few counties reported problems with their central count scanners and with memory cards.

Arizona's Cochise County suffered perhaps the most serious tabulation anomaly of Super Tuesday:

[A]s the county accumulated totals from the precincts, a computer error kept adding the results for five polling places every time new figures were added. The error got worse when the cumulative error went through five updates. County officials noticed the problem when they realized the *total number of ballots cast was reported to be more than the people registered in the county.*<sup>38</sup>

Because the total recorded votes were much higher than expected, election officials noticed and investigated the anomaly. When reporting irregularities are not sufficiently dramatic to draw such attention, however, and routine auditing is not performed, software programming errors that

can lead to erroneous election results are unlikely to be identified and corrected. Discovering grave errors by happenstance troubles many advocacy organizations, and they urge the federal Election Assistance Commission to gather and report software errors.<sup>39</sup>

The 2008 general election reinforced the lessons of the primaries regarding the voting systems' uncertain reliability. Under the leadership of the Lawyers' Committee for Civil Rights Under Law, the Election Protection Coalition coordinated more than 100 organizations nationally to field legally trained election observers and troubleshooters. The Coalition established a hotline for voters, poll workers, and others to file reports on election difficulties. Partnering with the Electronic Frontier Foundation, the Coalition also sought to collect and analyze voting equipment problems. While the Coalition did not verify the individual reports and some may not be completely accurate, the constellations of voting system problems tend to match the press-reported technical issues that impeded voting.

Princeton researcher Joe Hall has analyzed the hotline equipment-related call data, finding that "machine breakdowns" led to long lines in numerous locations.<sup>40</sup> In one Atlanta polling place, all 15 DREs were nonfunctional. In other states, precinct ballot scanners failed. Long lines frequently ensued when primary balloting equipment failed, as voters declined to use the back-up balloting systems. Hall reports that voters distrust "contingency balloting" methods; across the nation, when the primary voting system failed, many voters chose to wait several hours for equipment repairs rather than risk having their ballots omitted from the count. Voters also reported to the Coalition hotline that disability access voting equipment was nonfunctional, that it had not been installed and activated when voters arrived, or was not usable in a manner that allowed independent and private voting as required by HAVA.<sup>41</sup> The hotline provided additional data that Hall characterizes as evincing "improper technical fixes" of voting equipment, such as removing voting machines to a parking lot for repairs while voting was occurring.

Of roughly 1,900 voting equipment reports filed with the hotline, Hall found the most

frequent was that the voting equipment was “broken” in some manner. These reports included nonfunctional lights, buttons, or legs; unstable screens, failure to boot, or crashing and freezing; failure to properly count or increment the number of ballots; DRE printer jams, DRE vote “flipping,” and DRE nonrecording of write-in votes.<sup>42</sup> In the states permitting early in-person voting and increased absentee voting by mail, these innovations mitigated the Election Day demands on finicky equipment and likely rendered more voters able to cast ballots than if voting occurred on only one date.

In the search for the reasons behind computer-based voting systems’ problematic performance record in 2008, the trail leads to regulatory decisions and gaps dating to almost 20 years ago. Unfortunately, at the inception of computers in voting systems, Congress did not perceive the substantial risks to voting rights that computers present and did not allocate regulatory authority sufficient to assure that only accurate and reliable voting machines would be used in federal elections. As 2009 commences, the regulatory gap remains unredressed.

## **II. The Voting Technology Regulatory Regimes: Pre-HAVA and HAVA**

Although the Constitution authorizes Congress to “make or alter” the states’ rules concerning the “Times, Places, and Manner” of holding federal elections,<sup>43</sup> Congress has never delegated to any federal agency regulatory power that mandates state compliance with a set of federal minimum standards for voting equipment.<sup>44</sup> Preceding the Help America Vote Act, Congress had vested in the Federal Election Commission (FEC) some regulatory authority over technologies used in elections, but this was only to generate voluntary standards.

### ***A. Pre-HAVA***

In 1975 the National Bureau of Standards, the predecessor agency to the National Institute for Standards and Technology, issued a report concluding that computers could be effectively

used as voting machines. But the report noted that its recommendation was conditional. Only if there were “technical improvements of the machines” and “better management of the election process,” as well as “formalized guidelines and greater computer expertise” so that election officials could make “informed purchasing decisions,” could computers be responsibly integrated into voting.<sup>45</sup> The study specifically noted gaps in information and design between the types of equipment that could be effectively deployed and the market power of officials to stimulate manufacture of the products needed.<sup>46</sup> However, it did not acknowledge the extended gestation that would be required to develop a good computer-based voting system because of the complex software that would need to be written and tested. Nor did the study adequately consider the likelihood or mechanisms by which election officials could receive education in managing the risks of computer-based voting equipment.

More than 10 years later and after additional studies, the FEC’s Office of Election Administration finally began work to generate federal voting equipment standards. This effort eventually resulted in the first set of FEC voluntary standards that were published in 1990. Beginning with this first standards-setting effort, voting system vendors played a major role. Roy Saltman has noted that, perhaps owing to inadequate funding, the FEC did not utilize independent assessments external to the industry, but instead leaned heavily on the vendors for technical input.<sup>47</sup> This FEC dependence on vendors and its failure to involve, for instance, academic computer scientists, may have been a leading cause of the total omission of strong standards for security, voter and ballot privacy, usability, documentation, configuration management, and quality assurance and auditing systems.<sup>48</sup> This omission of independent computer scientists may have been the fateful wrong turn that led to over fifteen years of computer-based voting technologies that failed to include, for instance, high security and reliability among the core design criteria.

Nearly ten years later, after the obsolescence of the prior standards and the GAO’s stern

chastisement of the agency for its failure to update standards to stay abreast of technological developments, the FEC returned to the task of drafting voting system standards. Again, the agency omitted most academic and other independent computer scientist expertise. The National Association of State Election Directors (NASED) collaborated with the FEC, eventually producing the two-volume proposed voluntary standards. After a notice and comment period, followed by revisions, the FEC approved the 2002 Voting System Standards.<sup>49</sup>

Under the FEC approach, and preserved by the EAC through its first years,<sup>50</sup> NASED certified the laboratories that conducted voting system testing. The labs were known as ITAs or independent testing authorities. The FEC–NASED testing procedures allowed vendors to contract with an ITA for “qualification” testing.<sup>51</sup> The 2002 standards charged vendors to design and test their voting systems and to document all initial product and system development and internal corporate testing. Once the vendor’s own testing supported a conclusion that the voting system satisfied the 2002 FEC voluntary standards, the vendor contracted with ITA Wyle Laboratories, or later SysTest, to conduct the full system testing of hardware and firmware.<sup>52</sup> (The term “firmware” refers to software embedded in a voting system.) The testing procedures required the vendor to submit all documentation of internal testing and test results to the ITA in what came to be known as a Technical Documentation Package, or TDP. The testing regime charged the testing laboratory to review the TDP and conduct system testing consistent with the FEC standards. If deficiencies were identified in testing, the ITA often would provide opportunities for the vendor to correct the problems.

After a voting system’s hardware received an ITA recommendation as qualified, the FEC required a software and documentation review by another laboratory that was specifically certified for this work. After the 2002 FEC standards were issued, CIBER Labs and SysTest held this ITA accreditation.<sup>53</sup>

Each testing lab independently reported its testing results and recommendations to both

NASED and the vendor in a written report that was branded “proprietary” and thus highly confidential. Even a state’s chief election officers and their internal certification processes often faced insurmountable obstacles to accessing the ITA testing reports. NASED maintained a Voting System Committee that was expected to undertake a close review of the ITA reports and recommendations, and to issue a NASED number if the system had qualified as complying with the FEC 2002 standards. As the GAO notably emphasized, though:

No federal agency has been assigned responsibility for or assumed the role of testing voting equipment against the federal standards. Instead, the National Association of State Election Directors, through its Voting Systems Committee, has assumed responsibility for implementing the federal voting equipment standards by accrediting independent test authorities, which in turn, test equipment against the standards.<sup>54</sup>

Thus, in 2001 the GAO flagged the voting system testing regulatory gap for Congress’s remedial consideration. The Help America Vote Act proved to be Congress’s response.

### ***B. HAVA’s Authority for Federal Voting System Standards and Testing***

HAVA articulates mandatory minimum standards for all voting systems used in federal elections from 2006 forward.<sup>55</sup> While the provision of some mandatory statutory standards is a step forward, the standards are predominantly functional rather than technical. With one exception, HAVA left the voting system technical specifications a matter of state discretion. The Act requires, however, that all voting systems that states purchase using HAVA funding or that they deploy in federal elections after January 2006 include the following:

- “Second-chance voting” or “notice voting,” meaning the capacity to notify voters of any overvote ballot errors before their ballot is cast, and to provide an opportunity to correct the ballot;
- At least one voting device per precinct that is accessible to disabled voters;

- A manual audit capability;
- Additional language accessibility, as per the Voting Rights Act, section 201;
- Proof of accuracy in the form of an operational error rate in that does not exceed the FEC's standard in 2002.<sup>56</sup>

HAVA also required states to define a valid vote for each type of authorized voting equipment.<sup>57</sup>

HAVA responded to the 2000 election issues by assigning to the newly created federal EAC various duties with respect to voting systems, including approval of new voluntary voting system guidelines, accreditation of testing laboratories (with NIST functioning as technical adviser), and certification, decertification, and recertification of voting systems.<sup>58</sup> HAVA initiated explicit federal authority for these crucial activities. The Act also transferred the FEC informational clearinghouse duties to the EAC, including reports regarding voting systems performance.<sup>59</sup>

Neither HAVA nor any other federal Act compels states to deploy only those voting systems that have obtained either an EAC certification or a 2002 FEC–NASED qualification that would presumptively suggest the system satisfies the applicable federal technical standards. Nor does any federal Act require states to test for proof that their voting systems satisfy the HAVA statutory mandates for vote tally accuracy or disability access. Rather, compliance with the federal technical standards for achieving security, reliability, and other objectives remain a matter of discretionary state governmental decision making, with those standards continuing to be typed “voluntary guidelines.”<sup>60</sup> While the HAVA statutory standards for voting systems are mandatory, HAVA failed to initiate a federal compliance program or to require states to craft their own. The 2008 performance of voting systems suggests HAVA’s mandatory voting system standards were treated as merely hortatory.

Turning to the impact of the voluntary technical standards and the EAC’s new certification regime, the EAC’s regulatory actions provide some basis for concluding that voting systems certified under its HAVA authority will reach substantially higher technical standards for

reliability, security, and accuracy. The EAC approved the 2005 Voluntary Voting System Guidelines, which became effective in December 2007. With NIST's technical assistance, the EAC adopted a substantially more exacting set of standards and accreditation reviews for Voting System Testing Laboratories, or VSTLs.<sup>61</sup> When NIST first evaluated the former ITAs—the labs that had approved the flawed voting systems widely deployed in 2008 and earlier years—for new certification as VSTLs, it recommended only one as an interim VSTL.<sup>62</sup> During most of 2008, the VSTLs were reviewing voting systems that vendors had submitted for EAC certification pursuant to the 2005 VVSG standards. No voting system has yet been EAC-certified, however. Thus, the 2008 election cycle record does not reflect on the substantive adequacy of the EAC's VVSG and its testing regime.<sup>63</sup>

The problematic voting systems deployed in the 2008 election cycle were permitted under pre-HAVA testing rules, not authorized under the EAC and HAVA testing regime. Depending on the state voting system certification requirements and the state's use of HAVA monies, a state's voting systems deployed in 2008 (1) might have been required to satisfy the FEC–NASED 2002 standards and weak testing regime, as well as state certification requirements; (2) might have been required to satisfy the state's certification requirements and testing only; (3) might have been required to satisfy only the FEC–NASED qualification testing; or (4) might not have been required to satisfy any certification testing whatsoever. Although HAVA mandated that all voting systems purchased by states and local jurisdictions with HAVA funding satisfy the statutory criteria, HAVA did not require that these systems pass any testing certifying that they comply with the statutory criteria before deployment in federal elections.<sup>64</sup>

In sum, while appearing to enunciate mandatory statutory standards for voting systems purchased with HAVA funding, HAVA was pervaded with regulatory gaps and vacuums that undermined its effectiveness in upgrading voting system performance. The first major error lay in disbursing HAVA's substantial voting systems funding before the EAC, its Technical

Guidelines Development Committee, and NIST had completed their work to strengthen voting system standards and introduce meaningful, comprehensive certification lab testing. In 2006 and 2007, a series of independent assessments clarified the profoundly deficient lab testing that was performed by ITAs.<sup>65</sup> Acting on NIST's recommendation, the EAC declined to accredit CIBER as an approved interim VSTL.<sup>66</sup> By some estimates, CIBER had conducted the lab testing of voting equipment on which over 65 percent of voters were casting their ballots in 2006.<sup>67</sup>

The California TTBR evaluations of vendor operator manuals and technical reports publicly confirmed the suspicions regarding CIBER's documentation and software evaluations.<sup>68</sup> For instance, the CIBER evaluation of the Diebold GEMS tabulation software summarily concluded in only three short paragraphs that the GEMS software had satisfied scores of complex testing requirements, and did not include any descriptions of required software testing that the lab had conducted. CIBER presented in but one paragraph its platitudinous assessment of the adequacy of over thirty Diebold operational manuals in light of usability, accuracy, and the other FEC standards.<sup>69</sup> The researchers concluded it was not possible to determine whether CIBER had conducted any testing, or which tests it had conducted with what types of results.<sup>70</sup>

A second sequencing problem in HAVA facilitated the error discussed above. Congress specified an overly ambitious but mandatory timetable for purchase and initial launch of the new voting technologies, requiring that the systems be used no later than the first federal election in 2006.<sup>71</sup> HAVA's enactment in late 2002, its specification of a new, more rigorous certification and testing regime to be instituted in relatively short order, and its \$2 billion in expected one-time appropriations for new voting technologies apparently invited vendors to engage in strategic behavior. Vendors' optimal strategy for the greatest market share with the fewest regulatory obstacles lay in pushing speedy sales to new HAVA-endowed jurisdictions.<sup>72</sup> HAVA did not explicitly permit the EAC to withhold HAVA funding until a vendor could prove that its system satisfied the stricter performance standards, and the EAC determined that it would not interpret

HAVA to require this proof.<sup>73</sup> Ultimately, HAVA's expedited timetable appeared to result in vendors making only slight adjustments to existing voting system product lines. Vendors then rolled out the equipment quickly for HAVA-funded purchases instead of designing, building, and testing higher-assurance voting equipment.

HAVA's goal of improving voting systems was undermined by yet a third legislative mistake: the Act dedicates too little attention to the regulatory, managerial, and technological infrastructure that is needed to support a dramatic technological systems shift and then maintain technological security and reliability. Consistent with its prevailing pro-market faith, the HAVA Congress apparently assumed the market would adequately satisfy the technical needs.<sup>74</sup> It seriously underestimated the risks to voting presented by computerized systems, and the infrastructural staffing, education, and regulatory guidance that would be needed in a computer-based voting world. By indulging the traditional deference to state and local decision making in election administration, Congress inadvertently undermined the capacity of local officials to conduct administratively competent and technically secure elections. HAVA provided lavish financial incentives for moving to technologically advanced voting equipment that generated new risks, but omitted the support that would educate and empower officials to protect voters and the fair administration of elections. The largely invisible risk to computerized elections—a matter beyond any cavil to the computer scientists who have studied the issues—was treated as a matter of marketing and conflicting opinion, rather than scientific judgment and effective public protection for fundamental voting rights. By this educational omission, HAVA exacerbated the conflict between sound science and election officials' discretionary management of election administration.

As the 2008 election cycle drew to a close, neither the federal regulatory apparatus nor most state governments had provided the technical expertise needed for ongoing local support of computer-based elections. HAVA started the ball rolling, but then largely abandoned election

officials; the officials were left to obtain technical information from vendors' marketing teams, which invariably promised that the voting systems would perform admirably. Instead of being penalized for fatally ambiguous or erroneous documentation, vendors have in effect been financially rewarded for their documentation failures. Electronic voting equipment has proved so complex and temperamental that even cash-strapped local jurisdictions have had little choice but to contract with the same vendors for additional expensive technical services contracts.

In its effort to show respect to state governments' traditional powers over elections, Congress also failed to supply at least interim guidance in effective and secure management of complex computer-based equipment, thus undermining the ability of state regulatory systems to protect election integrity and administrative competency. Most state elections policymaking apparatus lacked the requisite technical expertise to provide guidance as to procurement criteria and ongoing staffing support, or to generate at the state level the array of support and supervision processes that would ensure election integrity.

Finally, Congress's prevailing faith in the market to produce exemplary election equipment constituted the fourth major regulatory mistake. The voting equipment market's defects in 2002 and continuing into 2009 include substantial market concentration reaching oligopolistic levels; significant barriers to market entry; an artificial "market" composed exclusively of state and local governmental purchasers; and regulatory mandates placing a premium on rapid procurement. Instead of stimulating vendors to design and manufacture outstanding voting systems, the statutory incentives favored vendors who brought their wares to market most rapidly. Trumpeted by glowingly positive marketing campaigns, both the software and hardware were heavily cloaked by stringent proprietary legal clauses that obstructed customers' close evaluations both before and after purchase.<sup>75</sup> A belief in an unregulated market's sufficiency is especially unwarranted where governmental entities are the sole buyers as this factor blocks normal market dynamics. Given the critical social and political importance of honest elections,

and the indisputably defective market dynamics, the congressional gamble on trusting the market was unwarranted.

### **III. The 2008 Record of Statewide Voter-Registration Databases**

All states but one (North Dakota) require voters to be registered in advance of voting. In the United States, voter registration systems are used to regulate access to voting. The government seeks to ensure that only those persons legally entitled to vote in a given jurisdiction are permitted to do so, and that each person votes only once in a given election.<sup>76</sup> Because voter registration lists determine who is allowed to vote, these lists constitute one point for potential wholesale disruption of elections for strategic gain.<sup>77</sup>

In reviewing Florida's record in the 2000 presidential election as well as some other states' performance in voter registration record maintenance,<sup>78</sup> HAVA's sponsors recognized that states had neglected to provide ongoing supervision and protection of voter registration lists.<sup>79</sup> Generally maintained at the county level, some voter lists were replete with errors that could cause voter disenfranchisement. The hypothesized causes ranged from local officials' inadvertent mismanagement to deliberate mischief for partisan gain. The HAVA Congress perceived the answer to these risks to lie in a statewide voter-registration database that the state's chief election officer would manage.

HAVA's core mandate provides for each state to implement "a single, uniform, official, centralized, interactive computerized statewide voter-registration list defined, maintained, and administered at the state level that contains the name and registration information"<sup>80</sup> of the legally registered voters in the state. Additionally, the list must assign a "unique identifier"<sup>81</sup> to each of these legally registered voters. The Act elaborates a variety of additional design and operational requirements for the statewide database, including a requirement that its data be consistent with the Department of Motor Vehicles drivers' license database and with several

other lists. It also specifies a range of technical managerial activities.<sup>82</sup>

Creating a statewide voter-registration database is a complex technical task. It requires state officials to combine many county databases, which have been separately developed and maintained, into one unified database. Further, a statewide database must include a unified update process. This task is exceedingly error prone for states with more than a handful of counties because the different databases are often built with different software, in most cases proprietary, or no software at all in cases where a jurisdiction still uses paper registration records. A large number of small but vital incompatibilities inevitably appear when data from two separate sources have to be unified.

Voters' names alone provide many sources of error. One source might record a single field for the name of the voter as opposed to two fields for the first and last names, or middle initials vs. full middle names, or formal names ("James") vs. informal ("Jim"), or married vs. single names. There may be orthographic differences, where one data source includes Spanish accents, German umlauts, and other diacritics but another drops them. The problem becomes even more complex and fraught with error when states "clean" the unified database by attempting to purge it of duplicates, felons, or deceased persons. One such difference in data conventions almost resulted in an apparently ethnically biased registration database purge in Florida in 2004, because the registration data recognized "Hispanic" as a racial category, whereas a list of felons being purged from it did not.<sup>83</sup> The problem was recognized and the purge was canceled.

In mandating statewide voter-registration databases, Congress appears not to have recognized the demanding high level of technical database design expertise and costly maintenance that would be imposed on states. Nor did it comprehend the risks the statutory requirement would present to registration data that constitutes the gateway to electoral participation. For instance, determining whether two data entries that have been recorded independently under different procedures and conventions refer to the same person is a notoriously error-prone task.

Registration-database purging based on matching of names and other nonunique data have been involved in the wrongful disenfranchisement of thousands of voters. The most notorious example remains the registration purges the Florida Division of Elections ordered in 2000.<sup>84</sup>

As these database-updating problems have become more recognized, some states have begun to rely more on unique identifiers, such as driver's license numbers and Social Security numbers, rather than on exact name matching before deleting voters. Florida again provides a key example. In 2007, the Florida State Conference of the NAACP filed suit in federal court to strike down a provision of Florida's registration law that required the state to match the prospective voter's name and driver's license number or Social Security number on a voter registration application with the same information in DMV and Social Security databases.<sup>85</sup> The NAACP argued that the name-matching requirement would produce many erroneous matching failures because of the general problems with name matching. Further, the NAACP contended that additional erroneous match failures would result from innocent clerical mistakes made by voters in writing down the lengthy HAVA-required unique identifier numbers on the registration application or from numerous transcription errors made by state clerks in entering the data from those applications. The evidence established that a high rate of county officials' transcription errors occurred that were no fault of the applicant. The case was largely resolved by Florida's statutory reforms to correct some of the problems claimed in the suit.<sup>86</sup>

While electronic voting systems have now received considerable scrutiny by independent experts, the same cannot (yet) be said of statewide registration databases. As required by HAVA, states have been consolidating local registration databases into statewide registration databases along with procedures for their administration, but the indicators are that many states have undertaken these tasks with little or no consultation from qualified independent technical experts. A large number of accuracy, security, privacy, and data maintenance issues related to the initial construction of those databases and to their maintenance have been published in the popular

press.<sup>87</sup> In many cases, state election agencies lack the staff expertise for handling them with the care requisite to protecting fundamental voting rights. Some state election agencies may also lack the technical expertise for identifying the appropriate set of advanced technical skills needed in advisers for such a demanding database project, but no detailed federal guidance has issued from the EAC.

All of the problems with registration databases that have arisen so far were eminently predictable given the technical demands HAVA specified, the lack of consistent software among the databases that must interrelate for consistent updating, and the lack of consistent data held in the databases. By contrast with the proprietary voting systems, state election agencies could resolve most if not all of the statewide database technical problems with the appropriate technical expertise. Technical firms' overstatement of their qualifications and desire for ongoing service contracts can keep state agencies from procuring appropriately designed and updated statewide databases, instead leaving them with a patchwork of partial solutions and a steady stream of expensive contracts. Hence, independent experts who do not seek an ongoing services contract (similar to those convened for the TTBR study) might be a wise initial step. Of particular concern and presenting yet new technical demands is the relatively new idea of online voter registration, as permitted in Arizona and (soon) California. Another key concern and omission: thus far, no comprehensive independent technical studies have been convened and published that determine the statewide databases' security, accuracy, reliability, and compliance with federal voting rights laws. Deficiencies in any of these areas may seriously affect thousands of voters' franchise rights.

As with voting systems, Congress's application of computer technology to voter registration reflected an idealistic vision of the opportunities the database technology offered, one that does not recognize or provide sufficient protection from the attendant risks. Unlike its treatment of voting systems, HAVA unfortunately omits explicit federal regulatory authority for minimum

voluntary or mandatory technical standards by which the functional statutory objectives will be achieved. Instead, HAVA directs that the “appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list. . . .”<sup>88</sup> In mandating a move to statewide voter-registration databases, Congress again set many state officials adrift, making them vulnerable to marketing ploys because they lacked the high level of technical expertise necessary to protect the voters’ franchise rights and ensure the registration systems’ basic functionality.<sup>89</sup>

Some advisory federal efforts have been initiated to raise state agencies’ appreciation of the security risks and technical challenges in managing statewide registration databases. In 2005, NIST convened a workshop titled “Threats to Voting Systems,” which included discussion of threats embedded in statewide voter-registration systems.<sup>90</sup> The EAC also cosponsored workshops for state election officials, including with the National Academies,<sup>91</sup> on performance challenges underlying the required statewide databases. These efforts began only after the technological idealism had faded somewhat and the challenging reality that HAVA had imposed on state officials became palpable.

Some published papers have shown that the technical challenges are not merely hypothetical.<sup>92</sup> In one major report, the authors noted the lack of agreement even on whether HAVA authorizes the EAC to articulate guidance or national consensus standards that might be considered best practices for the statewide voter databases.<sup>93</sup> In their conclusion, they argue that three elements are missing from any definition of a successful implementation of a statewide voter-registration system under HAVA:

1. A set of national consensus standards for voter registration systems.
2. A set of consensus performance measures to determine the extent to which the systems exhibit the desirable characteristics.
3. Means of obtaining the necessary information for those metrics.

In 2007, the EAC commissioned a study of official voter information websites, which often include an online connection (interface) to the statewide voter-registration database. The study report was submitted in late 2008<sup>94</sup> with recommendations of a number of best practices that seek to protect the data and reliability of the voter information website. The study's researchers reviewed more than seventy websites to produce the assessments. In addition to finding some effective sites, the lead researcher commented that he was "surprised at the amount of information about registered voters some officials were putting online."<sup>95</sup> Despite its classification as "public" information, he viewed some sites as creating the risk of identity theft.<sup>96</sup>

The study included a number of recommendations whose predicates reveal that many state agencies' statewide databases fail to satisfy basic precepts by which data security and privacy are achieved. For instance, the researchers advised that such websites "should be carefully constructed to avoid jeopardizing voters' privacy or the integrity and security of the records."<sup>97</sup> It also cautioned officials to be sure that any interface to the registration database on a website is, of course, to a copy of the database rather than the live original, so that there is no possibility of accidental or malicious modification of registration data through the Internet.<sup>98</sup> The study recommended that state governments consider outsourcing the development of these websites, use commercial or open-source tools and software, plan to accommodate spikes in demand, and promote the sites' use. The researchers urged that HAVA section 508 requirements be viewed as stating the minimum standards for accessibility and that administrators control and limit the amount of data exposed.

Some states have experienced significant continuing problems with the HAVA-mandated registration databases. In Wisconsin, for instance, 11 percent of voters cannot currently be matched against other state lists. Its Government Accountability Board notes that this 11 percent reduces by half the mismatches found in August 2008, when 22 percent of voters' data entries

were inconsistent as between databases.<sup>99</sup> The database mismatching spawned significant litigation in Ohio and Wisconsin during the 2008 general election, with some suggesting that mismatches indicated voter fraud.<sup>100</sup> Unfortunately, the paucity of technological understandings regarding the design, reliability, security, and accuracy of these registration databases may lead to an unwarranted public belief that fraud had occurred.

As the 2008 election cycle concluded, abundant indicators of serious technical deficiencies in the statewide voter-registration databases had arisen across the nation. No federal or independent study, however, appears to have been planned to assess the statewide registration databases' basic functionality or compliance with HAVA, as part of the EAC's research work or federal legislative agenda. The technical features and deficiencies of these mission-critical registration databases remain shrouded in secrecy. The federal agencies do not consider the databases within their core regulatory or advisory mandates; many state election agencies and their leadership are apparently ignorant of the grave risks the substandard database designs pose and are reluctant to provide public transparency; and the technical issues can be daunting to policymakers at every governmental level. But this set of regulatory circumstances means there is no federal or other public accountability for the highly vulnerable public gateways into the electoral system and the concomitant rights of popular sovereignty.<sup>101</sup> Further, neither voter registration database performance metrics nor independent compliance reviews are part of election administrative transparency and accountability to the public.<sup>102</sup>

The federal experience with the statewide voter-registration databases appears to track that of voting technologies. With both technologies, their inception has been marked by enthusiasm and idealism about the technological prospects, followed by serious and unexpected deficiencies in technical system performance or the fiscal issues that arise from the technology, followed by a more mature recognition of the prospects, risks, and costs attending the technology. Importantly, mature governmental judgment regarding voting systems has involved advice and reports from

independent technical experts such as those from major academic institutions. As occurred with voting systems, critical evaluations by teams led by highly qualified academic technical experts may be needed in order to obtain “top to bottom” evaluations of the databases’ technical sufficiency.<sup>103</sup> These independent experts’ involvement may be necessitated to diagnose, document, and recommend appropriate remedial technical steps and standards for safeguarding essential voting rights and achieving electoral administrative success.

#### **IV. Conclusion**

To a great extent and with the best of intentions, the nation undertook in HAVA a vast experiment with one of the most fundamental and vulnerable of our civil rights. While technical understandings may be improving at both the federal and state levels, the sophisticated technical systems HAVA embraced pose threats to the franchise. Before embarking on any new technological experiments in elections, the nation must revisit the elections IT regulatory structure. Computer-based election equipment should not be deployed bereft of a policy apparatus that is structured and staffed so that it can remain fully informed of the dynamically developing technological knowledge relevant to ensuring election accuracy, security, and other core objectives while also preserving voter access.

#### **Notes**

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<sup>1</sup> U.S. COMMISSION ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION (June 2001), *available at* <http://www.usccr.gov/pubs/vote2000/report/main.htm>; *Bush v. Gore*, 531 U.S. 98 (2000).

<sup>2</sup> Help America Vote Act of 2002, 42 U.S.C. §§ 15301–15545 (2002). Curiously, in enacting HAVA, Congress supplied none of the common sources of legislative history. The omission of Committee Reports is a particular loss. The omissions leave legal scholars and regulatory entities to rely on contemporaneous public discussions, interviews

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with congressional Committee staff, and reports of other federal entities that studied the 2000 election. For instance, see Leonard M. Shambon, *Implementing the Help America Vote Act*, 3 ELECTION L.J. 424 (2004), whose author was Counsel to Rep. Steny Hoyer of Maryland. Hoyer was the ranking (minority) member of the House Administration Committee, in whose jurisdiction federal election law is reposed, and was a primary coauthor of the bipartisan HAVA bill. *See also* COMMISSION ON CIVIL RIGHTS, *supra* note 1.

<sup>3</sup> 42 U.S.C. § 15481; *see infra* part II.B.

<sup>4</sup> HAVA required technology purchased with Title I and Title III funds to be launched no later than the first federal election of 2006. *See* 42 U.S.C. §§ 15302(a)(3), 15481(d).

<sup>5</sup> 42 U.S.C §§ 15321–15330.

<sup>6</sup> *See* Shambon, *supra* note 2, at text accompanying note 32 (“HAVA has the effect of moving from an environment of loose state and limited federal oversight to an environment of strong state control”).

<sup>7</sup> Interview with former House Administration Committee senior staff member Patrick Sweeney, October 2005.

<sup>8</sup> HAVA created the U.S. Election Assistance Commission (EAC), *supra* note 5. The only mandatory regulatory authority Congress vested in the EAC was that HAVA transferred from the Federal Election Commission (FEC) pursuant to the National Voter Registration Act. *See* 42 U.S.C §§ 15531, 15532.

<sup>9</sup> *See, e.g.*, 42 U.S.C. §§ 15381–15387, 15501. As the EAC website states, “One of EAC’s top priorities is providing assistance to election officials. EAC has issued guidance, advisories and best practices to help them comply with HAVA and make other election administration improvements and enhancements.”

<http://www.eac.gov/election>.

<sup>10</sup> *See* <http://www.votersunite.org> for an extensive inventory of press reports of voting technology malfunctions and the vendors’ explanations, dating back to 2004. The site permits searching by year, vendor, or type of issue. Some examples of attributing technology malfunctions to election officials and other operators include Sequoia Voting Systems’ blaming human error in Washington, D.C., *see* Nikita Stewart, *Voting Database Is Fine, Firm Says; User Error Cited as Possibility in D.C. Vote Foul-Up*, WASH. POST, Sept. 12, 2008, *available at* <http://www.washingtonpost.com/wp-dyn/content/story/2008/09/12/ST2008091200149.html>; and Premier/Diebold’s blaming election officials for errors in Florida’s Hillsborough County, *see* *Governor Asked to Intervene in Hillsborough County Elections*, Nov. 6, 2008, <http://www.votersunite.org/article.asp?id=8184>.

<sup>11</sup> *See, e.g.*, the California Secretary of State’s Top to Bottom Review of Voting Systems conducted by the University of California, summer 2007, [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm).

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<sup>12</sup> EAC, STATE GOVERNMENTS' USE OF HELP AMERICA VOTE ACT FUNDS table 2.1 (July 2008), *available at* [http://www.eac.gov/election/HAVA%20Funds/docs/2007-report-on-hava-spending-by-states/attachment\\_download/file](http://www.eac.gov/election/HAVA%20Funds/docs/2007-report-on-hava-spending-by-states/attachment_download/file).

<sup>13</sup> *See* Stephen Ansolabehere & Charles Stewart III, Chapter 12 of *America Votes!*, at 241.

<sup>14</sup> *See, e.g.*, NATIONAL COMMISSION ON FEDERAL ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS (Aug. 2001) (“Ford/Carter” Commission), *available at* [http://www.reformelections.org/data/reports/99\\_full\\_report.pdf](http://www.reformelections.org/data/reports/99_full_report.pdf).

<sup>15</sup> *Bush v. Gore*, 531 U.S. at 103.

<sup>16</sup> In an “overvoted” race, a ballot has been marked with more choices than the race permits, such as selecting 2 candidates for 1 legislative seat. An overvoted race will not record either selection but voids the ballot for that race. Some faulty ballot designs are blamed for high overvote rates. An “undervoted” race results in no recorded or readable vote in the race. *See generally* LAWRENCE NORDEN, DAVID KIMBALL, WHITNEY QUESENBERRY & MARGARET CHEN, *BETTER BALLOTS* (2008), *available at* [http://brennan.3cdn.net/d6bd3c56be0d0cc861\\_hlm6i92v1.pdf](http://brennan.3cdn.net/d6bd3c56be0d0cc861_hlm6i92v1.pdf) (discussing ballot design principles that augment voter accuracy).

<sup>17</sup> Before HAVA, in the absence of explicit statutory authority, the FEC had attempted to redress the regulatory vacuum by developing and issuing its recommendations of standards for voting systems performance and lab testing. The National Association of State Election Directors (NASED) created and administered a program to qualify voting systems as being in compliance with the FEC standards. Within this certification system, NASED used the term “qualified,” reserving the term “certified” for a state’s formal decision that a voting system was acceptable according to its own standards, which in many cases required satisfaction of the FEC standards. *See infra* part II.A.

<sup>18</sup> HAVA’s primary mechanism for infrastructural support was the creation of the U.S. Election Assistance Commission and its related advisory boards detailed in the text. *See* 42 U.S.C. §§ 15321–15330.

<sup>19</sup> 42 U.S.C. § 15302; *see infra* part II.B. Dan Tokaji has written extensively about the discriminatory racial and ethnic effects of voting technology choices. *See, e.g.*, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 *FORDHAM L. REV.* 1711, 1741–67 *passim* (2005).

<sup>20</sup> *See* Ansolabehere & Stewart, *supra* note 13, at 252–253. Other accessible technologies exist and arguably have a better or competitive accessibility and performance record as compared with the major technologies. The

Vote-PAD, for instance, claims to be an “inexpensive, non-electronic, voter-assist device that helps people with a broad range of visual or dexterity impairments to vote independently.” <http://www.vote-pad.us/>.

<sup>21</sup> Although some scanning systems are “optical” scanners that read and record the voting data, and others are “digital” scanners that digitally photograph each ballot as well as record the voting data, for purposes of this chapter “optical scanning” designates both technologies.

<sup>22</sup> E.g., ES&S presents its touch screen: “The patented iVotronic™ Touch Screen Voting System is the premier voting solution for jurisdictions who prefer paperless voting. Available with a 15" full-color display, the iVotronic is wireless, multilingual, and ADA-compliant. Voters securely cast their vote for each race and/or ballot proposition simply through the touch of the screen. Its Audio Ballot feature easily assists those voters who are visually impaired.” <http://www.essvote.com/HTML/products/ivotronic.html>.

<sup>23</sup> TADAYOSHI KOHNO, ADAM STUBBLEFIELD, AVIEL D. RUBIN & DAN S. WALLACH, ANALYSIS OF AN ELECTRONIC VOTING SYSTEM, Johns Hopkins University Information Security Institute Technical Report TR-2003-19 (July 23, 2003), *available at* <http://avirubin.com/vote.pdf>.

<sup>24</sup> “DOS” attacks or denial of service and operability. Voting machines failing to boot up on Election Day could be a reliability issue or an example of an attack that is disguised to appear as simply a malfunction. *See generally* MATT BISHOP, COMPUTER SECURITY: ART AND SCIENCE (2002).

<sup>25</sup> Given the high financial value of control over government policy, and the impact of government over private sector assets and economic opportunities, voting would seem to be an inherently vulnerable activity.

“Voting systems demand accuracy and security, and if they fail to meet these properties, so will the election.

Developing mission-critical systems requires the application of high-assurance techniques. These systems must incorporate features not normally included in other systems (such as redundancy, validation mechanisms, and fail-safe controls) so they require a rigorous development process.” A. Yasinsac & M. Bishop, *The Dynamics of Counting and Recounting Votes*, 6 IEEE SYMP. SEC. & PRIVACY 22, 25 (2008). *See generally* MATT BISHOP, AN INTRODUCTION TO COMPUTER SECURITY 1.5, 1.6.2, and ch. 18 (2005).

<sup>26</sup> *See, e.g.*, the studies listed in MATT BISHOP, MARK GRAFF, CANDICE HOKE, DAVID JEFFERSON & SEAN PEISERT, RESOLVING THE UNEXPECTED IN ELECTIONS: ELECTION OFFICIALS’ OPTIONS, Appendix 2: Partial List of Voting Systems Studies at 22–27, *available at* <http://www.electionexcellence.org/> (reviewing forensics for electronic voting systems).

<sup>27</sup> The TTBR reports are published at [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm). A two-page summary

can be found at <http://www.electionexcellence.org>. Matt Bishop, one of the principal investigators, noted that he and the other TTBR researchers “did not focus on the criteria that the machines *should* meet. The criteria were specified in the project’s Statement of Work. We instead focused on how well those criteria were implemented, both by the design and construction of the system.” E-mail message from Bishop to coauthors, January 8, 2009. The time-bound study also noted a number of means by which voting results accuracy could be subverted.

<sup>28</sup> The Ohio Secretary of State’s EVEREST reports reviewed some of the same voting systems as in California except the ES&S systems were included and the Sequoia systems were not.

<http://www.sos.state.oh.us/SOS/elections/voterInformation/equipment/VotingSystemReviewFindings.aspx>.

<sup>29</sup> See BISHOP ET AL., *supra* note 26, for an inventory of the most significant voting systems research assessing deployed systems (with links).

<sup>30</sup> See *supra* note 25.

<sup>31</sup> The former president of the California Association of County Election Officials (CACEO), Steve Weir, responded to the TTBR: “It was a test that was conducted in a laboratory without any of the protections that we have on our systems. And in theory—and only in theory—were these systems vulnerable. . . . But there’s no proof that it has been done.” [http://www.pbs.org/newshour/bb/politics/jan-june08/ballot\\_01-16.html](http://www.pbs.org/newshour/bb/politics/jan-june08/ballot_01-16.html).

<sup>32</sup> Ohio’s election officials responded in a measured tone, suggesting that discussions on “remediation” ensue. [http://www.acluohio.org/issues/votingrights/OAEOStatementInResponseToEVEREST2008\\_0122.pdf](http://www.acluohio.org/issues/votingrights/OAEOStatementInResponseToEVEREST2008_0122.pdf).

<sup>33</sup> The Verified Voting Foundation, <http://www.verifiedvoting.org>, and Voters Unite, <http://www.votersunite.org> offer useful research resources on voting technology issues.

<sup>34</sup> See, e.g., the report coauthored by three major national research and advocacy organizations: *Is America Ready to Vote?* available at [http://www.brennancenter.org/content/resource/is\\_america\\_ready\\_to\\_vote/](http://www.brennancenter.org/content/resource/is_america_ready_to_vote/) (partnering Common Cause, Verified Voting Foundation, and the Brennan Center for Justice).

<sup>35</sup> All voting equipment technical issues recounted in text accompanying notes 34–39 can be found at <http://www.votersunite.org>, in the “Election Problems” inventory that is searchable by state, date, or type of problem.

<sup>36</sup> In 2008, Super Tuesday occurred on February 5 as 24 states held primaries or caucuses. The day’s tallies produced 52 percent of pledged Democratic Party delegates and just over 40 percent of the total Republican Party delegates. See Dan Balz, *Feb. 5 Primaries to Pose a Super Test of Strategy*, WASH. POST, Jan. 15, 2008, available at [http://www.washingtonpost.com/wp-dyn/content/article/2008/01/14/AR2008011402926\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/01/14/AR2008011402926_pf.html).

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<sup>37</sup> ANDREW W. APPEL, MAIA GINSBURG, HARRI HURSTI, BRIAN W. KERNIGHAN, CHRISTOPHER D. RICHARDS & GANG TAN, INSECURITIES AND INACCURACIES OF THE SEQUOIA AVC ADVANTAGE 9.00H DRE VOTING MACHINE, <http://citp.princeton.edu/voting/advantage/>.

<sup>38</sup> Summarized by VotersUnite! at <http://www.votersunite.org/electionproblems.asp?offset=280&sort=date&selectstate=ALL&selectvendor=&selectproblemtyp=ALL> (emphasis added).

<sup>39</sup> See, e.g., VotersUnite! testimony for EAC public hearing, Dec. 3, 2008, available at [http://www.votersunite.org/info/EACTestimony12\\_8\\_08.pdf](http://www.votersunite.org/info/EACTestimony12_8_08.pdf) (written testimony urging tracking).

<sup>40</sup> JOE HALL, PRELIMINARY ANALYSIS OF OVL VOTING EQUIPMENT REPORTS, <http://www.josephhall.org/nqb2/index.php/2008/11/12/p1105>.

<sup>41</sup> The California TTBR report on the accessibility of three major voting systems with regard to specific physical impediments documented pervasive non-usability of the supposedly accessible voting devices. See NOEL RUNYAN & JIM TOBIAS, ACCESSIBILITY REVIEW REPORT FOR CALIFORNIA TOP-TO-BOTTOM VOTING SYSTEMS REVIEW, available at [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm).

<sup>42</sup> *Id.*

<sup>43</sup> U.S. CONST. art. I, § 4.

<sup>44</sup> Indeed, a GAO Report found that Congress had never explicitly authorized a federal agency to develop voting system standards. See U.S. GENERAL ACCOUNTING OFFICE, ELECTIONS: STATUS AND USE OF FEDERAL VOTING EQUIPMENT STANDARDS, GAO-02-52, at 4 (Oct. 2001), available at <http://74.125.95.132/search?q=cache:5P2zJZMp5OkJ:www.gao.gov/new.items/d0252.pdf+%22gao-02-52%22&hl=en&ct=clnk&cd=1&gl=us>.

<sup>45</sup> Eddan Katz and Rebecca Bolin, *Electronic Voting Machines and the Standards-Setting Process*, 8 J. Internet L. 4 (2004), referring to an NBS report authored by Roy Saltman, EFFECTIVE USE OF COMPUTING TECHNOLOGY IN VOTE TALLYING (1975).

<sup>46</sup> *Id.*

<sup>47</sup> ROY G. SALTMAN, THE HISTORY AND POLITICS OF VOTING TECHNOLOGY: IN QUEST OF INTEGRITY AND PUBLIC CONFIDENCE (2006).

<sup>48</sup> See GENERAL ACCOUNTING OFFICE, *supra* note 44, at 11.

<sup>49</sup> <http://www.eac.gov/program-areas/voting-systems/voluntary-voting-guidelines/2002-voting-system-standards>.

<sup>50</sup> 42 U.S.C. § 15362(e); for further discussion, see *infra* note 58.

<sup>51</sup> The FEC–NASED regime contemplated three distinct types of technical testing:

- *Qualification* testing is the process by which a [*sic*] voting equipment is shown to comply with the requirements of its own design specification and with the requirements of FEC standards.
- *Certification* testing, generally conducted by individual states, determines how well voting equipment conform to individual state laws and requirements.
- *Acceptance* testing is generally performed by the local jurisdictions procuring voting equipment and demonstrates that the equipment, as delivered and installed, satisfies all the jurisdiction’s functional and performance requirements.

GENERAL ACCOUNTING OFFICE, *supra* note 44, at 8.

<sup>52</sup> *See id.*; SALTMAN, *supra* note 47, at 180.

<sup>53</sup> *See* GENERAL ACCOUNTING OFFICE, *supra* note 44, at 8–10.

<sup>54</sup> *See id.* at 5.

<sup>55</sup> 42 U.S.C. § 15481(a).

<sup>56</sup> *Id.*

<sup>57</sup> 42 U.S.C. § 15481(a)(6).

<sup>58</sup> Under HAVA, the National Institute of Standards and Technology (NIST) is charged with assisting the EAC in its testing lab certification program through the NIST National Voluntary Laboratory Accreditation Program (NVLAP). NIST recommends laboratory accreditation but the EAC makes the final decision to accredit laboratories.

<sup>59</sup> 42 U.S.C. § 15222(1), incorporating by reference the duties of 42 U.S.C. §§ 15361 *et seq.* Whether the EAC holds clearinghouse duties to gather and post information regarding the performance of voting systems it did not certify under its new federal testing regime and VVGS standards has been a matter of continuing controversy. At a hearing on Dec. 8, 2008, the EAC heard oral testimony and received written statements regarding its clearinghouse powers and duty regarding these systems. *See* <http://www.eac.gov>. This chapter’s co-authors have concluded that HAVA expressly confers EAC authority, and arguably a statutory duty, to provide voting systems informational (clearinghouse) reporting on voting systems that pre-date the EAC’s certification system. In 42 U.S.C. § 15362(e), HAVA provides that the 2002 FEC standards “shall be deemed to have been adopted by the Commission as of the date” HAVA is enacted. Hence, the FEC standards are now EAC standards, and the clearinghouse reporting duties

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encompass pre-EAC and post-EAC voting systems.

<sup>60</sup> The best example is the EAC's Voluntary Voting System Guidelines. The EAC has documented that all but 20 states required voting systems approved for their state to participate in some form of EAC testing or certification. *See* STATE REQUIREMENTS AND THE FEDERAL VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM, *available at* <http://www.eac.gov/program-areas/voting-systems/>.

<sup>61</sup> The EAC approved the Voluntary Voting System Guidelines (VVSG) in December 2005. It announced that the VVSG would be effective for all voting systems submitted for certification testing after December 2007. *See* <http://www.eac.gov/program-areas/voting-systems/voting-system-certification/2005-vvsg>. In July 2006, EAC adopted a phased implementation of its new Voting System Testing and Certification Program. The two phases consist of (1) the pre-election or "interim phase," and (2) the full testing and certification program. The interim phase began in July 2006 and covered only modifications to existing voting systems. On December 7, 2006, EAC Commissioners voted to approve adoption of the full program with implementation beginning in January 2007. As this chapter went to press, the EAC had not yet certified any voting systems under the more rigorous testing program.

<sup>62</sup> SysTest was the only ITA that was initially certified as a VSTL, but the EAC revoked its certification after NIST documented that the lab had not been conducting the required tests. *See* [http://www.eac.gov/News/eac-announces-intention-to-suspend-systest-labs/base\\_view](http://www.eac.gov/News/eac-announces-intention-to-suspend-systest-labs/base_view).

<sup>63</sup> The EAC has sustained criticism for not completing the certification of newer, and presumably much-improved, voting systems in time for purchase and deployment for the 2008 general election. This chapter's coauthors, however, applaud the EAC's refusal to rush voting systems through a less rigorous testing and evaluation process. Given the vital importance of protecting voting rights and the established record of harms caused by flaws in supposedly HAVA-compliant voting systems that were hurried to market with insufficient testing, it is incumbent on public officials to ensure that voting systems meet at least minimum technical standards for performance.

<sup>64</sup> The GAO acknowledged the problem in a report; *see* FEDERAL PROGRAM FOR CERTIFYING VOTING SYSTEMS NEEDS TO BE FURTHER DEFINED, FULLY IMPLEMENTED, AND EXPANDED, GAO-08-814, Sept. 16, 2008.

<sup>65</sup> *See supra* note 29.

<sup>66</sup> *See* Press Release, EAC, EAC Accredits Voting System Test Labs, *available at* [http://votetrustusa.org/index.php?option=com\\_content&task=view&id=2278&Itemid=26](http://votetrustusa.org/index.php?option=com_content&task=view&id=2278&Itemid=26). In 2008, however, NIST recommended CIBER for EAC accreditation. <http://www.eac.gov/voting-systems/test-lab-accreditation/laboratories->

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recommended-for-accreditation-by-nist.

The *New York Times* broke the story concerning CIBER's testing failures. Christopher Drew, *U.S. Bars Lab from Testing Electronic Voting*, Jan. 4, 2007, available at

[http://www.nytimes.com/2007/01/04/washington/04voting.html?\\_r=1](http://www.nytimes.com/2007/01/04/washington/04voting.html?_r=1).

<sup>67</sup> Joe Hall's estimate is reported in an op-ed piece by Michael Richardson, *Banned Test Lab Certified Electronic Voting Machines Used by 68.5% of Nation's Registered Voters in 2006 Elections*,

[http://www.opednews.com/articles/opedne\\_michael\\_\\_070113\\_banned\\_\\_test\\_lab\\_cer.htm](http://www.opednews.com/articles/opedne_michael__070113_banned__test_lab_cer.htm).

<sup>68</sup> The TTBR documentation reviews are published at [http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm). See CANDICE HOKE & DAVE KETTYLE, DOCUMENTATION ASSESSMENT OF THE DIEBOLD VOTING SYSTEM, available at

[http://www.sos.ca.gov/elections/voting\\_systems/ttbr/diebold\\_doc\\_final.pdf](http://www.sos.ca.gov/elections/voting_systems/ttbr/diebold_doc_final.pdf); JOSEPH LORENZO HALL & LAURA

QUILTER, THE DOCUMENTATION REVIEW OF THE HART INTERCIVIC SYSTEM 6.2.1 VOTING SYSTEM, available at

[http://www.sos.ca.gov/elections/voting\\_systems/ttbr/hart\\_doc\\_final.pdf](http://www.sos.ca.gov/elections/voting_systems/ttbr/hart_doc_final.pdf); AARON J. BURSTEIN, NATHAN S. GOOD &

DEIRDRE K. MULLIGAN, REVIEW OF THE DOCUMENTATION OF THE SEQUOIA VOTING SYSTEM, available at

[http://www.sos.ca.gov/elections/voting\\_systems/ttbr/sequoia\\_doc\\_final.pdf](http://www.sos.ca.gov/elections/voting_systems/ttbr/sequoia_doc_final.pdf).

<sup>69</sup> One coauthor of this chapter, Candice Hoke, was a research team leader and coauthor of the TTBR Diebold Documentation Assessment. She recalls the surprisingly superficial, platitudinous summations concerning the quality of the vendor's software and documentation. The TTBR assessment noted that the CIBER report provided no basis for concluding that the required testing had been conducted or that the voting system had been shown to meet the 2002 FEC standards. See HOKE & KETTYLE, *supra* note 68, at 2–3 (Executive Summary) and part 4.1 (reviewing adequacy of testing lab reports).

<sup>70</sup> *Id.*

<sup>71</sup> 42 U.S.C. § 15481(d).

<sup>72</sup> See Thomas P. Ryan & Candice Hoke, *GEMS Tabulation Database Design Issues in Relation to Voting Systems Certification Standards* 6–7, <http://www.usenix.org/events/evt07/tech/> (published as part of the 2007 Electronic Voting Workshop proceedings).

<sup>73</sup> See EAC Advisory 2005-004: How to Determine if a Voting System Is Compliant with Section 301(a)—A Gap Analysis Between 2002 Voting System Standards and the Requirements of Section 301(a) (July 20, 2005), available at [http://www.eac.gov/election/docs/eac-20advisory-2005-004301a.pdf/attachment\\_download/file](http://www.eac.gov/election/docs/eac-20advisory-2005-004301a.pdf/attachment_download/file).

<sup>74</sup> HAVA's primary mechanism for infrastructural support was the creation of the U.S. Election Assistance

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Commission and its related advisory boards detailed in the text. *See* 42 U.S.C. §§ 15321–15330.

<sup>75</sup> Joseph L. Hall, *Contractual Barriers to Transparency in Electronic Voting* 4.2–4.4, <http://www.usenix.org/events/evt07/tech/> (published as part of the 2007 Electronic Voting Workshop proceedings).

<sup>76</sup> JUSTIN LEVITT, WENDY R. WEISER & ANA MUÑOZ, MAKING THE LIST: DATABASE MATCHING AND VERIFICATION PROCESSES FOR VOTER REGISTRATION 23 (Mar. 2006), *available at* [http://brennan.3cdn.net/96ee05284dfb6a6d5d\\_j4m6b1cjs.pdf](http://brennan.3cdn.net/96ee05284dfb6a6d5d_j4m6b1cjs.pdf).

Many factors can affect the accuracy of statewide voter-registration databases. The Association for Computing Machinery (ACM), U.S. Public Policy Committee, produced an important report recommending steps to safeguard the databases. Written for a layperson (not requiring technical training in computer science or engineering), the report includes chapters on security, privacy, accuracy, reliability, and usability. *See* STATEWIDE DATABASES OF REGISTERED VOTERS: STUDY OF ACCURACY, PRIVACY, USABILITY, SECURITY, AND RELIABILITY ISSUES (2006), *available at* <http://usacm.acm.org/usacm/VRD/>.

<sup>77</sup> STATEWIDE DATABASES OF REGISTERED VOTERS, *supra* note 76, at 39–40, 46–49.

<sup>78</sup> The U.S. Commission on Civil Rights focused *inter alia* on voter registration issues. *See* COMMISSION ON CIVIL RIGHTS, *supra* note 1, ch. 5, “The Reality of List Maintenance.”

<sup>79</sup> The Caltech-MIT Voting Technology Project estimated that as many as three million votes were lost in the disputed 2000 presidential election because of problems with the voter registration process. R. Michael Alvarez, Stephen Ansolabehere & Catherine H. Wilson, *Election Day Voter Registration in the United States: How One-Step Voting Can Change the Composition of the American Electorate* 4 (Caltech-MIT Voting Technology Project, Working Paper No. 5, June 1, 2002), *available at* <http://vote.caltech.edu/drupal/node/16>.

<sup>80</sup> 42 U.S.C. § 15483(a).

<sup>81</sup> *Id.*

<sup>82</sup> 42 U.S.C. § 15483(a)(2).

<sup>83</sup> TED SELKER & ALEXANDRE BUER, VOTER REMOVAL FROM REGISTRATION LIST BASED ON NAME MATCHING IS UNRELIABLE, Voting Technology Project, MIT Media Laboratory, *available at* <http://www.vote.caltech.edu/reports/purging-vrddb.pdf>.

<sup>84</sup> *See* COMMISSION ON CIVIL RIGHTS, *supra* note 1.

<sup>85</sup> The record of the case can be found at [http://www.brennancenter.org/content/resource/florida\\_naacp\\_v\\_browning](http://www.brennancenter.org/content/resource/florida_naacp_v_browning) and at

<http://moritzlaw.osu.edu/electionlaw/litigation/FloridaNAACPv.Browning.php>.

<sup>86</sup> The Eleventh Circuit declined to hold that federal law preempted the Florida statute, and remanded the case, *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir 2008), eventually leading to legislative reforms.

<sup>87</sup> See, e.g., Posting of Reginald Fields to Openers: The Plain Dealer Politics Blog, *Jennifer Brunner Cancels Cross-Checking of Ohio's New Voters*, [http://blog.cleveland.com/openers/2008/10/brunner\\_says\\_voter\\_registratio.html](http://blog.cleveland.com/openers/2008/10/brunner_says_voter_registratio.html) (Oct. 30, 2008, 12:13 EST); Myung Oak Kim, *New Voter Database Price at \$13 Million; Two Years Late, SCORE Will Be Tested April 21*, *Rocky Mountain News*, Apr. 11, 2008, available at <http://www.rockymountainnews.com/news/2008/apr/11/new-voter-database-price-at-13-million/>.

<sup>88</sup> 42 U.S.C. § 15483(a)(3), entitled “Technological Security of Computerized List.”

<sup>89</sup> For instance, the Pew Center on the States found that 20 states planned to construct their systems in house. See *Assorted Rolls: Statewide Voter Registration Databases Under HAVA* (June 2005), available at <http://www.electionline.org>.

<sup>90</sup> R. MICHAEL ALVAREZ, POTENTIAL THREATS TO STATEWIDE VOTER REGISTRATION SYSTEMS, Caltech/MIT Voting Technology Project, Oct. 6, 2005, available at [http://www.vote.caltech.edu/media/documents/wps/vtp\\_wp40.pdf](http://www.vote.caltech.edu/media/documents/wps/vtp_wp40.pdf).

<sup>91</sup> 5th Meeting of the State Voter Registration Databases, sponsored by the National Academies, Dec. 4, 2008. <http://www8.nationalacademies.org/cp/meetingview.aspx?MeetingID=3022>. The posted program notes that the second day's presentations and discussions were closed to the public.

The National Academies assisted the EAC in providing some general background guidance for state officials in a 2005 report, *Voluntary Guidance on Implementation of Statewide Voter Registration Lists*, available at <http://www.eac.gov/News/meetings/ploneexfile.2006-04-24.4700034238/?searchterm=National%20Academies>. Unfortunately, the document lacks important technical specifications for the complex databases that would be required as well as explanations of what types of technical credentials would be necessitated to achieve the HAVA-imposed tasks. For instance, the Guidance directs: “Election officials must also create clear policies and protocols to make statewide voter registration lists secure. The protocols must identify appropriate classes of authorized users. . . .” *Id.* at 17. At a minimum, the document should have advised state officials that they should retain a qualified database security expert to advise on database design for achieving high security and reliability.

<sup>92</sup> See also LEVITT, WEISER & MUÑOZ, *supra* note 76.

<sup>93</sup> ERIC A. FISCHER & KEVIN J. COLEMAN, *VOTER REGISTRATION SYSTEMS* (2006), available at [http://www.american.edu/ia/cdem/hava/papers/Fischer\\_Coleman-Voter\\_Registration\\_Systems-AU.pdf](http://www.american.edu/ia/cdem/hava/papers/Fischer_Coleman-Voter_Registration_Systems-AU.pdf).

<sup>94</sup> See William Jackson, *Voter Sites Face Privacy Risk: Commission Report Recommends Ways to Secure Public but Sensitive Data on Web*, GOV'T COMPUTER NEWS, Dec. 15, 2008, available at [http://www.gcn.com/print/27\\_29/47730-1.html?topic=data\\_management](http://www.gcn.com/print/27_29/47730-1.html?topic=data_management). The EAC posted the study; see U.S. ELECTION ASSISTANCE COMMISSION, *VOTER INFORMATION WEBSITES STUDY*, [http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/program-areas/research-resources-and-reports/2008\\_nov\\_voter\\_info\\_website\\_study/attachment\\_download/](http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/program-areas/research-resources-and-reports/2008_nov_voter_info_website_study/attachment_download/).

<sup>95</sup> William Jackson, *Voter Sites Face Privacy Risk*, [http://mobile.gcn.com/articles/27\\_29/47730-1.html](http://mobile.gcn.com/articles/27_29/47730-1.html).

<sup>96</sup> ELECTION ASSISTANCE COMMISSION, *supra* note 94.

<sup>97</sup> See *id.*

<sup>98</sup> “Do not expose the official registry file to the Internet,” the study further states. “Create a copy of your authoritative database to use for your voter information Web site and regularly update it from the authoritative database.” The study also counseled that personal information that is exposed when answering voters’ questions also should be limited to what is “necessary and appropriate.” The authors recommended encrypting the link as an additional safeguard. *Id.* That these basic database understandings constitute major recommendations of a December 2008 EAC study suggest that many states lack even a modicum of appropriate technical knowledge for designing or procuring, and then maintaining, highly secure and reliable complex databases. Further, comprehensive, independent studies of statewide voter-registration databases need to be undertaken immediately to document and address the risks to voter’s franchise rights posed by technological malfunctions and design deficiencies.

<sup>99</sup> Published Monday, Dec. 15, 2008:

[http://www.riverfallsjournal.com/articles/index.cfm?id=18614&section=Wisconsin%20News&property\\_id=18](http://www.riverfallsjournal.com/articles/index.cfm?id=18614&section=Wisconsin%20News&property_id=18).

<sup>100</sup> Ohio’s 2008 federal litigation concerning the statewide voting registration database ended with the U.S. Supreme Court’s short *per curiam* opinion, *Brunner v. Ohio Republican Party*, 129 S. Ct. 5 (2008).

<sup>101</sup> States in which major technological research firms and academic institutions are located, such as California and Washington, appear to be managing their statewide databases significantly better than others, but they should not be taken as the national norm.

<sup>102</sup> In an effort to improve its problematic election administrative record, Ohio’s most populous county,

Cuyahoga County, appointed an election monitor to facilitate compliance with best practices in elections and with governing law. As part of its work, the monitor submitted a report on the 2006 general election, identifying administrative tasks where indicators of legal noncompliance had come to light. Technical issues, including computer security practices, formed a major part of the report. In reviewing the voter registration issues, specifically those regarding possibly erroneous voter registration deletions, the report referenced potential legal violations of the Voting Rights Act, 42 U.S.C. § 1971(a); the National Voter Registration Act, 42 U.S.C. §§ 1973gg-1 *et seq.* and especially § 1972gg-6; the Help America Vote Act, 42 U.S.C. § 15483; and Ohio voter registration statutes, OHIO REV. CODE §§ 3503.11–3503.33. After the monitor’s report became public and executive leadership changed, the elections staff redoubled efforts to achieve electoral legal compliance.

<sup>103</sup> See *supra* note 76.

Appendix 4: Election Protection, 2008  
*Post-Election Preliminary  
Analysis: Ohio*

Jonah H. Goldman  
Dir, Nat'l Camp. for Fair Elect.

# **ELECTION PROTECTION** **YOU HAVE THE RIGHT TO VOTE**

## **2008 Post-Election Preliminary Analysis**



**2008 National Election Protection Coalition Partners:**

Advancement Project  
Alliance for Justice  
Alliance for Retired Americans  
American Association for Justice  
American Bar Association  
American Civil Liberties Union  
Artists for a New South Africa  
Asian American Justice Center  
Asian American Legal Defense and Education Fund  
BET Networks  
Brennan Center for Justice  
Campaign Legal Center Voting Rights Enforcement Project  
Center for Community Change  
Citizens for Responsibility and Ethics in Washington  
Color of Change  
Common Cause  
Credo Mobile  
Democracia USA  
Demos  
E!  
Electronic Frontier Foundation  
Fair Elections Legal Network  
Go Vote Absentee  
Hispanic National Bar Association  
Human Rights Campaign  
IMPACT  
Lawyers' Committee for Civil Rights Under Law  
Leadership Conference on Civil Rights Education Fund  
League of United Latin American Citizens  
Mobilize.org  
MSNBC  
National Asian Pacific American Bar Association  
National Association for the Advancement of Colored People  
National Association for the Advancement of Colored People Legal Defense Fund  
National Association of Elected and Appointed Officials Educational Fund  
National Bar Association  
National Black Law Students Association  
National Campaign for Fair Elections  
National Coalition for the Homeless  
National Council of Jewish Women  
National Council of La Raza  
National Disability Rights Network  
National Education Association  
National Lesbian and Gay Law Association  
Native Vote  
NBC News  
New Voters Project  
Nonprofit Voter Engagement Network  
Our Faith Our Vote  
People for the American Way  
Progressive Future  
Puerto Rican Legal Defense and Education Fund  
Religious Action Center of Reform Judaism  
Rock the Vote  
Service Employees International Union  
Sierra Club  
The Campaign Legal Center  
TV One  
U.S. Public Interest Research Group  
United States Hispanic Leadership Institute  
United States Student Association Foundation  
Verified Voting Foundation  
Video the Vote  
Voto Latino  
Women Donors Network  
YouTube

**Election Protection thanks the following groups and organizations for their help and support during Election Protection 2008 in Ohio:**

Advocates for Basic Legal Equality, Inc.  
American Civil Liberties Union of Ohio  
Black Lawyers Association of Cincinnati  
Center for Election Excellence  
Citizens' Alliance for Secure Elections  
Cleveland-Marshall College of Law,  
Cleveland State University

Coalition on Homelessness and Housing in  
Ohio  
Common Cause Ohio  
Election Law @ Moritz  
Greater Cleveland Voter Coalition  
League of Women Voters of Ohio  
Miami Valley Voter Protection Coalition  
Moritz College of Law Student Chapter of  
the American Constitution Society

National Association for the Advancement  
of Colored People-Cleveland Branch  
Norman S. Minor Bar Association  
Northeast Ohio Chapter of the American  
Constitution Society  
OhioVOTES  
Ohio Voter Protection Coalition  
Women's Voices. Women Vote.

Election Protection, the nation's largest non-partisan voter protection coalition, brings together over 70 national and hundreds of state and local organizations in a common effort to provide immediate assistance to voters across the country. Through the 1-866-OUR VOTE voter services hotline, [www.866ourvote.org](http://www.866ourvote.org), year round communication with election officials, comprehensive field programs and necessary litigation, the coalition collects an unprecedented set of data that illustrates the problems Americans face while heading to the poll from the perspective of the voter.

The Lawyers' Committee, which helped found Election Protection and serves as the legal and administrative leader of the coalition, was founded 45 years ago by President Kennedy to organize the pro bono resources of the private bar to protect civil rights.

The program is not just about Election Day, but about developing a comprehensive and proactive campaign to ensure that all eligible voters are able to cast a meaningful ballot. Our Election Protection Legal Committee's (EPLCs) work involves the entire voter engagement process, meeting with election officials, supporting non-partisan grassroots organizations, and providing valuable voter education and voter protection materials and resources.

This report provides an initial snapshot of the numerous, complex problems facing voters and election administrators in Ohio as reported through the hotline, website, interactive web chat and field program organized by Election Protection. By comparing snapshots of past programs with the experience of voters in Ohio in 2008, this report also provides a window into the progress made with election administration in the state as well as the problems that persist from one election cycle to the next. Finally, this report also provides recommendations for statewide election officials and election administrators to remedy those problems that continue to place obstacles in front of Ohio voters as they attempt to cast a meaningful ballot.

## **Overview of Election Protection in Ohio**

In Ohio, successful statewide Election Protection programs have been operating since 2004. Through Election Protection Legal Committees, Election Protection leaders met with election officials in all of our target counties prior to the Election Day to identify potential problems and identify solutions that protected many eligible Ohio voters. Examples of such pre-election advocacy included preventing widespread pre-Election Day challenges through aggressive legal and media campaigns and working with election officials to establish direct lines of communication between our EPLC leaders and election officials on Election Day.

In 2004, voters in counties across Ohio reported almost 2,000 problems on Election Day through the hotline. Nationally, we recruited over 15,000 volunteers, many of whom were on the ground in Ohio on Election Day. Locally, we worked with local individual and organizational leaders throughout the state to create a comprehensive voter support network in Ohio, and established EPLCs in several counties.

In 2006, we received over 2,300 calls from voters across the state through the Election Protection hotline, more than any other state. The Lawyers' Committee, with substantial pro bono support from Proskauer Rose LLP, created a legal field program in Ohio focusing on Cincinnati, Cleveland, Columbus, Dayton, and Toledo and housed a hotline call center specifically for Ohio out of Proskauer's New York offices. Legal organizations such as the National Bar Association, Advocates for Basic Legal Equality,

Ohio Legal Assistance Foundation, and Ohio Academy of Trial Lawyers and dedicated lawyers from the AFL-CIO and SEIU led Election Protection Legal Committees in targeted cities. Grassroots organizations across the state, including the Cleveland NAACP, Cleveland Voter Coalition, Coalition on Homelessness and Housing in Ohio, Common Cause Ohio, League of Women Voters of Ohio, Ohio Citizen Action, and People For the American Way Foundation, spearheaded comprehensive and sophisticated field programs that helped publicize the 1-866-OUR-VOTE hotline number and assisted citizens with the voting process.

In 2008, Election Protection operated programs in preparation for the March 4th primary, through the November election. As in 2006, the coalition included a broad network of Ohioans (including all of those mentioned above) who led the program with innovative organizing strategies to educate Ohio voters and provide a comprehensive safety-net. During this election cycle, the hotline received over 4,000 calls from voters in Ohio, with over 1,300 reports of problems facing voters in the voting process during the primary and general election. During the primary, Election Protection had an especially strong presence in Cuyahoga County with legal volunteers on the ground monitoring targeted precincts throughout the County, assisting voters, helping poll workers and gathering information. The coalition also placed legal volunteers at select Board of Elections offices in Cuyahoga County and across the state. Prior to November 4th, we organized hundreds of volunteers across the state and established EPLCs in more than five counties, including in the Cleveland, Columbus, Cincinnati, Dayton and Toledo areas.

The following is a preliminary analysis of the reports in the OurVote Live Database. In Ohio alone, there are nearly 3,000 reports of voter inquiries and nearly 1,000 reports of voter problems. This report only scratches the surface of that data. It is not a statistical analysis, nor is it a detailed inquiry into the Election Protection data. It is a first look at the program and the information received during this year and a comparison of that information to similar data from past Election Protection programs in Ohio.

Election Protection conducted two programs in Ohio during the 2008 cycle, one focused on the March 4 Primary and one focused on the November 4 General Election. In both, problems at the polling place and problems with poll workers challenged the ability of eligible voters to participate in the process. In addition, voter registration problems, problems relating to absentee and provisional ballots, and confusion over voter identification caused voter frustration and, in some cases, disenfranchisement.

Election Protection received 7,900 calls into the hotline from Ohio on and before Election Day, with over 4,000 reports entered into the Our Vote Live database. The majority of reports were voter inquiries though voters reported more than 900 problems across Ohio. In the weeks leading up to the General Election, Ohio voters faced a charged environment, with the Secretary of State and the Republican Party battling over the window when voters could register and cast early ballots at the same time. Election Protection organizations supported the position of the Secretary of State. This position prevailed in the Ohio Supreme Court and federal district court.

**Turnout**  
% of Eligible Voters..... 67  
Point change since 2004.....-0.5

Reminiscent of 2004, the tension between the parties and election officials was palpable. A protracted legal battle that reached all the way to the Supreme Court was fought over database matching rules. Media attention was especially high as the tone turned decidedly partisan and personal.

### Polling Place Problems

Polling place problems were most common on Election Day, caused in large part by registration problems. In some cases voters who had voted in the same precinct for years were not listed in the poll book; in others, the voter had received a registration card or was listed in the statewide database, but did not appear in the book. These problems exacerbated other issues at the polling places -- polling places opening late, insufficient signage or supplies (pens, specifically) and machine failures -- making already long lines even longer.

### Poll Worker Issues

The problems of poll worker training were evident even before the election -- some voters were told during the early vote period that they would need to vote provisionally if they had requested or received an absentee ballot, rather than canceling their request or original ballot and allowing them to vote a new absentee ballot when they appeared in-person at the Board of Elections during the in person absentee voting period.

"It was chaotic, no one was directing or anything... they told you to vote anywhere you could, nothing was private and you could see who everyone was voting for."

- Peggy N., Cleveland, Ohio.  
Peggy's poll location was unprepared.

Though tremendously dedicated to helping every eligible voter cast a ballot, poll workers were poorly trained which added to problems on Election Day. Poll workers were not equipped to handle the high turnout in those jurisdictions across the state that saw a surge in voters at the polls, a problem that voting right advocates pointed out to election officials well before Election Day.

A Toledo voter, Letrice M., went to the Pathway Community Church to vote along with two of her neighbors. Election officials were confused about provisional ballots and changed Letrice's and one of

her neighbor's ballots to provisional ballots, even though they had initially been given regular ballots. After voting, Letrice's ballot was placed in the provisional ballot box, which was unsecured. Letrice called the 866-OUR-VOTE hotline because she was concerned that her vote would not count and was disappointed that election officials didn't seem to know the rules.

"I'm afraid my vote won't count."

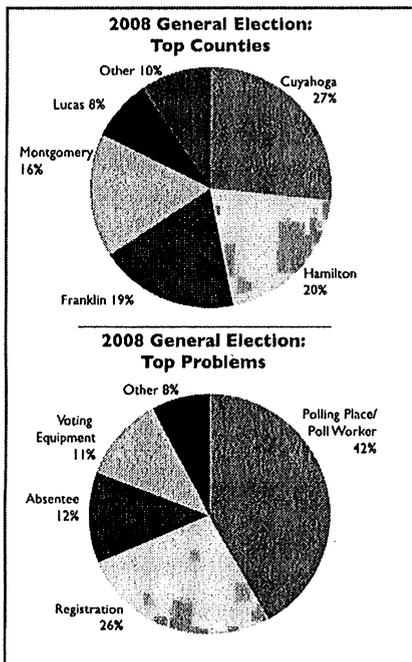
– Letrice M., Toledo, Ohio. The poll workers at Letrice's poll location were poorly trained and confused on Election Day.

In some cases, poll workers were insisting on more stringent forms of ID than are necessary in Ohio. In Ohio, the law does not require that the address on a voter's license match their registration address if the voter shows photo identification. However, some poll workers forced voters whose photo ID address did not match their registration address to vote provisionally. Election Protection volunteers reported misapplication of ID laws by poll workers, which resulted in some voters being forced wrongly to cast provisional ballots. Voters and volunteers also reported that poll workers failed to instruct provisional voters of the toll-free hotline that they may call to find out if their ballot was counted; and poll workers failing to instruct voters who voted provisionally due to insufficient or lack of ID that they should appear in-person at the Board of Elections to present appropriate ID.

Election Protection leaders worked with the County Board of Elections to communicate with the County's presiding judges clarifying the correct law.

Poll workers also failed to direct voters to the correct precinct, and instead would offer provisional ballots. Voters and field volunteers reported that poll workers issued provisional ballots to voters in the incorrect precinct instead of informing those voters where the correct precinct was and that, if cast in the wrong precinct, their provisional vote will not count. The failure to direct voters to the proper

precinct resulted in tens of thousands of provisional ballots that were not counted; for example, in Cuyahoga County, about 3,400 provisional ballots were not counted because the ballot was not cast in the proper precinct. Election Protection tried to rectify this problem where possible. For example, in Hamilton County, Election Protection volunteers worked with the Board of Elections to allow a voter who had voted provisionally at the wrong precinct due to poll worker error to come back and vote at the proper precinct so that the voter's ballot would count. Moreover, the failure of poll workers in Franklin County to ensure that voters casting provisional ballots completed all relevant information on the provisional ballot envelope might be determinative in a closely contested Congressional race; there has been state and federal litigation over whether more than 1,000 provisional ballots should be counted where the voter had not signed the provisional ballot envelope.



**Absentee Ballot Problems**

Voters also experienced significant problems with absentee ballots. In some cases, ballots were received by voters who didn't request them while in others, ballots were not received by voters who had asked for them. Voters were wrongly told during the

early vote period that they would need to vote provisionally if they had requested or received an absentee ballot, rather than canceling their request or original ballot and allowing them to vote a new absentee ballot when they appeared in-person at the Board of Elections.

### **Voter Registration Problems**

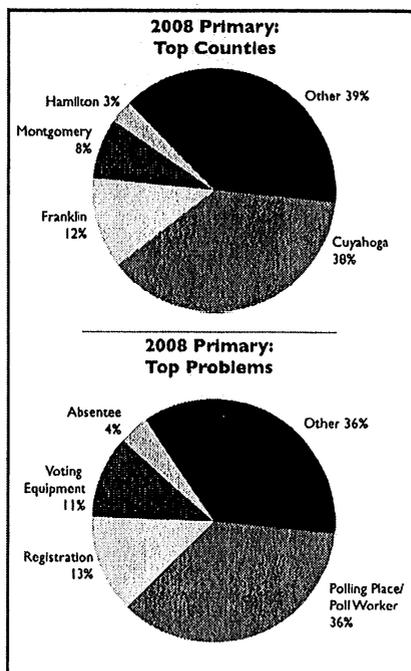
Many of the problems at the polling place were really problems with the voter registration system. In 2008, long time Ohio voters who have voted at the same precinct for many years showed up at their polling place to find out that their names have disappeared from the poll book. Problems with the statewide voter registration lists bore out across the state. 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 on the statewide lists.

About half of the March 4 primary calls came from Ohio. The majority of the problems involved insufficient information, lack of resources, and inclement weather. These problems included:

- Polling place problems
- Ballot related problems
- Disability access and assistance problems
- Voter registration problems
- Confusion regarding identification requirements

**Polling Place Problems**

Polling place problems were particularly evident during the primary, during which multiple precincts began to run out of materials in the evening and poll workers reported problems getting more materials from the board. When one precinct ran out of paper ballots, poll workers began handing out ballots for another precinct within the polling location despite the fact that the two precincts were in different Congressional Districts. Election Protection was able to quickly notify the Board of Elections and get ballots to the polling place. At one location an Election Protection mobile legal volunteer brought a new box of pens for filling out ballots because the poll workers could not get through to the Board of Elections and workers were concerned that voters would be turned away. The paper ballot system also raised privacy issues across the state. Mobile Legal Volunteers observed multiple polling locations that lacked sufficient privacy screens, forcing many voters to cast their ballot in the open.



**Ballot Related Problems**

One of the common problems reported by callers during the primary was confusion among voters and poll workers about the newly implemented paper ballot system, especially whether or not to remove "Stub A" from paper ballots. The stub was clearly labeled "Do Not Remove Or Vote Will Not Be Counted." While the warning was not to remove the stub prior to a voter marking the ballot, this was not clear to voters or poll workers. Election Protection worked with the Cuyahoga County Board of Elections to inform voters and poll workers of correct procedure, ensuring that ballots would be counted.

**Disability Access and Assistance Problems**

In Cuyahoga County, disability access and electronic reading machines were down at multiple polling locations—some had not worked since early morning. One report noted that the person with knowledge to operate the special disability equipment simply failed to show up.

**Voter Registration Problems**

Numerous eligible voters were unable to vote with regular ballots because their names did not appear on the electoral rolls or appeared incorrectly. A caller reported that when she gave the poll worker an

electric bill as proof of identification, the worker refused to accept it and told her voters needed a valid Ohio drivers' license with a current address in order to vote.

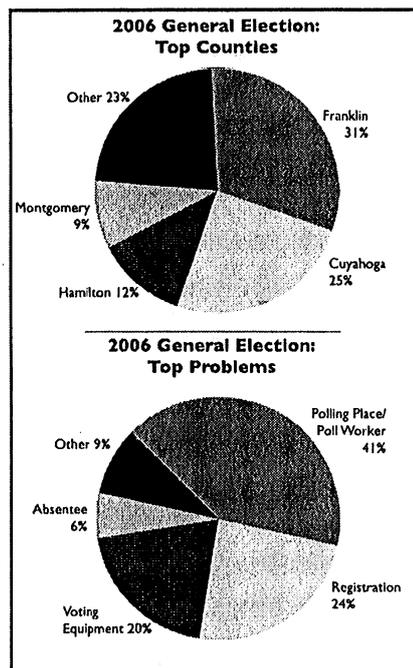
### **Identification Problems**

Confusion over the identification requirements by both voters and poll workers continued to be a problem during the 2008 primary. One student reported that a poll worker required students to recite their address, while another overheard poll workers incorrectly saying that if the address on a student's driver's license did not match the address on their voter registration they would have to vote a provisional ballot.

Prior to Election Day, voters called the Election Protection hotline with questions about registration, new and changing identification requirements, and other questions about where and how to vote. Election Protection received 2,334 calls from Ohio, more than from any other state. Hotline volunteers recorded 2,139 reports into the database. Of those reports, 1,037 were from voters reporting problems while 1,102 were voter inquiries.

According to the Election Protection database, on Election Day, Ohio voters complained of the following problems at the polls:

- Long lines at the polling place,
- Registration problems including long-time voters not showing up on the rolls,
- Malfunctioning voting machines,
- Continued confusion and misapplication of identification requirements, and, in many cases, improper implementation of Ohio election laws; and
- Deceptive practices and voter intimidation.



### Registration Problems

Over 24% of all reports came from voters in 23 counties with questions about registration. Many voters simply called to confirm that they were registered and others inquired about where and how to vote if they had moved since the last election. On Election Day, however, voters across the state were told their names were not on the rolls and were either turned away entirely or had to vote by provisional ballot.

In 2006, a poll worker in Franklin County reported that nearly 90% of the voters in her precinct were not on the rolls. Many were long-time residents and had voted in the primary. In Hamilton County, a voter went to vote at her regular polling place but her name did not appear on the rolls. Poll workers told her she could not vote provisionally because they did not have any provisional ballots but she could see if her name was on the rolls at another polling place. Her name was not on the rolls at the second location and she went home without voting. Instances like this occurred in many counties throughout the state.

### Polling Place Problems

Problems at the polls accounted for 53% of all problems and reports came from 37 counties across Ohio. Voters were disenfranchised by inadequate distribution of election resources, poor poll worker training, long lines, late poll openings, and voters being erroneously told to vote by provisional ballot.

The hotline received reports of long lines from over 30 polling places in Cuyahoga County, including a 2-3 hour wait in Bedford Heights. Seniors had to wait over an hour with nowhere to sit down at Glacemount School. In at least 10 precincts, voters left without voting because of long lines, including at Lonnie Burton Recreation Center, Oxford Elementary, and Shaker Heights Community Center. In Columbus, a polling place with two precincts, one predominantly African-American and the

other predominantly white, only had long lines at the predominantly African-American precinct. Additionally, late poll openings were reported across the state.

### **Election Equipment and Voting Machine Problems**

Nearly 25% of reported problems involved problems with voting machines, and nearly half of those reports came from Franklin and Cuyahoga counties alone. Many voters, especially in Franklin County, reported multiple machine failures in the same polling place. Poll workers were unsure how to use machines or solve errors, voters reported vote switching (where they voted for one candidate but another candidate's name appeared on the confirmation screen), and many precincts did not have an adequate supply of paper ballots, meaning voters had to leave without voting, vote by provisional ballot, or vote on a piece of paper.

### **Identification Problems**

Identification problems accounted for 7% of all reports and reports came in from 16 counties. Across the state, voters and poll workers were confused by the ID requirements. Voters were turned away for not having ID, even when they presented a form of ID accepted by the state. Contrary to Ohio law, voters were also forced to vote provisional ballots when the address on their driver's license differed from the address on their registration; we received 61 reports from voters who encountered this problem. Seniors at a nursing home in Cuyahoga called the hotline to complain because they were forced to vote by provisional ballot because they did not have drivers' license that matched their address. As allowed by state law, a police officer in Toledo listed a P.O. Box on his license and poll workers demanded another form of identification because they did not know to accept his ID even though it did not display his home address. And voters in Delaware, Hamilton, Lucas, and Montgomery Counties reported being turned away from the polls (not offered even a provisional ballot) because the poll workers implemented a stricter identification requirement than Ohio law mandates.

Based on the Election Protection database, voting problems encountered in Ohio in 2004 included:

- Improper requests for, and non-uniform acceptance of identification;
- Improper instructions on when to offer a provisional ballot;
- Long lines due in part to poorly trained poll workers, inadequate staffing or machines;
- Long-time voters showing up at the polls and finding themselves no longer listed;
- Non-uniform procedures for handling voter who requested, but did not receive, absentee ballots; and
- Inequitable distribution of voting materials (ballots or machines).

#### Absentee Ballot Problems

EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. Most often, individuals who had requested such ballots never received them or received them too late to send in to the county on time. Others reported receiving ballots they never requested.

#### Voter Registration Problems

EP volunteers helped voters with problems related to voter registration. Individuals frequently reported having "disappeared" from the voter rolls. Others had questions regarding how to register, how to determine if they were registered, and what to do if they had moved. Many individuals expressed concerns that they had registered but never received confirmation or were not listed on the voter rolls at their precincts.

#### Voter Intimidation/Suppression

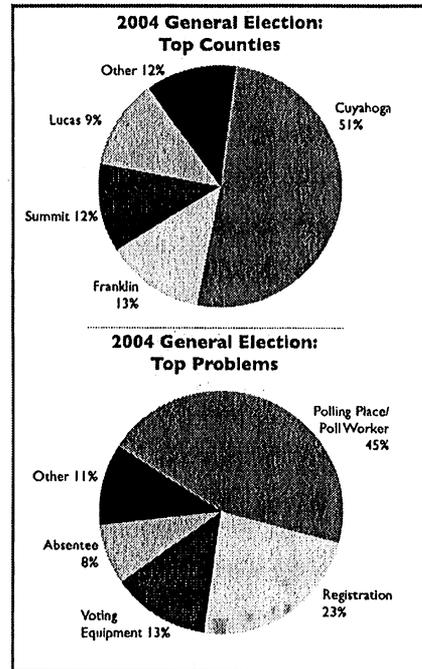
EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Some voters reported being intimidated – and deterred from voting or from requesting assistance – by the presence of poll challengers. Other voters reported poll workers engaging in questionable practices, such as one poll worker who only asked African-American voters for their ID or another poll worker who called the police when an individual attempted to help a disabled voter cast his vote. Other voters reported misinformation campaigns.

#### Poll Worker Error and Provisional Ballot Problems

EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Some polling places either ran out of provisional ballots or never had any at their location.

#### Voting Machine Problems

EP volunteers received reports about problems with voting machines, particularly in Cuyahoga and Franklin counties. There were multiple polling locations with an inadequate number of voting machines



and/or with broken machines, which led to long lines and frustration for voters and poll workers alike. EP volunteers also received reports of machines not correctly recording votes.

#### **Disability Access and Assistance Problems**

EP volunteers received questions and complaints related to disability access and assistance. Voters asked EP volunteers how they could vote if they were disabled. Other voters reported problems, including polling places inaccessible to voters in wheelchairs and poll workers who did not allow disabled voters to receive assistance.

#### **Criminal Status Related Problems**

EP volunteers answered questions related to criminal status. Most of these individuals wanted to know what the eligibility requirements were to have their voting rights restored after being convicted of a felony.

#### **Ballot Related Problems**

Voters contacted EP volunteers regarding ballot problems. Most of these problems were related to poll workers handling ballots improperly, for example by failing to seal the ballot envelope or failing to place them in the voting box.

#### **Long Lines**

EP volunteers received complaints, especially from voters in Cuyahoga and Franklin counties, about long lines, some as long as 3-4 hours. The problem appeared to be caused by an insufficient number of voting booths for the record number of voters who turned out.

#### **Polling Place Problems**

EP volunteers helped voters with problems that arose at the polling place. In some cases, voters needed help identifying their proper polling location, and in other cases voters could not find their polling place due to inadequate signage. EP volunteers also received reports from voters who had witnessed improper polling place procedures.

Election Protection encountered thousands of voters who faced numerous obstacles in casting a meaningful ballot this election. In each of the elections that Election Protection has covered in Ohio, - polling place problems continue to persist. This broad category includes everything from voters being told they could not vote at a polling place to polling places running out of ballots. Many of these problems were a direct result of poll worker errors and leading to provisional ballots being cast where voters were entitled to cast a regular ballot, or provisional ballots being cast in the wrong precinct and thus would not be counted. Additionally, while long lines seemed to be less of a problem on November 4<sup>th</sup> than expected – as well as less of a problem than in 2004 in particular – many voters complained of waiting in lines for several hours in various counties during the early voting period. And though reports of deceptive practices and intimidation decreased this election, instances are still being reported during each election and serving to disenfranchise voters throughout the state. In many instances, the problems that were avoided on Election Day were the result of close, and constant, collaboration between election officials, Ohio election reform advocates and Election Protection.

There seemed to be a decrease in the percentage of voters reporting identification problems in 2008, after a brief spike in ID problems corresponding to the change in Ohio's voter ID law in 2006. A comprehensive voter education campaign by Election Protection coalition partners and election officials alike, to inform voters of their rights and of the change in Ohio's voter ID law, seemed to work in reducing the number of reports related to ID. Reports of voting equipment and machine failures have also decreased with each election cycle. A large-scale statewide effort to encourage voters to take advantage of early voting helped to prevent long-lines on November 4<sup>th</sup>. This was particularly evident in Cuyahoga County, in which nearly a third of voters voted early.

Problems Reported:	2004	2006	2008P	2008
Polling Place/Poll Worker	45%	41%	36%	42%
Registration	23%	24%	13%	26%
Voting Equipment	13%	20%	11%	11%
Absentee	8%	6%	4%	12%
Other	11%	9%	36%	8%

Each election cycle, the problems we hear about from voters in Ohio are ones that are shared across the country – election officials and poll workers not adequately prepared for increased turnout, malfunctioning machines, shortages of paper ballots, long lines, and problems with registrations. In Ohio, many of these problems can be remedied by select policy and legislative changes, and continued proactive preparation by organizational leaders and election administrators in advance of the next election.

#### **Require Pre-Election Plans**

Many of the problems in election administration that occur on or before Election Day would be prevented by detailed pre-election plans which set forth how each election board plans to handle issues such as voter registration, absentee ballots, polling place resource allocation, poll worker recruitment and training, ballot preparation, and security. If these plans were required and made publicly available, election administration would improve and there would be greater transparency in the system.

#### **Improve Voter Registration Process**

The most prevalent and alarming challenge to our electoral process throughout each election cycle, particularly this November, came in the form of voter registration problems. Voters across the state arrived at the polls to find that their registrations had never been processed, that their names had been purged from voter lists, or that they had missed the registration deadlines altogether. Indeed, the Secretary of State has acknowledged that the statewide voter registration database needs to be overhauled. Our first priority for improving this flawed system should be to make the registration process fair, accurate and efficient.

Voter registration should be the responsibility of the state and not the voter. Shifting this burden is more – not less – efficient for election officials. A system of automatic registration will spread the registration process over the course of the year, updating the rolls when voters become eligible. This will take the tremendous weight of last minute registrations off of the backs of election officials during the critical weeks before the election. Registration should also be permanent, allowing voters to update their registrations when they move or change their names, instead of requiring re-registration. Finally, voters should have the ability to correct mistakes to the registration list on and before Election Day.

#### **Combat Deceptive Practices**

Voters across the country, including Ohio, received misinformation about polling locations, times and rules during this past election. It's easier than ever to disseminate deceptive information quickly - and with new mediums - our election system needs to adapt accordingly to combat these practices and minimize the effects of partisan tricks. Additionally, though the elimination of Election Day challenges at polling places by anyone other than election judges has helped to reduce reports of intimidation, many voters still complained of intimidating behavior by individuals inside and outside of the polling place. Legislation preventing voter deception and providing an administrative remedy to correct misinformation will go a long way to solving this problem.

#### **Provide More Resources to Election Officials**

In Ohio, particularly during the primary, eligible voters were forced to cast provisional ballots because of ballots shortages, and were hampered by poorly trained poll workers, and broken voting machines.

These problems could have been avoided if the administration of our electoral process provided officials and poll locations with the resources needed to handle the weight of full participation. Additionally, additional resources put towards recruiting and training poll workers will help to ensure that fewer provisional votes are cast due to poll worker error. Throughout Ohio, election officials are doing all they can to provide every eligible Ohioan with the opportunity to vote a meaningful ballot. Unfortunately, underinvestment in our elections has prevented that from happening.

### **Expand Early Voting**

Ohio saw fewer problems in counties in which more voters took advantage of the early voting process. For local election officials, the lighter volume of voters on Election Day equates to shorter lines, fewer complaints, and a more efficient election environment. By expanding the number of locations in which voters may cast an absentee ballot in-person, election officials give voters greater flexibility in choosing when and where they would like to vote, and long lines become a less likely administrative problem for election officials at single early voting locations in each county during the early voting period and at polling places on Election Day.

Additionally, over 1/3 of registered voters who do not vote attribute their inaction to being out of town, away from home, too busy, or having conflicting obligations on Election Day. Other Americans complain of transportation problems or inconvenient polling place locations. More of our citizens will vote when we allow them to choose where and when they will vote. Offering instant voter registration at early voting sites, beyond the initial 6-day "overlap period", further empowers voters who may have missed restrictive registration deadlines. By expanding opportunities to vote through no-excuse absentee, these voters can simply go to early voting locations, re-register, and vote on the spot.

### **Reform Provisional Ballot Process**

In every major statewide election, tens of thousands of Ohioans are disenfranchised because their provisional ballots are not counted, mostly because voters are not on the registration list or cast their provisional ballots in the correct precinct. This disenfranchisement would be prevented by implementing the reforms to the registration process described above and eliminating the correct precinct rule.

Appendix 5: Greater Cleveland Voter  
Coalition, *Analyses of Voter  
Disqualification, Cuyahoga  
County, Ohio*

**ANALYSES OF VOTER DISQUALIFICATION,  
 CUYAHOGA COUNTY, OHIO, NOVEMBER 2004**  
 Norman Robbins, Study Leader, nxr@cwru.edu  
 Greater Cleveland Voter Registration Coalition (GCVRC)  
*Note Revision Data: May 9, 2006*

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**Overview:**

In a time when elections are decided by small margins and when the integrity of the electoral process is often questioned, avoidable voter disqualification is not acceptable. Quantitative studies in Cuyahoga County of the 2004 general election, summarized here, help to define some of the sources of disqualification. Taken in conjunction with other reported data, these studies lead to conservative estimates of votes that were avoidably lost or put at risk. Statewide extrapolation indicates that about 42,500 votes may have been lost and 30,000 put at risk – that is, over 1% of votes in a Presidential election that was decided by about a 2% margin. We believe that almost all these errors (on the part of voters, Board of Elections, or voter registration groups) were unintentional. Several reforms could greatly reduce these flaws in the future. Results similar to those reported here would be expected in many urbanized counties in the United States.

**Summary of key findings:**

(Non-technical summary given in underlined statements)

- In 2004, the registration/change of address applications of large numbers of voters in Cuyahoga County are projected to have been lost or put at risk through errors on the part of voters or the Board of Elections. Based on the findings of our studies of both Board of Elections (BOE) and voter entry errors in about 9,600 applications for registration or change of address, we project that nearly 7,000 Cuyahoga County voters were probably disqualified and about 12,500 voters were put at varying degrees of risk of disqualification.

- Large numbers of applications arrived after the deadline. The applications of another 6,000 voters were lost because the applications were handed in after the October 4 deadline.
- The BOE list of disqualified applications was even larger than our projections. About 15,000 names (not including minor special categories) were on the BOE list of disqualified or “at risk” voters. This number is greater than the projections of our studies on BOE or voter error, possibly because our volunteers exercised careful oversight of the voters we registered. About half of BOE categories of faulty application were totally disqualifying unless corrected before the election, and the other half potentially so unless corrected at the time of voting.
- Over 900 provisional ballots may have been wrongfully rejected because of database problems alone. Between 624 and 938 rejected provisional ballots, mostly classified as “not registered”, were apparently mistakenly purged from the registration lists, or involved other clerical errors in searching or entering data. Since this error was detected by only one type of search, which did not detect other voters who reported similar errors, the true number of provisional ballots wrongfully rejected is likely to be higher.
- We estimate that 2 out of every 5 provisional ballots that were rejected should have been accepted as legitimate. If we combine incorrectly purged provisional votes, projected votes rejected because of initial registration errors, provisional ballots lost through polling place misinformation and innocent errors filling out the provisional application, it appears that over 41% of rejected provisional ballots (or 14% of all provisional votes) may have been unnecessarily rejected.
- We estimate that simply changing residence exposes voters to a 6% chance of being disenfranchised. Youth, the poor, and minorities are disproportionately affected. In fact, with respect to just provisional ballots, we found a two-fold increase in rejection rate in predominantly African-American compared to predominantly Caucasian precincts. As noted in national studies, those Americans who move more frequently are more likely to be subject to registration errors (and also provisional ballot rejection). These include youth, those who rent rather than own homes, African Americans and Hispanics, and the poor. In Cuyahoga County, we estimate that each move brings about a 6% chance of disenfranchisement through registration error. The national data on groups that move more frequently is consistent with our findings of a nearly twofold rate of provisional ballot rejection in precincts with over 90% black populations compared to those that are 10% black or less. There is also a clear pattern of higher provisional ballot rejection rate in predominantly African American wards of the city of Cleveland.
- Avoidable errors and problems such as we studied amounted to over half the percent margin of victory in Ohio’s close 2004 Presidential election.”Ballpark” extrapolation of our results to big cities statewide lead to the conclusion that in 2004 about 1.3% (range 0.9 to 1.6%) of votes (42,500 lost, 30,000 at risk) could have been lost statewide in a Presidential election decided by a 2.1% difference of votes cast (and our numbers probably understate the problem).
- Election reforms – itemized here only for illustration -- would reduce the disenfranchising errors discussed in this report. The Greater Cleveland Voter Coalition is developing recommendations which will be presented later.

## REPORT

### 1. Registration errors

In the course of registration drives in the spring of 2004, some recently registered voters complained that they had not received confirmation notices from the Cuyahoga County Board of Elections (BOE) many weeks later. In order to determine what had happened to their applications, the Greater Cleveland Voter Registration Coalition (GCVRC) carried out two studies (completed mid-September and mid-October) tracking the fates of individual new registration or change of address applications by checking copies of these applications against the BOE's data base. The GCVRC had made a copy of every application submitted to the BOE, and beginning in spring of 2004, had submitted all new applications to the BOE once a week.

The summary results of the two studies combined (Table 1), based on the detail in Table 4 (attached at the end as an appendix), are expressed in terms of projected numbers of votes at risk. These are derived from the numbers actually found under each category of error (Table 4, as appendix) within our sample of about 9600 applications, followed by extrapolation to the 312,900 non-duplicate applications received by the BOE in 2004. For the combined projected numbers the uncertainty is about 20% -- i.e. the numbers could be up to 20% higher or lower than those given.

BOE errors: We project (Table 1) that the BOE totally failed to enter 2677 submitted new registrations and made serious errors (e.g. omitting voter's date of birth) in entering another 1143 projected applications, for a total of 3,820 votes disqualified or at high risk of disqualification. Other types of entry errors, with low to possibly high risk of disqualification (numbering 8,131 + 4,114, Table 1) amounted to another 12,245 projected votes. About 40% of these 12,245 were address updates never entered, so that such voters would not receive information from the Board, might be purged for not having voted in 2 general elections, and would have to vote provisionally, with a 14% risk of rejection (see section 2, below). Errors in transcribing the voter's name (especially last name) could lead to lack of successful BOE confirmation of registration by mail, erroneous BOE information to voters that they were not registered (unintentionally discouraging them from voting), or poll workers not readily finding voters on the rolls, and requiring vote by provisional ballot. The availability of provisional ballots undoubtedly "rescued" many registered voters with address entry errors, but in turn subjected them to greater risk of rejection (see below) than voters who used regular ballots.

Some problems of erroneous BOE or voter entries after Sept. 1, 2005 may also be attributed to failings of the DIMS Voter Registration system now in use by the BOE, according to a recent report<sup>1</sup>.

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<sup>1</sup> <http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm>

**Table 1. [Projected] or actual potential votes put at risk\* through registration errors, fall 2004, Cuyahoga County, Ohio**

Type of Error	Number of applications likely to be disqualified	Number of applications at higher risk of loss	Number of applications at low to high risk of disqualification	Source of information
<b>Apparent Board Error</b>	[2677] #1	[1143] #5 + #6	[12,245] #2 + #4 + #3	<b>Table 4</b> (appendix)
<b>Apparent Voter Error</b>	[2938] #7 + #9 + #10		[392] #8	<b>Table 4</b>
<b>Applications missed deadline date</b>	~6,000			<b>BOE</b>
<b>Subtotal: Potential votes affected</b>	<b>11,615</b>	<b>1,143</b>	<b>12,637</b>	
<b>BOE List of Completely or partly Disqualified Voters**</b>	<b>10,971</b>		<b>3645</b>	<b>BOE</b>

\*Since turnout on election day was about 65%, actual votes lost from disqualified or compromised registrations would be 65% of the numbers given. The term “application” includes both new registrations and change of address applications, which many registrants treated identically (not specifying their former address).

#1,#2, etc. below projected numbers (in brackets) refer to items as numbered in Table 4, from which the projected numbers are derived

\*\*Overlaps some of the data of Apparent Voter and BOE errors in rows 1 and 2

Voter errors: Voters failed to enter vital information or gave addresses deemed not to exist for a projected total of 2,938 disqualified registrations. Other voter errors put an additional 392 projected registrations at low to high risk. The combination of these serious 2,938 voter errors and the 3,820 serious BOE errors mentioned above amounts to 6,758 or nearly 7,000 disqualified voter applications.

Late applications (combination of Voter and Registration Group errors): According to Michael Vu, Director of the Cuyahoga County BOE, about 6,000 applications were handed in to the BOE after the Oct. 4 application deadline, and were thus disqualified. About 2500 were due to errors made by one registration group, and the remainder were a mixture of errors made by voters, Bureau of Motor Vehicles, and unspecified other sources.

*Based on studies of both BOE and voter entry errors in about 9,600 applications for registration or change of address, we project that nearly 7,000 Cuyahoga County voters were probably disqualified and about 12,500 voters were put at varying degrees of risk*

*of disqualification<sup>2</sup>. The applications of another 6,000 voters were lost because the applications were handed in after the deadline.*

## **2. BOE lists of disqualified applications.**

The BOE published a list of 15,253 “fatal pending” or faulty applications, as updated Dec. 1, 2004 (Information from<sup>3</sup>). Two of the largest categories -- invalid address (6,203) and missing signature (4,768) -- totally disqualify the voter. The names of voters in the next two largest categories -- missing important information (1,987) or birth date (1,658) -- are flagged on the polling books, and requested when the voter signs in, in which case the vote is accepted. Where the address is invalid, the Board takes no further measures to notify the voter, but in the other 3 categories, it sends a non-forwardable notification and asks the voter to supply the missing item. We were told by a BOE staff member that only about 20% of those notified actually supply the missing information by mail, although many with missing birth date or incomplete information, may do so at the polling place (No data available on this). Other smaller categories on the BOE “fatal pending” list, such as being under age or not being a citizen, are legitimately invalidating or very small.

We can attempt to relate the numbers of voters on this “fatal pending” list to those in the GCVRC studies described above. We exclude applications which were apparently submitted but never entered (including change of address) or had only errors in transcribing the name of the voter. Neither of these categories of error would cause the voter to appear on the “fatal pending” list. After this exclusion, the GCVRC study predicts that about 6,000-8,000 faulty applications<sup>4</sup> would appear in the 4 major categories on the BOE’s “fatal pending” list: the actual number is 14,616. We suspect that part of the difference is due to the fact that the projected numbers in Table 4 derive from applications overseen by highly motivated GCVRC volunteer registrars, who were trained to spot and prevent errors of omission.

*About 15,000 names (not including minor special categories) were on the BOE list of disqualified or “at risk” voters. This number is greater than the projections of our studies on BOE or voter error, possibly because of the careful oversight of our volunteers in registering voters. About half of BOE categories of faulty application are totally disqualifying unless corrected before the election, and the other half potentially so unless corrected at the time of voting.*

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<sup>2</sup> From Table 1, probably disqualified, those “likely to be disqualified” or at “higher risk of disqualification” (2,677+1,143+2,938=6758; at “low to high risk” of disqualification (8,131 + 4,114 + 392 = 12,637)

<sup>3</sup><http://ohiovigilance.org/Analysis/CountyCuyahoga.html>, then click on link to “Fatal Pending” voters...

<sup>4</sup> Those given explanatory code letters E or F in Table 4. Mis-entry of addresses, if trivial, might not put the voter on the “fatal pending list”, so we give a possible range of errors (6,000-8,000) rather than one number.

### 3. Provisional ballots

8,559 of 25,309 provisional ballots cast in Cuyahoga County were rejected<sup>5</sup>, because of BOE findings that the voter was not registered (5760), had not voted in the correct precinct (2164) or (for 618, most of the remainder) had not been on the polling books and had made a disqualifying error in filling out the provisional ballot application (main categories: missing information, no signature, bad address).

We asked whether some of those rejected provisional ballots might have been erroneously purged from the BOE's list of duly registered voters. We used matching of names and date of birth<sup>6</sup>, using the BOE's list of provisional voters rejected for all reasons and the BOE-supplied list of all registered voters as of Aug. 17, 2004 or as of Oct. 22, 2004:

**Group 1.** Legitimate voters who had been on the BOE rolls of registered voters as of Aug. 17, 2004, but were absent from the rolls on Oct. 22 (Group 1 total of 286 found in this category: see Table 2 for breakdown). Clearly, the only major reasons for purging, death or incarceration, did not apply to these voters who cast provisional ballots. Special circumstances may apply to a few, but in the absence of feedback from the BOE, we conclude that most if not all of the 286 were incorrectly purged from the rolls.

**Group 2.** Legitimate voters who were on the BOE rolls of registered voters as of Oct. 22, 2004 but were nonetheless found on the list of rejected provisional ballots (652 found in this category, not including ballots rejected for being cast in the "wrong precinct – see Table 2). We presume that these provisional ballots were required because poll workers had not found the voter's name on the rolls on election day. Of these individuals, 338 provisional ballots were rejected as "not registered" even though the voters were on the rolls as of Oct. 22, 2004. In these cases, we cannot distinguish between voters being purged (more likely) or failures of the clerks checking the provisional ballots to find listed voters (less likely). These 338 lost votes added to the 286 in Group 1 equals 624 apparently purged voter records.

Another 314 provisional ballots in Group 2 were rejected because of "no signature", "bad address" or "missing information", raising the question of why these voters were forced to vote provisionally in the first place if they were registered as of Oct. 22. Presumably they were not found on the rolls at the polling place, and later, because of voter errors in filling out the provisional ballot forms at the polls, clerks at the BOE may have disqualified these provisional ballots without checking whether they were registered.

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<sup>5</sup> Information from Ohio Secretary of State, officially certified list of provisional ballots, for overall accept and reject values; information from Cuyahoga BOE for subcategories (with very slightly different totals than state certified numbers).

<sup>6</sup> Computer searches carried out by Dan Kozminski, volunteer, Greater Cleveland Voter Registration Coalition.

**Table 2. Tally of apparent errors in database of registered voters whose provisional ballots were rejected, voting date nov.2, 2004**

Reason for rejection of provisional ballot	Not Registered		No Signature		Missing Info	Bad Address	Wrong Precinct	
	Address Change	Same Address	Address Change	Same Address				
<b>Group 1:</b> On db in Aug., off in October	111	153	19				3	<b>286</b>
<b>Group 2.</b> On db in Oct. but made to vote provisional ballot on Nov. 2	101	237	164	81	13	56	Not applicable	<b>652</b>

More complicated possibilities for some of these findings do exist, but in sum:

- 1) It is likely that at least the 286 in Group 1 and 338 rejected as “not registered” in Group 2 had been purged, for a total of 624;
- 2) The remainder (314) rejected in Group 2 for the other reasons given above, may or may not have been purged. Therefore between 624 and 938 voters may have been purged;
- 3) The BOE was unwilling to investigate these data before certifying the election results, when the problem was first raised and the first detailed data was presented at BOE meetings of Nov. 22 and Nov. 29, 2004; and
- 4) Cuyahoga BOE Director Vu reportedly said “he would review the lists Robbins provided and wished he had had them sooner” (Plain Dealer, Nov. 30, 2004), but in fact, has never responded (as of this writing) since he was sent the complete files described above within a week of this news report. Until the BOE analyzes our results, we will not know exactly how many of these presumed purges actually occurred, and how many were due to other circumstances or errors on the part of either voters or the BOE.

We know that the number of purged and rejected provisional voters (624 to 938) is probably an underestimate. From a variety of non-BOE sources, we learned of 13 voters who insisted that they had voted repeatedly or had confirmed their registration with the BOE and yet were told they were not on rolls, were forced to vote provisional ballots on Nov. 2 and were rejected. Of these 13, the search for purged voters in our matching studies picked up only 3. Therefore, we believe that using other types of search (e.g. voters incorrectly purged before Aug. 17, use of variations in name or address as well as

date of birth, etc.), the total number of erroneously rejected provisional ballots would be greater than the number we found with one particular search protocol. According to another report, errors in the DIMS data base could also contribute to cases where provisional voters had been purged, rendered unfindable, or otherwise rejected<sup>7</sup>.

How many provisional ballots voters may have been rejected because the BOE failed to enter registration applications or entered them incorrectly (see item 1)? We could not use the registrations analyzed in September, 2004, because we had taken vigorous measures to get these registration failures or errors corrected before the registration deadline of Oct. 4. However, using data from the other study subgroup of about 7400 applications submitted to the BOE before the deadline but analyzed after the deadline, we found 30 individuals whose provisional ballots had been rejected, mostly listed as “not being registered” but some as “wrong precinct”. Since the BOE received 312,900 applications in 2004, we project that with a voter turnout of 65%, about 825 rejected provisional ballots may have been rejected directly or indirectly because of BOE errors<sup>8</sup>.

What is the risk of any legitimate voter being forced to vote a provisional ballot and being disenfranchised? From the above, up to 938 such ballots may have been rejected due to purging errors and 825 due to BOE registration entry errors (unknown to the voter). Another 540 voters made errors of omission (e.g. missing signature, incomplete information) on the provisional ballot form that alert poll workers could have prevented. Finally, another investigative group found that 1201 provisional ballots were rejected for being cast in the “wrong precinct” when the voters were actually at the correct polling place<sup>9</sup>. These voters received incorrect information from the poll workers or were not properly directed by them to the proper precinct table (Additional voters arrived at the wrong polling place because of software errors in the poll place finder on the BOE web site<sup>10</sup>, or because they failed to receive mailed polling place information because of address errors in their listing, but we don’t have any numbers on this type of error). In all, these 4 sources of known error add up to 3504 or 41% of rejected provisional ballots, or 14 % of all provisional ballots cast (accepted and rejected) in Cuyahoga County.

***Between 624 and 938 rejected provisional ballots, mostly classified as “not registered”, may have been mistakenly purged from the registration lists. The true number incorrectly rejected for this reason is likely to be higher.***

***If we combine incorrectly purged provisional votes, projected votes rejected because of initial registration errors, provisional ballots lost through polling place misinformation and innocent provisional application errors, it appears that over 41% of rejected provisional ballots (or 14% of all provisional votes) may have been unnecessarily rejected.***

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<sup>7</sup> <http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm>

<sup>8</sup>  $(312,900/7400) \times 0.65 \times 30 = 825$

<sup>9</sup> <http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyWrongPrecinctSummary.pdf>

<sup>10</sup> personal communication from Cheryl Kufta, a software expert who personally encountered and analyzed these problems. Also, see:

<http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm>

#### 4. Population sectors at greater risk for disenfranchisement

Americans who move more frequently are more often subject to the kind of registration errors described in this report because they need to re-register to avoid voting provisional ballot<sup>11</sup>. Those disproportionately affected include youth, home-renters (vs. home owners), the poor, African-Americans and Hispanics (Table 2). Fortunately, the provisional ballot mechanism partly prevents disenfranchisement due to lack of re-registration, BOE address entry errors (in some cases), or BOE failure to enter address updates.

**Table 3.**  
**Comparison of residential mobility in different pairs of American subpopulations**

Percent who move in the space of one year <sup>12</sup>								
	Age	%	Housing	%	Race	%	Household income	%
Comparison Of pairs	20-29	28-30%	Rent	31	Black or Hispanic	18	<\$25,000	19
	Over 55	3.5-6%	Own	7	White	12	>=\$100,000	10

What is the risk in Cuyahoga County of being disenfranchised by registration errors with each new move and new registration? From Table 4, the sum of all risks of un-entered or erroneously entered registrations is about 6%. Thus, movers (youth, low income, minorities) are at greater risk of disenfranchisement.

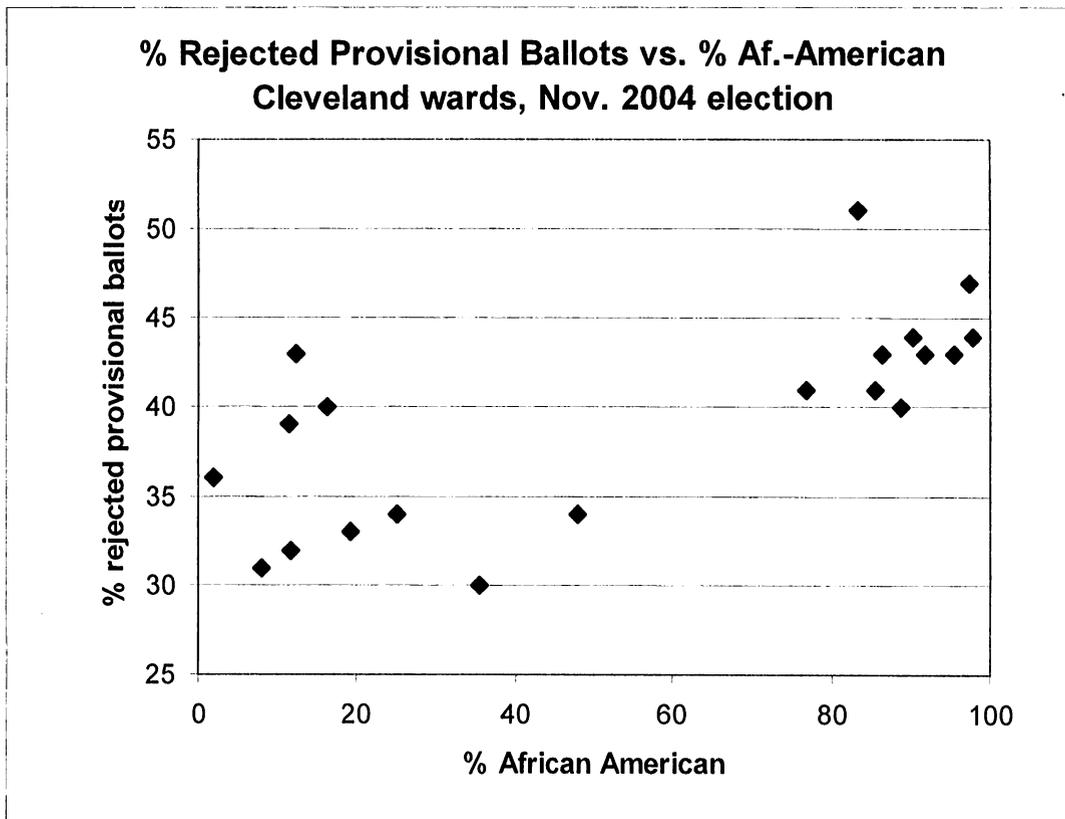
We investigated the consequence of this disproportionate effect of registration error, specifically with regard to race, in two ways:

1. Precinct by precinct comparison of the provisional ballot rejection as a percent of all votes cast in each Cuyahoga County precinct as a function of black/white percentages in the precinct population. Selecting precincts where there were at least 100 persons 18 and older, we found that the average rejection rate (as % of all votes cast) was 1.8% in precincts with 90% or more black residents, and 1.1% in precincts with less than 10% black residents. This result was highly statistically significant.

2. Evaluation of percentage of provisional ballots rejected as percent of provisional ballots cast in the 21 wards of Cleveland, graphed below by % black population.

<sup>11</sup> Task Force on the Federal Election System, 2001 (attached to the National Commission on Federal Election Reform, 2001), [http://www.millercenter.virginia.edu/programs/natl\\_commissions/commission\\_final\\_report/task\\_force\\_report/complete.pdf](http://www.millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf)

<sup>12</sup> Table 8 in U.S. Census Report, Geographical Mobility: 2002 to 2003. <http://www.census.gov/prod/2000pubs/p20-549.pdf>



It is obvious by eye (and valid statistically) that wards with over 80% black populations had higher rejection rates (as % of provisional ballots cast) than those with 50% or less black populations. In one predominantly black ward, the rejection rate reached 51%.

*As noted in national studies, those Americans who move more frequently are more likely to be subject to registration errors (and also provisional ballot rejection). These include youth, those who rent rather than own homes, African Americans and Hispanics, and the poor. In Cuyahoga County, we estimate that each move brings about a 6% chance of disenfranchisement through registration error. The national data on groups that move more frequently is consistent with our findings of a nearly twofold rate of provisional ballot rejection in precincts with over 90% black populations compared to those that are 10% black or less. There is also a clear pattern of higher provisional ballot rejection rate in predominantly African American wards of the city of Cleveland.*

##### **5. “Ballpark” estimate of registration/provisional ballot errors on a statewide basis**

By what factor should the errors in Cuyahoga County be multiplied in order to estimate their occurrence statewide in 2004? The majority of errors appeared to be concentrated in the most urbanized areas of the County where the most intense registration drives occurred. Therefore, one approach to extrapolation is to find the combined populations of the 10 largest Ohio cities (1.72 million, assuming that about half of Columbus is urbanized) and to divide that by the population of Cleveland (478,000) to yield a factor of

about 3.6. Using this factor and data cited or derived above, these cities together would have experienced 24,300 disqualifications due to BOE or voter error<sup>13</sup>, 45,500 registrations or change of address at varying degree of risk because of BOE or voter error<sup>14</sup>, and up to 21,600 because of applications handed in after the deadline<sup>15</sup>. In addition, about about 12,500 provisional ballots may have been incorrectly rejected<sup>16</sup>. With an average turnout of 65%, this amounts to a “ballpark” projection of about 31,000 final votes actually lost ( $0.65 \times (24,300 + 21,600)$ ), and 30,000 ( $0.65 \times 46,500$ ) at risk of loss, in addition to the 12,500 provisional ballots lost. Because of the assumptions involved, these numbers could easily be off by 20% in either direction. However, the key point is that the sum of these avoidably lost votes or votes put at risk add up to 72,500 votes or about 1.3% (range 0.9-1.6%) of votes cast in a (2004) Presidential election decided by a difference of 2.1% of Ohio’s votes<sup>17</sup>. Therefore, despite the range of uncertainty, there is no doubt that these sources of error must be addressed by election reforms.

Are these estimates “conservative”, i.e. likely to be understatements of the magnitude of the problem? We believe they are, because:

- we derived our numbers of voter and Board just from applications submitted by the Greater Cleveland Voter Registration Coalition, whereas twice as many voters were on the BOE’s “fatal pending list” of voters disqualified for wrong or missing information;
- we did not include estimates of voters who did not even attempt to vote a provisional ballot because they called the Board of Elections after the registration deadline only to find they were apparently not listed (either because of registration or data base errors that were not the fault of the voter); and
- we did not include voters who might have voted provisionally but were directed by poll workers or the BOE’s “precinct finder” to the wrong precinct, and did not have the time or energy to correct these errors.

***“Ballpark” extrapolation to big cities statewide lead to the conclusion that in 2004 about 1.3% (range 0.9 to 1.6%) of votes (42,500 lost, 30,000 at risk) could have been lost statewide in a Presidential election decided by a 2.1% difference of votes cast (and our numbers probably understate the problem).***

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<sup>13</sup> Using the number of high risk errors in application (Table 1, columns 2&3) times the 3.6 factor:  $3.6 \times (2,677 + 2,983 + 1,143) = 24,328$

<sup>14</sup> Multiplying number of applications at low to high risk in Table 1 times 3.6 ( $3.6 \times 12,637 = 45,493$ )

<sup>15</sup> 6,000 applications in Cuyahoga County which missed the deadline for registration  $\times 3.6 = 21,600$

<sup>16</sup> 3504 provisional ballots possibly incorrectly rejected in Cuyahoga County times 3.6 = 12,600 statewide.

<sup>17</sup> According to the “Amended Official Results” at <http://www.sos.state.oh.us/sos/results/index.html>, where it is reported that there were 5,627,903 votes cast, of which 50.81% were for Bush, 48.71% for Kerry.

**6. Some of the election reforms which would reduce the disenfranchising errors discussed in this report (P=problem; R=reform): Incomplete List supplied only for Illustration.**

The following reforms are sketched rather than detailed, and do not include all good options. Rather, they are intended to illustrate that for each problem, there are workable solutions if there is the will at the appropriate level of agency or government. The Greater Cleveland Voter Coalition is developing a set of reforms which will be presented at a later time.

**A. Registration errors**

**PROBLEM:** New registration or change of address submitted to BOE but never entered.

**REFORM:** BOE provides some form of receipt on receiving an application from voter or registration group (see also next item), so that timely submission can be proven.

**PROBLEM:** Voter or BOE error in filling out or transcribing application.

**REFORM.** BOE checks all registrations on disqualified (“fatal pending”) list against original written application to correct clerical errors (BOE already notifies voters with missing information or birth date to supply same, but this unfortunately is not sufficient).

**REFORM.** If BOE notification to voter of error or omission is returned, it should be re-sent as a forwardable letter.

**REFORM:** At a point in time sufficiently before the registration deadline, BOE supplies all fully registered voters with prominent notification that they are registered (e.g. repeat large-size flyer to all registered voters, searchable website list of all registered voters, available on internet, public libraries, etc.), including address for checking **plus** intensive public outreach to everyone to check their registration status, correct faulty registrations or re-register if necessary before the deadline.

**REFORM:** Major overhaul of DIMS data base so that it warns of input errors as they occur<sup>18</sup>

**PROBLEM.** Applications missing important information (e.g. signature, birthdate, Social Security or Driver’s License number) in submissions by registration organizations or individuals.

**REFORM.** The Board should check periodically and randomly for the number of such omissions, and warn the offending registration organization that unless the problem is immediately corrected (to a certain percent of error), further applications will not be accepted.

**REFORM.** More graphic and literacy-sensitive flyers, explaining and warning against potential voter errors and omissions, should accompany all blank registration forms distributed publicly.

**PROBLEM:** Applications handed in huge batches or late by registration or other organizations.

**REFORM:** BOE requires that all applications be submitted within 5 working days of signature date, with penalty of losing future right of registration for organizations that fail

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<sup>18</sup> <http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyProblemDIMS.htm>

to do so. All organizations that routinely submit applications (including BMV) should receive special administrative reminders of the deadline for receipt.

### **B. Provisional ballot problems (other than Registration problems as above)**

PROBLEM: BOE inadvertently purges voters from list.

REFORM: BOE keeps list of registered voters as of each month, and routinely checks that those that are dropped from the list in subsequent months are done so for legitimate reasons.

PROBLEM: Provisional Ballots rejected because voter is in wrong precinct.

REFORM: At the very least, accept ballots cast in the correct polling place (even if wrong precinct) as prima facie evidence of poll worker mistake;

REFORM: Change state interpretation of HAVA so that voter can cast provisional ballot anywhere in the correct county (with loss of vote only on precinct-specific offices or issues).

PROBLEM: Provisional Ballot rejected as “not registered” because original voter application was disqualified

REFORM: Check all such individuals against a copy or scan of the original voter application, to be sure the voter was not disqualified because of clerical error or omission in the original entry on to the data base

PROBLEM: Provisional Ballot rejected because of voter omission (on the provisional application form) of signature, date of birth, or other required identifying information.

REFORM: Accompany provisional application form with graphic, low-literacy sensitive flyer explaining most common errors.

REFORM: Make poll workers responsible for voter omissions (e.g. discharge worker if over a certain number of provisional ballots OK'd by this worker contains omissions)

### **C. Disproportionate risk of disenfranchisement in certain subpopulations**

REFORM: Reforms as above, plus proportionately more intensive public outreach directed at those subpopulations with higher percentage of those who move (Table 2) – e.g. at youth, minorities and the poor

### **D. Election Day Registration would reduce disenfranchisement due to most errors reported here:**

REFORM: Election Day Registration, as practiced successfully in 6 states, would eliminate most of the errors discussed in this report much more effectively than many of the reforms suggested above. Furthermore, according to national studies, election day registration also significantly increases voter turnout. Any added administrative costs of election day registration should be balanced against the costs of correcting the errors reported here, as well as the reduction in avoidable disenfranchisement.

APPENDIX

Table 4: Combined results of two studies<sup>i,ii</sup> of about 9600 registration/change of address applications submitted to the cuyahoga county board of elections by the greater cleveland voter registration coalition prior to oct. 4, 2004

	Category of Error	Number of applications affected in our studies	Percent of submitted applications in our studies	Projected number of applications affected countywide <sup>iii</sup>	Item # (see text)	Likelihood of voter being disenfranchised (letters refer to explanatory code below table)	
<b>Apparent Board Errors</b>	New registrations never entered	82	0.9	2677	1	100%	
	Address updates not entered	153	1.6	4996	2	A,C	
					3	B,C	
	Mistakes in entering: name address date of birth multiple items	492	126	1.3	4114	4	B,D,E
						5	E (many disqualified)
						6	B,E (many disqualified)
<b>Subtotal</b>						<b>16,035</b>	
<b>Apparent Voter Errors</b>	Nonexistent address	25	0.3	816	7	F 100%	
	Undeliverable at address given	12	0.1	392	8	B Low to high	
	Missing information	54	0.6	1763	9	B,E High, many disqualified	
	Other invalid information	11	0.1	359	10	E High, most disqualified	
	<b>Totals</b>	<b>594</b>	<b>6.2</b>	<b>19,395</b>			

- A. Forced to vote provisional ballot with 14% risk of rejection (see text section 3);
- B. Possibly forced to vote provisional ballot, with 14% risk of rejection, or higher risk if faulty voter information on the data base prevents detection of registered status;
- C. Possibly purged from list of registered voters if voter had not voted in last 2 general elections and updated information was not entered in to prevent purging;

- D. Disqualified if mistaken address does not exist**
- E. Possibly placed on “fatal pending” list**
- F. Definitely placed on “fatal pending” list**

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<sup>i</sup>We wish to acknowledge the consistent helpfulness of the BOE staff in making available computers and in assisting volunteers in carrying out computer searches of the BOE's database. The first study of 2183 non-duplicate applications was completed Sept. 17, 2004; the 2nd study of approximately 7400 additional applications was completed end of October for registrations as of Oct. 22, 2004. Results for each category are combined in the information presented, so that the percent is derived from numbers found in each category divided by 9583 (2183+7400). In the case of the September study, vigorous outreach to affected voters led to correction of many of these errors, but for the present purposes, the data are presented as originally found before correction. In the case of the October study, efforts were made to correct the registration errors but in most cases were too late. Numbers in some categories are slightly different from previous versions because of review, small numbers reclassified, or use of more subcategories.

<sup>ii</sup>Qualifications: Work done by volunteers on Board of Election computers, and some categories subject to interpretation. Most of these data were submitted to the Board of Elections for their review and correction, but no response was received. Copies of most of the applications used have been retained. Number of total applications studied in the second study, 7400, is an estimate based on previous day exact number. Low numbers in several study categories make projections to entire 2004 application list (see next note) very uncertain. The calculated 95% confidence interval for these data vary with the number of entries: for instance, the 95% confidence interval for the number of new registrations never entered (row 1) is about 18% so that the 95% confidence interval goes from 1700 to 3184. Entries with smaller numbers have much bigger uncertainties or larger confidence intervals; for this reason, smaller categories are pooled in the overall summary (Table 1) and especially in the text, so that confidence intervals for pooled categories is in this same 20% range. Surrounding events were somewhat different for the Sept and October studies (see note 1 above), with variations in different subcategories. Nonetheless, overall combined percentage of either Board or voter errors were similar, so results were pooled by category.

<sup>iii</sup>In order to extend our results to the entire universe of submitted applications, we need to calculate the total non-duplicate number received. The Director of the Cuyahoga County Board of Elections said that 360,000 registration/change of address applications were received in 2004 by the deadline. However, at an earlier time, when the number received was 344,245, the Director said there were 45,043 duplicates, or duplicates were 13% of the total. Thus if the latest total is 360,000, then 13% or 47,100 need to be subtracted as duplicates, so that the number of non-duplicate registrations received would be (360,000 – 47,100) or approximately 312,900. Therefore, we multiply the percentages of each type of error (in column labeled “percent of submitted applications” in Table 4) times 312,900 to find the “projected number of applications affected countywide”.

Appendix 6: Summary of Cuyahoga  
County Board of Elections  
data on invalid registrations  
(Fatal Pending), provided by  
Norman Robbins, Former  
Study Leader of the Greater  
Cleveland Voter Coalition

**SUMMARY: FATAL PENDING REGISTRATIONS  
Cuyahoga County 2008**

Category	Number	
"Z-Invalid Address" (new registrations with invalid address)	5023	
"GIS Invalid Address" (registration updates with invalid address)	1544	Street Exception (Questionable addresses investigated) 9735
No Address supplied	1985	
Commercial Address	111	
Crude estimate of duplicates in above @35/1000	298	
Subtotal Address Errors (less duplicates)	8366	
No Signature	2589	
No ID line 10	4654	
No DOB	1285	
Crude estimate of duplicates in above @35/1000	298	
		"Change missing DOB or signature" (original registrations sent to and corrected by voter) 915
Total Fatal Pending	16596	

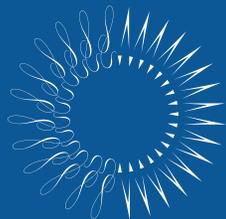
Total number of registrations received by Cuyahoga County in 2008 is 275,265, including Active, Inactive, Fatal Pending and Pending.

275,265

% NG Registrations 6.0

(If 6% statewide, would be 39,600 defective registrations)

Appendix 7: Pew Center on the States,  
*Being Online is Not Enough:  
State Elections Web Sites*



THE  
**PEW**  
CENTER ON THE STATES

# Being Online is Not Enough

## State Elections Web Sites



OCTOBER 2008

The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. Our Pew Center on the States identifies and encourages effective policy approaches to critical issues facing states. The goal of Make Voting Work is to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

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For additional information on the Pew Center on the States, please visit [www.pewcenteronthestates.org](http://www.pewcenteronthestates.org).

October, 2008

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October 2008

Dear Reader:

As Election Day approaches, excitement is building for a presidential race expected to generate greater voter interest than we have seen in decades.

Many of those going to the polls on November 4 will be first-time voters who will need to know how to register to vote, where to vote and, likely, who and what are on the ballots for the 2008 elections. Today's technology should make it easier for these first-time voters. However, while it is clear that the Internet helps people search for and use information, it is not clear that voters will in fact find the information they are looking for or that the information they do find will help them vote in the coming elections.

Americans are increasingly incorporating the Internet into their daily lives. Today, it's an easy way to look for directions, purchase gifts or household necessities, get a movie or book review or search for information about a presidential candidate. For many companies like Marriott, Progressive, Best Buy or Toyota, a first-class Web site is part of their core strategy and the site's usability sometimes makes the difference between success and failure. Businesses realize that their customers rely on Web sites to help them not only purchase goods, but also to gather information—comparing products and prices—that can help consumers make better decisions.

In this report, Make Voting Work (MVW) examined the state elections Web sites in all 50 states and the District of Columbia to determine whether citizens can find the official election information they need to register to vote, check their registration status and locate their polling places. More importantly, MVW measured if potential voters can use the information on state elections Web sites and if it helps them. We found that every state has room for improvement. However, states can still take steps to help voters; as the election approaches, many states have updated their Web sites and developed tools to help voters this November.

How easy a state's elections Web site is to use dictates if citizens can efficiently learn what they need to know to vote on November 4. According to experts, on average, people spend less than two minutes on a Web site before they abandon their search for information. Web sites that quickly and easily deliver the information citizens seek about the upcoming election will potentially improve the voting experience and ease the burdens placed on election officials' resources. A 2007 U.S. Election Assistance Commission survey found that election administrators are realizing the importance of offering voting information online—saving election offices time and resources while also possibly reducing voter frustration.

Make Voting Work, a project of the Pew Center on the States, is committed to making the election system work optimally for all voters. Through this research, MVW has identified areas for improvement for all state elections Web sites and made recommendations for improvement. MVW has also partnered with the JEHT Foundation and state and local election administrators, with technical assistance from Google, Inc., to create the Voting Information Project, which is working to develop and implement a technical standard to more efficiently disseminate accurate voting information.

*Being Online is Not Enough: State Elections Web Sites* was researched and written by The Pew Charitable Trusts' Center on the States (PCS). PCS identifies and encourages effective policy approaches to critical issues facing states.

MVW hopes this report will help state and local election officials continue to find new and better ways to deliver information to voters through the Internet to make the election process easy and efficient for citizens.

Sincerely,

Sue Urahn

# Executive Summary

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Can I find it?  
Can I use it?  
Does it help?

Three broad questions, but ones critical to any user searching a Web site for information.

According to Pew Research Center's Internet and American Life Project, as of May 2008, almost three in four adults use the Internet. Although roughly three-quarters of users go to the Internet for information on expected topics such as health, the weather and travel planning, increasing numbers of Internet users—two-thirds of all users—are also turning to government Web sites for information.<sup>1</sup> And this year, Americans are using the Internet to gather information about the campaigns and the 2008 election more than ever before.

In many ways, the 2008 presidential election represents the first campaign of the 21st century. Using modern technologies and Web-based trends developed in the past few years, like social networking, both Democratic and Republican campaigns have raised money, recruited volunteers and sent out messages to their supporters through the Internet. In turn, a record-breaking 46 percent of Americans have used the Internet, e-mail or cell phone text messaging to get news about the campaigns, share their views and mobilize others.<sup>2</sup> However, despite the prominence of the Internet in the 2008 elections, 60 percent of users reported that a great deal of misinformation exists online.<sup>3</sup>

With the prevalence of the Internet as a source of information in the 2008 campaign, Make Voting Work (MVW), a project of the Pew Center on the States, seeks to understand how the Web and the information available on state elections sites will help engage citizens in this November's election.

As of June 2008, 40 percent of all adults were turning to the Web for campaign information—a nine percentage point increase over a comparable stage in the 2004 presidential campaign.<sup>4</sup> Some groups of voters—particularly young and first-time voters—will increasingly go to the Web to find basic information about how to register, where to vote and what is on the ballot this year. MVW finds that much of this information is available at the state and local level, but finding and using the information can be difficult—particularly on state elections Web sites.

*Being Online is Not Enough: State Elections Web Sites* assesses how well state elections Web sites are doing to provide the necessary information to help citizens vote. To answer the three basic questions (Can I find it? Can I use it? Does it help?), this research critically focuses on the ease of navigation in accessing the information and the usability of that information.

MVW found that all states have room to improve. Furthermore, making election information easy to find and use can yield a return on investment (ROI) for election officials. If people are locating the information they need online, fewer of them will need to use the phone to call a state or county elections office. Experts suggest that calls to state or county elections offices can cost between \$10 and \$100 each, depending on the staffer's qualifications.<sup>5</sup>

There are many ways that states can address the limitations described in this report. To further highlight these avenues of improvement, we introduce the Voting Information Project, a unique partnership between Pew, the JEHT Foundation and state and local election officials. This partnership, made possible with technical support from Google, Inc., will enable states to place critical election information directly in the hands of their voters.

# Introduction

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In recent years, state and local election offices across the country have been following the national trend of making information available online. As more and more Americans use the Internet, simply putting information online is not enough. State Web sites must be easy-to-find and easy-to-use if they are to fulfill their intended purpose of helping voters.

Brian Ryu, a 24-year-old transplant to D.C. who works in finance, voted in the last presidential election by absentee ballot from New York. In this November's election, he is voting for the first time in the District of Columbia.

To register to vote in D.C., the first thing he did was turn to the Web to find out how. "I went online and typed in, 'Washington D.C. voter registration' using Google. The link to the registration page was the first hit," he said.

Brian then had to fill out an online form, which required his home address, driver's license number and date of birth. That still wasn't enough to get to the registration form. He had to declare a party affiliation as well. Only then was he able to download the registration form. But, he wasn't done yet. He had to sign the form and mail it back. "It wasn't too difficult, but it wasn't easy either. At first, I didn't affiliate with a party, but D.C.'s Web site wouldn't let me move on."

Thanks to the government site, Brian was able to find and fill out the right form to register to vote. For Brian, because he's had a computer since he was seven years old, when he wants information his instinct is to turn to the Internet, where he, and according to research, his peer group, go for most of their information gathering needs. "Registering to vote took time, but when I need to find out where to vote or who is running for city council, I'll still look on D.C.'s Web site. It's just naturally where I would go to get that information."

It is simply no longer enough to have the data on state elections Web sites. If citizens turn to the Internet for election-related information, they require information they can find, use and trust to help them participate in the 2008 election and beyond. As a result, it is important that state elections Web sites be easily accessed, easy to use and helpful. This report is limited to state elections Web sites only, since elections are primarily a function of state law. Local elections Web sites, however, are also important and can benefit from the study's analysis and findings on usability.

## Using the Internet to find voting information

More and more Americans are looking to the Internet to find information. Users increasingly have incorporated the Internet into their daily lives since the World Wide Web became popular in the mid to late 1990's. Currently, more homes have high-speed internet connections than had

## INTRODUCTION

computers 10 years ago (58 percent vs. 43 percent).<sup>6</sup> Many users prefer the Internet over traditional channels to research services and products, manage finances and make purchases. Users' expectations are set by user-friendly online services.

The number of adults who turn to the Web for campaign information has increased by 29 percent since the 2004 election.<sup>7</sup> And if the 2008 primary season is an indicator of voter turnout, the upcoming election is likely to see a record number of young voters. Some states witnessed as much as a 15 percent increase in young voter rates between the 2004 and 2008 primaries.<sup>8</sup>

This election's youngest voters are members of Generation-Next, a generation that has grown up with personal computers, cell phones and the Internet and uses technology in fundamentally different ways than previous generations. Unlike other groups of voters, these young voters are turning to the Internet as their primary source of information about the election—for the first time the Internet has supplanted cable television as the preferred source of campaign and political information for 18- to 29-year-old voters.<sup>9</sup> These young voters will also likely rely on the Internet for information about voter registration, polling locations, ballot measures and other voter concerns in the same ways they rely on the Internet as a source of political news.

Voter turnout is not expected to surge just among young voters; if election interest and voter registration numbers are indicative, many predict record levels of Americans of all ages will vote this November. A June 2008 poll conducted by the Pew Research Center projects that, based on self-reported voter interest in the election,

voter turnout in November will be significantly higher than in the previous four presidential elections.<sup>10</sup>

Voter registrations have grown exponentially in many states over the past year. *The Washington Post* reported that in Nevada there are 400,000 more voters registered now than four years ago and that over half a million voters have registered in Indiana since January of this year. In response to this growth in Indiana's electorate, Secretary of State Todd Rokita said this could be "the biggest Election Day in our nation's history in terms of turnout."<sup>11</sup> According to George Mason University's Michael McDonald, "If all conditions remain the same as what they are now, we could see voter turnout up three to four percentage points, cresting over turnout rates in the mid-1950s."<sup>12</sup>

### What we know about voter concerns

There is little data available on Web usage by voters in need of assistance during the election process; however, the concerns of voters in earlier elections are indicative of the information voters will likely need leading up to this November's election. In the 2006 election cycle, approximately 70,000 calls were made to four hotlines providing election information.<sup>13</sup> The most commonly asked questions were related to where to vote (42 percent of questions) and registration concerns (33 percent of the inquiries).<sup>14</sup> For example, 65 percent of calls received by the MyVote1 National Election Hotline, which helps voters through an automated Interactive Voice Response System, were about locating a polling place.<sup>15</sup> Some of these calls could be avoided if states were able to provide accessible and usable voting information online.

### The importance of state elections Web sites

Between 2002 and 2003, use of government Web sites increased by 50 percent.<sup>16</sup> Today, 66 percent of Internet users go to government Web sites for information.<sup>17</sup> As the election approaches, these government Web sites are likely to be sources of trusted information on how and where to vote.

Noting the importance of making government data accessible online, J.L. Needham, manager of public sector content partnerships at Google, Inc.—the division dedicated to finding official information and making it searchable—explains that “some state government documents are hidden behind design elements of the Web site or, more commonly, in a database that a search engine’s crawlers can’t access.”<sup>18</sup>

With an increasing number of Internet users, it is paramount that state elections Web sites meet

the needs and expectations of current and prospective voters by providing useful and usable elections Web sites. For many businesses, this is a core strategy. For state elections Web sites, this is no longer a nice thing to do, but a must-do to enable citizens to exercise their right to vote.

User-friendly Web sites can also ease the burden on election officials. One Election Assistance Commission (EAC) survey showed that state election offices are realizing the importance of offering voter information online.<sup>19</sup> Election officials can save time and resources if voter information is readily available online. An effective Web site can reduce the number of inquiries and alleviate voter frustrations. An added benefit is that these online services are accessible 24 hours a day, seven days a week, from the voter’s home and other locations.<sup>20</sup> The presence of user-friendly official sites also reduces the likelihood of outside groups creating unofficial, and potentially unreliable, sources for voting information.

# How well are elections Web sites helping voters?

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Make Voting Work's study, an examination of the information available to voters, looked at elections Web sites of all 50 states and the District of Columbia. This report assessed whether state elections Web sites could be easily found and used by voters seeking information before going to the polls this November. These questions usually come in the form of one or more of the following voter frequently asked questions (FAQs):

- Am I registered; or, how do I register?
- Where do I vote?
- What candidates and issues are on the ballot?

Much of this information is available at the state and local level as part of election management systems and voter databases, many of which were created as a result of state appropriations funded in part by the Help American Vote Act of 2002. Election officials use this information to manage voter registration, select polling locations and prepare ballots for the millions of voters who go to the polls each year.

However, this information comes from a patchwork of data sources that are not consistently available to information providers, such as newspapers, civic organizations and other outlets where voters turn for voting information. Most importantly, this data is not readily accessible to the growing segment of Americans who rely on search engines for finding government information online.

As voters look to the Internet for election information, it is good practice for states to increase transparency and make official voting information easily accessible. For the current study, MVW examined if election information is easily available through state elections Web sites.

First, can voters find official election information? Ideally, citizens who sit down at their computers and search for voting information should be able to easily find their state's official elections Web site. It doesn't matter how many bells or whistles states may have on their Web sites. If voters can't find the site, they can't use it.

Next, do state elections Web sites provide the information voters need, and will likely be looking for, in the upcoming election? To facilitate voter participation, states can provide critical tools online, such as polling place locators, online voter registration verification and information so voters know which candidates and initiatives are on the ballot. By providing this information online, states may reduce the number of people who need to contact local or state election officials to request information.

Finally, is the information on state elections Web sites easy to use? MVW looked at how user-friendly and accessible state elections Web sites are. State efforts will be wasted if the information they provide to voters is mired in poor Web site design. Many of the Web sites MVW analyzed for this report are rich with data, but data is not information; it is

only through the design of usable interfaces that data can be put in context and combined to provide useful, meaningful information for citizens preparing to vote. For example, historical data clutters some Web sites, and that can confuse or distract voters from obtaining the information they seek. Historical data is not useful to citizens preparing to vote by registering, verifying registration, locating polling places and analyzing candidates and issues that will be on their ballot.

### Can voters find the information they need?

The user's ability to find the state Web site is the most critical element of our evaluation. If voters can't find a site, they can't use it. Users' strategies for finding Web sites fall into two categories. First, some users will attempt to type a name or term into the address bar of their browser, figuring that someone who offers a corresponding service will have bought the domain name. Alternatively, and increasingly more common, users will type a name or term into a search engine. If the state Web site does not appear within the first few search terms, users may be confused about where to go to find the information, go to an unofficial Web site that could include out-of-date or incorrect information, or give up entirely. The official Web site ideally should appear as the first search term to guide users quickly to the correct information.

Users who have to scroll through multiple results may end up on unofficial or paid advertising sites before finding the information they are looking for. These Web sites may not be up-to-date or users may give up altogether. Because many users reach a site via search engines, states need to pay special attention to the page titles, tags and descriptions so a Web site can be indexed and presented properly through a search engine.

Our study found that 38 official state sites do appear as the first search result when searching for "voting in <state name>." For example, a voter in Kentucky can type "voting in Kentucky," and the official state elections Web site appears as the first result in the search list. However, for 12 states, the official site appears within the first five results and South Dakota's Web site does not appear at all on the first page of results. For Web users searching for information on their polling places, only 34 official state Web sites appear as the first search result when users enter in their state name with "polling place."

The main homepage of a state's Web site should also include a prominent link specifically for that state's elections Web site. Seventeen states included such a link. Although many states added these links as the election drew closer, all states should add this feature because many voters may go to the primary state government page before searching for the elections Web site. All states should do everything possible to point users in the right direction. For example, the Rhode Island state government site currently includes a prominently labeled "Spotlight" section on its home page, and when we checked the site it was using this location to promote the election Web site.

### Do state elections Web sites provide the tools to answer voter questions?

To facilitate voter participation, states can provide critical tools online, such as polling place locators, online voter registration verification and information about which candidates and initiatives are on the ballot.

Generally, we found sites lacking basic tools such as registration verification and poll locator features

## HELPING VOTERS

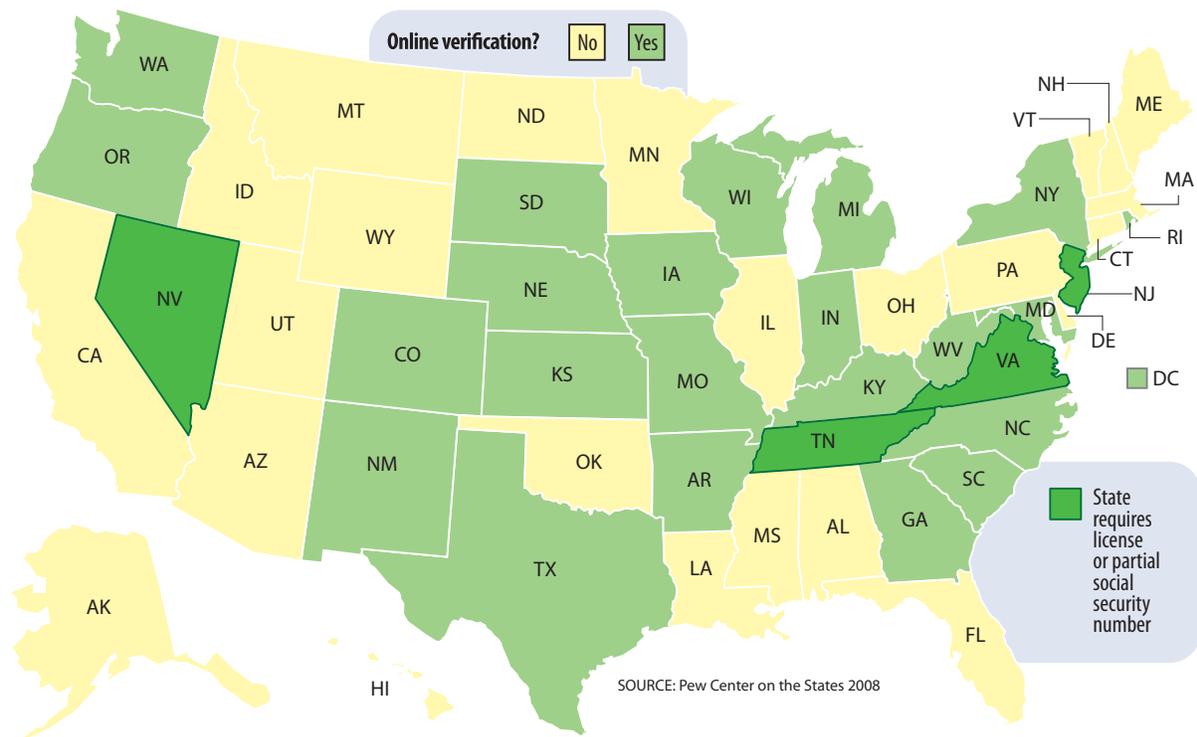
(see Exhibits 1 and 2). However, we know that these sites have the data—they just have not built usable interfaces that take that data and turn it into useful information. Approximately half the states (53 percent) offer a way for voters to verify their registration online. All of these tools require personal information, but there is tremendous variation in the amount and type of personal information required to check one's registration status. For example, in North Carolina and New Mexico voters need only input their last names to find very comprehensive voter information. States such as Nevada, New Jersey, Tennessee and Virginia require voters to input as much as the last four digits of their Social Security number to retrieve confirmation of their registration. Users in some

states can indirectly check their voter registration status by using a polling locator tool that requires personal information; these states were not credited with having a voter registration tool because there is a notable disconnect between the functionality and the usability of these services (see sidebar on page 10).

Two-thirds (67 percent) of elections sites have a tool for finding polling locations. Many of these sites require users to enter personal information and already be registered to find their polling location. Of the states with a polling place locator tool, one third (32 percent) will identify the polling place for any address in the state. However, the remaining states (68 percent) require either some form of

### Exhibit 1 AM I REGISTERED TO VOTE? | ELECTION SITES WITH REGISTRATION VERIFICATION

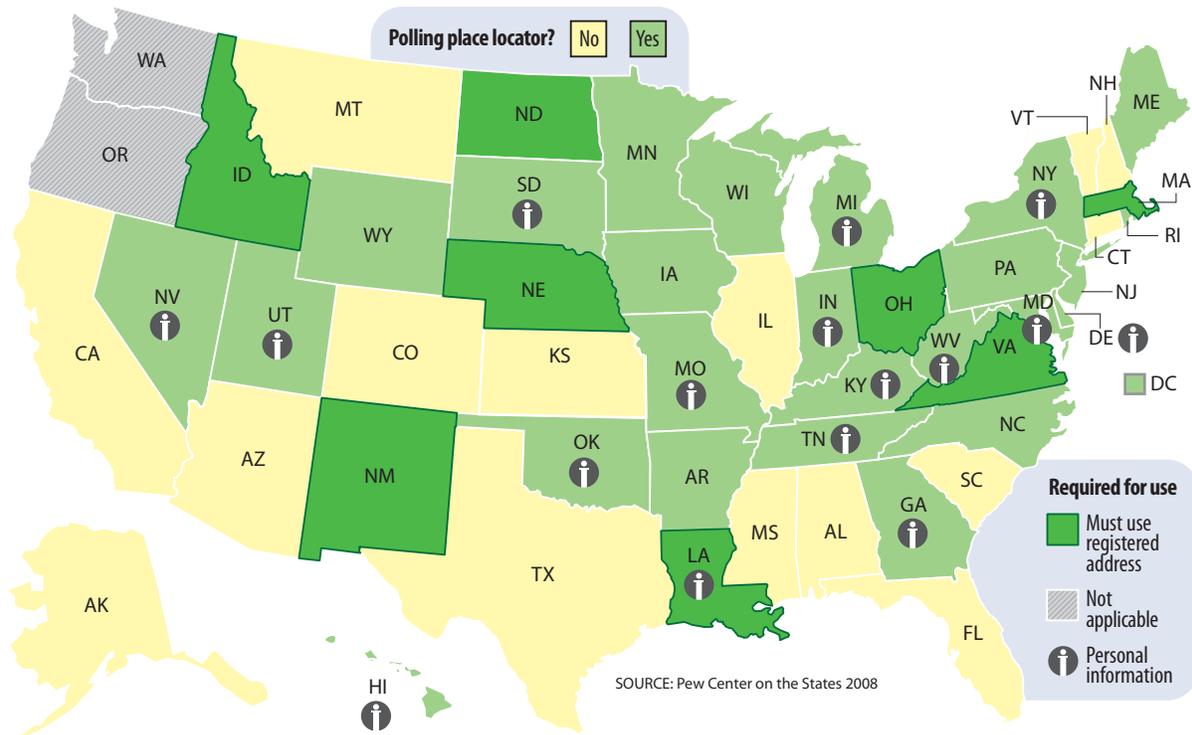
Half the states have online registration verification tools.



## HELPING VOTERS

### Exhibit 2 WHERE CAN I VOTE? | ELECTION SITES WITH POLLING PLACE LOCATORS

Two-thirds of the states have polling place locators on their Web sites, but many of them require the user to enter personal information, and some only work with registered addresses.



NOTE: Both Oregon and Washington have vote-by-mail systems. In Oregon, voters may only vote by mail, while Washington is predominantly vote-by-mail. The Washington site notes that a ballot drop-off locations tool is coming soon.

personal information or locate polling places only for addresses associated with registered voters.

If these tools are going to help voters, it is critical that users can easily find information by entering basic information such as street address and ZIP Code or name and date of birth (see Exhibits 1 and 2 for more information about what each state requires).

Some states without poll locator tools have attempted to use tables and other features to funnel visitors toward their polling places, but these features do not “push” the information to

their users; instead they require users to sort through layers of data and to synthesize the pieces that are most pertinent. For example, the Florida Web site has an interactive map, but it links to the phone number for each county supervisor who the voter would need to call to get their polling location. In this study, the only type of polling location tools that were given credit are those that provide the relevant information to users once they input some pieces of personal information such as a street address.

## ALIGNING FUNCTIONALITY AND USABILITY

Georgia, Idaho, Louisiana, Massachusetts, Ohio, Oklahoma and Utah all have poll locators that require different levels of personal information or only serve voters with registered addresses. These poll locators essentially act as registration verification tools but are not labeled as such. While these states have the information necessary to provide users with online voter registration verification, they have not made this information easy to navigate to or use. For example, in Massachusetts users can input any registered address and find detailed voter information such as a sample ballot and a list of current elected officials. However, the Web site does not provide information on the specific individual's registration. If there are multiple residents at the same address, they are unable to confirm who is registered. With some minor adjustments these states could dramatically increase the functionality and usability of their voter information tools. The information that voters need is online, but it can only be accessed indirectly and may be difficult to decipher.

Eight sites require users to sift through tables or lists and know their ward and precinct to find their poll location. Another seven states do not have any polling location information on their Web sites (Alabama, Colorado, Connecticut, Illinois, Kansas, Mississippi and Montana).

In lieu of providing the tools and information that are truly required by users, many state elections Web sites tell users to call or visit county and city officials. Not only do these sites frustrate users who are unable to find information needed to

vote, they potentially generate phone volume for the Web site's own agency and other government agencies.

### Is the information on state elections Web sites easy to use?

While the features and tools that states provide are critical, states' efforts will be wasted if they fail to provide user-friendly and easy-to-access Web sites. On average, people spend less than two minutes on a Web site before they abandon their search for the information.<sup>21</sup> According to usability experts Jakob Nielsen and Hoa Loranger, "Usability...refers to how quickly people can learn to use something, how efficient they are while using it, how memorable it is, how error prone it is, and how much users like using it. If people can't or won't use a feature, it might as well not exist."<sup>22</sup>

Making a site usable can avoid many undesirable consequences for state voting officials. Frustrated users give up on Web sites that are not straightforward to use. They pick up the phone instead, driving up costs and drawing on personnel resources for state and county election offices. For commercial use, Web site usability is most commonly discussed in terms of the return on investment (ROI) that brings in business, but Jakob Nielsen advocates that government Web sites can reap similar returns by increasing the usability of their informational sites. Nielsen finds that the easiest way to measure the usability ROI for government sites is in terms of the reduced call-center burdens; if more people are finding the information they need online, they will not have to call a state or county elections office. Experts suggest these calls can cost that office between \$10 and \$100 each, depending on the staffer's qualifications.<sup>23</sup>

## HELPING VOTERS

Also, poor information—or simply the lack of it—on candidates and ballot issues can lead voters to the polls without the information they need to make informed decisions. It’s not the job of state elections Web sites to help users make choices, but it is the job of the elections sites to present voters with the choices so they can then research on their own.

For example, Delaware’s elections Web site includes a link where voters can enter their addresses and find their polling places, where they are registered and what is on the ballot.

These are critical tools for voters. Unfortunately, the link to all of this information is labeled, “Find your polling place”. If a potential Delaware voter is going to the Web site to explicitly find out if they are registered or to see who is on the ballot in their local election, what are the chances they would think to fill out the form listed under “find your polling place”? If voters fail to fill out the form, they would miss the information they are looking for; and, there are no other links on the site that might lead them to find out if they are registered or who is on the ballot. Potential voters may give up if they can’t find those links.

### Exhibit 3

## SEVEN CRITERIA FOR EVALUATING USABILITY OF STATE ELECTIONS WEB SITES

Web Presence	How easily can users find the official state elections Web site when conducting standard Web searches for key phrases related to voting? Can they find the elections Web site from the state’s main Web site?
Navigation and Information Architecture	Is it easy to navigate to key topics? Can users easily tell where they are within the site if accessing a deep link from a search engine? Are links named intuitively? Is the site organized in a user-centered manner?
Content	Is the content understandable to users? Is it easy to scan and find the right information? Is information made available in HTML versus PDFs?
Homepage	Is the homepage organized such that users can tell which information is intended for them? Are important links placed and presented so they will be noticed? Is the homepage easy to scan?
Accessibility	Can users with disabilities (severe or mild) utilize the site effectively?
Search	Is there an open search field available on each page of the site? Do search results seem appropriate? Are result titles/content understandable?
Site Tools	Are tools for looking up registration, finding a poll location, etc. intuitive and efficient?

SOURCE: Pew Center on the States 2008, based on research from Nielsen Norman Group

NOTE: Full details on the project methodology are included in Appendix A, and the Web addresses for the 51 Web sites scored are included in Appendix B.

## HELPING VOTERS

Having a site that allows users to find what they need quickly and reliably without having to invest an inordinate amount of effort is essential. Uncomplicated access to accurate information is key to successfully navigating the election process. If users cannot understand or if they receive inaccurate information regarding polling places or registration procedures, they may get lost in the system and not be able to vote.

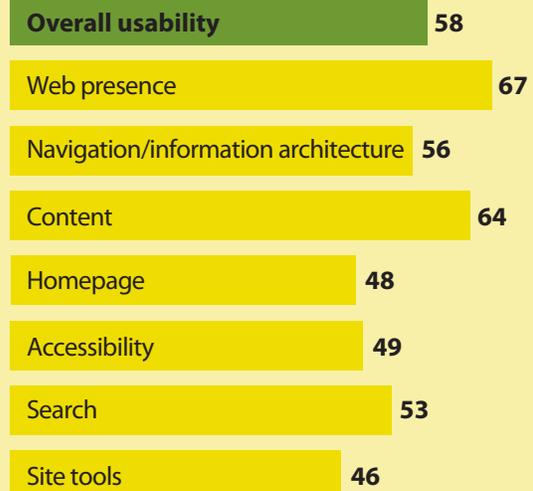
To measure the usability of a Web site, it's best to use the site within context—as users would interact with it. We tested several tasks that users would likely perform on state elections Web sites as they sought to answer the typical Voter FAQs:

- Am I registered; or, how do I register?
- Where do I vote?
- What candidates and issues are on the ballot?

Based on our evaluations and the final scores (see Exhibit 3 for assessment criteria), state elections Web sites overall are not meeting usability standards. The average usability score across the Web sites of all 50 states and the District of Columbia is 58—far below what it should be given the importance of these Web sites in serving the people and supporting democracy. Overall usability scores (scored on scale of 1 to 100) range from a high of 77 (Iowa) to a low of 33 (New Hampshire).

As Exhibit 4 shows, the average scores on the seven criteria for our assessments reflect some specific challenges for state elections Web sites. At two points during our study, we checked each states' elections Web sites for our usability assessment. The average Web presence score of these sites dramatically increased—to 67—

### Exhibit 4 AVERAGE USABILITY | ELECTIONS SITES' COMPLIANCE SCORES



SOURCE: Pew Center on the States 2008, based on research from Nielsen Norman Group

between our two review periods. This increase may be attributed to the rise in traffic to these sites; the more a site is visited the greater likelihood of it appearing as a top search result rises. This trend will probably continue as the election approaches. This growth does not negate the need for improvements; it highlights the need for official Web sites to appear as top search results. If unofficial elections sites, with potentially incorrect or out-of-date information, are top search results, the traffic to those sites could increase, diverting voters from the accurate, state administered elections Web sites. On average, many states had easy to understand content on their state elections Web sites, but scored weakly on homepage and middle-of-the-road on the navigation and information architecture criteria. Therefore, many of these Web sites have easy to understand content but users will have trouble getting to it and finding it.

## HELPING VOTERS

Exhibit 5

### STATE ELECTIONS WEB SITES AND USABILITY—THE TOP 10 AND BOTTOM 10

Top 10			Bottom 10		
Rank	State	Score	Rank	State	Score
1	Iowa	77	42	Alabama	49
2	Texas	75	42	Georgia	49
3	Utah	72	44	South Dakota	48
4	Pennsylvania	71	45	Wisconsin	47
4	New Jersey	71	46	Idaho	46
6	West Virginia	70	47	New Mexico	45
7	Missouri	69	48	Connecticut	37
8	Maine	68	49	Illinois	36
8	Minnesota	68	50	Mississippi	35
8	Wyoming	68	51	New Hampshire	33

SOURCE: Pew Center on the States 2008, based on research from Nielsen Norman Group  
NOTE: The scoring accounts for ties.

All but six states scored under 70 points out of a possible 100, suggesting considerable room for improvement. Scores for all 51 state elections Web sites are included in Appendices C and D. Half of the states scored at or below 58 points (the mean score). Most state elections Web sites'

usability scores fall between 45 and 65 points. As Exhibit 5 shows, no size (population) or geographic (U.S. region) patterns emerge when looking at the top and bottom performers. What is clear is that most state elections Web sites have room to upgrade their usability so that citizens

### SITE UPDATES SHOULD BE LOGICAL, PERSISTENT AND CONSISTENT

Usability is critical to the success of any Web site, and Alabama is an example of a state that has invested in a new site with new user tools and improvements in content. In this study, MVW analyzed the Secretary of State's Web site—the primary source of official information available to Alabama voters when data collection began. Over the course of the study, Alabama introduced a new Web site to help voters. But, unfortunately users cannot find the new Web site through a browser search (i.e., Google) and it is not linked to the Secretary of State's site. Only when visiting the official state Web site will users be directed to [www.alabamavotes.gov](http://www.alabamavotes.gov). As a result, voters in Alabama are being directed to different and unrelated sources of information depending on how they begin their search for voter information. If Alabama's two elections Web sites were seamlessly integrated with each other and accessible through the same Web search channels, all voters would have access to comprehensive and useful elections information.

Alabama's new site, [www.alabamavotes.gov](http://www.alabamavotes.gov), has many improvements and would have scored well on several of the study's criteria. However, usability research suggests that additions and improvements should be incorporated within a unified Web site rather than spread across different URLs or separate windows. As state elections Web sites update their information and tools, they should aim for consistency in the navigation and information architecture of their sites.

## HELPING VOTERS

have an easier time finding answers to the voter FAQs and using this information to facilitate voting.

The top scoring state elections Web sites are those that are easy to find, navigate and understand. For example, Iowa—a technical assistance provider to MVW on the Voting Information Project—received the highest score in our usability analysis because the links on its homepage are divided into useful categories, and voter information is the first and most prominent category link (see Exhibit 6). The direct links to voters' most critical questions about absentee voting, registration status and polling places are easy to locate in the bottom of the page. The site also scored perfectly on two of the three Web search criteria, and a link to the site is prominently listed on the state's Web site homepage. Although the reading level of the content was a little high, overall the Web site easily guides voters to the information they need.



SOURCE: <http://www.sos.state.ia.us/elections/>; Accessed September 10, 2008.

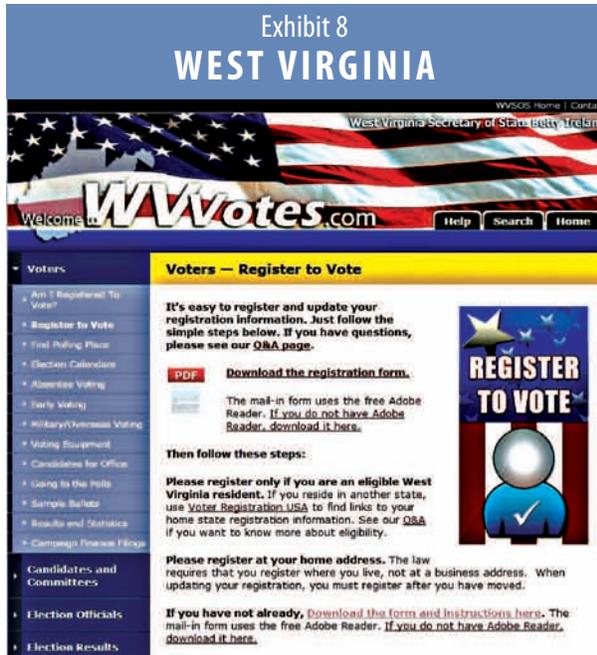


SOURCE: <http://www.votespa.com/AboutVotingandElections/ImportanceofVoting/tabid/60/language/en-US/Default.aspx>; Accessed September 10, 2008.

Contrast the Iowa page with that of Mississippi. Rather than including links to the key tasks for voters, the Mississippi elections homepage includes descriptions of what the election officials do. The Web site is difficult to navigate and the sidebar links to election information by year, rather than to the specific pieces of information needed by voters for the upcoming election. Users must click around to several pages before they find information relevant to the upcoming election.

The navigation and architecture of elections Web sites is vital because many users may access the site via Web search “deep links.” Deep links are below the homepage and essentially thrust the user into the midst of the Web site. Therefore, it’s important that users can verify that they are in the right place, easily navigate to other information/services and find what they need without exerting much effort. The navigation links should be logical and consistent on every page of the site, so users can quickly return to the previous page or the main elections site.

## HELPING VOTERS



SOURCE: <http://www.wvvotes.com/voters/register-to-vote.php>; Accessed September 10, 2008.

For example, both the Pennsylvania (see Exhibit 7) and West Virginia (see Exhibit 8) Web sites include a navigation bar on the left-hand sidebar. Links within the site are logically labeled and highlight the page the user is currently viewing. Users can use the navigation bar to orient themselves on the site and jump to another topic without having to return to the main page.

States don't need sophisticated tools and programming to be user-friendly. The Texas state elections Web site (see Exhibit 9) is relatively modest in scope but performed well in our usability analysis because it provides a logical introduction, clear links to voter tools and is easy to understand.

Missouri is another state to look to for homepage and navigation inspiration. The homepage is well-organized, easy to scan and to the point. Unfortunately, Missouri lost points for Web presence. Poor search results for polling place and the absence of a link on the state's main Web site

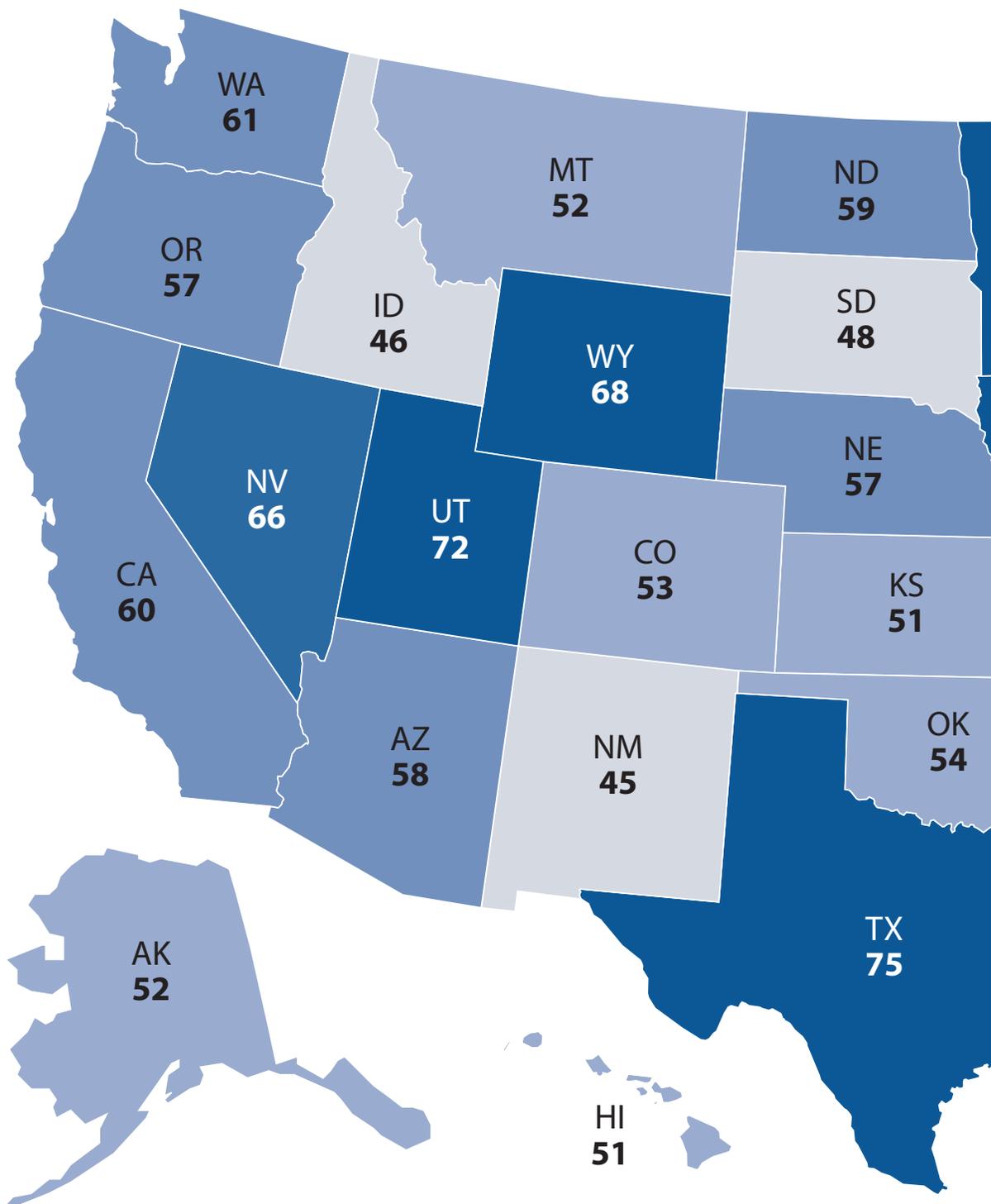
to the elections site lowered Missouri's overall score. However, with minor improvements in these areas, the Missouri Web site has the opportunity to truly be a stand-out site.

Nevada also scored well on usability and is the only site to feature poll locator and registration verification tools directly on the homepage. Placing the voter tools directly on the homepage illustrates the state's understanding of the purpose of the site—users want easy-to-find and easy-to-use information. Additionally, the links below the tools are grouped and organized to help users find the right content. Given the predicted surge in the number of voters, election officials are using their Web site to push information out to voters. However, Nevada's tools require more personal voter information than most sites, and the multiple labels describing different functions can be confusing to users. Voters looking for help may want to call election offices for assistance but see a graphic



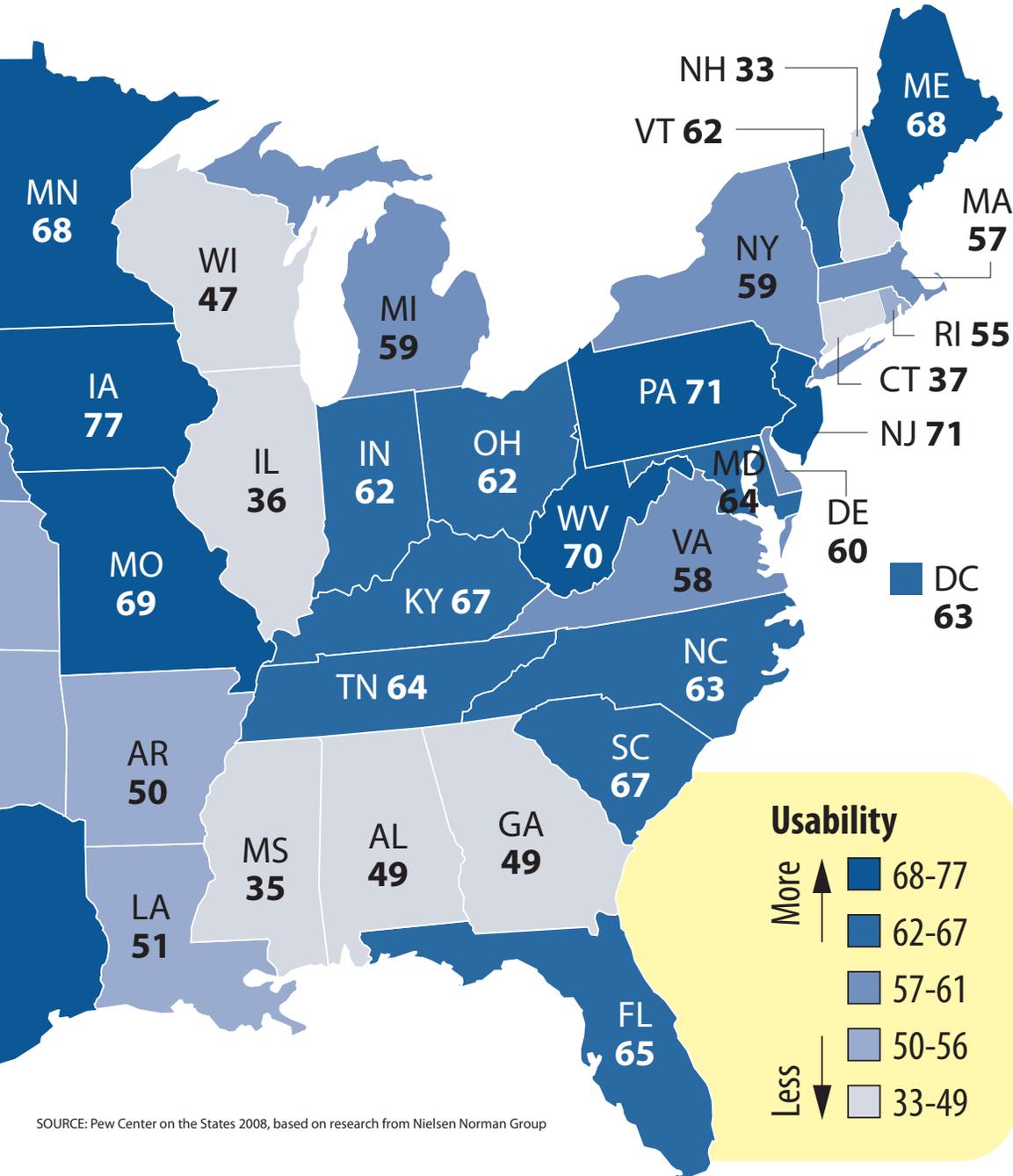
SOURCE: <http://www.sos.state.tx.us/elections/index.shtml>; Accessed September 10, 2008.

# All states can



STATE ELECTIONS WEB SITES  
OVERALL USABILITY

# improve their elections Web sites



SOURCE: Pew Center on the States 2008, based on research from Nielsen Norman Group

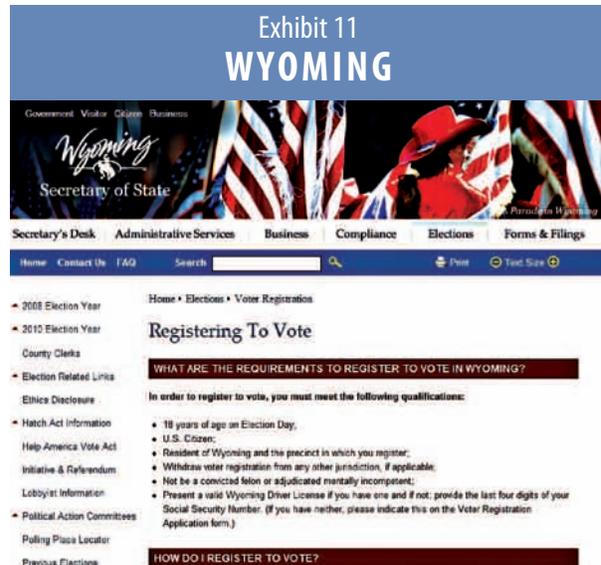
## HELPING VOTERS

that relates, “Please Don’t Call nvsos.gov”. When placing the mouse over the graphic, one sees that it provides information about how to get on the state’s do-not-call list. But, unless a user finds the roll-over text, the graphic conveys the message: please do not call state election offices.

On government Web sites, content truly is king. Users come to the site trying to find out information about programs, processes and guidelines. Reading level, formatting and easy access are of the utmost importance. Government Web sites serve a wide and varied audience. They must be written so that readers of all levels can comprehend the information. Experts recommend that content be written at an 8th grade or lower level—this will allow both lower and higher-literacy users to gain information from this site—and written specifically for Web sites with concise bullet points and easy to scan content.<sup>24</sup> The average score for content across the 51 Web sites is 64, which is the second highest category score



SOURCE: <http://www.elect.ky.gov/>; Accessed September 10, 2008.



SOURCE: <http://www.sos.state.tx.us/elections/index.shtml>; Accessed September 10, 2008.

but still not at the level it needs to be. For example, although Kentucky scored near our top ten usability sites, the text on the homepage is written at a reading level well above the 12th grade (Exhibit 10). The tools on other pages of the Web site are easy to use, but the homepage that serves as a welcome mat to users may prohibit some voters from clicking on the more user-friendly content. The Wyoming Web site (Exhibit 11), on the other hand, is easy to read and scan.

Overall, most of the state elections Web sites leave considerable room for improvement in very basic areas. User expectations are based not on what they see on other elections or government Web sites but rather on those sites they use every day, such as banks, bookstores and news outlets. States should be investing in the usefulness and usability of not only their elections Web sites, but all state Web sites that serve citizens. Voter Web sites do not need fancy tools or programming, but the information should be accessible and usable.

# Recommendations for states

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By investing in a Web site with easy-to-find and easy-to-use information that helps voters, states can realize a return on their investments.<sup>25</sup> Improved Web sites can provide citizens with the information they need to exercise their right to vote. Also, states will see a reduction of the number of telephone inquiries to call centers and election officials, which can rack up costs for elections offices—up to \$100 per call.<sup>26</sup>

The following recommendations are specific areas that all states can improve upon.

## Homepage design

Agencies need to clean up their homepages, remove historical data, group content by audience-type, place key content and links in the body of the page and highlight tasks critical to voters—register to vote, verify registration, find your polling location and view your ballot. Ultimately, focus on voters!

## Site tools

During our review, we found many sites lacked basic tools such as polling place locators and ballot generators. However, we know that these sites have the data—they just have not built usable interfaces that take that data and turn it into useful information. For example, some sites still post long PDF lists of poll locations that require users to know their ward and precinct to find their poll location. It is essential that users can easily find information by providing basic, known information such as a street address.

States should also remove barriers to accessing polling place and voter information. Information on polling places is publically available, and potential voters should not need to enter personal information to access it. Although 34 states have a tool for finding polling locations, two-thirds require users to enter personal information and already be registered to find their polling location. This is a serious impediment to the usefulness of such a tool.

States should also focus on embedding the proper tags and meta tags that will allow search engines to easily catalog the content and make the site more accessible during Web searches.

## HOW THE VOTING INFORMATION PROJECT CAN HELP STATES REACH THEIR VOTERS

Recognizing the need to make official voting information both widely and equally available to voters, Make Voting Work partnered with the JEHT Foundation—with technical assistance from Google, Inc.—to create the Voting Information Project (VIP). The VIP has worked with state and local election officials to develop and implement a technical standard, known as an "open format," by which state and local election officials can more efficiently disseminate voting information to citizens, the media, civic groups, search engines and political parties.<sup>27</sup>

### Benefits of the VIP

The availability and accessibility of this information will bring information straight from election officials to voters. Voters will gain access to the full range of voting information, including voter registration, polling place location, absentee ballot instructions and identification requirements at the polls. Using the open format increases transparency and allows for any organization to serve as a distribution channel—taking voting information directly from election officials and bringing it to the voters. Additionally, election officials will likely see reduced call traffic from voters and may experience considerable savings in staff time and resources. For more information, visit [www.votinginfoproject.org](http://www.votinginfoproject.org).



# Endnotes

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- 9 The Pew Research Center for the People and the Press, *Social Networking and Online Videos Take Off: Internet's Broader Role in Campaign 2008*.
- 10 The Pew Research Center for the People and the Press, *McCain's Enthusiasm Gap, Obama's Unity Gap; Likely Rise in Voter Turnout Bodes Well for Democrats*, "Campaign Interest & November Turnout," July 10, 2008, <http://people-press.org/reports/pdf/436.pdf> (accessed September 18, 2008) p. 8.
- 11 Mary P. Flaherty, "High Turnout, New Procedures May Mean an Election Day Mess," *The Washington Post*, September 18, 2008, online edition.
- 12 Electionline, *2008 Primary in Review*, July 2008, Pew Center on the States, <http://www.pewcenteronthestates.org/uploadedFiles/Primary%202008%20FINAL.pdf>, (accessed September 17, 2008) p. 5.
- 13 The four hotlines with publicly available data about the 2006 election cycle were: Voting Rights Institute of the Democratic Party, Election Protection Hotline, My Vote1 Consortium and Nation Association of Latino Elected and Appointed Officials.
- 14 U.S. Election Assistance Commission, *U.S. Election Assistance Commission: Voter Hotline Study*, 2008, [http://www.eac.gov/program-areas/research-resources-and-reports/copy\\_of\\_docs/voterhotline\\_5\\_20\\_final.pdf/attachment\\_download/file](http://www.eac.gov/program-areas/research-resources-and-reports/copy_of_docs/voterhotline_5_20_final.pdf/attachment_download/file) (accessed September 12, 2008), p. 16. This is of jurisdictions that had hotlines dedicated to providing information to voters and poll workers.
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- 20 Voting Information Project, "About the Project," <http://www.votinginfoproject.org/index.cfm?objectid=960198E5-1D09-317F-BB3EAC4473134BE6> (accessed September 11, 2008).
- 21 Jakob Nielsen and Hoa Loranger, *Prioritizing Web Usability*, New Riders: Berkley, CA, 2006, pg. 27.
- 22 Nielsen and Loranger, *Prioritizing Web Usability*, pg. xvi.
- 23 Nielsen, "Do Government Agencies and Non-Profits Get ROI from Usability?"
- 24 Jakob Nielsen, "Lower-Literacy Users" *Jakob Nielsen's Alertbox*, March 14, 2005, <http://www.useit.com/alertbox/20050314.html> (accessed September 19, 2008).
- 25 Nielsen, "Do Government Agencies and Non-Profits Get ROI from Usability?"
- 26 Ibid.
- 27 The states invited to participate in the pilot phase of this partnership were carefully chosen to reflect the nation's political and geographical diversity and the variety of election management technologies currently in use nationwide.

# Our Methodology

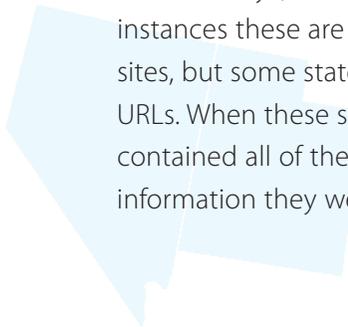
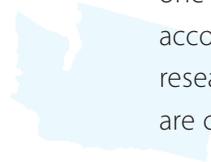
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To develop the benchmarks for the usability criteria, the Nielsen Norman Group conducted an analysis of state elections Web sites on behalf of Make Voting Work. Usability data was collected between September 4 and 15, 2008 and all of the sites were reviewed again on October 6 and 7, 2008. Although some state elections Web sites may change leading up to the election, these results reflect what users would have experienced with these sites during this study period. To maintain browser consistency, all state Web sites were accessed using the Internet Explorer 7 browser, and all Internet searches were conducted using Google.com. Researchers used one search engine for Internet searches because, according to Hitwise—an Internet market research firm, over 70 percent of all U.S. searches are conducted using Google.com.

At the onset of this study, we selected the state elections Web sites to be scored for functionality and usability (listed in Appendix B). In most instances these are the Secretaries of States Web sites, but some states maintain separate voter URLs. When these separate, but official, state sites contained all of the pertinent elections information they were used for the study.

In the current study, we utilized an overall usability score that was a composite of seven category scores. Category scores with breakdowns for each criteria are included in Appendices C and D. Each category was weighted to reflect its contribution to overall usability, and included three to five criteria that were scored to determine the individual category scores.

For each category, we summed the points the sites received on all the criteria and divided that number by the total number of points possible for the category. These category scores were then weighted according to the category weight and were totaled to determine a state's overall usability score.



## CRITERION

**Web Presence (25%)**

- State election site falls within first page of Web search results. Search for "register to vote in [state]". [use Google]
- Search for "polling place in [state]".
- Search for "election candidates in [state]".
- Noticeable link to the elections Web site (or specific functions on the elections Web site) on the state Web site homepage.

**Navigation and Information Architecture (20%)**

- Global and local navigation: logical, persistent and consistent.
- Effective use of page titles, navigational highlighting and breadcrumbs to help users determine where they are within the site.
- Descriptive link names clearly indicate content the user is linking to (instead of links such as "Click Here", "Go" and "More").
- Site architecture groups information logically and allows users to easily get all the information for a topic without having to jump around the site or visit numerous pages. (e.g., voter registration information is not located across 10 different pages).

**Content (20%)**

- Key voter-oriented content written at an 8th grade level (or lower).
- Written for the Web (concise, bullet points, easy-to-scan and hyperlinks used to direct users).
- PDF usage limited to print-and-fill-out forms, not for basic content (e.g., How to register to vote). Also, links to PDFs are labeled as such (eliminating surprise).

**Homepage (15%)**

- Chunking of information/links so that users can easily determine which information is intended for voters versus candidates and researchers.
- Links to key voter content and functionality are grouped and located noticeably on the homepage above the fold: Am I registered to vote? How to register? Polling Locations? Absentee voting?
- Homepage is easy to scan—light on prose-style content. Links are easily identifiable; content is concise and presented in brief format.

**Accessibility (10%)**

- "Skip Navigation" link at top of all pages.
- Site uses scalable fonts.
- ALT text on informative/functional graphics (i.e., graphics you need to understand in order to use the site).
- High contrast between background and text and in images.
- Visited links change color.

**Search (5%)**

- Search field (or link) located on every page in consistent location.
- Search results titles/content are understandable.
- Search results are appropriate to the query.

**Site Tools (5%)**

- Tool descriptions adequately describe the tool users are about to use and what they will receive by entering their information.
- Tools are designed with intuitive flow, buttons, controls, and links.
- Clear error messages.

## APPENDIX A

### Scoring

Each criterion was scored on a scale from zero to three. Most of the criteria were scored according to a general scoring key:

#### General Scoring Key

- 3 Full compliance/User-centric implementation
- 2 Partial compliance/User needs considered
- 1 Poor compliance/Requires significant improvement
- 0 Not available on site/Extremely poor

For three of the Web Presence criteria (numbers 1-3 above), scoring was determined based on the location of the result in the search results using the following scoring:

#### Web Search Scoring Key (used for criteria 1-3)

- 3 First result
- 2 Within first 5 results
- 1 Within first page of results
- 0 Not on first page of results

The content grade level was assessed using the Flesch-Kincaid Grade level metric, which is one of the most widely used readability tests to determine comprehension difficulty. The metric translates a text passage based on the complexity as determined by the number of words and syllables in the sentence. The score is translated to a specific grade level need to understand it, as calculated by the following formula:

$$0.39 \left( \frac{\text{total words}}{\text{total sentences}} \right) + 11.8 \left( \frac{\text{total syllables}}{\text{total words}} \right) - 15.59$$

The criterion for content grade level was scored using the following scale:

#### Content Grade Level Scoring Key (used for criterion 9)

- 3 8th grade or lower (grade school to junior high)
- 2 9th-12th grade (high school)
- 1 13th-16th grade (undergraduate)
- 0 Higher than 16th grade (graduate)

# Web sites Included in Scorecard

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Alabama	<a href="http://www.sos.state.al.us/Elections/Default.aspx">http://www.sos.state.al.us/Elections/Default.aspx</a>
Alaska	<a href="http://www.elections.alaska.gov/">http://www.elections.alaska.gov/</a>
Arizona	<a href="http://www.azsos.gov/election/">http://www.azsos.gov/election/</a>
Arkansas	<a href="http://www.sos.arkansas.gov/elections.html">http://www.sos.arkansas.gov/elections.html</a>
California	<a href="http://www.sos.ca.gov/elections/elections.htm">http://www.sos.ca.gov/elections/elections.htm</a>
Colorado	<a href="http://www.elections.colorado.gov">http://www.elections.colorado.gov</a>
Connecticut	<a href="http://www.ct.gov/sots/cwp/view.asp?a=3&amp;q=415810">http://www.ct.gov/sots/cwp/view.asp?a=3&amp;q=415810</a>
Delaware	<a href="http://elections.delaware.gov/">http://elections.delaware.gov/</a>
District of Columbia	<a href="http://www.dcboee.org/">http://www.dcboee.org/</a>
Florida	<a href="http://election.dos.state.fl.us/index.shtml">http://election.dos.state.fl.us/index.shtml</a>
Georgia	<a href="http://sos.georgia.gov/Elections/">http://sos.georgia.gov/Elections/</a>
Hawaii	<a href="http://hawaii.gov/elections/">http://hawaii.gov/elections/</a>
Idaho	<a href="http://www.idahovotes.gov/">http://www.idahovotes.gov/</a>
Illinois	<a href="http://www.elections.state.il.us/">http://www.elections.state.il.us/</a>
Indiana	<a href="http://www.in.gov/sos/elections/">http://www.in.gov/sos/elections/</a>
Iowa	<a href="http://www.sos.state.ia.us/elections/">http://www.sos.state.ia.us/elections/</a>
Kansas	<a href="http://www.kssos.org/elections/elections.html">http://www.kssos.org/elections/elections.html</a>
Kentucky	<a href="http://elect.ky.gov/default.htm">http://elect.ky.gov/default.htm</a>
Louisiana	<a href="http://www.sos.louisiana.gov/tabid/68/Default.aspx">http://www.sos.louisiana.gov/tabid/68/Default.aspx</a>
Maine	<a href="http://www.maine.gov/sos/cec/elec/">http://www.maine.gov/sos/cec/elec/</a>
Maryland	<a href="http://www.elections.state.md.us/">http://www.elections.state.md.us/</a>
Massachusetts	<a href="http://www.sec.state.ma.us/ele/eleidx.htm">http://www.sec.state.ma.us/ele/eleidx.htm</a>
Michigan	<a href="http://www.mi.gov/sos/0,1607,7-127-1633---oo.html">http://www.mi.gov/sos/0,1607,7-127-1633---oo.html</a>
Minnesota	<a href="http://www.sos.state.mn.us/home/index.asp?page=4">http://www.sos.state.mn.us/home/index.asp?page=4</a>
Mississippi	<a href="http://www.sos.state.ms.us/elections/elections.asp">http://www.sos.state.ms.us/elections/elections.asp</a>
Missouri	<a href="http://www.sos.mo.gov/elections/">http://www.sos.mo.gov/elections/</a>
Montana	<a href="http://sos.mt.gov/ELB/">http://sos.mt.gov/ELB/</a>
Nebraska	<a href="http://www.sos.ne.gov/dyindex.html">http://www.sos.ne.gov/dyindex.html</a>
Nevada	<a href="http://sos.state.nv.us/elections/">http://sos.state.nv.us/elections/</a>
New Hampshire	<a href="http://www.sos.nh.gov/electionsnnew.html">http://www.sos.nh.gov/electionsnnew.html</a>
New Jersey	<a href="http://www.state.nj.us/state/elections/index.html">http://www.state.nj.us/state/elections/index.html</a>
New Mexico	<a href="http://www.sos.state.nm.us/sos-elections.html">http://www.sos.state.nm.us/sos-elections.html</a>
New York	<a href="http://www.elections.state.ny.us/">http://www.elections.state.ny.us/</a>
North Carolina	<a href="http://www.sboe.state.nc.us/">http://www.sboe.state.nc.us/</a>
North Dakota	<a href="http://www.nd.gov/sos/electvote/">http://www.nd.gov/sos/electvote/</a>
Ohio	<a href="http://www.sos.state.oh.us/SOS/voter.aspx">http://www.sos.state.oh.us/SOS/voter.aspx</a>
Oklahoma	<a href="http://www.ok.gov/~elections/">http://www.ok.gov/~elections/</a>
Oregon	<a href="http://www.sos.state.or.us/elections/">http://www.sos.state.or.us/elections/</a>
Pennsylvania	<a href="http://www.votespa.com/">http://www.votespa.com/</a>
Rhode Island	<a href="http://www.sec.state.ri.us/elections">http://www.sec.state.ri.us/elections</a>
South Carolina	<a href="http://www.scvotes.org/">http://www.scvotes.org/</a>
South Dakota	<a href="http://www.sdsos.gov/electionsvoteregistration/electionsvoteregistration_overview.shtm">http://www.sdsos.gov/electionsvoteregistration/electionsvoteregistration_overview.shtm</a>
Tennessee	<a href="http://www.state.tn.us/sos/election/index.htm">http://www.state.tn.us/sos/election/index.htm</a>
Texas	<a href="http://www.sos.state.tx.us/elections/index.shtml">http://www.sos.state.tx.us/elections/index.shtml</a>
Utah	<a href="http://elections.utah.gov/">http://elections.utah.gov/</a>
Vermont	<a href="http://vermont-elections.org/">http://vermont-elections.org/</a>
Virginia	<a href="http://www.sbe.virginia.gov/cms/">http://www.sbe.virginia.gov/cms/</a>
Washington	<a href="http://www.secstate.wa.gov/elections/">http://www.secstate.wa.gov/elections/</a>
West Virginia	<a href="http://www.wvotes.com/">http://www.wvotes.com/</a>
Wisconsin	<a href="http://elections.state.wi.us/">http://elections.state.wi.us/</a>
Wyoming	<a href="http://soswy.state.wy.us/Elections/Elections.aspx">http://soswy.state.wy.us/Elections/Elections.aspx</a>

# Usability Scores

State	Overall Usability Score	Web Presence	Navigation and Information	Content	Homepage	Accessibility	Search	Site Tools
		Total out of 25	Total out of 20	Total out of 20	Total out of 15	Total out of 10	Total out of 5	Total out of 5
Iowa	77	18.75	15.00	15.56	15.00	7.33	3.89	1.11
Texas	75	20.83	15.00	15.56	10.00	6.67	2.78	4.44
Utah	72	18.75	13.33	15.56	11.67	4.67	3.33	5.00
Pennsylvania	71	16.67	18.33	15.56	15.00	2.00	0.00	3.89
New Jersey	71	18.75	13.33	15.56	11.67	5.33	3.33	3.33
West Virginia	70	14.58	20.00	20.00	5.00	6.67	0.00	3.33
Missouri	69	14.58	11.67	15.56	15.00	4.67	3.33	3.89
Maine	68	20.83	15.00	15.56	3.33	7.33	3.33	2.78
Minnesota	68	18.75	16.67	17.78	6.67	5.33	0.00	2.78
Wyoming	68	22.92	15.00	11.11	6.67	5.33	3.89	2.78
Kentucky	67	22.92	13.33	13.33	5.00	6.00	1.67	5.00
South Carolina	67	18.75	13.33	15.56	5.00	7.33	3.89	2.78
Nevada	66	10.42	16.67	15.56	13.33	2.67	3.89	3.33
Florida	65	16.67	13.33	15.56	10.00	6.00	3.89	0.00
Maryland	64	22.92	10.00	13.33	5.00	4.67	3.89	3.89
Tennessee	64	12.50	11.67	13.33	11.67	6.00	3.89	4.44
North Carolina	63	12.50	15.00	15.56	10.00	4.67	4.44	1.11
District of Columbia	63	10.42	15.00	15.56	13.33	3.33	3.89	1.11
Indiana	62	20.83	13.33	13.33	10.00	2.67	0.00	2.22
Ohio	62	12.50	15.00	11.11	15.00	3.33	3.33	1.67
Vermont	62	22.92	13.33	13.33	5.00	6.00	1.11	0.00
Washington	61	18.75	6.67	11.11	11.67	5.33	3.89	3.33
California	60	18.75	11.67	8.89	11.67	6.00	3.33	0.00
Delaware	60	20.83	8.33	15.56	5.00	4.67	3.89	1.67
New York	59	10.42	15.00	13.33	8.33	6.00	4.44	1.67
North Dakota	59	16.67	6.67	11.11	8.33	7.33	4.44	4.44
Michigan	59	18.75	11.67	11.11	5.00	6.00	3.89	2.22
Arizona	58	18.75	10.00	13.33	8.33	4.00	3.89	0.00
Virginia	58	20.83	11.67	11.11	5.00	4.67	3.89	1.11
Nebraska	57	16.67	10.00	13.33	6.67	4.67	3.89	2.22
Massachusetts	57	20.83	8.33	13.33	6.67	4.00	2.78	1.11
Oregon	57	12.50	6.67	15.56	10.00	6.00	1.11	5.00
Rhode Island	55	22.92	11.67	6.67	1.67	5.33	3.33	3.33
Oklahoma	54	20.83	6.67	15.56	1.67	6.67	0.00	2.22
Colorado	53	18.75	6.67	11.11	8.33	5.33	0.56	2.22
Alaska	52	16.67	11.67	11.11	6.67	3.33	2.78	0.00
Montana	52	16.67	11.67	11.11	5.00	6.67	1.11	0.00
Hawaii	51	14.58	10.00	13.33	3.33	6.00	2.78	1.11
Louisiana	51	16.67	11.67	11.11	1.67	3.33	3.33	3.33
Kansas	51	14.58	16.67	11.11	0.00	2.00	3.33	3.33
Arkansas	50	14.58	5.00	11.11	8.33	6.00	2.78	2.22
Alabama	49	14.58	13.33	13.33	1.67	2.67	0.00	3.33
Georgia	49	20.83	6.67	8.89	5.00	0.67	3.33	3.33
South Dakota	48	6.25	11.67	11.11	5.00	5.33	4.44	4.44
Wisconsin	47	10.42	10.00	11.11	3.33	4.67	4.44	3.33
Idaho	46	12.50	10.00	8.89	8.33	5.33	0.00	0.56
New Mexico	45	14.58	5.00	13.33	3.33	4.67	1.67	2.22
Connecticut	37	8.33	5.00	11.11	8.33	3.33	1.11	0.00
Illinois	36	16.67	3.33	2.22	8.33	3.33	1.11	1.11
Mississippi	35	12.50	5.00	13.33	0.00	4.00	0.56	0.00
New Hampshire	33	14.58	3.33	8.89	0.00	6.00	0.00	0.00
51 state average	58	16.67	11.27	12.85	7.25	4.93	2.63	2.31

# Web Presence *(weighted 25%)*

State	Search "register to vote in [state]"	Search "polling place in [state]"	Search "election candidates in [state]"	Link from official state Web site homepage	Total score (out of 12)
Alabama	3	1	2	1	7
Alaska	3	3	1	1	8
Arizona	3	2	3	1	9
Arkansas	3	3	1	0	7
California	3	3	0	3	9
Colorado	3	2	2	2	9
Connecticut	2	0	0	2	4
Delaware	2	3	2	3	10
District of Columbia	3	2	0	0	5
Florida	3	2	3	0	8
Georgia	3	3	1	3	10
Hawaii	3	3	1	0	7
Idaho	3	3	0	0	6
Illinois	3	3	2	0	8
Indiana	3	3	2	2	10
Iowa	3	3	0	3	9
Kansas	3	3	1	0	7
Kentucky	3	3	3	2	11
Louisiana	2	3	1	2	8
Maine	2	3	2	3	10
Maryland	3	3	2	3	11
Massachusetts	3	3	2	2	10
Michigan	3	2	1	3	9
Minnesota	3	3	2	1	9
Mississippi	3	3	0	0	6
Missouri	3	2	2	0	7
Montana	3	3	2	0	8
Nebraska	3	3	0	2	8
Nevada	3	0	0	2	5
New Hampshire	3	3	0	1	7
New Jersey	3	3	0	3	9
New Mexico	2	3	2	0	7
New York	2	1	0	2	5
North Carolina	3	3	0	0	6
North Dakota	2	2	1	3	8
Ohio	2	2	0	2	6
Oklahoma	3	2	2	3	10
Oregon	3	0	2	1	6
Pennsylvania	3	2	0	3	8
Rhode Island	2	3	3	3	11
South Carolina	3	3	0	3	9
South Dakota	0	3	0	0	3
Tennessee	3	0	2	1	6
Texas	3	3	3	1	10
Utah	3	3	2	1	9
Vermont	3	3	2	3	11
Virginia	3	2	2	3	10
Washington	3	3	0	3	9
West Virginia	2	3	1	1	7
Wisconsin	2	3	0	0	5
Wyoming	2	3	3	3	11
51 state average	3	2	1	2	8

# Navigation and Information Architecture *(weighted 20%)*

State	Global and local navigation	Help users determine where they are	Easy to use links	Information grouped logically	Total score (out of 12)
Alabama	2	2	2	2	8
Alaska	2	2	1	2	7
Arizona	1	1	2	2	6
Arkansas	0	0	2	1	3
California	2	1	2	2	7
Colorado	1	0	2	1	4
Connecticut	1	1	0	1	3
Delaware	2	1	1	1	5
District of Columbia	2	2	3	2	9
Florida	1	2	3	2	8
Georgia	0	1	2	1	4
Hawaii	1	1	2	2	6
Idaho	1	1	2	2	6
Illinois	1	0	1	0	2
Indiana	1	1	3	3	8
Iowa	1	2	3	3	9
Kansas	3	2	3	2	10
Kentucky	2	2	2	2	8
Louisiana	2	2	1	2	7
Maine	2	3	2	2	9
Maryland	1	1	2	2	6
Massachusetts	0	1	2	2	5
Michigan	2	1	3	1	7
Minnesota	3	2	3	2	10
Mississippi	0	1	2	0	3
Missouri	2	1	3	1	7
Montana	2	1	2	2	7
Nebraska	0	2	2	2	6
Nevada	3	1	3	3	10
New Hampshire	0	0	1	1	2
New Jersey	2	1	3	2	8
New Mexico	1	0	2	0	3
New York	2	1	3	3	9
North Carolina	3	1	3	2	9
North Dakota	0	1	2	1	4
Ohio	3	2	2	2	9
Oklahoma	0	1	1	2	4
Oregon	1	1	2	0	4
Pennsylvania	3	3	2	3	11
Rhode Island	1	2	3	1	7
South Carolina	2	2	3	1	8
South Dakota	1	1	3	2	7
Tennessee	2	1	3	1	7
Texas	2	1	3	3	9
Utah	2	1	3	2	8
Vermont	2	1	3	2	8
Virginia	2	2	1	2	7
Washington	0	1	2	1	4
West Virginia	3	3	3	3	12
Wisconsin	1	1	3	1	6
Wyoming	3	3	2	1	9
51 state average	2	1	2	2	7

# Content *(weighted 20%)*

State	Written at 8th grade level (or lower)	Written for the Web	Limited PDF use	Total score (out of 9)
Alabama	2	2	2	6
Alaska	2	1	2	5
Arizona	2	2	2	6
Arkansas	1	3	1	5
California	1	2	1	4
Colorado	3	1	1	5
Connecticut	2	2	1	5
Delaware	3	2	2	7
District of Columbia	3	3	1	7
Florida	2	3	2	7
Georgia	1	1	2	4
Hawaii	2	2	2	6
Idaho	2	1	1	4
Illinois	1	0	0	1
Indiana	1	2	3	6
Iowa	2	3	2	7
Kansas	2	1	2	5
Kentucky	2	2	2	6
Louisiana	2	2	1	5
Maine	3	2	2	7
Maryland	2	2	2	6
Massachusetts	2	2	2	6
Michigan	2	2	1	5
Minnesota	2	3	3	8
Mississippi	2	2	2	6
Missouri	1	3	3	7
Montana	2	1	2	5
Nebraska	2	3	1	6
Nevada	2	2	3	7
New Hampshire	2	0	2	4
New Jersey	2	3	2	7
New Mexico	2	1	3	6
New York	2	2	2	6
North Carolina	2	3	2	7
North Dakota	2	1	2	5
Ohio	2	1	2	5
Oklahoma	3	2	2	7
Oregon	3	2	2	7
Pennsylvania	2	2	3	7
Rhode Island	1	1	1	3
South Carolina	2	2	3	7
South Dakota	2	1	2	5
Tennessee	2	1	3	6
Texas	2	2	3	7
Utah	2	2	3	7
Vermont	2	1	3	6
Virginia	1	1	3	5
Washington	2	2	1	5
West Virginia	3	3	3	9
Wisconsin	2	1	2	5
Wyoming	2	2	1	5
51 state average	2	2	2	6

# Homepage *(weighted 15%)*

State	Content grouped for voters	Links to key voter content	Homepage is easy to scan	Total score(out of 9)
Alabama	0	0	1	1
Alaska	1	2	1	4
Arizona	2	0	3	5
Arkansas	2	2	1	5
California	2	2	3	7
Colorado	1	2	2	5
Connecticut	2	1	2	5
Delaware	1	2	0	3
District of Columbia	3	3	2	8
Florida	1	3	2	6
Georgia	0	2	1	3
Hawaii	0	2	0	2
Idaho	2	1	2	5
Illinois	2	2	1	5
Indiana	2	3	1	6
Iowa	3	3	3	9
Kansas	0	0	0	0
Kentucky	1	1	1	3
Louisiana	0	1	0	1
Maine	0	0	2	2
Maryland	1	1	1	3
Massachusetts	0	3	1	4
Michigan	1	2	0	3
Minnesota	1	1	2	4
Mississippi	0	0	0	0
Missouri	3	3	3	9
Montana	1	1	1	3
Nebraska	1	1	2	4
Nevada	2	3	3	8
New Hampshire	0	0	0	0
New Jersey	3	2	2	7
New Mexico	0	1	1	2
New York	0	3	2	5
North Carolina	0	3	3	6
North Dakota	0	3	2	5
Ohio	3	3	3	9
Oklahoma	0	1	0	1
Oregon	1	3	2	6
Pennsylvania	3	3	3	9
Rhode Island	0	0	1	1
South Carolina	1	1	1	3
South Dakota	0	2	1	3
Tennessee	2	3	2	7
Texas	1	3	2	6
Utah	2	2	3	7
Vermont	1	1	1	3
Virginia	1	1	1	3
Washington	3	2	2	7
West Virginia	1	1	1	3
Wisconsin	1	0	1	2
Wyoming	0	2	2	4
51 state average	1	2	2	4

# Accessibility (weighted 10%)

State	"Skip Navigation" link	Scalable fonts	Easy to use graphics	High contrast (easy to view)	Visited links change color	Total score (out of 15)
Alabama	0	0	1	3	0	4
Alaska	0	0	2	3	0	5
Arizona	0	0	2	2	2	6
Arkansas	0	3	3	3	0	9
California	0	3	3	3	0	9
Colorado	0	2	3	3	0	8
Connecticut	0	2	2	1	0	5
Delaware	0	3	1	3	0	7
District of Columbia	0	0	3	2	0	5
Florida	0	3	3	1	2	9
Georgia	0	0	0	1	0	1
Hawaii	0	3	3	3	0	9
Idaho	0	0	2	3	3	8
Illinois	0	1	1	3	0	5
Indiana	0	0	0	1	3	4
Iowa	0	3	2	3	3	11
Kansas	0	0	2	1	0	3
Kentucky	0	2	1	3	3	9
Louisiana	0	0	2	3	0	5
Maine	0	3	2	3	3	11
Maryland	3	0	1	3	0	7
Massachusetts	0	0	2	3	1	6
Michigan	0	3	1	2	3	9
Minnesota	0	1	1	3	3	8
Mississippi	0	1	2	2	1	6
Missouri	0	3	2	2	0	7
Montana	0	3	3	2	2	10
Nebraska	0	1	0	3	3	7
Nevada	0	0	1	3	0	4
New Hampshire	0	3	2	2	2	9
New Jersey	0	0	3	2	3	8
New Mexico	0	3	2	2	0	7
New York	3	3	2	1	0	9
North Carolina	0	0	3	3	1	7
North Dakota	2	3	3	3	0	11
Ohio	0	1	3	1	0	5
Oklahoma	0	3	2	2	3	10
Oregon	0	3	3	3	0	9
Pennsylvania	0	0	0	3	0	3
Rhode Island	0	3	2	3	0	8
South Carolina	0	3	2	3	3	11
South Dakota	0	3	2	3	0	8
Tennessee	0	3	3	3	0	9
Texas	0	3	3	3	1	10
Utah	0	2	2	3	0	7
Vermont	0	3	3	3	0	9
Virginia	0	0	2	2	3	7
Washington	0	3	2	3	0	8
West Virginia	0	3	3	3	1	10
Wisconsin	0	2	2	3	0	7
Wyoming	0	3	2	3	0	8
51 state average	0	2	2	3	1	7

# Search (weighted 5%)

State	Consistent location	Results are understandable	Results are appropriate to the query	Total score (out of 9)
Alabama	0	0	0	0
Alaska	3	1	1	5
Arizona	3	1	3	7
Arkansas	1	1	3	5
California	2	1	3	6
Colorado	1	0	0	1
Connecticut	2	0	0	2
Delaware	3	3	1	7
District of Columbia	3	2	2	7
Florida	3	1	3	7
Georgia	1	2	3	6
Hawaii	3	1	1	5
Idaho	0	0	0	0
Illinois	2	0	0	2
Indiana	0	0	0	0
Iowa	3	1	3	7
Kansas	3	1	2	6
Kentucky	3	0	0	3
Louisiana	2	1	3	6
Maine	3	1	2	6
Maryland	3	1	3	7
Massachusetts	2	0	3	5
Michigan	3	1	3	7
Minnesota	0	0	0	0
Mississippi	1	0	0	1
Missouri	3	0	3	6
Montana	1	0	1	2
Nebraska	3	1	3	7
Nevada	2	2	3	7
New Hampshire	0	0	0	0
New Jersey	3	1	2	6
New Mexico	3	0	0	3
New York	3	2	3	8
North Carolina	3	2	3	8
North Dakota	3	2	3	8
Ohio	3	1	2	6
Oklahoma	0	0	0	0
Oregon	2	0	0	2
Pennsylvania	0	0	0	0
Rhode Island	3	1	2	6
South Carolina	2	2	3	7
South Dakota	3	2	3	8
Tennessee	3	1	3	7
Texas	3	1	1	5
Utah	1	2	3	6
Vermont	1	1	0	2
Virginia	3	1	3	7
Washington	2	2	3	7
West Virginia	0	0	0	0
Wisconsin	3	3	2	8
Wyoming	3	1	3	7
51 state average	2	1	2	5

# Site Tools *(weighted 5%)*

State	Adequate tool descriptions	Tools are intuitive	Clear error messages	Total score (out of 9)
Alabama	2	2	2	6
Alaska	0	0	0	0
Arizona	0	0	0	0
Arkansas	1	2	1	4
California	0	0	0	0
Colorado	1	2	1	4
Connecticut	0	0	0	0
Delaware	1	1	1	3
District of Columbia	0	1	1	2
Florida	0	0	0	0
Georgia	1	3	2	6
Hawaii	0	1	1	2
Idaho	0	0	1	1
Illinois	1	1	0	2
Indiana	1	1	2	4
Iowa	0	1	1	2
Kansas	2	2	2	6
Kentucky	3	3	3	9
Louisiana	2	2	2	6
Maine	3	1	1	5
Maryland	2	3	2	7
Massachusetts	0	1	1	2
Michigan	0	2	2	4
Minnesota	3	1	1	5
Mississippi	0	0	0	0
Missouri	3	2	2	7
Montana	0	0	0	0
Nebraska	0	3	1	4
Nevada	1	3	2	6
New Hampshire	0	0	0	0
New Jersey	2	2	2	6
New Mexico	0	3	1	4
New York	0	2	1	3
North Carolina	0	1	1	2
North Dakota	3	3	2	8
Ohio	0	1	2	3
Oklahoma	0	2	2	4
Oregon	3	3	3	9
Pennsylvania	2	2	3	7
Rhode Island	2	3	1	6
South Carolina	0	2	3	5
South Dakota	2	3	3	8
Tennessee	2	3	3	8
Texas	3	3	2	8
Utah	3	3	3	9
Vermont	0	0	0	0
Virginia	0	2	0	2
Washington	2	2	2	6
West Virginia	1	3	2	6
Wisconsin	3	1	2	6
Wyoming	3	1	1	5
51 state average	1	2	1	4

Appendix 8: Spreadsheet of States' Use of  
Social Security Database,  
October 2007 – September  
2008, provided by the New  
York Times

October, 2007 - September, 2008

State	Transactions	Unprocessed	Non	% Non	Matches	Single Match		Multiple Matches		
			Matches	Matches		Alive	Deceased	Alive	Deceased	Mixed
Alabama	1,037,372	2,542	123,929	11.95%	910,901	893,988	16,706	185	2	20
Alaska	742	0	220	29.65%	522	519	3	0	0	0
American Samoa	0	0	0	--	0	0	0	0	0	0
Arizona	58,758	0	14,543	24.75%	44,215	43,867	340	8	0	0
Arkansas	27,494	0	7,374	26.82%	20,120	20,047	68	5	0	0
California	410,777	44	292,324	71.16%	118,409	116,690	1,703	15	0	1
Colorado	3	0	2	66.67%	1	1	0	0	0	0
Connecticut	35,563	15	9,292	26.13%	26,256	26,242	2	12	0	0
Delaware	1808	5	236	13.05%	1567	1562	4	1	0	0
District of Columbia	0	0	0	--	0	0	0	0	0	0
Federated Micronesia	0	0	0	--	0	0	0	0	0	0
Florida	127,120	0	57,968	45.60%	69,152	69,120	18	13	0	1
Georgia	1,956,464	0	265,691	13.58%	1,690,773	1,688,666	1630	406	0	71
Guam	0	0	0	--	0	0	0	0	0	0
Hawaii	0	0	0	--	0	0	0	0	0	0
Idaho	40,170	9	15,635	38.92%	24,526	22,520	2,002	4	0	0
Illinois	8,915	0	2651	29.74%	6,264	6,205	53	4	0	2
Indiana	415,517	153	57,887	13.93%	357,477	357,154	251	60	0	12
Iowa	41,505	3	12,158	29.29%	29,344	29,250	92	1	0	1
Kansas	56,581	0	9,576	16.92%	47,005	46,714	286	5	0	0
Kentucky	0	0	0	--	0	0	0	0	0	0
Louisiana	55,073	28	17,274	31.37%	37,771	37,670	94	6	0	1
Maine	9,388	0	1530	16.30%	7,858	7,853	5	0	0	0
Mariana Islands	0	0	0	--	0	0	0	0	0	0
Marshall Islands	0	0	0	--	0	0	0	0	0	0
Maryland	37,646	0	11,827	31.42%	25,819	25,790	18	11	0	0
Massachusetts	48,564	9	11,072	22.80%	37,483	37,476	2	4	0	1
Michigan	9,428	0	2017	21.39%	7,411	7,406	5	0	0	0
Minnesota	514	0	202	39.30%	312	312	0	0	0	0
Mississippi	0	0	0	--	0	0	0	0	0	0
Missouri	147,766	16	39,489	26.72%	108,261	107,594	636	29	0	2
Montana	33,760	7	11,352	33.63%	22,401	22,386	12	3	0	0
Nebraska	14,184	0	3,108	21.91%	11,076	10,817	255	4	0	0
Nevada	744,913	0	716,252	96.15%	28,661	28,595	30	30	0	6
New Hampshire	184	0	94	51.09%	90	68	22	0	0	0
New Jersey	205,300	29	68,939	33.58%	136,332	136,268	49	15	0	0
New Mexico	0	0	0	--	0	0	0	0	0	0
New York	337,940	13	94,561	27.98%	243,366	242,987	311	58	0	10
North Carolina	395,155	61	74,797	18.93%	320,297	320,171	39	78	0	9
North Dakota	0	0	0	--	0	0	0	0	0	0
Ohio	741,132	696	289,603	39.08%	450,833	420,667	30,102	51	0	13
Oklahoma	9,471	0	1,448	15.29%	8,023	8,017	5	1	0	0
Oregon	93,409	12	22,475	24.06%	70,922	70,903	11	8	0	0
Palau	0	0	0	--	0	0	0	0	0	0
Pennsylvania	262,054	147	72,137	27.53%	189,770	189,668	77	24	0	1
Puerto Rico	0	0	0	--	0	0	0	0	0	0
Rhode Island	14,791	8	2,341	15.83%	12,442	12,441	1	0	0	0
South Carolina	0	0	0	--	0	0	0	0	0	0
South Dakota	13,404	0	1,982	14.79%	11,422	11,407	14	1	0	0
Tennessee	0	0	0	--	0	0	0	0	0	0
Texas	205,093	9	33,763	16.46%	171,321	170,304	996	20	0	1
Utah	10,003	1	2,432	24.31%	7,570	7,548	22	0	0	0
Vermont	5,515	0	1323	23.99%	4,192	4,191	1	0	0	0
Virgin Islands	0	0	0	--	0	0	0	0	0	0
Virginia	0	0	0	--	0	0	0	0	0	0
Washington	40,484	7	7,453	18.41%	33,024	33,015	6	3	0	0
West Virginia	0	0	0	--	0	0	0	0	0	0
Wisconsin	17600	0	4546	25.83%	13054	12968	82	1	3	0
Wyoming	22,574	10	5,416	23.99%	17,148	17,035	101	11	0	1
Unidentified	20	0	3	15.00%	17	17	0	0	0	0
National	7,694,154	3,824	2,366,922	30.76%	5,323,408	5,266,119	56,054	1,077	5	153

Appendix 9: Association for Computing  
Machinery, *Statewide  
Databases of Registered  
Voters*

**Association for Computing Machinery  
Advancing Computing as a Science & Profession**

**Statewide Databases of Registered Voters:**  
Study Of Accuracy, Privacy, Usability, Security, and Reliability Issues commissioned by  
the U.S. Public Policy Committee of the Association for Computing Machinery

February 2006

## **Preface**

The Association for Computing Machinery (ACM) is an educational and scientific society uniting the world's computing educators, researchers and professionals to inspire dialogue, share resources and address the field's challenges. ACM strengthens the profession's collective voice through strong leadership, promotion of the highest standards, and recognition of technical excellence. As such, ACM cares deeply about the dependability and reliability of computing technology. Voter registration systems encompass not only the databases that house voter information, but also an entire information technology infrastructure that must be carefully managed by election officials. The U.S. Public Policy Committee of the ACM (USACM) commissioned this study to provide objective technical information and expert recommendations to state and local election officials, policy makers, and the public about these systems.

The USACM serves as the focal point for ACM's interaction with U.S. government organizations, the computing community, and the U.S. public in all matters of U.S. public policy related to information technology.

Supported by ACM's Washington, D.C., Office of Public Policy, USACM responds to requests for information and technical expertise from U.S. government agencies and departments, seeks to influence relevant U.S. government policies on behalf of the computing community and the public, and provides information to ACM on relevant U.S. government activities. USACM also identifies potentially significant technical and public policy issues and brings them to the attention of ACM and the public.

More information about ACM may be found on the World Wide Web at <http://www.acm.org>, and information on USACM may be found at <http://www.acm.org/usacm>.

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"An adequate and effective registration will go far toward assuring honesty and fairness in the conduct of elections. Upon the honest and faithful maintenance of the registration books depends the purity of the ballot box. And upon the purity of the ballot box depends the success or failure of our democratic form of government."

-- *Registration of Voters in Louisiana*, Alden L. Powell and Emmett Asseff, Bureau of Government Research, Louisiana State University, 1951

## Executive Summary

The voter registration process may seem simple to most voters. They give their names, addresses, birth date, and in some cases party affiliations to election officials with the expectation that they will be able to vote on Election Day. In reality, election officials must oversee a complex system managing this process. They must ensure that the voters' information is accurately recorded and maintained, that the system is transparent while voter information is kept private and secure from unauthorized access, and that poll workers can access this information on Election Day to determine whether or not any given voter is eligible. A well-managed voter registration system is vital for ensuring public confidence in elections.

State and local governments have managed voter registration using different approaches among different jurisdictions. In 2002, Congress sought to make these disparate efforts more uniform by passing the Help America Vote Act, which required that each state have a computerized statewide voter registration database. In implementing this mandate, state and local governments still have differing approaches, but it is clear that information technology underpins each of their efforts. While technology will help election officials manage this complex system, it also creates new risks that must be addressed.

This study focuses on five areas that election officials should address when creating statewide voter registration databases (VRDs): accuracy, privacy, usability, security, and reliability. Each chapter contains detailed discussions and recommendations. The following are some of the overarching goals for VRDs and selected recommendations for achieving them.

### **1. The policies and practices of entire voting registration systems, including those that govern VRDs, should be transparent both internally and externally.**

VRDs control access to voting; therefore, they have a direct impact on the fairness of elections, as well as the public's perception of fairness. It must be possible to convince voters, political parties, politicians, academics, the press, and others that VRDs are correct and are operating appropriately. Internal procedures and interfaces also must be clear to election workers in order to minimize errors. Transparency can be provided by allowing voters to verify their voter registration status and data; publicly disclosing outside data sources that officials use for verification; indefinitely keeping a secure write-

once VRD archive in electronic form to allow audits of previous elections; and using independent experts to audit and review VRD security policies. Other goals such as accountability, audits, and notification also support transparency and are discussed below.

## **2. Accountability should be apparent throughout each VRD.**

It should be clear who is proposing, making, or approving changes to the data, the system, or its policies. Security policies are an important tool for ensuring accountability. For example, access control policies can be structured to restrict actions of certain groups or individual users of the system. Further, users' actions can be logged using audit trails (discussed below). Accountability also should extend to external uses of VRD data. For example, state and local officials should require recipients of data from VRDs to sign use agreements consistent with the government's official policies and procedures.

## **3. Audit trails should be employed throughout the VRD.**

VRDs that can be independently verified, checked, and proven to be fair will increase voter confidence and help avoid litigation. Audit trails are important for independent verification, which, in turn, makes the system more transparent and provides a mechanism for accountability. They should include records of data changes, configuration changes, security policy changes, and database design changes. The trails may be independent records for each part of the VRD, but they should include both who made the change and who approved the change.

## **4. Privacy values should be a fundamental part of the VRD, not an afterthought.**

Privacy policies for voter registration activities should be based on Fair Information Practices (FIPs), which are a set of principles for addressing concerns about information privacy. FIPs typically address collection limitation, data quality, purpose specification, use limitation, security safeguards, openness, individual participation, and accountability. There are many ways to implement good privacy policies. For example, we recommend that government both limit collection to only the data required for proper registration and explain why each piece of personal information is necessary. Further, privacy policies should be published and widely distributed, and the public should be given an opportunity to comment on any changes.

## **5. Registration systems should have strong notification policies.**

Voters should be informed about their status, election information, privacy policies of the government, and security issues. As with audit trails, notification procedures can improve transparency; however, they are not always widely embraced. A recent survey found that approximately two-thirds of surveyed states do not notify voters who have been purged from election rolls. Voters should be notified by mail about their polling places, any changes that may affect their ability to vote, or any security breaches that expose private data.

**6. Election officials should rigorously test the usability, security and reliability of VRDs while they are being designed and while they are in use.**

Testing is a critical tool that can reveal that “real-world” poll workers find interfaces confusing and unusable, expose security flaws in the system, or that the system is likely to fail under the stress of Election Day. All of these issues, if caught before they are problems through testing will reduce voter fraud and the disenfranchisement of legitimate voters. We recommend many different ways to test various aspects of VRDs throughout the report. Examples include, evaluation of VRD interfaces by laypersons and experts for consistency, feedback, and error handling; testing interfaces with real-world users and conditions, including extreme or sub-optimal conditions such as high processor load or network congestion; and allowing thorough, independent evaluations of the security and reliability of the VRD.

**7. Election officials should develop strategies for coping with potential Election Day failures of electronic registration databases.**

VRDs are complex systems. It is likely that one or more aspects of the technology will fail at some point. Different strategies can be employed to adjust for various failures. For example, Election Day verifications can be done via any of the following: paper systems, personal computers or hand-held devices with DVD-ROMs or other methods of holding static copies of the voter list, or via personal computers or hand-held devices connected by electronic communication links to central VRDs. Regardless of the method used, a fallback process should be devised to deal with a VRD failure. When appropriate, these processes should operate in tandem with provisional balloting and other measures designed to protect the voters’ right to vote.

**8. Election officials should develop special procedures and protections to handle large-scale merges with and purges of the VRD.**

One of HAVA’s main requirements is that VRDs be coordinated with other state databases (such as motor vehicle records). Ensuring that voter records reflect up-to-date information from other databases can improve the accuracy of VRD, but coordination can introduce errors from the same databases, thereby undermining accuracy. Because large-scale merges and purges can render voters ineligible, the action should only be performed by a senior election official with procedures that force some sort of manual review of the changes. Further, if large-scale purges occur, they should be done well in advance of any election, and anyone purged from the database should receive notification so that any errors can be corrected.

**Conclusion.** State and local election officials face an ongoing and challenging task in creating and implementing statewide voter registration databases. We hope that the discussion and recommendations in this report will help inform officials and the public on how to meet these challenges.

In issuing this report, we recognize that many states have been working diligently

toward meeting the federal requirement to have an operational statewide VRD. Both because many states will not meet this deadline, and because there will be ongoing maintenance and changes to any such system, state and local governments will also face the issues identified in this report well beyond the federal deadline. For this reason, we offer our continued guidance to officials who may wish to discuss any of the topics raised in this report.

## Chapter Overviews and Recommendations

### Accuracy

Databases are only as good as the data they contain. Quality assurance is a challenge for any database because data entry and necessary merges and purges of data within the system can create errors. Maintaining accurate VRDs is even more difficult considering the mobility of the U.S. population<sup>1</sup> and the wide variety of information sources voting officials must use to verify registration records. Further, voting officials must balance between competing concerns of ensuring that each legally registered voter can cast his or her vote and preventing ineligible voters from casting votes. Accuracy concerns often lie at the center of these debates. An additional complication is that voter eligibility rules are determined state-by-state, and VRD design and implementation are likely to differ state-by-state.

### **Accuracy Recommendations**

#### *Voter Verification*

- Voters should easily be able to determine if they are registered.
- Voters should be able to verify that they are registered through the use of a computer or handheld device located at any of the polling places in that state. Responses should not include personally identifiable information about the potential voter.
- Voters should be able to view the relevant contents of their voter registration records to check for accuracy and should be provided with easy-to-use mechanisms and contacts for correcting errors.
- Electronic Election Day updates to registration records are risky and should be implemented only after careful testing, if at all. Paper forms are a well-understood alternative.

#### *Notice*

- Whenever a voter or potential voter is determined to be ineligible to vote, the reason and source of information for the determination of ineligibility should be noted in the VRD for the potential voter to review and contest, if appropriate.
- Voters should be notified when their records change in any way that affects their eligibility to vote.
- Public notice of polling places should be provided well in advance of an election (e.g., signs in neighborhoods, prominent notices on local web sites).
- Each registered voter in the VRD should be mailed a postcard with his or her assigned polling place and registration status in advance of the election.

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<sup>1</sup> A recent report of the Commission on Federal Election Reform found that “during the last decade, on average, 41.5 million Americans moved each year.”

### *Polling Place Lists*

- Polling place lists (whether paper or electronic) of all registered voters associated with a particular polling place should be generated automatically by the VRD well before Election Day.
- Automatically generated lists should be carefully checked by at least two local officials and far enough in advance of elections to allow time for corrections.

### *Archiving*

- Ineligibility records should be retained in the VRD for at least twenty-two months and possibly longer.
- If for any reason it is determined that an individual is ineligible to vote, that individual's record should be marked accordingly, not deleted.
- When information is sufficiently old (we recommend at least 22 months), it should be moved from the VRD into an offline archival database that is never purged and is protected against unauthorized disclosure or access.

### *Other Databases*

- When other databases, such as driver registration databases, are used to check for eligibility, those databases should be used for screening and not to automatically enroll or de-enroll voters.
- An automated check can be used to flag some voters for further scrutiny, but the final determination of eligibility should be performed only by an appropriate election official.

### *Merges, Purges, and Batch Updates*

- Large-scale automated database merges are error-prone and should be avoided if possible.
- If purges are performed, they should be done well in advance of any election. People whose names are purged from the VRD should receive notification in sufficient time for them to be able to correct any errors.
- A greater level of authority should be required to perform a batch update than is required to make smaller changes.

### *Accountability*

- There must be well-defined accountability for all changes to the VRD including to source code, database schemas, database contents, and system configuration.
- Changes should require approval or sign-off by an authorized individual.
- It should be possible to identify a clear chain of responsibility for each change, and the VRD should be designed to facilitate tracking of this information.

## *Audits*

- A complete audit trail should log all modifications to the VRD.

## **Privacy**

The public is increasingly aware that personal information in electronic form can pose new risks, such as identity theft, to personal privacy. As state and local governments digitize, centralize, and share this data, the stakes are raised still higher. While VRDs may pose threats to privacy, technology also opens up new opportunities to protect privacy. As governments design and implement these systems, privacy values must be considered a fundamental part of the design process, not simply applied as an afterthought.

Privacy policies for voter registration activities should be based on Fair Information Practices (FIPs), which are a set of principles for addressing concerns about information privacy. FIPs typically address collection limitation, data quality, purpose specification, use limitation, security safeguards, openness, individual participation, and accountability.

## **Privacy Recommendations**

### *Openness (Transparency)*

- Publish on the main election board website a complete notice of policies and practices describing the collection, maintenance, use, and disclosure of voter registration data. The notice should include contact information for the office or the officials responsible for voter registration data.
- Publish a readable summary notice in other places, such as voter registration forms, at polling places, on sample ballots, and elsewhere as appropriate.
- Provide a copy of the complete notice to any person who requests it.
- Publish any changes to the notice before the changes become effective, and accept and consider public comments.
- Place a date and version number on notices as they are published. Maintain, and make publicly available, copies of all previous notices, including the periods of time during which they were effective.

### *Data Collection Limitation*

- All data should be collected by lawful and fair means.
- Data should be collected, where appropriate, with the knowledge or consent of the subject.
- Registrants and the public should be informed through the published notice of policies and practices of the sources of all data obtained for voter registration purposes.
- The types of data elements to be collected should be subject to public scrutiny.
- Data collection should be limited to sources and procedures authorized by law and properly described in the published notice.
- Only the minimum information necessary for, and relevant to, voter registration

purposes should be collected and maintained. The reason for collecting each type of personal information should be explained, and the specific data elements collected should be subject to public scrutiny.

### *Use and Disclosure Limits*

- Limit use and disclosure of voter registration data to activities directly related to the election process or to other activities expressly authorized by law.
- Describe all uses and disclosures in the published notice of information practices. Identify publicly all recipients of voter registration data.
- Provide public notice of and, if possible, a chance for public comment on all disclosures of identifiable voter registration data for any activity not directly required for voter registration purposes.
- Restrict access to specific records, specific data elements, and specific classes of voters (e.g., by location) to those election officials who have a need to use those records, data elements, and classes in the performance of their duties.
- For some or all uses by election officials or disclosures to external parties, maintain a record of the date, nature, and recipient of all personal information and make the record accessible to the data subject upon request.
- Restrict disclosures to specific data elements permitted by law and necessary to accomplish the purpose of the disclosure. Withhold data elements that are not essential to accomplish the purpose of the disclosure or that would place data subjects in excessive jeopardy to identity theft or other improper activities.
- Prevent recipients of data from using or redisclosing the data in ways not specifically authorized by law. Asking recipients to sign data use agreements is one way to accomplish this purpose.
- Allow some non-essential uses and disclosures only with the affirmative consent (opt-in) or negative consent (opt-out) of the data subject.
- For some data subjects at risk (e.g., victims of spousal abuse, jurors, some public officials), it may be appropriate to further limit disclosures.
- Even the best use and disclosure policies may be violated by people and software within the election process. Therefore, limit access by each person and each system component.
- Provide access for every voter to a personalized list of those third parties who have been given or purchased access to his or her voter registration data.

### **Usability**

VRDs will be used in many ways by a wide variety of people. Ensuring that well-trained election officials, minimally trained volunteer poll workers, and voters with little to no technical skills can all use different and appropriate aspects of VRDs is a key challenge for designers of these systems. Poorly designed user interfaces might confuse users or, worse yet, disenfranchise voters. This can create the reality or the perception of an unreliable system, thereby undermining the entire process.

## **Usability Recommendations**

### *General Usability*

- Consider the various types of users, tasks, and environments in which the voter registration database will be used. Design user interfaces that address all of these factors, providing different interfaces for different combinations as necessary.
- Use accepted user interface design techniques to build data entry forms and data retrieval components that are clear, usable, and interpretable.

### *Design and Features*

- Involve a wide range of test users of different backgrounds, skills, literacy levels, ages, and roles (county official, election volunteer, voters, etc.) in all stages of user interface design, including gathering of usability requirements, design of user interfaces, and testing and evaluation.
- Treat user interface design as an iterative process: use evaluations of user interface designs to guide revisions that themselves can be evaluated in turn.
- Provide informative feedback (i.e., provide users with detail sufficient for understanding the impact of their actions, results of queries, and characteristics of the current operating environment).
- Eliminate unnecessary functionality and data output in favor of simple, minimal user interfaces.
- Provide online tutorials and help systems for all voter registration database user interfaces. For critical applications such as voter verification on Election Day, appropriate experts should be available to help address any concerns.
- Ensure that public-facing interfaces (e.g., World Wide Web based services) are vendor-neutral and are designed to meet widely accepted technical standards.

### *Evaluation and Testing*

- Use a variety of user interface evaluation techniques, including heuristic evaluation by usability experts, “think-aloud” sessions, and user studies.
- Test interfaces thoroughly with representative users performing tasks under situations that approximate those likely to be found in real use.
- Test user interfaces under extreme or suboptimal conditions, including high processor load, network congestion, and noisy or extreme environments.
- Test web-based user interfaces for use by the public on as wide a range of browsers as possible, including multiple older (and pre-release) versions of popular browsers and screen-reader systems for people with visual impairments.
- Evaluate user interfaces, particularly web-based interfaces, to determine their impact on other system goals such as reliability, security, accuracy, and privacy.

## **Security**

Security underpins each of the issues discussed in this report. Maintaining accurate and

private information is impossible if a VRD is vulnerable to malicious attack. Further, the validity of data within the VRD may be called into question if the system is easily compromised or lax security policies are established. Ultimately, an unsecured VRD could undermine elections. Good security policies address many different factors. Election officials should establish detailed access controls for each user accessing the VRD, procedures to harden VRDs from attack, and mechanisms to deal with and recover from security failures.

## **Security Recommendations**

### *Designing & Implementing Access Control Policies*

- Federal, state, and local election officials should work together to establish a common framework for access control policies, such as common roles and responsibilities of users and their levels of access, as well as who would be responsible for ultimately implementing and enforcing access control policies.
- Access control policies should not grant the same privileges to all users; rather the policies should group people by established roles and geographic areas. For example, the security policy might give the same level of privileges to all data entry officials for a particular county, but privileges should be different for VRD administrators.
- Access control policies should minimize the number of people who receive privileges both to access each piece of information and to grant access to others.
- Access control policies should ensure that each person is granted only the minimal set of privileges needed to do his or her job.
- Access control policy should cover all records stored in the VRD including records on both voters and non-voters.
- VRDs should use access control mechanisms provided in the database management systems provided; trying to implement access control entirely at the application level leaves greater opportunity for security mechanisms to be bypassed or compromised.
- VRDs should create public logs of all changes to the list of authorized users and their access rights, and any changes to either of these should require authorization from two different persons.
- Authorized users of the system should receive security training, including how to protect passwords and how to resist social engineering attacks (attempts to deceive someone into performing certain actions), and the importance of never sharing passwords.
- Older versions of access control policies should be retained, along with their dates of applicability, and possibly made available to the public to increase the transparency of the system.

### *Administrative Privileges and Emergencies*

- The number of people with administrative privileges for the VRD should be limited; very few users should have the ability to grant access to others.
- People with administrative access should not be allowed to grant themselves new access privileges unilaterally; rather, such a change should require the consent of another administrator.

- Officials should create rules that allow trusted election officials to increase temporarily the privileges available to others during emergencies in a controlled and fully audited manner.
- Emergency overrides should require two-person authorization and generation of detailed audit logs.

### *Security Metrics*

- Those responsible for managing VRDs should measure how effectively they have limited VRD users' privileges by determining how many people have access to how much data and by tracking effectiveness over time using these metrics.
- The EAC or some other appropriate organization should help develop and identify appropriate metrics.

### *Protecting Against Attack*

- All communication channels used by the system should be secured. Anything transmitted over open communication networks, such as any wireless connection, the Internet, or the phone system, should be protected using end-to-end cryptography.
- Firewalls should be used to severely limit connectivity between internal and external networks.
- Mechanisms should be deployed to detect any penetration of system defenses or any insider misuse.

### *Dealing with Security Failure*

- It must be possible to recover from security failures (e.g., retaining historical copies as well as the latest, regular backups with offsite storage, etc.)
- Officials should obtain independent security reviews of the VRD before system deployment and periodically thereafter.
- Individuals should be notified if an inappropriate person may have obtained their data.

## **Reliability**

Because VRDs control access to voting, they must meet a very high standard for reliability. If the system fails, it may disenfranchise voters and undermine public confidence in elections. VRDs should be designed to be reliable both during the non-peak times before and after an election, and for high-activity times such as Election Day. While reliability issues are often considered in terms of “always on” electronic systems, registration systems may be economically designed to employ both online VRD and offline solutions, such as distributing DVD-ROMs of registration data to polling places for use on Election Day. State and local governments should assess the entire scope of reliability issues and design systems that have built in redundancy, replication, and distribution, but also incorporate mechanisms that allow the voting process to proceed should the VRD fail. States may choose to implement the VRD by centralizing the

database at the state level or decentralizing it and spreading responsibility among the different local jurisdictions; officials must recognize that reliability issues differ depending on the chosen implementation.

## **Reliability Recommendations**

### *Redundancy*

- Use redundancy to alleviate failures affecting time-critical operations.
- Ensure that redundancy actually increases reliability by conducting system failure tests.

### *Replicated Data*

- There should be multiple copies of the database.
- Copies should be physically separated to protect against physical damage.
- Copies should be logically separated (i.e., in different forms/types of systems) to protect against software failure and attacks.
- The data on physically separate copies (such as DVD-ROMs) should be encrypted. Encryption and decryption mechanisms should be tested.
- Different channels, including alternate network providers and routes, physical media, and printed copies to access different replicas should be provided.

### *Distribution*

- Evaluate the ability of individual databases to function when other parts of the system fail.
- Evaluate distributed database solutions with respect to their ability to meet the HAVA-mandated goal of a single, uniform, official, centralized, interactive computerized statewide voter registration list.

### *Centralization*

- Evaluate the ability of the system as a whole to respond to the unavailability of one or more copies of the centralized database.

### *Archives*

- All changes to the database that affect the ability of an individual to vote must be logged and archived.
- Archival media, including audit logs and backups, must be write-once or otherwise protected to ensure that accurate records of changes to the VRD have been maintained.

### *Election-Day Fallback Processes*

- Develop fallback processes for registration verification so that elections can proceed

even in the face of system failures.

- Ensure that fallback processes will withstand any failure that would not otherwise prevent voting. If a power failure at a polling place does not prevent use of voting machines, then it should not prevent voter registration checks to be performed.

#### *Provisions for Delayed Entry of Registration Information*

- Develop processes supporting delayed entry of registrations.
- Analyze the impact of near-deadline registration and early/absentee ballots on the system.

#### *Testing*

- A defined and empowered quality assurance group should be in place from the beginning of the project. The group should develop functionality, usability, and reliability tests.
- Periods of peak stress (e.g., immediately before registration deadlines, during elections, and registration verification) should be identified for reliability testing, as should the activity mix during periods of peak stress. Consider questions such as how many simultaneous users or operations are expected, and identify all potential component failures. Testing should check whether system performance will be adequate even when some system components have failed.
- Tests for security against likely attacks (e.g., denial-of-service attacks) should be conducted.

# 1. Introduction

The Help America Vote Act of 2002<sup>2</sup> (HAVA) mandates that each state create a single, uniform, official, centralized, and interactive computerized statewide voter registration list by 2006. The requirement that the list be both interactive and computerized implies that the only compliant implementation will be as a database. While the goal of mandating the use of databases is to improve and streamline aspects of voter registration, inappropriately designed or implemented databases will have serious negative impacts on the accuracy of elections and on public perception.

In this report, we describe the characteristics that centralized voter registration databases should possess. While some recommendations might not be relevant to some systems, most of our recommendations should be implemented if systems are to be accurate, usable, secure, reliable, and appropriately protective of voters' privacy. In those cases in which systems have already been designed or built, election officials should consider modifications if our recommendations have not yet been included.

We start with an overview of voter registration databases and the Help America Vote Act and then provide technical recommendations.

**Voter Registration Databases (VRDs).** VRDs are statewide databases of registered voters. With the exception of North Dakota, which is the only state that does not have voter registration, voter registration rules are created at the state level.<sup>3</sup> Prior to the Help America Vote Act, local jurisdictions maintained lists of voters, with list formats and uses varying from jurisdiction to jurisdiction. In general, the lists can consist of the following:

- full legal name,
- date of birth,
- last four digits of the social security number,
- driver's license number,
- address of residence (to assign the precinct),
- mailing address,
- phone number,
- place of birth,
- party affiliation (so the correct election materials can be sent before primaries, and correct ballots can be given at primaries), and
- validity status, noting whether the record is for a valid voter, or if the registrant is not currently allowed to vote.

Some jurisdictions may request the full social security number and a digital image of the individual's signature for visual verification of mail-in ballots and initiatives. Jurisdictions may also retain voting history of registered voters and remove invalid

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<sup>2</sup> Public Law No. 107-252, 116 Stat. 1666 (codified at 42 U.S.C. §§ 15301-15545), available online at [http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt).

<sup>3</sup> For more information about state voter registration deadlines, see [http://www.eac.gov/register\\_vote\\_deadlines.asp](http://www.eac.gov/register_vote_deadlines.asp).

registrations from the voting rolls. Invalid voter registrations can occur if a voter has not voted in several elections, has died, or has moved outside of the jurisdiction. If a record indicates that someone is not currently a valid voter, that individual must reregister. Some jurisdictions also include an indicator on a voter's record as to whether or not the address and phone number are to be given to outside organizations.

Election officials mail election materials, such as mail-in ballots and polling place addresses, to the voters listed in the VRD. *Polling books or voter rolls* derived from the VRD enable local officials to verify that a voter is registered in the precinct served by a particular polling place and that the voter has not previously voted in the election via a mail-in ballot or early voting. Polling books can be printed on paper or they can be digitized and put on personal computers or electronic handheld devices, often called electronic polling books. While these devices may differ in design, in general they connect either by phone lines or a wireless link to a master location that has the polling information, or they are stand-alone and contain copies of polling information. VRDs also may be used to produce lists of voters, including names, addresses, and party affiliations. Such lists frequently are used by outside groups to send voters election-related materials and to call voters in get-out-the-vote campaigns. VRDs typically are the basis for Internet-based voter information applications that enable people to determine if they are registered and where their polling places are located.

**Standards.** In light of recent events and legislation that have underscored the core importance of voting and of public confidence in our electoral system, one might conclude that all VRDs should be built and operated to the highest possible standards. While the highest standards of reliability, privacy, accountability, usability, and security are desirable, they may at times be impractical because of resulting expense or system response. Nonetheless, where practical and reasonable, the highest standards should be applied.

Standards for reliability, privacy, accountability, usability, and security allow for a wide range of applications and choices. Conventional commercial products and normal practices, which may be suitable for business or governmental applications, might not satisfy the difficult political and operational demands of voter registration systems. The cost of failure for a VRD, which may include a major loss of confidence in our political system and institutions, must be considered in the standards-setting process along with the other traditional costs that are the normal subject of evaluation.

This report discusses some standards that exceed the average commercial application for database software. While a higher standard may be recommended or included in a list of options for consideration, the ultimate decisions about standards obviously are not ours to make. We hope that those decisions will be made with an awareness of and sensitivity to the requirements essential to maintaining a high degree of public confidence in our electoral system.

**The Administration of HAVA.** The U.S. Election Assistance Commission (EAC), created by HAVA, is charged with, among other things, assisting states in the administration of Federal elections and establishing minimum election administration standards. It also provides states federal grants to replace punch card voting systems and

to establish and maintain statewide voter registration lists.<sup>4</sup> The cost of developing and maintaining voter registration lists could be more than half the overall cost of administering elections.<sup>5</sup>

Prior to HAVA, voter registration records often were maintained on a county or other local level; these records frequently were not coordinated across counties. What is new with HAVA is the aggregation of all records statewide under a central administration and in electronic form, thereby creating new challenges, risks, and opportunities.

We address a variety of issues in this report with the understanding that many states are nearing the completion of the HAVA-mandated implementation.<sup>6</sup> As computer systems are rarely finished, it is likely that the VRD implementations will continue to be developed and enhanced and that our recommendations will be relevant well beyond the initial implementations.

**Other Studies.** This report focuses on the technology aspects of VRDs. There are several other studies that discuss different aspects of VRDs. For example, “Balancing Access and Integrity, The Report of the Century Foundation Working Group on State Implementation of Election Reform”<sup>7</sup> has an excellent chapter on VRDs. This study, while not as detailed as ours, includes more policy-related issues.

The California Voter Foundation has an outstanding study, “Voter Privacy in the Digital Age,”<sup>8</sup> that details how information on voter registration lists is gathered and used. “Assorted Rolls, Statewide Voter Registration Databases Under HAVA” by Electionline.org, is a complete snapshot of the States’ different plans and implementations of HAVA-mandated statewide VRDs. The Appleseed Foundation, in a joint effort with Latham & Watkins and the Brennan Center for Justice, released a best practices guide in 2005 offering guidance to states in developing their VRDs.<sup>9</sup>

**Scope.** We make some assumptions to narrow the scope of our report to the kinds of VRDs that are actually being used by the states.<sup>10</sup> For example, we assume that the VRD is implemented as an application using a commercial off-the-shelf database system. Commercial *database management systems* (DBMSs) are reliable, affordable, and have many features that are needed for the VRD application. However, the use of a commercial DBMS is only part of the implementation. Applications built on top of a

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<sup>4</sup> 42 U.S.C. § 15322.

<sup>5</sup> Ace Project, Voter Registration Overview web page, <http://www.aceproject.org/main/english/vr/vr10.htm>.

<sup>6</sup> Electionline.org, 2005, “Assorted Rolls: Statewide Voter Registration Databases Under HAVA,” Election Reform Briefing 11, June, available online at <http://www.electionline.org/Portals/1/Assorted%20Rolls.pdf>.

<sup>7</sup> Century Foundation Working Group on State Implementation of Election Reform, 2005, “Balancing Access and Integrity,” available online at <http://www.reformelections.org/publications.asp?pubid=542>.

<sup>8</sup> California Voter Foundation, 2004, “Voter Privacy in the Digital Age,” available online at <http://www.calvoter.org/issues/votprivacy/pub/voterprivacy/index.html>.

<sup>9</sup> Appleseed, 2005, “The Database Dilemma: Implementation of HAVA’s Statewide Voter Registration Database Requirement,” available online at [http://www.appleseeds.net/download/Appleseed\\_Brennan\\_HAVA\\_Users\\_Manual.pdf](http://www.appleseeds.net/download/Appleseed_Brennan_HAVA_Users_Manual.pdf).

<sup>10</sup> Electionline.org, op. cit.

DBMS include user interfaces, system design, and the implementation of various security and reliability policies.

Commercial DBMSs have features that are necessary for the VRD application such as *transaction logs* and *audit logs* that maintain records of changes to the data and database design. The systems also provide mechanisms to *backup* the database. A backup is a complete copy of the database at a known point in time. Transaction logs are used together with backups to rebuild the system if there is a problem, restoring the data to its state at the time of the backup. Audit logs are used to determine if suspicious updates have occurred. Commercial DBMSs also provide *access protections*, so that only users with the correct authorizations can access given data.

VRDs may be *top-down*, *bottom-up*, or some combination of the two.<sup>11</sup> In a top-down approach, state officials administer a single master computer server; all voter records are stored on that central server, and all requests to view or modify voter records are executed on the central server. In a bottom-up approach, each county may keep its own database of records for voters within the county, and the county's records may be reconciled with a database run by the state on a periodic basis.<sup>12</sup> Although these two approaches have some different properties, most of the issues that we discuss apply independent of whether the VRD is top-down or bottom-up. Therefore, when we refer to the VRD, it is worth keeping in mind that this database may in fact be implemented by a collection of computer systems working cooperatively to store and maintain voter registration records.

**Software Development.** Sound principles of project management must be followed when developing software. The knowledge of the people currently working in the local offices, who may be experts in voter registration, should be assessed. A single person should manage the software development project and also bear responsibility for its success.

Those working on the development of the VRD must be trained professionals who have implemented database systems, preferably with the development tools of the chosen vendor. In addition, from the beginning there must be a trained quality assurance group that is continuously testing the design and ultimately the implementation to make sure that the application is reliable and accurate.

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<sup>11</sup> The Electionline.org briefing cited above contains an excellent discussion of the distinction between the two and why both can be considered HAVA-compliant.

<sup>12</sup> 42 U.S.C. § 15483(a)(1)(A)(vi) (“All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.”) The EAC Voluntary Guidance has interpreted “expedited” as meaning “at least every 24 hours.”

## 2. Accuracy

Maintaining the accuracy of VRDs requires balancing two opposing concerns. The first concern is that a VRD needs to be inclusive to avoid disenfranchising legitimate voters. The names of all people who have registered and are duly eligible to vote must be included in the VRD; any omissions will exclude eligible voters from voting. The second, somewhat contrary concern is that the VRD must not be overly inclusive. To prevent fraud, only legally registered persons should be listed in the VRD as eligible to vote. We will address both of these concerns.

Not only must VRDs be accurate, the public must also believe that they are accurate. Because VRDs control access to voting, transparency is critical. It must be possible to convince those with interests in elections—including voters, political parties, politicians, academics, and the press—of the correctness of the VRDs. To provide transparency, policies should minimize the possibility of error and facilitate the correction of errors. Election officials must also take responsibility for ensuring adherence to these policies.

**Data Entry and Errors.** Most errors in individual database records occur during data entry. Errors include misspelling of names and addresses, incorrect recording of unique IDs, misidentification of people to whom access to the system should be allowed or denied, and misdirecting voters to the wrong polling place.

Data is entered into the VRD using one of two methods: manual entry or via automatic scanning devices. An automatic scanning device is a machine that looks like a copier and is used to scan a document into a computer system. Once the document is scanned in, software that can recognize characters transfers the data from the printed form into the VRD, while providing a clerk with the opportunity to correct mistakes. For either manual entry or automatic scanning, a well-designed user interface for the clerk will reduce errors. (Chapter 4 on usability contains further discussion of user interfaces.)

While quality control systems and appropriate supervision of data entry may reduce data entry errors, some errors will inevitably occur. Problems can arise because of variations of name spellings (Stevens or Stephens), first and last names that use accent marks or more than one capital letter (McMullen), and names that have no vowels (Ng). Incorrect or incomplete spellings of street names are additional potential sources of errors. Changes that are primarily entered in other state databases—such as changes in marital status and court approved name changes—also compound the challenge to accuracy.

**Voter Verification and Notice.** To minimize the impact of errors in the VRD, voters should be provided with (1) opportunities and methods to view and verify their data, and (2) notices about changes to their records. For example, the system might provide an Internet website or automated telephone service where voters can examine parts of their records, check their registration status, and determine their assigned polling places.

Whenever a voter or potential voter is determined to be ineligible to vote, the reason and source of information for the determination of ineligibility should be included in the VRD. This information should be retained so that someone who has been inappropriately labeled as ineligible can easily challenge the decision and demonstrate that an error has occurred.

Finally, election officials should mail each registered voter in the VRD a postcard with his or her registration information and information necessary for voting, such as polling place location or instruction for voting by mail. Voters also should be notified when their registration status changes. A voter removed from the rolls or reassigned to a new polling place should be notified by mail of the change and be provided an opportunity to seek correction if the change is an error. A voter recorded as having moved should be notified by mail sent to both the new address and the old address (similar to the method the United States Postal Service uses with respect to change of address forms).

To help correct errors in voting records, contact information for the person or office responsible for complaints and questions should be provided to voters. Further, voters and system administrators should understand how complaints and errors are addressed, and voters should receive feedback explaining the reasons for a final determination.

One recent survey found that approximately two-thirds of surveyed states do not notify voters who have been purged from the election rolls.<sup>13</sup> Advance notice, which can be facilitated by the VRD, would provide voters with an opportunity to identify mistakes prior to an election. Care must be taken in designing such systems so that violations of privacy and security do not occur.

Notification processes are not always foolproof. For example, in 2004, 8,800 Maricopa County, Arizona, residents received election notification cards listing the wrong polling places in the wrong cities.<sup>14</sup>

To help minimize the impact of incorrect notification, we recommend that public notice be provided well in advance of an election. That notice should include the polling place's geographic location and official name (school, church, library name), a description of the exterior of the polling place to assist voters in locating the entrance, times of poll operation, residential boundary lines, and corresponding zip codes.

Some states allow voters to verify that they are registered through an Internet web site or by phone. For states that use Internet verification the user interface should protect voters' privacy by requiring the voter to provide his or her name and address and limiting the response to "yes, you are registered to vote and here is where you go" or "no, you are not registered to vote." The response should not include personally identifiable information about the potential voter.

Some provision needs to be made to deal with corrections on Election Day because not all errors can be corrected in advance. Poll workers are likely to be preoccupied with running an election and should not be allowed to make changes to the VRD. Under the right circumstances, after extensive testing for accuracy and usability, it might be possible to allow poll workers to send electronic reports of needed changes to election workers. If such a system is implemented, the updates would need to satisfy the auditing and authorization requirements discussed elsewhere in this report.

A simple alternative is to provide paper forms that are filled out at the polling place and submitted to election workers after the close of the election.

**Generating the List of Registered Voters.** A printed voter registration list for those precincts served by a polling place is typically used to verify registered voters. While

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<sup>13</sup> Electionline.org, op. cit.

<sup>14</sup> Dennis Wagner, 2004, "8,800 Voting Cards Have Wrong Poll Address," *The Arizona Republic*, October 27, p. B5.

these printed lists are convenient and easy to control, sometimes the wrong list is provided to a polling place. To minimize the chance of the delivery of an incorrect list, we recommend that automated generation of polling place lists be used as much as possible and that the lists be carefully checked by at least two people. Local officials can conduct these checks, but they need to be made far enough in advance of elections to allow time for corrections.

Incorrect voter lists could be delivered to polling places independent of whether the data are provided on paper, DVD-ROMs, in a PC, or in a handheld device. In all of these cases, a computer operator might provide incorrect directions to the computer, resulting in the wrong electronic list going to the polling place. As with paper printouts, we recommend that electronic versions of voter lists be checked by at least two people well in advance of elections to allow time for corrections.

**Information Deletion and Retention.** In addition to being a list of currently registered voters, a VRD is a comprehensive set of records reflecting voter registration activity and administration. Consequently, we recommend that after records appear to be no longer relevant, they be retained in the VRD at least for the next two Federal elections or for the statutorily-mandated minimum of twenty-two months.<sup>15</sup> The retained record should include a dated annotation stating that the voter is not eligible to vote, along with the reason for ineligibility. Thus, a VRD might contain information about those who have applied, been approved, been questioned, died, moved, or been denied the right to vote, as well as those who currently are eligible to vote.

When records were stored on paper, retaining old records imposed a non-trivial administrative burden. Electronic databases have made the cost of retention negligible, so old information can be retained relatively easily and inexpensively. When information is sufficiently old, it should be moved from the VRD into an offline archival database that is never purged. Retention of such information will enhance transparency and facilitate the correction of errors such as those that can occur when voters are thought to have died, moved, been convicted of a felony, or otherwise determined not to be eligible to participate in a public election.

**Other Databases.** HAVA requires that states authenticate each potential voter by cross-checking with other state databases—in particular, databases of driver’s licenses.<sup>16</sup> If a potential voter does not have a state driver’s license, then the last four digits of the voter’s Social Security number must be used for authentication.

Because other databases can be inaccurate as a result of ambiguous or incorrectly entered data or computer-related problems, wholly automated procedures are risky. Consequently, we recommend that other databases not be used to enroll or de-enroll voters automatically. External databases could be used for initial screening, but an appropriate election official should perform any final determination of voter eligibility or

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<sup>15</sup> The Civil Rights Act of 1960 requires that every officer of elections retain for 22 months registration and other voting records and papers for federal elections. 42 U.S.C. § 1974.

<sup>16</sup> HAVA provides for coordination of voters lists with other state agency databases (42 U.S.C. § 15483(a)(1)(A)(iv)) and requires that registration applications include either a current and valid driver's license or the last 4 digits of the applicant's Social Security number (42 U.S.C. § 15483(a)(5)).

ineligibility. We suggest that every change, addition, or deletion to the VRD require explicit approval by an individual authorized to make that change. We discuss how this might be done in Chapter 5 on security.

Errors can arise because of court-approved changes in legal name that conflict with existing birth records, motor vehicle records, or other state records. Name similarities also can create problems. For example, a death record database may show that Mr. John Smith who lives at 254 Vine St. has died. There may be a Mr. John Smith, Jr. living at the same address who is eligible to vote. If the death record database is applied with no cross checking, John Smith Jr. may learn on Election Day that he has been denied his right to vote.

Databases also can be inaccurate or unreliable because of computer viruses, programming errors, and system failures. For example, in 2003 the Maryland Motor Vehicle Administration (MVA) offices were attacked by a computer worm.<sup>17</sup> The worm shut down the MVA's computers and telecommunication systems, cutting them off from all forms of remote communication and disrupting operations in all 23 MVA offices located throughout the state. A second event occurred on January 20, 2004, when the MVA could not process work on the mainframe computer for about an hour after opening. The problem was characterized as a computer glitch.<sup>18</sup>

A further risk to the accuracy of databases is insider fraud, involving either the VRD itself or external databases, such as driver's license databases, that are used to authenticate voters.<sup>19</sup> Therefore, election officials should carefully consider if the accuracy and security of external databases is sufficient to meet voter registration needs. Risks associated with insider fraud are discussed further in Chapter 5 on security.

**Avoid Large-Scale Merges and Purges.** Computers make it easy to automate sweeping batch updates to a VRD; at the same time, errors can be magnified by the use of automation. In the context of VRDs, a batch update is a group of updates received from what is believed to be an authorized source (e.g., a local county). Because many voter records could be affected by a single batch transaction, a greater level of authority should be required to perform a batch update than is required to make individual changes. As is the case with all updates, election officials should develop policies and procedures to ensure the accuracy of large batch updates to the VRD. For example, a policy might prohibit batch updates affecting more than a maximum number of voters or jurisdictions (essentially requiring that large changes be broken down into multiple smaller batches that can be reviewed more effectively), or a policy might require individualized review and approval of each voter record that is affected. A policy might specify that batch updates be reviewed by several people or mandate that audits of a statistically-significant

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<sup>17</sup> Christian Davenport and Hamil R. Harris, 2003, "MD's MVA Offices Forced to Shut Down," *Washington Post*, August 13, p. A09.

<sup>18</sup> "Glitch at MVA Branch Offices Delays Some Transactions for an Hour," 2004, *The Baltimore Sun*, January 21, p. B6.

<sup>19</sup> For example, a Maryland MVA employee was charged with conspiring with others to sell more than 150 state identification cards. See Eric Rich, 2005, "MD, MVA Employee Charged in ID Card Sales," *Washington Post*, April 23, p. B03. For a collection of stories of security problems of motor vehicle records, see Center for Democracy and Technology, *Tracking Security at State Motor Vehicle Offices*, available online at <http://www.cdt.org/privacy/030131motorvehicle.shtml>.

random sample of records in the batch be performed before approving the batch update.

Given the inaccuracies that exist in many governmental databases, large-scale automated merges between databases increase the risk of errors in a VRD.<sup>20</sup> Consequences of inaccuracies in other databases could result in the widespread disenfranchisement of eligible voters, the inclusion of ineligible voters in a VRD, or both.

We recommend special caution in deploying large-scale purges of VRDs. The move to a statewide VRD may make it tempting to attempt to automatically eliminate duplicates by comparing lists of eligible voters across counties, something that previously could not be done. However, automatic purges of duplicate entries could disenfranchise large numbers of legitimate voters. If large-scale purges occur, they should be done well in advance of any election, and all people whose names are purged from the VRD should receive notification in sufficient time for them to be able to correct any errors arising from the purge.

**Accountability.** Clearly defined accountability for all changes to the database is a fundamental requirement for helping instill voter confidence in VRDs. Voters, politicians, election officials, the press, and others should be able to determine who is responsible for changes to the VRD.

These changes include, changes to the data such as adding new voters, purging voter records, changing addresses, names, etc.; changes to the software configuration such as incorporating new software releases into the VRD; changes to the security policy and access rights; or changes to the database design. Any of these changes can adversely affect the data, so in order to provide the desired accountability there must be a record of each change, when it occurred, and who approved the change.

**Audit Trail.** The record of the changes to the VRD is called an *audit trail*. In order to ensure accuracy and transparency, VRDs must be auditable. VRDs that can be independently verified, checked, and proven to be fair will increase voter confidence and help avoid litigation.

The audit trail should include the record of all possible changes mentioned, namely, data changes, configuration changes, security policy changes, and database design changes. Although we call this an audit trail, it is not a single entity. The records of configuration, policy and design changes, including who approved them, can be kept in computer files or on paper as long as they are auditable by a third party. The record of changes to the data, because there will be many of them, must be kept in computer files to facilitate auditing.

In DBMS applications, there are typically two files generated because of a change to the database. The *transaction log* records in a file the data values before and after the change occurred, as well as the time of the change. The *audit log* records information about the user ID of the person who made the change. The transaction log is used to provide backup should a system failure occur.

The content of audit logs varies among DBMSs. In some, it is possible to configure the system so that the audit log tracks changes to the security of the system (the

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<sup>20</sup> In 1988, Congress enacted the Computer Matching and Privacy Protection Act to address some of the unfairness and inaccuracies arising from federal government use of computer matching techniques. See Public Law 100-503, 102 Stat. 2507 (codified at 5 U.S.C. §552a).

permissions given to particular users), changes to the data, and changes to the database design. For the purposes of the VRD auditing requirements, this is not sufficient. The VRD should record not only which user made the change, but also the identification of the person who authorized the change. Therefore, it may not be possible to rely on the commercial DBMS's auditing capabilities alone for the audit trail that a VRD requires. VRD implementers will need to augment the application code of the commercial database audit log to provide a complete audit trail.

Well-maintained audit trails are critical because they may allow reconstruction of the circumstances of a system failure, thereby facilitating future improvements to access policies and possibly to the database itself.

**Approval Mechanism.** Given that there is an audit trail that records whose approval was given for each change, state or local officials must set policies on who is actually authorized to make changes. Access control policies are discussed in more detail in Chapter 5 on security. We assume that the person with ultimate authority to make the changes is an election official, and we recommend that the responsibilities and authorities of such election officials be clearly defined and publicly available.

For system changes, we recommend that there be a formal change control process that states how changes to the system configuration, security policy, and database design are reviewed, approved, and recorded.

Summary reports or excerpts from audit trails should be provided to supervisors and made available to external auditors. These reports should be inspected frequently for unusual or suspicious activities such as access from unexpected Internet Protocol (commonly referred to as "IP") addresses or at unusual times of day, surges in the number of accesses by a single user, and other anomalous activity.

**Conclusion.** Well-designed accuracy features must be accompanied by appropriate training and resources. Even the best designed VRD will be of little value if officials do not monitor and verify that only authorized changes are made to the VRD. Log files that are never read and system quality control processes that are not supervised will not ensure database accuracy. Since accuracy should be viewed as an ongoing responsibility, election officials should assign specific staff to oversee these continuing activities.

### 3. Privacy

Policies for voter registration activities should include appropriate protections for the privacy of identifiable data about individuals. A privacy policy should be based on Fair Information Practices (FIPs), a set of principles for addressing concerns about information privacy. FIPs typically address issues such as how data is collected, secured and used, and how policies regarding data practices are disseminated. Specific implementation recommendations are included in the discussion.

The increased computerization and sharing of voter registration records raises the stakes for privacy. While paper records also affect the privacy of data subjects, the risks are greater with electronic records, which may be more vulnerable to improper disclosures by more people. Furthermore, the scope of the disclosures can be much greater. A thief can carry only so many paper records, but an entire electronic database can fit unnoticed in someone's pocket.

Technology also brings opportunities for privacy improvements, making it easier to obtain and enforce the preferences of each voter for the use and disclosure of the voter's personal data. Technological tools also facilitate the tracking of data. To minimize the threats and maximize the benefits of technology for privacy, it is necessary to build the proper capabilities into VRDs.

Fair Information Practices, which form the basis of many privacy laws in the United States and around the world, help to assure that any system of personal information addresses all appropriate privacy elements. The Privacy Act of 1974,<sup>21</sup> a law that applies to federal agencies, was the first statutory implementation of FIPs anywhere in the world, and federal agencies have been operating under that law for more than 30 years.<sup>22</sup> Although there have been numerous restatements and versions of FIPs,<sup>23</sup> core principles address collection limitation, data quality, purpose specification, use limitation, security safeguards, openness, individual participation, and accountability.

While FIPs provide a useful framework for information privacy, the principles are not self-implementing. How they are implemented depends on the type of data, the record keeper, the purpose of processing, the manner in which data is to be used and disclosed, the costs, the technology, and the traditions of the jurisdiction or record keeper. There are often several strategies for implementing the same principle. What is most important is that any privacy policy should consider and address in an appropriate way all elements of FIPs. Some FIPs principles also reflect good record management policies.

The prevalence of identity theft illustrates why any sharing of personal information can be a threat to an individual. There is already some evidence that concerns about privacy affect voter behavior: one survey found that 23 percent of California non-voters

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<sup>21</sup> 5 U.S.C. § 552a (2002).

<sup>22</sup> Fair Information Practices were invented in America. See Secretary's Advisory Committee on Automated Personal Data Systems (Department of Health, Education & Welfare), 1973, *Records, Computers, and the Rights of Citizens*, available online at <http://aspe.os.dhhs.gov/datacncl/1973privacy/tocprefacemembers.htm>.

<sup>23</sup> The leading international statement of FIPs is by the Organisation for Economic Cooperation and Development. See *Council Recommendations Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* (1980), available online at [http://www.oecd.org/document/18/0,2340,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/document/18/0,2340,en_2649_34255_1815186_1_1_1_1.00.html).

say they haven't registered to vote because they want their information to remain private.<sup>24</sup> If voter records are perceived to be a source of data that contributes to the widespread trafficking in personal information and to identity theft, some potential voters may be discouraged from registering and voting. Larger or centralized databases may exacerbate these concerns. Further, any inadvertent or malicious release of data can affect millions of people and will attract considerable publicity. The move to statewide VRDs raises the privacy stakes considerably.

Privacy values, which too often are an afterthought for collections of personal information, are fundamental for voter registration. For this reason, some privacy issues are intertwined with basic design standards and do not need to be addressed separately. This chapter addresses only those privacy policy matters of openness, data collection limitation, and use and disclosure limits, which are not otherwise considered in this report.

**Openness (Transparency).** Policies and practices for the collection, maintenance, use, and disclosure of voter registration databases should be transparent, published, and available to all upon request.

#### *Implementation Strategies*

- Publish on the main election board website a complete notice of policies and practices describing the collection, maintenance, use, and disclosure of voter registration data. The notice should include contact information for the office or the officials responsible for the voter registration data.
- Publish a readable summary notice of policies and practices in other places such as on voter registration forms, at polling places, on sample ballots, and elsewhere as appropriate.
- Provide a copy of the complete notice to any person who requests it.
- Publish any changes to the notice before the changes become effective, and accept and consider public comments.
- Place a date and version number on notices as they are published. Maintain, and make publicly available, copies of all previous notices, including the periods of time during which they were effective.

**Discussion.** A notice of policies and practices for the collection, maintenance, use, and disclosure of personal information informs registrants, the public, and interested parties of the relevant policies. It also informs the staff of the election agency about the policies and the need to conform to those policies. Finally, clear notice imposes a discipline on agencies helping prevent them from making ad hoc choices about their data processing activities. By requiring that these activities be properly disclosed in advance, privacy policies prevent agencies from undertaking new data gathering or disclosures without going through a formal process, thereby helping agencies resist pressures to use personal information in new ways without sufficient oversight.

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<sup>24</sup> California Voter Foundation, 2005, "California Voter Participation Survey," available online at <http://www.calvoter.org>.

Formal privacy notices, like other legal notices, are often necessarily long and detailed – likely longer and more complex than an average voter will care to read. Consequently, we recommend that a summary notice that is more accessible to the average voter and brief enough to fit on commonly distributed forms be made available.

**Collection Limitation.** The following principles should apply to the collection of personal data.

- All data should be collected by lawful and fair means.
- Data should be collected, where appropriate, with the knowledge or consent of the subject.
- Registrants and the public should be informed through the published notice of the policies and practices of all the sources of data obtained for voter registration purposes.
- Data collection should be limited to sources and procedures authorized by law and properly described in the published notice.
- Only the minimum information necessary for and relevant to voter registration purposes should be collected and maintained. The reason for collecting each type of personal information should be explained, and the specific data elements collected should be subject to public scrutiny.

**Discussion.** There are several reasons why the public should be informed in advance of the collection and the source of the data, when such data about voters is obtained from third party sources for purposes of updating, correcting, verifying, or amending the database. First, the public should know what data sources are being used so that it can assess the validity and utility of the data sources. Second, public disclosure may uncover errors (e.g., use of inappropriate or outdated sources). Third, the election agency will be required to justify its choices, thereby reducing the chance that unnecessary data will be collected. For example, there is no reason for voter registration records to reflect religious or sexual preference.

The collection of data with the knowledge or consent of the individual will be accomplished in most instances through the published notice of policies and practices. The public identification of data sources normally will be sufficient to meet the knowledge standard. However, if data on a specific individual is being collected as part of an examination of that individual's eligibility, it may be appropriate to inform the individual, seek consent for the collection, ask for cooperation in the examination, and provide due process rights before taking any action that affects the individual. It will not always be possible to satisfy the consent standard. For example, if voter registration records are examined in an investigation of voting irregularities, notice or consent to the subject of the investigation may be inappropriate. However, in other circumstances, the data subject may be the best source of information.

**Use and Disclosure Limits (Purpose Specification and Use Limitation).** There should be limits to the uses and disclosures of voter registration data by the agencies that collect and maintain the data. Personal data should not be shared with anyone outside the election process without legal authority or the consent of the data subject. Within the

election process, use of personal information should be limited to those officials who have a need for the information in the performance of their duties. All uses and disclosures should be specified at the time of collection.

### *Implementation Strategies*

- Limit use and disclosure of voter registration data to those activities directly related to the election process or expressly authorized by law.
- Describe all uses and disclosures in the published notice of information practices.
- Identify publicly all recipients of voter registration data.
- Provide public notice of and, if possible, a chance for public comment on all disclosures of identifiable voter registration data for any activity not directly required for voter registration purposes.
- Restrict access to specific records, specific data elements, and specific classes of voters (e.g., by location) to those election officials who have a need to use those records, data elements, and classes in the performance of their duties.
- For some or all uses or disclosures, maintain a record of the date, nature, and recipient of all personal information and make the record accessible to the data subject upon request.
- Restrict disclosures to specific data elements permitted by law and necessary to accomplish the purpose of the disclosure. Withhold data elements that are not essential to accomplish the purpose of the disclosure or that would place data subjects in excessive jeopardy to identity theft or other improper activities.
- Prevent all recipients of data from using or disclosing the data in ways not specifically authorized by law. Asking recipients to sign data use agreements is one way to accomplish this.
- Allow some non-essential uses and disclosures only with the affirmative (opt-in) or negative consent (opt-out) of the data subject.
- Limit disclosures to the greatest extent possible for data subjects at risk (e.g., victims of spousal abuse, jurors, some public officials).
- Even the best use and disclosure policies may be violated by people and software within the election process. Therefore, limit access by each person and each system component. Chapter 5 on security provides further discussion on access policies.
- Provide access for every voter to a personalized list of those third parties who have been given or purchased access to his or her voter registration data.

**Discussion.** *Use* refers to the utilization of data internal to the operation of the election agency. *Disclosure* refers to any sharing of data with an external party. Controlling both use and disclosure is essential to maintain proper control over data and to prevent the data from being used in inappropriate ways. Controlling use and disclosure through formal procedures and public notice will help limit function creep, which is the use of data for a purpose unrelated to the purpose for which it was originally collected.

Whenever possible, use or disclosure should include only those data elements that are necessary for the required purpose. Limits on the disclosure of some data elements are *constitutionally* required. The principle is illustrated by a successful challenge in 1993 to the disclosure of Social Security numbers from Virginia voter registration records

(*Greidinger v. Davis*<sup>25</sup>). The plaintiff challenged the public disclosure requirement of Social Security numbers as an unconstitutional burden on the right to vote. The plaintiff argued that the privacy interest in the number is sufficiently strong that the right to vote cannot be predicated on disclosure of the number to the public or to political entities. The Fourth Circuit Court of Appeals agreed. Following the decision, Virginia changed its law. The importance of restricting disclosure of some or all data elements has only been highlighted by the epidemic of identity theft in recent years. The Greidinger decision was issued in 1993, well before identity theft had become a common crime and concern.

The Greidinger decision also highlights the sensitivity of the use of any identification number as part of the voter registration process. While Congress mandated that a registration application include a driver's license number or the last four digits of the Social Security number, excessive reliance on numbers for identity verification in voter registration may not be successful, may create new risks to data subjects, and may expand pressures for the use of identification numbers or identification cards in other contexts.

While some secondary uses and disclosures of voter data are authorized by law, the political process may impose limitations on what secondary activities are to be permitted. Some states make voter registration records public, while other states strictly restrict secondary activities. There are no clear right or wrong choices, but privacy standards argue for limiting secondary data sharing to the greatest extent possible.

Middle ground may be helpful at times. While registration records will appropriately be used for voting purposes, it is possible to offer each individual a choice with respect to some secondary uses or disclosures. The federal Driver's Privacy Protection Act<sup>26</sup> provides a model. It describes a series of activities for which use and disclosure is permitted without the consent of the data subject. For other activities, the affirmative consent of the data subject is a requirement.

Many methods can be used to give voters a choice about how their data will be handled. Under an affirmative consent (opt-in) model, personal information can be used or disclosed for particular purposes only if the data subject agrees. Consent can be obtained orally or in writing. Under a negative consent (opt-out) model, a use or disclosure is permissible unless the data subject has stated an objection. Individuals can be offered choices through check boxes on applications or websites or in other ways. Sometimes it may be possible to ask each individual to make a choice about a use or disclosure without establishing a default option. For example, on a website, an individual can be required to make a selection before moving on to the next screen.

The value of individual choice is that it gives the individual a voice in how his or her records may be used for purposes that are not directly related to the purpose for which information was originally obtained. It is a way to resolve conflicts between data subjects who desire privacy and officials and others who seek to use information in new ways. It is a middle ground between saying that records are never available and that records are freely available. The preference of the individual is a reasonable and significant factor to consider when making decisions. With computerized information

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<sup>25</sup> 988 F.2d 1344 (4th Cir. 1993).

<sup>26</sup> 18 U.S.C. § 2721 et seq. (2002).

systems, it is easier as well as practical to keep track of individual choices and to abide by those choices.

## 4. Usability

VRDs will be used by voters, election workers, and authorized officials from state and local governments to perform crucial tasks. As problems in data entry and interpretation can easily disenfranchise voters, user interfaces for these systems must be designed to minimize opportunities for error.

User interfaces that provide users with inadequate and unclear feedback can lead to the entry of inaccurate data. Displays that fail to provide indicators of system state (e.g., the name of the currently authorized user) can introduce opportunities for malicious users. Data displays that include identifying information beyond the minimum level needed to complete a task might compromise voter privacy. Poorly designed voter registration database user interfaces might confuse users and reduce confidence in the system, thus creating a perception, if not a reality, of reduced reliability.

**General Usability.** User interfaces for voter registration database systems should be designed to help all users complete their tasks confidently and correctly. The design, development, and testing process should explicitly account for wide ranges in user training, backgrounds, and physical abilities, as well as the physical environments in which these user interfaces will be used.

VRDs will be used by voters, election workers, and other authorized officials to accomplish numerous tasks, including (but not limited to) registering voters, updating registration information, verifying eligibility for a given election, and extracting summary reports. Each of these tasks involves one or more user interfaces that bridge the gap between user tasks and the underlying database.

The range of possible users and uses make user interface design particularly challenging. Although some people—for example, county and state elections staff—are likely to be frequent users who receive detailed training, many others—namely polling place volunteers and voters—will use these systems infrequently, possibly without any training at all. Large variations in background, literacy, computer experience, and physical capabilities (including disabilities) throughout the general voting population complicate matters further. User interfaces should be designed to be easily usable by a wide variety of users in a variety of challenging environments employing strategies such as providing text in multiple languages and providing alternative input and output methods for people with disabilities.

The environments in which these systems will be used present additional challenges. Unlike systems that are only used in one well defined work context such as an office, VRDs might be used in many places, including municipal offices, polling places, and in homes or libraries via the Internet. These differing use contexts require different user interfaces.

The computing environment may also influence usability. Computing platforms for VRDs may have relatively minimal requirements for processor performance, network bandwidth, memory, and display capabilities. However, user interfaces that seem to be functional when a system is not stressed can encounter usability difficulties when there is a high system load, network congestion, or other demanding situations. These issues are discussed in more detail in Chapter 6 on reliability.

Human-computer interaction professionals know that simply adding an interface to an

already-designed system does not work well. Interface design development, documentation, and training materials should be addressed at the beginning of a project and throughout its course of development and implementation. While an early focus on interface design and testing allows more time for refinement, user interface evaluation can provide useful information at almost any stage in the software development process.

The needs of the wide range of likely users should be evaluated during the interface design process. Although it is clear that there will be many different types of users for VRDs, not all types of users initially can be defined or identified completely. Input from classes of many potential users including voters, public officials, poll workers, and others can help clarify user needs. Serious consideration for user concerns also can have the added benefit of building good will toward the project.

Before any user interfaces are designed, techniques such as interviews, group discussions, and observations of users completing typical tasks with existing systems (computerized or paper-based) can be employed to gather usability requirements and help developers understand the contexts of use. Such activities also will help developers understand the difference between classes of users and how those differences will impact user interface design.

Usability requirements can act as a starting point for an iterative cycle of design and feedback. Initially, simple mockups of proposed layouts will stimulate more input from users and further clarify usability requirements. In addition to being inexpensive to produce, paper prototypes and other informal presentations of design proposals can make some users feel freer to make critical comments than if they are presented with an almost-finished version. Feedback can be used to inform subsequent, more fully-realized designs, with further iterations eventually leading to convergence on acceptable designs.

Structured evaluations can be useful for identifying specific usability issues that may not arise in discussions with users. Usability experts can examine user interfaces for consistency, proper feedback, error handling, and other criteria. Known as heuristic evaluation, this technique is often very effective after just a few evaluations. Direct observation of potential users attempting typical tasks with proposed designs can also be very helpful. In so-called “think aloud” sessions, users are asked to tell observers what they are doing and why. This feedback helps developers identify potentially confusing or disorienting aspects of a proposed design. If multiple alternative designs are being considered, a user study involving measurement of user performance (in terms of task completion time, accuracy, or other objective measures) on meaningful tasks can help clarify the strengths and weaknesses of the alternatives.

These measures may seem excessive to some, but frequent, early evaluations increase the chances of finding problems with interface designs and other system features before fixes become prohibitively costly.

The process of evaluating and refining user interfaces should continue after the systems have been deployed. As various users—including many who were not involved in the design discussions and evaluations—work with the system, usability difficulties and challenges will likely be identified. Developers should assume that ongoing feedback will lead to further user interface revisions.

Although specific user interfaces will vary from state to state, all of the VRDs will face similar usability problems. Mechanisms for sharing insights gained during user interface design and evaluation (while still respecting proprietary designs) can help

improve overall usability.

**Usability in the Service of Accuracy, Security, Reliability, and Privacy.** All user interfaces should be explicitly designed to support the goal of building VRDs that are accurate, secure, reliable, and sensitive to voter privacy concerns.

To be successful, user interface specification and design must be an integral part of the software development process. As mechanisms for ensuring accuracy, reliability, security, and privacy sensitivity are developed, their impact on user interactions should be carefully considered and user interfaces designed accordingly.

Clear and useful feedback regarding the state of the system and the impact of user actions is a crucial component of successful user interface design. Such feedback can play a role in guaranteeing system security and privacy sensitivity. For example, user interfaces used by polling workers or county officials might display a photo of the currently logged in user at all times, allowing onlookers to verify that a task is being performed by the appropriate person. Prominent displays of system date and time can show both users and (when appropriate) voters that the systems are configured correctly. Status alerts listing active network connections, along with indications of any that involve unknown hosts, can be used to identify possible intrusion attempts. Dialog boxes and other alerts that warn users of the potentially undesirable outcomes of their action should be displayed. Well-designed displays of summaries regarding accesses to the system and changes to voter records can help managers ensure that the system is functioning reliably and securely.

User interfaces for VRDs should be minimal, containing only displays and functionality that are necessary for the completion of specific tasks. Because displays of personal information create risks for invasion of voter privacy, these displays should only contain information that is necessary for the task at hand. For example, if the last four digits of the Social Security number are used to verify identity, displays should contain only those four digits, not the full number.

When extraneous functionality is removed from an interface, opportunities for malicious hacking, data theft, or entry of inaccurate data are also removed. For example, hardcopy printouts of voter registration data might contain unnecessary information that violates voter privacy. Proper privacy protection would mandate protecting and destroying the printouts. As modern printers generally receive data over a network connection, hardcopy print facilities also have the potential to introduce security vulnerabilities. Limiting print functionality to cases where it is absolutely necessary can reduce these privacy and security risks.

Eliminating extraneous user interface components can have other benefits as well. Simple user interfaces are often less cluttered and therefore easier to use, particularly for novice users. Decreasing the complexity of the interface also can simplify the underlying implementation, potentially reducing development costs.

Usability considerations must factor in tradeoffs as well. Supporting privacy, accuracy, security, and reliability can sometimes reduce usability as can happen with security measures that are explicitly designed to make systems unusable by unauthorized users. For example, systems that are used in public places might have forced logouts after very short idle times to prevent unattended workstations from becoming inviting targets, even though this will, in some cases, result in annoyance for the authorized users.

Appropriate evaluations and user tests might identify aspects of interface design that could negatively impact other design goals. Each display and control can be evaluated to determine if it might introduce potential problems or if it simply can be removed.

Testing user interfaces under extreme or suboptimal conditions can provide insight into the interplay between user interfaces and reliability. Systems that simply freeze or lock-up under extreme operating conditions are neither usable nor reliable. Wherever possible, systems should respond gracefully to stressful conditions, provide users with appropriate feedback, and degrade to reduced functionality if some services are unavailable.

**Usability for Election Staff and Government Workers.** Because errors in data entry, retrieval, and interpretation by election workers and government officials can lead to voter disenfranchisement, the VRDs should be designed to maximize the usability for election officials while reducing these common problems. The challenge of constructing user interfaces to minimize these errors is complicated by the nature of the user population. County election officials and other municipal employees regularly use the voter registration system. These users can be provided with training that would enable them to effectively use a reasonably complex system. Volunteer election officials, on the other hand, might use the system infrequently (perhaps one day per year) with minimal training. These users might also be relatively unfamiliar with some election jargon.

Polling places are often crowded, busy, and noisy on Election Day. Noise, interruptions, and other distractions can increase cognitive load on users, potentially leading to an increased error rate. Any election technology user interfaces that will be used during polling should account for Election Day stresses.

Known user interface design techniques can reduce the frequency of errors in data input, retrieval, and interpretation. Data input forms should be designed with layouts that clearly indicate the meaning of each field. When possible, data provided on these forms should be immediately validated for accuracy and consistency. Error messages should be as clear as possible, providing information that can help users respond appropriately, for example, by correcting the input or by accessing external resources, such as documentation or personnel, to clarify any confusion. However, as mentioned in the previous section, messages should avoid disclosing unnecessary information.

Modifications to voter record fields such as address or party affiliation can change a voter's precinct or render the voter ineligible to vote in some primaries or for certain offices. Functionality that might change the ability of one or more citizens to vote should be available only to authorized users, but access controls are only the first step in preventing harmful changes. Exactly as desktop operating systems require users to confirm potentially damaging actions before they are executed ("Are you sure you want to delete this file?"), user interfaces for VRDs should require explicit confirmation from the user before making any changes that would restrict or modify an individual's ability to vote. This confirmation might come in the form of a dialog box, or by requiring that a certain check box be selected. For changes that have wider impact, particularly batch updates, displays should indicate the number of affected records. Confirmation for these changes should make users think twice before making significant changes. Possible approaches include multiple, sequential requests for confirmation, request for reauthentication via retyping of the user name and password, or requiring that users type

a word embedded in an image (a so-called CAPTCHA™ test, commonly used for registration on web sites). Larger batch updates should require confirmation by the current user and a colleague who confirms the action separately. Where possible, undo facilities should be provided.

User interfaces for specifying data retrieval parameters are similar to data entry forms: users must specify one or more values for each of several fields. Once data has been retrieved, it should be presented clearly on screens that indicate both the values of the specified parameters and the fields that match those parameters. Such a presentation will help users distinguish between input errors and result interpretation errors. Important fields such as registration status should be highlighted. Detailed feedback, including appropriate contextual information and links to relevant rules and policies, should be provided especially on problems and policies that might disenfranchise voters. To minimize the risk of infringing upon voter privacy, all displays of personally identifiable information should be limited to include only details that are necessary for the task at hand.

Different users might require different user interfaces and training materials. An interface for election officials might provide information that is more detailed and use specialized language that would be inappropriate for election volunteers. Infrequent, less well-trained users might benefit from training sessions, online tutorials, and online help. The context of use is also an important factor in interface design. While audio indication of input errors may be fine for office workers, noisy conditions in polling places might render such output useless.

Interface designs should be tested thoroughly, with representative users performing typical tasks under situations that simulate as closely as possible those of real use. These challenging tests may identify usability problems that might not have been found during testing under idealized conditions.

**Usability for Voters.** Usable interfaces for individual voters have the potential to educate voters, provide necessary information, and build confidence in the election process. Voters who are unable to perform voting tasks effectively might require help from election officials. If assistance is not available, a voter might simply walk away, effectively disenfranchised by bad design.

The deployment platform for voter user interfaces is an important concern. Systems for use by election officials and workers are likely to be dedicated, stand-alone packages with completely custom user interfaces. As the deployment of custom software to individual voters is not practical, voters are likely to use web browsers to access registration information. Although the use of standard browsers offers many advantages, including the ease of linking to relevant contextual data, browsers can be somewhat limited in the types of feedback that they can display.

The use of web browsers for general public-access user interfaces also presents testing challenges. These systems need to work with many different hardware and software configurations. Such systems need to have their performance verified on many web browsers, including multiple older (and pre-release) versions of popular browsers and screen-reader systems for people with visual impairments. Designing to generic, vendor-neutral standards is one way of achieving maximum portability; conversely, using one vendor's proprietary extensions is an almost certain way to restrict portability and access

by the full public.

Web-based user interfaces should be designed to maximize privacy and security. Retrieval of information about polling places and election policy should be based on a minimal specification: if the street address is sufficient for identifying a polling place, the voter's name should not be requested.

**Conclusion.** The importance of ease of use with VRDs cannot be overemphasized. User-friendly interfaces are essential if the systems are to be effective and credible.

## 5. Security

This chapter examines the security mechanisms that enforce the decisions made about who may read or update VRDs. It also addresses ways of protecting against malicious actions by both insiders and outsiders.

VRDs need to control who may access different kinds of information stored in the VRD and under what circumstances they are authorized to do so. Accordingly, the first part of this chapter discusses access controls. Careful control over who is allowed to read or update the VRD reduces the possibility of intentional abuses and unintentional mistakes by authorized users of the system.

The right to view or modify some portion of the VRD is called an access privilege. The list of rules specifying who has which access privileges is called an access control policy. We examine the following aspects of data access:

- deciding who should specify which parts of the access control policy;
- determining who should have which access privileges;
- enforcing access control policies; and
- authenticating that people are who they say they are so the system can identify what access privileges each user should receive when the system is in use.

Generally speaking, four broad classes of access privileges are commonly found in any database system:

- **Read privileges.** The authority to view, inspect, read, print, or otherwise access certain records without modifying them in any way.
- **Write privileges.** The authority to modify, update, add, or delete certain records.
- **Administrative privileges.** The authority to specify what privileges are made available to other users. This includes the ability to create new user accounts, to assign user accounts to specific employees, to specify or change the privileges available to users, and to delete users. In some systems, this category might also include related privileges such as the authority to modify or patch software, the database schema, and other administrative functions.
- **Execution privileges.** Operations that the user is allowed to perform. Execution privileges are often enforced by another system component called the application server.

Access control policies should minimize the number of people who receive privileges either to access each piece of information or to grant access to others. They should also ensure that each person is granted only the minimal set of privileges needed to do his or her job. Following these guidelines can provide significant protection.

The second part of this chapter discusses how to harden a VRD against attack. If a VRD is not secured adequately, technical attacks by insiders who have access privileges or by outsiders via hacking may undermine the VRD—for example, by inserting the names of ineligible voters into the VRD or by removing names of eligible voters from the VRD. Since there are many ways that an attacker might try to subvert the system, one needs processes that encourage secure system design and detect and close significant

vulnerabilities in the deployed system. We discuss the following:

- providing security against technical attacks and other attempts to subvert the system (system security); and
- dealing with security failures should they occur.

**Dividing the Responsibility of Choosing an Access Control Policy.** Access control policies provide an automated way for state and local officials to implement the accuracy and privacy policies discussed in Chapters 2 and 3, respectively. Access control can help ensure that only authorized users are allowed to make authorized transactions. Establishing access control policies will likely require the cooperation of state election officials and election officials from each local jurisdiction. For example, state officials might not have detailed knowledge of the staff and their responsibilities in each jurisdiction; county officials are more likely know which county employees should receive which kind of access. However, county officials are unlikely to be able to set statewide policy. Therefore, we believe it will be productive if all relevant offices work together in setting VRD access control policy. We discuss some of the options for structuring this process.

One possibility is a partially centralized model. State officials might identify certain common job roles, suggest a reasonable set of access privileges for each role, and perhaps even require that local registrars adopt these roles and privilege sets. For example, roles might include (1) data entry clerk (who receives access privileges that permit the creation of new records and editing of existing records subject to approval by other officials), (2) election judge (who approves modifications to voter records for all voters within the judge's jurisdiction), or (3) registrar of voters (who receives access privileges that allow him or her to create accounts for new users, assign these users to roles, and change the role assignments for existing users). To allow for local autonomy, localities might be allowed to modify the roles and their privileges.

Alternatively, the partitioning of access privileges could be decentralized and left up to county election officials, leaving the state officials with only tasks such as the following:

- Specifying the access rights that officials in one jurisdiction have to data belonging to others. This policy could be rigid, or subject to revision by the jurisdictions involved.
- Managing a list of job roles and purposes, so that people in different jurisdictions all use the same terminology. In other words, in situations where practices are the same, make the vocabulary the same.
- Specifying (or recommending) maximum privileges that can be granted to each job role and purpose. A jurisdiction would be free to specify narrower privileges, if the jurisdiction's officials felt this was appropriate for their setting.

It is likely that even a centralized scheme will require some aspects of authorization to be decentralized. For example, the roles of authorized users are more suitably managed locally, such as by a county registrar, than from afar by, say, the Secretary of State. In many cases a local registrar knows who local users are and thus is much less likely to be deceived by an impersonator.

There is an opportunity for the EAC, or some other nationwide organization, to

provide sample roles and levels of privilege as suggestions to states and local jurisdictions, leading to a more uniform vocabulary and starting point for states.

Some composite actions might require privileges from more than one of the four categories of access privileges (read, write, administrative, and execution). For example, moving a voter from one jurisdiction's voter rolls to another's might require both write privilege (to delete the voter from the former jurisdiction's voter rolls) and read privilege (to obtain the information needed to add the voter to the new jurisdiction's rolls).

Normally, a user should be permitted to take a composite action only if the user has all relevant access privileges. Alternatively, such situations can be handled by access rules that state who may execute the action. The rules can be specified by an authorized user who administers all the necessary underlying privileges and enforced in either a DBMS or an application server.

The process used to assign categories of access privileges need not be the same. For example, it would be possible to assign administrative privileges via a semi-centralized model, yet assign read and write privileges in a decentralized fashion. One could also separate administration of felony status from administration of addresses.

Determination of the access control policy does not need to be tied to details of how data is physically distributed. Access control policy might be determined in a centralized or decentralized fashion regardless of whether the VRD data is stored at a centralized location or is physically distributed.

**Assigning Access Privileges.** The access control policy's scope should include all types of access to the VRD including records on both voters and non-voters, database schema, and so forth, and the VRD should be designed so that such a policy can be enforced. To reduce the overhead of administering privileges, we recommend the approach of grouping people by their roles. Most DBMSs and application servers support this approach. One might define groups of people, groups of data, groups of actions, and specify rules for whole groups. Election officials should specify very detailed rules on who can access what.

It is advisable not to grant all users the same access privileges. Instead of thinking in terms of access to whole databases (e.g., the list of eligible voters or the database from which the eligible voter list was derived), officials should determine specific access rights for each user or group, limiting each user to appropriate data fields, subsets of voter records, and purposes, as well as appropriate access modes (e.g., read, modify, delete, create). One can specify privileges for individual fields of all voters' records (e.g., authority to modify party affiliation and preferred contact method but not the mailing address). One also can specify access privileges for sets of voter records (e.g., authority to modify any part of the voter record for voters in Boston). Separately, one can specify access privileges in terms of groups of people (e.g., all data entry clerks receive the same set of access privileges) or in terms of individual employees (e.g., a privilege granted only to Alice Jones).

The basic principle underlying a sound access control policy is to minimize the number of people who have routine access (read or write) to each data item, and to minimize the amount of data that each person has access to. The rule of thumb is to give each user of the system the minimum amount of access privileges he or she legitimately needs to get the job done and nothing more. This is often known as the *Principle of Least*

### *Privilege.*

A related guideline is that users' tasks should be structured to minimize the amount of access they need and to minimize the number of people allowed to access information. For example, processes should be organized so that poll workers do not require routine access to voters' Social Security numbers or criminal conviction information.

The Principle of Least Privilege helps reduce the likely impact of security failures and abuse should they occur. For example, if some user's password is discovered by a hacker, then the hacker might gain access to everything to which the user has access. In this case, the damage will be far less if the user has only a limited degree of access to the system. By comparison, if every user receives full privileges to read and write every voter record within the state, then penetration of a single user account could lead to almost unlimited harm to the VRD. The Principle of Least Privilege also helps reduce the likelihood of insider abuse of privileges.

A user's access rights should usually depend on his or her role, location, current purpose, and so forth:

- User access privileges should be limited by jurisdiction. Election officials normally should not be granted privilege to read or modify records for voters registered outside of their jurisdiction. For example, San Diego election officials would normally not need to read or modify the records of a San Francisco voter, so they should not be given access privileges that would let them do so. As a special case for voters who move, a San Diego election official might be permitted to read the record of a San Francisco voter when performing a transfer transaction that moves the voter to San Diego County. Initiating such a transfer also might require approval by a San Francisco election official.
- An employee who processes registration forms might be allowed only to change a voter's driver's license or phone number, while an official responsible for determining eligibility might be allowed only to update whether or not a voter is eligible.
- Access might also be limited by field. For example, on Election Day poll workers need read access to some information from the voter rolls (including voter names, addresses, and party affiliations for some elections) to check voter eligibility at the polls. However, poll workers normally would not be granted any access to other fields of the voter record because such access is not needed to perform their jobs and because poll workers are not vetted as carefully as other users of the system. The access control policy should codify such privileges and restrictions.

Administrative privileges should be particularly restrictive; very few users should have the ability to grant access to others. Privileges also might be limited to account for organizational relationships. In certain circumstances, preventing municipal employees from increasing the access levels of their supervisors might remove the possibility of conflicts between database access policies and manager-employee relationships. Similarly, users with administrative privileges should never be allowed to grant themselves new access privileges; requiring the consent of another administrative user increases accountability.

Use of software that extracts and prints voter information, including the creation of

DVD-ROMs for political parties or poll workers, should be governed by the privileges of the ultimate recipient. In other words, documents or DVD-ROMs should contain only data that all of the recipients are allowed to view, even if the creators of the documents have additional privileges.

It is likely that access control policies will need to be updated periodically. As with privacy policies, older versions of access control policies should be retained, along with their dates of applicability. Furthermore, officials may wish to consider making their access control policies public in some form in the interests of transparency and to make the chain of responsibility clear.

We recommend that those responsible for managing VRDs attempt to measure how effectively they have limited privilege by characterizing how many people have access to how much data and by tracking progress over time using these metrics. For example, one might count for each voter record how many people have some kind of access privilege to at least part of this record and compute the average of this across all voter records. More refined metrics might reflect access to only some of the fields (e.g., affiliation but not full SSN). One might perform separate analyses for read access (to assess privacy risk) and write access (as a risk to accuracy). We stress that we mention these metrics only as examples of what is possible.

The EAC, or other nationwide voting administration organizations, could play a helpful role in coordinating an effort to develop suitable metrics. Ideally, such metrics would be published by each state, enabling independent analysts to evaluate each state's effectiveness at setting access control policies and facilitating comparisons of practices among states in a meaningful way.

Adding election workers to the system in an appropriate fashion is a crucial step in the operation of a VRD. It does no good to have restricted access rights if a corrupt official can add new personnel with arbitrary access privileges. There are two complementary solutions: public logs of all changes to the list of authorized parties including their access rights, and a dual signature requirement for any changes to the list (also known as two-person control). Both should be adopted for most users of the system. An exception might be made in the case of poll workers with very limited read access to the system (e.g., ability to view redacted records of only voters within their precinct) and no write access. In this case, approval by a single full-time election official might replace the dual-signature requirement.

**Access During Emergencies.** Provisions also need to be in place for handling emergencies. Officials should create rules that allow trusted election officials to temporarily increase privileges available to others. This might be achieved by creating rules that enable additional privileges under emergency conditions, together with a separate mechanism to declare to the system that an emergency exists. Emergency overrides should be tightly controlled, for example by two-person authorization, generation of detailed audit logs regarding such events, notification of the person whose privileges are delegated, and periodic proactive inspection of such audit logs. No single user should be permitted to declare an emergency and elevate his or her access privileges during the declared emergency; instead, exercise of an emergency override should require the active cooperation of at least two people.

Recognizing that people will occasionally be absent or overloaded with work, it will

sometimes be necessary to grant one employee some privileges belonging to another. If access control policies are based on roles, this can be done by temporarily assigning a new role to the appropriate individual. In any case, this should be done without revealing either employee's password to the other employee. Emergency or unanticipated delegation of access privileges should be temporary, preferably with automated procedures to remove the extra authority.

**Enforcing Access Policies.** DBMS and application server security provide several mechanisms for specifying and enforcing policies with the goal of keeping administration manageable. First, DBMSs provide mechanisms for describing the set of users. One can

- Define groups and assign users to them. Groups, rather than individuals, then become the basic unit of authorization. Similarly, one may define a role to represent a specific set of privileges (e.g., those associated with a job description).
- Give users additional descriptive properties that may be used for decisions. For example, officials might be associated with a list of zip codes for which they are responsible.

Second, DBMSs provide the means for assigning privileges to users and enforcing the access control policy. One can

- Grant a privilege for a group to access a field or specified fields of the database (e.g., encoding a policy that states that this user is permitted to view the voter's address but not the voter's full SSN).
- Grant access to a view that filters or summarizes the data but hides many details. Some views might filter by locality, while others might provide statistical summaries that are widely releasable.
- Grant access in which some items in a database are automatically filtered out based on the current user or task.

Application servers offer some of these capabilities, together with privileges to execute programs that implement business functions larger than a single DBMS request.

The VRDs should use access control mechanisms provided in the DBMS; trying to implement access control entirely at the application level leaves greater opportunity for security mechanisms to be bypassed or compromised. There should be no way for users to bypass the access control mechanisms. For each user request, either the application server policy must approve the entire operation or the DBMS must enforce access controls on each data access or both. This requires examining the user's individual credential and the privileges associated with his or her job. Implementing an access control rule in the DBMS guarantees that the rule applies to *all* operations that developers create.

**Authentication: Verifying Identity.** In any system with restricted access rights, authentication is crucial. The system needs a way for people to prove who they are; from this, their access rights must be determined and enforced.

Authentication can be done in many different ways. The most common form of

authentication is by user name and password. While superficially attractive, password authentication is subject to many failure modes including password guessing, inappropriate sharing of passwords, and inadvertent or deliberate password leakage.

Authentication schemes based on physical devices can be considerably more secure. Systems based on smart cards or timer-based tokens require the presentation of an appropriately encoded electronic device (possibly within a defined time period) for authentication. Biometrics such as fingerprints or eye scans may also provide greater security than simple textual passwords.

The potential advantages of these alternative authentication techniques may be offset by increases in cost and complexity. Lost smart cards are likely to be more expensive to replace than lost passwords. Biometrics systems may have difficulties in enrollment: difficulties in the initial capture of the finger, eye, or voiceprint may cause later problems with authentication.

Security breaches in authentication mechanisms might be exploited to achieve unfettered access to the underlying systems. To avoid this scenario, authentication mechanisms should be carefully designed and tested. Authentication servers must be highly secured, both physically and technically, and appropriate cryptographic techniques should be used. VRDs should not utilize any authentication techniques that have not been validated by extensive use in production environments.

Biometric systems are especially tricky, because many current deployments have been implemented improperly. The use of fingerprints, retinal scans, facial features, and other biometrics all rely on the conversion of these characteristics into strings of bits that can be stored and processed by computers. If these digitized versions of the biometrics are transmitted across networks or stored on multiple computers, security weaknesses in the networks or remote computers might be exploited to capture the biometrics. A malicious attacker who captures digitized biometrics might be able to use them to gain access to the system. In addition to reducing the security of the VRD, such attacks might compromise the use of the specific biometric by the affected users in any other domain. As a result, biometric data should be stored as close to the user as possible, perhaps used only to unlock a smart card. In this scenario, the user's fingerprint, for example, might be used to verify that she is the authorized user of a smart card that would then be used to access the VRD. As the biometric data would be stored only on the smart card (which is generally under the physical control of the authorized user), there are no network connections or remote hosts to tempt malicious intruders.

Biometrics also should be used only in a supervised setting to foil various forms of spoofing attack. There have been many reports of successful attacks on unsupervised biometric authentication. For example, with some facial recognition systems, holding up a glossy photograph of an authorized user to the camera is sufficient to fool the system. There also have been published reports stating it is possible fool a fingerprint recognition system by lifting the fingerprints of an authorized user off of a surface touched by that person and creating a fake "gummy finger" made out of gelatin that bears the authorized users' fingerprint.<sup>27</sup>

Different authentication schemes might be appropriate for different users or different

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<sup>27</sup> Tsutomu Matsumoto, 2002, "Gummy and Conductive Silicone Rubber Fingers: Importance of Vulnerability Analysis," pp. 574-575 in *Advances in Cryptology - ASIACRYPT 2002*, Lecture Notes in Computer Science, Vol. 2501.

tasks. The type of authentication being used should be determined by the type of task that the user is performing, the expense and complexity of the authentication scheme, and the potential harm that may be caused if the authentication system is breached.

Advanced authentication schemes are more appropriate for election workers and government officials with access to greater privileges over a wide range of voter records. In these cases, multi-factor authentication (such as requiring both a biometric and password) may be warranted, despite its higher costs or inconvenience.

Another style of authentication relies on a technology known as *certificates*. Apart from authenticating the user, certificates allow for operation in the absence of access to a permission database. A certificate can contain a user's access rights in a form that is mathematically protected from change. When a certificate is presented to a system, that system can enforce the user's access rights using only the data presented. Because certificates are too long to be memorized or typed, they frequently are stored on smart cards.

Once a user has been authenticated to the system, each operation on the database should check that the person's privileges allow him or her to perform that operation. Similarly, the database should create an audit trail for all requests that modify the database. Both of these goals are straightforward to achieve. Logging read operations may be feasible and useful though careful engineering is needed to ensure that the logging system can handle the data volume. As previously discussed, to guarantee that these access controls cannot be bypassed, access control restrictions should be implemented in the database itself, where possible.

The importance of security training cannot be overstated. Authorized users of the system must be taught about protection of passwords, how to resist social engineering attacks—attempts to deceive someone into performing certain actions—and the importance of never sharing their passwords, even with their colleagues and other authorized users. Training should include how to cope with failure scenarios such as how to proceed when normal authentication mechanisms are for some reason not functioning. Because procedures that seem arbitrary are often ignored, users should also learn how and why failure to follow procedures could lead to security breaches. Knowing why a rule is in place is the best motivation for following it.

**Operational Security.** If a partial or whole database is transferred from a central site to another location, protection becomes more difficult, especially if the data is transferred to system with different security controls. *Digital signature* techniques can protect the integrity of database dumps; thus, a county system that receives a copy of its database on a DVD-ROM could verify that the copy was properly created by the statewide system. Further, a combination of encrypted media and procedural controls (i.e., the presence of two people to decrypt the data) can help.

**Security Against Technical Attacks.** VRD systems must be secured against technical attacks, including attacks both by outside “hackers” and by insiders. When any system is connected to an open communication network, including the Internet, a wireless network, or the phone system, the risk from hackers becomes substantial. Any network-connected VRD will be exposed to attacks from anyone anywhere in the world who cares to attack it; therefore, system security needs to be sufficiently robust to survive the inevitable

onslaught of attacks. It is imperative that security be considered starting very early in the software development lifecycle so that design decisions can be made in ways that maximize security. Trying to add security as an afterthought to a completed system often leads to catastrophic security failures.

First, all communication channels should be secured. Anything transmitted over open communication networks such as the Internet, wireless network, or the phone system should be protected using end-to-end cryptography (such as a VPN or an encrypted network tunnel). This cryptography requirement applies to all channels of communication including those between local election officials and the central database. It may also be prudent to cryptographically protect all data sent over internal networks to limit the damage if a hacker is able to break into the internal network or if an insider seeks to attack the system. Cryptography is especially important if wireless networks are employed, because otherwise anyone within radio range can effectively gain insider access to the wireless network.

Second, defenses should be applied to prevent outsiders from penetrating internal systems. Firewalls should be used to severely limit connectivity between internal and external networks. One simple strategy might be to completely disconnect voting registration systems from all open networks. For example, county officials might communicate with central servers by sending authenticated DVD-ROMs through the mail. Alternatively, if network connectivity is necessary, firewalls should be used to minimize the set of communication protocols, network services, and destination addresses allowed to cross the firewall communicate from the internal network to the external network or vice versa.

Mission-critical machines should be hardened as much as possible, and they should be professionally administered. All relevant security patches should be applied, and virus scanners should be used where appropriate. Unnecessary network services should be disabled. These machines and networks should be used only for voter registration.

Third, mechanisms should be deployed to detect any penetration of system defenses, as well as any insider misuse. For example, application-specific intrusion detection systems could be used to monitor the number of updates to the VRD. Any large spike in activity, whether by an authorized user or in the aggregate, might warrant human attention. In addition, officials could consider contracting with a third-party network security monitoring service to detect network intrusions and attempted attacks on the system.

Fourth, care should be taken to ensure that it is possible to recover from security failures. Regular backups are a simple and effective method for recovering from known failures. All modifications to the database should be logged to write-once media to provide a trustworthy audit trail and enable after-the-fact forensic investigations. Offsite storage of backups can reduce the risk of catastrophic loss of voter registration data. However, backups themselves must be secured, possibly including encryption, so that their loss does not compromise voter privacy or reveal information.

Denial-of-service attacks are particularly vexing. Such an attack could render the VRD unreachable or non-functional when it is most needed. Election officials should be aware that systems connected to open networks are almost invariably subject to malicious denial-of-service attacks that render the system unavailable or unreachable. Because it is beyond the state-of-the-art to completely prevent denial-of-service attacks, either officials

should have a plan prepared for how to ride out and survive such attacks, or they should avoid the use of open networks. For example, one might arrange to use DVD-ROMs if the network has been rendered unusable. Because of the threat of Election Day denial-of-service attacks, officials should ensure that it is possible to function without any network connectivity on this day. Options might include downloading all critical data to polling places several days in advance or distributing copies of the registration list printed on paper. These issues are also discussed in Chapter 6 on reliability.

Fifth, officials should obtain an independent review of their system before deployment. We recommend hiring a group of skilled experts to evaluate VRD security. These experts will conduct a thorough risk analysis of system requirements, architecture, security processes, and all other aspects of the system. These reviews should check for flaws that would allow attackers to obtain privacy-sensitive information, to compromise the integrity of the database by modifying information without authorization, or to mount denial-of-service attacks that would render the VRD inoperable. The use of technical, physical, and human procedural measures to attempt to penetrate a system can also identify security problems that might otherwise have been overlooked.

Officials should consider including an independent security review and publication of the software as part of the acceptance testing for the system. Claims that the security of the system will be endangered by such a review should be treated with extreme skepticism or rejected outright.

Sixth, the technical security of the system needs to be viewed as an ongoing responsibility, with resources devoted to it accordingly. Election officials may find it useful to perform periodic security audits of their system to ensure that system security is kept up to date as technology and attacks change. As the system will evolve over time, and as the threats will change with time, it is important that the system be tested for security issues on a periodic basis. In particular, the system should be fully evaluated after any major upgrades and after recovery from any significant incident

**Dealing with Security Failures.** In spite of good security measures, there is always some possibility that an attacker will carry out a successful attack. When successful attacks do occur, the system should protect the ability of users (including both election officials and voters) to carry out their activities with as little disruption as possible. Additionally, because prosecution of attackers can act as a deterrent to future attackers, it is important that systems be designed to support potential identification and prosecution of attackers, for example, by keeping audit logs and maintaining a proper chain of custody for relevant records.

Electronic registration databases heighten the need for well-designed recovery mechanisms, because a statewide electronic database potentially introduces opportunities for more, and more significant, failures. To the extent possible, existing policies and laws should be applied.

We discuss three categories of security failures:

- unauthorized disclosure of data in which some data is seen by someone who is not authorized to see the data;
- breaches of integrity, in which ineligible voters are wrongly registered and/or actually vote or in which eligible voters are disenfranchised or wrongly prevented from

- voting; and
- breaches of reliability, possibly occurring on Election Day, in which legitimate users of the database are unable to get necessary results.

**Unauthorized Disclosure of Data.** Disclosure can occur by accident or on purpose. Unauthorized disclosure can happen when an authorized user of the system exceeds his privileges, or when an outsider gains unauthorized access. VRDs should incorporate audit logs (discussed in Chapter 2 on accuracy) that record all attempts to read registration data. With appropriate scrutiny of these audit logs, it may be possible to detect many cases of unauthorized disclosure.

To the extent possible, individuals should be notified if it is determined that data about them has been or may have been obtained inappropriately. Security breach notification laws in California and other states are already having a beneficial effect in this regard.

**Breaches of Integrity.** The intentional corruption of official records is both a federal and state crime falling under many different statutes, giving prosecutors a number of options. However, unless appropriate audit trails, procedures, and detective controls are in place, security breaches are unlikely to be noticed and identified as potential criminal acts.

Because of the high legal and public relations cost of disenfranchising legitimate voters or allowing ineligible people to vote on Election Day, states should have procedures for auditing and quantifying the accuracy of registration data before an election. For example, election officials could perform an audit of a statistically-significant random sample of all changes to the voter registration database since the last election to look for anomalies, followed by a more thorough audit if anomalies are found. Such an audit should be performed sufficiently in advance that corrective actions can be taken before Election Day if errors are discovered.

To avoid disenfranchisement of legitimate voters on Election Day, it is also important to avoid creating a culture among poll workers that assumes that the computer is always right. In particular, it should be possible for someone who thinks she is a registered voter but is not in the database to cast a provisional ballot that can be counted later, if it is subsequently determined that she is an eligible voter.

**Breaches of Reliability.** Unlike breaches of data and integrity, which can go undetected, breaches of reliability are easily detectable. Audit logs, including firewall logs, are crucial for tracing and perhaps prosecuting malicious attackers. To limit the impact of reliability breaches on Election Day, we suggest that each polling place be given a backup copy of the data that will be needed to validate eligible voters within that precinct. This list should contain only the information needed for validating voters. For example, Social Security numbers might be redacted from the backup list. Existing policies allow the polls to be kept open beyond the scheduled closing time if failures occur; we recommend these policies be followed. Reliability issues and fallback procedures are discussed in more detail in the next chapter.

## 6. Reliability

Reliability is often thought of as system availability (i.e., whether the system is up and running 24x7). However, to better understand reliability, we need to understand the *goals* of reliability in a statewide VRD.

While 24x7 operation may achieve these goals, solutions that are more economical are possible because reliability can often be achieved without continuous online access to the database. For example, if regulations impose a deadline for registration or registration changes sufficiently in advance of an election, static snapshot copies of the database may be adequate for supporting Election Day verification of voter registration. Static copies may well prove more reliable than attempting to guarantee reliable network access from each polling place.

We assume that VRDs will have more intense usage in the months immediately prior to the election, with a very large spike in usage during and immediately following the election itself. Activity before an election includes absentee voting, in-person absentee voting, and early voting. Absentee and in-person absentee voting occurs anywhere from 10 to 45 days before Election Day, and early voting usually occurs 10 to 14 days before Election Day.

With this in mind, we divide the recommendations for design of a VRD into two classes—namely, *technical* and *operational* mechanisms for ensuring reliability. We also give recommendations for ensuring reliability during the development of the database.

**Technical Mechanisms for Reliability.** The hardware/software combination used to access the VRD needs to provide good response and reliable service. It should be designed to work well both in non-election times, when the major activity is voter registration, and in the high-activity times, immediately prior to and during the election itself.

We list several design choices that can be used to improve reliability and discuss recommendations and caveats to be considered when evaluating choices.

**Redundancy.** While redundant communications systems (e.g., multiple network connections from different providers) have been used successfully,<sup>28</sup> care must be taken to ensure that the systems are truly redundant. For example, a modem and ADSL connection<sup>29</sup> over the same phone line provides little redundancy; two ADSL lines from different providers probably provides less still, as they likely utilize the same central

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<sup>28</sup> The Federal Aviation Administration, for example, makes frequent use of redundant systems for air-traffic control. This includes both alternate communication links such as redundant fiber links for Airport Lighting Control and Monitoring Systems (see AC 150/5345-56) and independent approaches such as using Flight Service Station communications as a backup for relaying Air Route Traffic Control Center instructions if direct ARTCC contact is lost (see Aeronautical Information Manual).

<sup>29</sup> “ADSL, which stands for Asymmetric Digital Subscriber Line, is a broadband communication technology designed for use on regular phone lines. It has the ability to move data over the phone lines at speeds up to 140 times speedier than the fastest analog modems available today.” From <http://www.dsllife.com/tutorial/faq.htm>.

switch leased from the local telephone company.

A more robust form of redundancy is to support independent approaches to accomplish the same task. For example, using online access to a centralized statewide database as the primary means of entering voter registrations allows immediate verification of registration. However, a power failure affecting a central database immediately before a registration deadline could prevent registration workers from entering registrations in time. Allowing local entry, followed by later online validation/verification of the entered values, could provide operational reliability similar to redundant power sources for the central database, but at less cost.

**Replication.** Replicating data in multiple places has value, but the impact of likely or anticipated types of failures must be evaluated to ensure that replication significantly increases reliability. Replicating the database may not protect against software failures that cause errors to spread to all copies, and keeping the replicated databases in different physical locations has the added cost of space for the replicated system and communication lines between the locations for updating the replicas. Additionally, replicated data may not be useful if communications problems at polling places make network access unavailable. Careful archival procedures combined with adequate fallback procedures may be more cost effective and provide as effective reliability as replication.

For example, sending DVD-ROM copies of the relevant part of the database to polling places shortly before an election would provide both a high degree of replication and a fallback procedure for access to the data if either centralized database or communication failures occur. However, the use of DVD-ROM copies must be tempered by the increased risk of disclosure of information. The information stored on such copies should include only the data that would otherwise be available to the polling place and no more. As discussed in Chapter 5 on security, encryption and digital signatures, along with appropriate policies for their use, should be used to protect these copies.

Building and including redundancy is not sufficient. The system must also be tested under realistic situations as discussed in the testing section of this chapter.

**Distribution.** As was discussed in the introduction, statewide VRDs are being implemented as top-down, in which the master copy of the database is stored in a centralized location, or bottom-up, in which the master copy of the database is actually distributed among many databases. A properly designed distributed database can provide a centralized list of voters as HAVA mandates. The design of a distributed VRD must be evaluated to ensure both that no single failure (hardware or software) can bring down all the connected databases and that fallback procedures are adequate in each county to protect against localized failure.

Distributed databases can serve as a good backup and contain damage caused by failures, including software failures and actions of malicious insiders. However, designers must be aware that distributed database systems can be vulnerable to mass propagation of errors if processes are designed to apply to all the databases at once. Another potential problem is to design a distributed database system so that individual parts cannot act independently. For example, one can design a system that requires that a county database coordinate with a central database for every transaction. It is important

to design a distributed database so that these possibilities are minimized.

Database distribution also increases the difficulty of ensuring the accuracy of the data, unless the system is designed to coordinate the data in the individual databases. One of HAVA's main requirements is that data should be coordinated between VRDs and other databases; therefore, this element should be part of every distributed VRD's design.

**Centralization.** Centralized databases face a different set of reliability challenges. If the entire database is stored in a central location, this location becomes a single point of failure. Power difficulties, network problems, or other reliability problems with the central location might bring voter registration activities to a halt throughout the state. Although replication and redundancy can help reduce such risks, additional costs may be involved. The use of alternative methods to access and input data, including DVD-ROMs, printed voter lists, and paper forms, may be particularly important when centralized databases are used.

**Archives.** When data is backed up, the backup files can be recycled or can be retained as long-term archives. Archives safeguard against loss from software failures, intrusion, or malicious insiders who could damage less resilient kinds of backup. Consequently, an archive must be protected from modification through write-once media such as DVD-ROM to ensure against both accidental and intentional erasure or modification.

A second use of archival material is for forensics—that is, identifying what went wrong when a failure occurs, correcting the problem, and preventing new failures (this includes both human- and system-caused failures). To ensure detection of malicious action, it is important to log and archive all changes to the database. With the decreasing cost and increasing density of backup media, long-term maintenance of such logs, which we recommend, can be achieved at reasonable cost.

**Operational Mechanisms for Reliability.** Reliability will not be achieved solely through technical means. Provisions must exist to ensure the integrity of the election process in spite of possible Election Day failure of the registration database. Since it should always be assumed that something could go wrong, a system must include operational procedures, or fallback processes, that ensure reliability in spite of technical failures. While these procedures are often tied to the technical design decisions, it is necessary to *document* the operational procedures to be followed in the event of database failures.

We recommend that for each process there be at least one specified alternate process to follow in case of failure. In particular, there should be a fallback procedure for each process that could affect the ability of people to vote on Election Day. For example, suppose the process requires that voters physically sign a voter registration list. In case the correct list is not sent to the polling place, we recommend as a fallback that there be a back-up computer system and communication line available at the polling place, so that people's names can be looked up online. If the process requires that voters' names be looked up online, then a fallback would be to provide paper copies of the list in case the computers or their connections go down. Further, Election Day verifications can be done (1) via paper systems, (2) via personal computers or handheld devices with DVD-ROMs, or other methods of holding static copies of the voter list, or (3) via personal computers

or handheld devices connected by electronic communication links to central VRDs. Regardless of the method used, a fallback process should be devised to deal with its failure. When appropriate, these processes should operate in tandem with provisional balloting and other measures designed to protect a voter's right to vote.

**Provisions for Delayed Entry of Registration Information.** While direct entry of voter registration information into the database may be desirable, allowing immediate confirmation of registration that requires direct entry could undermine the registration process in case of system failure. As discussed previously, fallback procedures must be developed to support alternate means of registration.

**Testing Issues.** A VRD must be tested to ensure that it will function reliably when placed into service. The problem is that it is impossible to do a true stress test on a VRD because there is no way to completely replicate the stress of an Election Day except to have an election. However, through effective modeling of the system and its capabilities, it is possible to design tests that effectively simulate the stress of actual use. This imposes the requirements on the contracting agency of ensuring that sufficient information is available for vendors/developers and quality assurance groups to adequately model the system.

Technical measures designed to increase greater reliability also should be tested. When used, replication and redundancy facilities might be tested by trying to operate the system when all or part of the system is unexpectedly taken offline. In accordance with EAC recommendations, archival backups should be tested regularly.<sup>30</sup>

The system also should be secured against external network-based attacks (see Chapter 5 on Security). Tests that simulate denial-of-service and related attacks can be used to evaluate the robustness of the VRD and possibly identify weaknesses that should be addressed.

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<sup>30</sup> U.S. Election Assistance Commission, 2005, *Voluntary Guidance on Statewide Voter Registration Lists*, available online at [http://www.eac.gov/docs/Statewide\\_Registration\\_Guidelines\\_072605.html](http://www.eac.gov/docs/Statewide_Registration_Guidelines_072605.html).

## Appendix A: Glossary

Following is a relatively non-technical glossary of terms referred to in the report. Our intent is for the report to be readable by as many people as possible; for that reason, many of the definitions below are not as technically detailed as they might be. For more exhaustive technical definitions or explanations of these and other related terms, please refer to one of the two documents noted at the end of the glossary.

**Access control policy** – A list of rules assigning access privileges to system users.

**Access privilege** – The right to read or update a particular kind of data, or to execute a particular operation.

**Application** – One or more computer programs developed to provide specific functionality. Examples include such things as word processing applications, web browsers, database software, and so on.

**Authentication** – The process of verifying that a person is who he or she claims to be – for example, specific knowledge of a personal identification number (or PIN) is often used to authenticate ATM card users.

**Backups** – Copies made for the purpose of safeguarding information; making regular backups of important data is a widely recognized best-practice.

**Batch update** – A group of additions, modifications, or deletions to a database received from what is believed to be an authorized source (e.g., a local county).

**Biometrics** – Authentication techniques that rely on an individual’s physical attributes (for example, fingerprints, iris scans, facial recognition, and so on).

**Bottom-up** – Approach to managing voter registration data whereby each county or municipality may keep its own database of records for voters within the county, and the county’s records may be reconciled with a database run by the state on a periodic basis. *See also “top-down.”*

**CAPTCHA™ (Completely Automated Public Turing Test to Tell Computers and Humans Apart)** – is a mechanism used to verify that a human user is completing a form, as opposed to a computer program. Generally, CAPTCHA tests consist of an image that contains distorted text that is easy to read for humans, but very difficult for computer software to interpret.

**Certificate** – A cryptographic tool used to verify such things as the identity of a computer, the source of a program, the integrity of a message, or the identity of the source of a message.

**Ciphertext** – Information rendered unintelligible except to those who can decrypt it; (encrypted plaintext).

**Data element** – A basic data structure in a database (for example, “last name,” “address,” “city,” and so on).

**DBMS** – A database management system is a computer program (or a suite of programs)

that enables users to store, modify, and retrieve information from a database.

**Decryption** – The process of turning ciphertext back into plaintext. *See Encryption.*

**Denial of service attack** – An attack on a system where the objective is to prevent the normal use of that system, often by overwhelming the system with a large volume of seemingly normal transactions or requests for data.

**Digital Signature** – An electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified.

**DVD-ROM** – Digital versatile disk (originally “digital video disc”) is an optical storage disk similar to compact disks (CDs). However, DVDs are capable of storing much more data. ROM, or read-only memory, refers to disks that are capable of being written to only once.

**Encryption** – The process for turning plaintext (e.g., a person’s name and address) into ciphertext, where the meaning of the encrypted plaintext is obfuscated. *See also Decryption.*

**FIPs** – Fair Information Practices, a widely accepted set of principles (e.g., notice, security, minimization, and so on) for addressing concerns about information privacy.

**Firewall** – A means for preventing unauthorized access to a given system. Firewalls (both hardware and software firewalls) allow administrators to regulate the kind of traffic and data that flow into and out of a system.

**HAVA** – The Help America Vote Act of 2002 (P.L. 107-252). Election reform legislation that mandated statewide VRDs.

**Heuristic evaluation** – A strategy for evaluating user interface designs. In heuristic evaluations, usability experts examine user interfaces for consistency, proper feedback and error handling, and other criteria. Heuristic evaluation can often be a cost-effective alternative to more rigorous evaluation via controlled user studies.

**Internet Protocol (commonly referred to as "IP")** – is a connectionless, best-effort packet-switching protocol and makes up part of the TCP/IP suite of protocols that enable machines to communicate with each other on the Internet.

**Intrusion detection system** – An application designed to detect attacks on a network or computer system.

**Logs** – Records of actions within a system, often contained in specific files (for example, audit log files, error log files, and so on). Information found in logs generally includes a description of what was done, when it was done, who did it, and other details necessary to construct an accurate and complete record of what happened.

**Merges/purges** – Batch updates that involve the integration, alteration, or removal of large amounts of data in an automated fashion (for example, updating voter records in a database by comparing data with a driver’s license database, or removing records in a voter database based on records added to a death record database).

**Plaintext** – Intelligible information; generally in a form readable by a person (decrypted ciphertext).

**SSN** – Social Security number.

**Top-down** – An approach to managing voter registration data whereby state officials administer a single master computer server; all voter records are stored on that central server, and all requests to view or modify voter records are executed on the central server. *See also* “*bottom-up*.”

**Truncation** – The practice of displaying only part of an identifying number (e.g., a Social Security number) for the purposes of identity verification.

**VPN** – Virtual private network.

**VRD** – Voter registration database.

**Web-based** – Applications that are accessed via the Internet (or an intranet), generally using a web browser (e.g., web-based email services like Google’s Gmail or Yahoo! Mail).

**Note:** Other relevant resources include the glossary associated with Volume One of the U.S. Election Assistance Commission’s *Voluntary Voting System Guidelines*, which is available online at [http://eac.gov/vvsg\\_intro.htm](http://eac.gov/vvsg_intro.htm), and the Consolidated Security Glossary by the NIST IEEE POSIX P1003.6 Security Working Group, which is available at [http://www-08.nist.gov/posix/framework\\_wg/glossary.asc](http://www-08.nist.gov/posix/framework_wg/glossary.asc).

## **Appendix B: Biographies of Committee Members**

### **Paula Hawthorn, Ph.D., Co-Chair**

Dr. Hawthorn received her Ph.D. in Electrical Engineering and Computer Science from the University of California in 1979. Her thesis topic was on the performance of database systems. She has spent much of her career as a manager of database development, including Vice-President of Software Development for start-ups such as Britton Lee and Illustra, and both management and individual contributor positions at Hewlett-Packard (working on database performance issues) and Lawrence Berkeley National Laboratory. She is now mostly retired, with occasional consulting and continuing involvement with U.C. Berkeley.

### **Barbara Simons, Ph.D., Co-Chair**

Dr. Simons earned her Ph.D. from U.C. Berkeley and was a computer science researcher at IBM Research, where she worked on compiler optimization, algorithm analysis, and scheduling theory. A former President of the Association for Computing Machinery (ACM), Dr. Simons founded ACM's U.S. Public Policy Committee (USACM) and served for many years as chair or co-chair of USACM. She was a member of the National Science Foundation panel on Internet Voting, the security peer review group for the DoD's Internet voting project (SERVE), and the President's Export Council's Subcommittee on Encryption. She is on several boards of directors, including the U.C. Berkeley Engineering Fund and the Electronic Privacy Information Center, as well as the Advisory Board of the Oxford Internet Institute and the Public Interest Registry's .ORG Advisory Council. She has testified before both the U.S. and the California legislatures. Dr. Simons is currently co-authoring a book on voting machines and related issues.

### **Steven M. Bellovin, Ph.D.**

Dr. Bellovin is a Professor of Computer Science at Columbia University. He recently joined the faculty after many years at Bell Labs and AT&T Labs Research. He is an AT&T Fellow and a member of the National Academy of Engineering. Dr. Bellovin is the coauthor of *Firewalls and Internet Security: Repelling the Wily Hacker* (2d ed. 2003) and holds several patents on cryptographic and network protocols. He has served on many National Research Council (NRC) study committees and is a member of the Department of Homeland Security's Science and Technology Advisory Committee. He has been a member of the Internet Architecture Board and co-director of the Security Area of the Internet Engineering Task Force.

### **Chris Clifton, Ph.D.**

Professor Clifton has a Ph.D. in Computer Science from Princeton University, and Bachelor's and Master's degrees from the Massachusetts Institute of Technology. He first worked on reliability and availability of database systems at IBM Research in the 1980s. He also worked on data mining and database security issues while at the MITRE

Corporation and, more recently, has been leading research on privacy-preserving data mining since joining the faculty of Purdue University.

### **Lillie Coney**

Ms. Coney is Associate Director with the Electronic Privacy Information Center (EPIC). Her issue areas include nanotechnology, surveillance, children's privacy, civil rights and privacy, coalition development, spectrum, census, and electronic voting. Ms. Coney also serves as Coordinator of the recently established National Committee on Voting Integrity (NCVI). NCVI was created in 2003 in response to growing concerns about the reliability of electronic voting systems.

### **Robert Gellman**

Robert Gellman is a privacy and information-policy consultant in Washington, D.C. He advises companies, government agencies, and other institutions on how to address privacy concerns on the Internet, implement the federal medical-privacy rules, and integrate privacy law and policy in their national and international operations. A graduate of Yale Law School, Gellman has worked on information-policy issues for more than 25 years. He spent 17 years as chief counsel to a subcommittee in the U.S. House of Representatives responsible for privacy, freedom of information, government information dissemination, health-record confidentiality, and other information-policy matters. He also served as a member of the U.S. Department of Health and Human Service's National Committee on Vital and Health Statistics (1996-2000), a federal advisory committee with responsibilities for health-information infrastructure matters, including the Health Insurance Portability and Accountability Act.

### **Harry Hochheiser, Ph.D.**

Dr. Hochheiser received his Ph.D. in Computer Science from the University of Maryland, and bachelor's and master's degrees from the Massachusetts Institute of Technology. His research interests include information visualization, bioinformatics, human-computer interaction, universal usability, and privacy. A former member of the board of directors of the Computer Professionals for Social Responsibility (CSPR), Dr. Hochheiser wrote CPSR's FAQ on Internet filtering systems. He has also written about the policy implications of Internet privacy protocols. He is a founding member of the ACM SIGCHI Committee on U.S. Public Policy.

### **Ralph Spencer Poore**

Ralph Spencer Poore (Principal Consultant at Inovè LLC and Senior Partner at Pi "R" Squared Consulting LLP) has over thirty years of information technology experience with emphasis on privacy, security, audit and control in electronic commerce, enterprise systems, and enabling technologies. His involvement in national and international standards for electronic commerce includes participation on two Internet Engineering Task Force (IETF) working groups and chairmanship of an ad hoc working group of the

Accredited Standards Committee X9, Financial Services, subcommittee X9F Data and Information Security. He founded and chaired the Standards Review Committee of the Information Systems Security Association (ISSA) and participates on the Global Executive Committee of the Generally Accepted Information Security Principles (GAISP) Committee. Mr. Poore has developed and patented security and privacy products, taught cryptographic security courses, and provided assurance services across a broad range of private sector and governmental organizations. He is an inventor, author, and frequent speaker on topics ranging from privacy to transnational data flows. Mr. Poore is a Certified Fraud Examiner (CFE), Certified Information Systems Auditor (CISA), Certified Information Systems Security Professional (CISSP), and Certified in Homeland Security-Level III (CHS-III).

**Arnon Rosenthal, Ph.D.**

Dr. Rosenthal is a Principal Scientist at The MITRE Corporation, doing consulting and research on databases and distributed systems. In recent years, his research and consulting has focused on data sharing, privacy, and security. He received a Ph.D. in 1974 from U.C. Berkeley. He was on the faculty of the University of Michigan and worked at Sperry Research and Computer Corporation of America. He has held visiting positions at the Swiss Federal Polytechnic (ETH Zurich) and IBM Research. He has served on numerous conference program committees and is an Associate Editor of the ACM Transactions on Database Systems.

**David Wagner, Ph.D.**

Professor Wagner is an Assistant Professor in the Computer Science Division at the University of California at Berkeley with extensive experience in computer security and cryptography. Dr. Wagner is an Alfred P. Sloan Research Fellow and a CRA Digital Government Fellow. Dr. Wagner was a co-designer of one of the Advanced Encryption Standard finalists, and he remains active in the areas of computer security, cryptography, and e-voting. In the past, Dr. Wagner has served as a member of the Security Peer Review Group for the SERVE Internet voting project and as a technical advisor to the ACLU Ad-Hoc Committee on Touchscreen Voting. Currently, Dr. Wagner is a member of the California Secretary of State's Voting Systems Technical Assessment Advisory Board.

**Rebecca N. Wright, Ph.D.**

Dr. Wright is an Associate Professor in the Computer Science Department at Stevens Institute of Technology in Hoboken, New Jersey. Her research spans the area of information security, including cryptography, privacy, foundations of computer security, and fault-tolerant distributed computing. Dr. Wright serves as an editor of the Journal of Computer Security (IOS Press) and the International Journal of Information and Computer Security (Inderscience), and she is a former member of the board of directors of the International Association for Cryptologic Research. She received a Ph.D. in

Computer Science from Yale University in 1994 and a B.A. from Columbia University in 1988.

Appendix 10: Testimony to Election  
Assistance Commission  
(Aug. 23, 2005) by Lillie  
Coney, Senior Policy Analyst  
of the Electronic Policy  
Information Center

Testimony  
Lillie Coney  
Before the  
U.S. Election Assistance Commission  
Proposed Voluntary Voting System Guidelines  
Denver, Colorado  
August 23, 2005

The Electronic Privacy Information Center (EPIC) and its project the National Committee for Voting Integrity (NCVI) would like to thank the U.S. Election Assistance Commission (EAC) for the opportunity to participate in a hearing regarding the proposed Voluntary Voting System Guidelines. The EAC's promulgation of the final document is greatly anticipated by states, election officials, technologists, and especially the voting public.

I am the Associate Director of the Electronic Privacy Information Center (EPIC) located in Washington, DC. EPIC is a public interest research center established in 1994 to focus public attention on emerging civil liberties issues as they relate to information technology and to protect privacy, the First Amendment, and constitutional values.

Although, I am testifying before you today, this testimony is a collaborative effort of the members of the National Committee for Voting Integrity. This statement will focus on the importance of election administration to successfully meet the challenge of creating in practice: reliable, secure, accessible, transparent, accurate, and auditable public elections.

Thomas Jefferson wrote that, "The first principle of republicanism is that the lex majoris parties [the will of the society] is the fundamental law of every society of individuals of equal rights [...] [T]o consider the will of the society enounced by the majority of a single vote as sacred as if unanimous is the first of all lessons in importance, yet the last which is thoroughly learnt."

Although it has always been within Congressional authority to regulate federal elections, it has rarely done so.<sup>1</sup> The Presidential Election of 2000, made it publicly

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<sup>1</sup> U.S. Constitution, Section 4, Clause 1,

- "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

U.S. Constitution, Section 5, Clause 1,

- "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to

known that the mechanisms of democratic elections within this nation were in desperate need of repair. As a result, Congress passed the Help America Vote Act of 2002 (HAVA), in response to the breakdown in the vote tabulation process during Florida's recount conducted at the conclusion of the 2000 Presidential Election.<sup>2</sup>

Post election analysis of 2000 and 2004, and legal challenges, which followed these presidential elections have identified many obstacles to reliable public election, which include problems with: voter registration,<sup>3</sup> voter roll purges,<sup>4</sup> poll place practices,<sup>5</sup> accessible polling locations, and voting technology,<sup>6</sup> usability of voting mechanisms, absentee ballot problems,<sup>7</sup> and vote tabulation.<sup>8</sup> Between 4 and 6 million voters were disenfranchised by the public election process in 2000.<sup>9</sup> In short--voters are the ultimate victims of failed election systems, but the least prepared to protect their interest in the public election process.

The bar for voting technology and election administration should not be set artificially low by the final guidance produced by the Commission. Voters need an advocate for their interests before, during, and after public elections. They need voting

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- compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.”

In 1845 added to the U.S. Code Title 3, Chapter 1, § 1

“The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.”

<sup>2</sup> Help America Vote Act of 2002 (HAVA), Public Law Number 107-252, October 29, 2002

<sup>3</sup> David Baltimore and Charles M. Vest, Caltech/MIT report, “Voting: What is What Could Be” July 2001

People for the American Way, NAACP, Lawyers Committee for Civil Rights Under the Law, Special Report, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections" December 2004.

Lillie Coney, Testimony, Election Assistance Commission's Technical Guidelines Development Committee, September 22, 2004

<sup>4</sup> ACLU, Right to Vote, Demos, Report, “Purged” October 2004

<sup>5</sup> David Baltimore and Charles M. Vest, Caltech/MIT report, “Voting: What is What Could Be” July 2001

Lillie Coney, Testimony, Election Assistance Commission's Technical Guidelines Development Committee, September 22, 2004

<sup>6</sup> David Baltimore and Charles M. Vest, Caltech/MIT report, “Voting: What is What Could Be” July 2001

<sup>7</sup> *id.*

<sup>8</sup> *id.*

<sup>9</sup> David Baltimore and Charles M. Vest, Caltech/MIT report, “Voting: What is What Could Be” July 2001

systems and procedures that reflect the best that human factors, computer science, cryptography, data protection, security, computer architecture, and informatics can produce. If the best resources of these disciplines were brought together to create the perfect voting system, but poll workers still lack training, then the effort would be meaningless.

The quality of the work produced by the EAC is a direct result of the support that the agency has received from Congress in the form of maximum allowable staff, and the funds provided. HAVA requires that the EAC produce a number of reports and meet fixed deadlines, such as the one regarding promulgation of voluntary voting system guidelines. Therefore, our comments today are intended to assist the EAC with producing the best possible document to guide states in developing reliable, secure, accessible, transparent, accurate, and auditable election systems.

Dr. Peter Neumann expressed it best when he said, “Elections require an end-to-end concern for a wide variety of integrity requirements, beginning with the registration process and ballot construction, and continuing through vote tabulation and reporting.”<sup>10</sup>

The EAC is limited to providing voluntary guidance to states on statewide-centralized voter registration databases, and voting systems.<sup>11</sup> This guidance may be used by some states as if they have the force of federal law. For this reason, it is important to offer clear and effective guidance to states on issues of functional capability, hardware, software, telecommunication, security, quality assurance, and configuration of voting systems. It is worth noting that four of the sections of Volume 1 of the draft Voluntary Voting System Guidelines are identified at “requirements” while other are not.<sup>12</sup>

### *General Comments*

While the draft Voluntary Voting System Guidelines is an improvement in some respects over the standards under the Federal Election Commission process for 1990 and 2002. The increased attention to accessibility for voters with disabilities and language minorities is a step forward over previous voting technology standards. The document’s treatment of security, transparency, and auditability reflects no improvement over

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<sup>10</sup> Peter Neumann, “Statement of Support for the LCCR/Brennan Center/Report, available at [http://www.civilrights.org/issues/voting/lccr\\_brennan\\_support.pdf](http://www.civilrights.org/issues/voting/lccr_brennan_support.pdf), June 29, 2004

<sup>11</sup> Help America Vote Act of 2002, (HAVA) Public Law 107-252, October 29, 2002

<sup>12</sup> Election Assistance Commission, Volume 1, Voluntary Voting System Guidelines:  
Volume 1, Section 4, Software Requirements  
Volume 1, Section 5, Telecommunications Requirements  
Volume 1, Section 7, Quality Assurance Requirements  
Volume 1, Section 8, Configuration Requirements

previous standards. Some sections of the draft pose serious challenges to election integrity and voter privacy.

### *Privacy*

Technology that facilitates the right of citizens to participate in the public discourse may threaten privacy, especially when it is associated with the administration of elections and, under certain conditions, the very act of voting.<sup>13</sup> The use of technology in the online<sup>14</sup> and offline<sup>15</sup> voting process is growing in popularity around the world.<sup>16</sup> The Charter of Fundamental Rights of the European Union<sup>17</sup> and the United Nations Universal Declaration of Human Rights<sup>18</sup> support the right of citizens to both privacy and self-governance. Democracies are universally defined as the most efficient means of supporting self-governance through citizen participation in the form of voting. The secret ballot has long been considered an integral requirement of democratic governance.

The balance between a state's right to ensure that intimidation and election fraud are not present in public elections, and the voter's right to privacy has resulted in the development of the secret ballot and restricted zones around voting compartments.<sup>19</sup> Because of the documented history of voter intimidation, coercion, and fraud associated with third-party knowledge of how individual voters cast their ballots, it is important not to underestimate the importance of voter privacy. No community is immune to the effects of voter manipulation, but some communities are more vulnerable than others—for example racial minorities; new citizens; language minorities; mobility and visually challenged; and the poor.

Federal and state courts as well as legislatures have historically taken steps to protect the right of voters to vote their conscience without fear of retaliation.<sup>20</sup> The Supreme Court in its majority opinion in *Buckley v. Valeo*, stated that, "Secrecy, like

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<sup>13</sup> Associated Press, "Widow with Visible Vote Gets No Help," Los Angeles Times, March 12, 1992, Part A, at 15.

<sup>14</sup> Parliamentary Office of Science and Technology Post Notes, May 2001 Number 155 Online Voting, available at <<http://www.parliament.uk/post/pn155.pdf>>.

<sup>15</sup> European Commission Cybervote Project Report, Chapter 2: The History of the Internet, available at <<http://www.eucybervote.org/Reports/KUL-WP2-D4V1-v1.0-01.htm>>.

<sup>16</sup> See generally EPIC's Voting Page web page <<http://www.epic.org/privacy/voting/>>.

<sup>17</sup> Charter of Fundamental Rights of the European Union Article 39, available at <[http://www.europarl.eu.int/comparl/libe/elsj/charter/art39/default\\_en.htm](http://www.europarl.eu.int/comparl/libe/elsj/charter/art39/default_en.htm)>.

<sup>18</sup> UN Declaration of Human Rights General Assembly resolution 217 A (III). 10 December 1948, available at <<http://www.un.org/Overview/rights.html>>.

<sup>19</sup> *Burson v. Freeman*, 504 U.S. 191, 207-208 (1992)

<sup>20</sup> Lillie Coney, Testimony before the U.S. Election Assistance Commission's Technical Guidelines Development Committee, September 22, 2004

privacy, is not per se criminal. On the contrary, secrecy and privacy as to political preferences and convictions are fundamental in a free society. Chief among the election reforms of the 1800s was the adoption of the secret ballot.”<sup>21</sup> The Supreme Court in *Burson v. Freeman*, found that “the very purpose of the secret ballot is to protect the individual’s right to cast a vote without explaining to anyone for whom, or for what reason, the vote is cast.” 504 U.S. 191, 206 (1992), quoting *Rogers v. Lodge*, 458 U.S. 613, 647 n.30 (1982) (Stevens, J., dissenting)

These cases along with others demonstrate the inseparable nature of voting and privacy.<sup>22</sup> The Voluntary Voting System Guidelines would serve the needs of the voter best by linking the privacy of voters to the integrity of public elections. The Sequoia AVC Edge touch-screen voting system, used in Nevada in 2004, seriously compromised voter privacy, by the introduction of a paper ballot system that records votes on a single continuous roll of paper. Section 6.8.5.2 of the Commission’s draft to provide guidance to states is correct to disallow this type of ballot recording system. It is important that this document make as strong a statement as possible regarding the importance of voter privacy and the secret ballot. The guidance regarding the voter privacy found in Volume 1, Appendix C Best Practices for Election Officials should be part of the sections on functionality, hardware, software, and security.

The privacy of voters who cast ballots by absentee methods or during early voting are just as important as votes cast on Election Day. The guidance should address the need to minimize and wherever possible eliminate the threat to absentee voter privacy. It would be beneficial to direct states to follow the example of those states that require a double envelope and only include mailing information on the exterior envelope. References to party affiliation and other election related information should be placed on the interior envelope. Internal election administration procedures should as soon as it is practical, separate the returned voted ballot from the exterior envelopes. The importance of assuring that all ballots are cast in secret and remain secret cannot be overstressed.

### *Transparency*

Transparency is a key component of a functioning healthy democracy. It can be translated into public policy decisions that allow citizens, policymakers, and the media to assure themselves that a local, state or federal government agency is functioning as intended. In this context, the process of providing transparency is referred to as "open government." Open government can be accomplished in a number of ways, which may include: public meetings, public rulemaking notices, reasonable public comment periods, access to rulemaking proceedings, official reports, and open records laws. The

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<sup>21</sup> Dennis R. Judd and Todd Swanstrom, pg. 86, Second Edition, *City Politics: Private Power and Public Policy*

<sup>22</sup> Lillie Coney, Testimony, US Election Assistance Commission’s Technical Guidelines Development Committee, September 22, 2004

application of technology intended to provide a government service should not be excluded from open government objectives. In addition to the methods described, the adoption of technology may require additional opportunities for public comment that facilitate the participation of those members of the public with relevant skills and training.

The guidance to states on the administration of elections should include strong support of open government procedures that allow public access to the election administration process. Historically, the election administration community, voting rights community, media, and partisan efforts looked closely at how elections were managed. Today, that list of constituencies has grown to include technologists, election reform advocates, and concerned citizens.

Guidance to states should make them aware of the challenges to transparency posed by barcodes on voted ballots, and non-disclosure agreements as a condition for purchase of voting systems. Implementation of voting systems should include transparency at every phase of the process.

### *Audit*

In the draft version of voting system guidelines, too little focus is placed on the importance of conducting audits of election results. Post-election evaluation of the results is fundamental to election integrity. For audits to be credible, the same vendor that supplied the voting system being audited should not perform the audit. It is important to know when election systems perform as expected, and when they do not. For this reason, independent, verifiable, and transparent audits of election results should be routine.<sup>23</sup> California, Colorado, Connecticut, Hawaii, Illinois, Minnesota, New Mexico, New York, North Carolina, Washington, and West Virginia all have laws addressing election audits.<sup>24</sup> For example, California's audit law requires a 1% manual recount of voted ballots.

Audits should include a representative hand count of ballots or ballot images; documentation of the chain of custody of all voting technology; and a chain of custody on all unmarked, and marked ballots. States are well within their prerogative to determine how the results of audits will be treated, however, they should be strongly encouraged to incorporate audits into every aspect of election administration, and make the results public. States should be encouraged to engage the technology community in the decision-making process to help meet the unique needs of state or local governments to routinely audit their elections.

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<sup>23</sup> David Dill, Testimony, Election Assistance Commission, July 28, 2005

<sup>24</sup> Verified Voting, Manual Audit Requirements, August 20, 2005, available at <<http://verifiedvoting.org/article.php?id=5816>>

Today it is not enough that vendors assure states that paperless voting systems retain vote information, those systems must be proven to do so. The record of systems failures that resulted in lost votes cannot be ignored. Ballots lost from electronic voting systems used in North Carolina and Florida in 2004 attest to the need for more rigorous voting technology standards.<sup>25</sup> There is also a need to ensure routine access to ballot images for recount and election audit purposes. Last year's California Primary election resulted in a legal challenge, *Soubirous v. County of Riverside*, when a candidate lost an election contest by 45 votes. The candidate was denied access to the memory and audit logs of the Sequoia electronic voting machines purchased by the Riverside County Board of Supervisors, which resulted in a court challenge.<sup>26</sup>

### *Security*

Security can be defined as a series of tradeoffs.<sup>27</sup> For example, interior airbags in cars were initially aggressively opposed by automobile manufacturers as being too costly. The government made the decision that their inclusion in cars would save lives, and that the increased cost for the purchase of an automobile was worth the tradeoff.

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<sup>25</sup> Voters Unite, Report, Myth Breakers: Facts About Electronic Elections, available at <http://www.votersunite.org/MB2.pdf>

“Electronic Voting Machines Lose Ballots Carteret County, North Carolina. November, 2004. Unilect Patriot DRE A memory limitation on the DRE caused 4,438 votes to be permanently lost. Unilect claimed their paperless voting machines would store 10,500 votes, but they only store 3,005. After the first 3,005 voters, the machines accepted -- but did not store -- the ballots of 4,438 people in the 2004 Presidential election. Jack Gerbel, president and owner of Dublin-Calif.-based UniLect, told The Associated Press that there is no way to retrieve the missing data. Since the agriculture commissioner's race was decided by a 2,287-vote margin, there was no way to determine the winner. The State Board of Elections ordered a new election, but that decision is being challenged in the court.

Palm Beach County, Florida. November 2004. Sequoia DRE Battery failure causes DREs to lose about 37 votes. Nine voting machines ran out of battery power and nearly 40 votes may have been lost. ... The nine machines at a Boynton Beach precinct weren't plugged in properly, and their batteries wore down around 9:30 a.m., said Marty Rogol spokesman for Palm Beach County Supervisor of Elections Theresa LePore. Poll clerk Joyce Gold said 37 votes appeared to be missing after she compared the computer records to the sign-in sheet. Elections officials won't know exactly how many votes were lost until after polls close.”

<sup>26</sup> *Soubirous v. County of Riverside*,

<http://www.verifiedvoting.org/downloads/legal/california/soubirous-v-countyofriverside/>

<sup>27</sup> Bruce Schneier, pg. 7, “Beyond Fear: Thinking Sensibly About Security in an Uncertain World”

The EAC is in the position to make decisions regarding tradeoffs to establishing in practice reliable, secure, accessible, transparent, accurate, and auditable public election systems. If the result of the Commission's actions is more reliable, secure, accessible, transparent, accurate, and auditable, public elections in this nation then the Commission has done its job.

Electronic voting systems create unique challenges to privacy, reliability, security, accessibility, transparency, accuracy, and auditability. Accessible voting that allows the independent casting of ballots by voters should be universal. The ability of voting technology to record, retain, and reproduce voter choices accurately should be a minimum requirement for voting systems. The proof of the ability of voting systems to accomplish this task, while at the same time protecting voter privacy is of critical importance to election integrity. Before voting systems are used in public elections, they should undergo testing by independent, federally certified laboratories.

The voter is the only person who should know how votes are cast on his or her ballot. That person should not be able to prove to anyone how they voted, nor should a ballot be associated with that voter.<sup>28</sup> The votes cast by voters should be recorded and retained free from error or manipulation. The ballots and votes cast should be secured from tampering, damage, machine failure, or loss. Voters should be able to cast votes and verify vote choices unassisted. Accuracy should be maintained and authenticated through a post-election audit process. State and local election contingency planning should detail what should be done in the event of a natural disaster or if a polling location unexpectedly becomes unavailable. Once an election has begun, contingency plans should cover what should take place to complete the election. For example, what should be done if a power outages occur that exceed battery life of voting or ballot tabulation technology, voter turnout exceeds expectations, or unexpected shortages of Election Day poll workers occur, which threaten the conclusion of an election once begun.<sup>29</sup>

#### *Comments on Sections of the Draft Guidelines*

The draft Voluntary Voting System Guidelines draft creates new threats to voting system security by recommending the use of telecommunication systems to transmit the election information over public telecommunication networks. Public telecommunication networks, especially the Internet, are insecure.<sup>30</sup> It is important to note that HAVA

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<sup>28</sup> Coney, Hall, Vora, and Wagner, "Towards a Privacy Measurement Criterion for Voting Systems,

<sup>29</sup> Ace Project, Voting Operation: Contingency Plans, available at <http://www.aceproject.org/main/english/po/poh01d.htm>

<sup>30</sup> David Jefferson, Aviel D. Rubin, Barbara Simons, David Wagner, Report, "A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE)", January 2004.

Section 245 directs that the EAC conduct a study and report on Electronic Voting and Electoral Process in federal elections.<sup>31</sup> The study, when completed, would assess the safe use of the Internet and other communication technology's use in voting.

Volume 1, Section 5 Telecommunications Requirements for accuracy, durability, reliability, maintenance, and availability should make mention of the section on security. Further, Volume 1, Section 6 Security, should offer strong caution against the use of telecommunications systems to transmit information related to critical components of voting systems before, during, or after an election. The section on security should address denial of service attacks, spoofing, viruses, worms, and power outages that exceed battery life of voting systems.

Another important factor to consider is a stronger section 3.2.2.8 Electrostatic Disruption (ESD) under guidance regarding Hardware. The effects of ESD can be devastating to the operation of electrical equipment. The recommendations to states should reflect the humidity and other conditions in which voting systems will operate. The current recommendations for ESD reflect conditions of less than twenty-five percent humidity, which is unrealistic for many regions of the nation. States should be directed to use a sliding scale for conditions, where machines will be used that may pose a threat of ESD.

It is our strong recommendation that the final guidance issued to states direct them to prepare realistic contingency plans in the event of electronic voting system failures that jeopardize the completion of the election process.<sup>32</sup> Appendix C's sections 6.7.2 Controlling Usage; and 6.8.7 Equipment Security and Reliability should be part of Section 6 Security.

The Voluntary Voting Systems Guidelines should encourage state and local election administrators not to limit their thinking to what can be done, but to consider what can be done safely to establish reliable, secure, accessible, transparent, accurate, and auditable public elections.

Volume 1, Section 6 Security, recommends the incorporation of infrared (IR) technology in voting systems. We strongly recommend that IR technology not be allowed in voting systems. The Voluntary Voting System Guidelines should place the strong language regarding the risks associated with IR technology found in Volume 1, Appendix C Best Practices for Election Officials in the telecommunications and security section. Although IR technology is commonplace in remote control systems for televisions, DVDs, VHS, and other consumer products that does not mean it should be trusted in

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<sup>31</sup> Help America Vote Act of 2002 (HAVA), Public Law 107-252, October 29, 2002. SEC. 245. 42 USC 15385, available at <[http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt)>

<sup>32</sup> Ace Project, Report on Physical Security, available at <<http://www.aceproject.org/main/english/et/ete01a.htm>>

voting systems. States considering IR technology as an option should be strongly encouraged to enumerate the need for it, and evaluate the potential risks. Manufacturers of voting systems should not incorporate IR technology as a standard offering in voting systems used in public elections because it poses serious security risks. The only way to be sure that the risk is not present is not to include the IR capability. If states insist on having IR capability on voting systems, the next best security option is the ability to physically remove the device from voting systems before their use in public elections, or at the minimum cover the IR port with “opaque” material to block visible light.

EPIC obtained under a Freedom of Information Act (FOIA) request the final draft voting technology standards submitted to the Election Assistance Commission by the Technical Guidelines Development Committee (TGDC). Although the document produced by the TGDC with the assistance of the National Institute of Standards and Technology was to assist the EAC with developing the final standards document it is important to note differences between the two documents. The TGDC’s Volume 1, Section 1.6.1, Qualification Tests, and the EAC’s draft Volume 1, Section 1.6.1 National Certification Tests appear to suggest different methods for voting system testing and certification. The TGDC’s version references independent testing authorities (ITAs) in a historical context, while the EAC’s version seems to imply that the Commission would replace the role of NASED in the new HAVA certification process. If this is the intent of the EAC then it appears to be in conflict with the authorizing legislation of HAVA, Section 231 Certification and Testing of Voting Systems.<sup>33</sup> The law states that the EAC shall establish a list of federally accredited laboratories no later than 6 months after the EAC adopts voluntary voting system guidelines. The Director of the National Institute of Standards and Technology must conduct an evaluation of independent, non-Federal laboratories and submit to the EAC a list of those laboratories the Director proposes to be accredited to conduct test, certification, decertification, and recertification of voting systems. The EAC must then promulgate a list of testing laboratories that it certifies for testing and certification of voting systems.

Dr. Michael Shamos said, “The system that we have for testing and certifying voting equipment in this country is not only broken, but is virtually non-existent.”<sup>34</sup> We

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<sup>33</sup> Help America Vote Act of 2002, Public Law 107-252, October 29, 2002

<sup>34</sup> Congressman William Clay, pg. 121, question to Dr. Michael Shamos, Official Hearing Serial No. 108-258, Subcommittee, House Government Reform Committee, Hearing The Science of Voting Machine Technology: Accuracy, Reliability, and Security, July 20, 2004

Michael Shamos, Testimony, Subcommittee on Environment Technology and Standards, House Science Committee, “Testing and Certification for Voting Equipment: How Can These Processes Be Improved?”, available at

< <http://www.house.gov/science/hearings/ets04/jun24/shamos.pdf>>

“I am here today to offer my opinion that the system we have for testing and certifying voting equipment in this country is not only broken, but is

strongly support this view of the current process for testing and certification of voting systems. Therefore, we would like to encourage the EAC to adhere to the directions provided by Congress and, to the extent your resources will allow, establish the strongest system of checks in the form of an improved federally certification process for voting systems.

Section 3.2.1 Accuracy Requirements references telecommunication data transmission for the initial tabulation of results, but it does not address the need to retain accurate information for audits or recount purposes. It should be noted in the final standards the inherent insecure nature of telecommunication systems and especially the Internet.<sup>35</sup>

Voting systems intended to be the sole source of recording, storing, and reproducing accurate list of qualified voters or ballots for use in public elections should have well defined critical requirements. These critical requirements should only include those systems that should they fail would result in eligible citizens who attempt to register or eligible voters who attempt to vote—being denied that right.<sup>36</sup> It should be made clear to states that the failure to meet these requirements would result in failures in the voter registration or voting processes. Statewide-centralized voter registration database critical requirements should include: adequate system reliability, data confidentiality, and system responsiveness during high volume periods.<sup>37</sup> For this reason, it will be important for each state to develop an effective security policy that rest on reliable, accurate, and auditable election systems.

Volume 1, Section 6.8 Requirements for Voter Verified Paper Audit Trail [(VVPAT)] (Optional), begs the question, why was this particular topic labeled as “Optional”? Further, why was the sentence “VVPAT is not mandatory” included. There are 24 states, which have VVPAT laws, and 13 with proposed legislation.<sup>38</sup> Independent voting by all voters regardless of physical condition, language of origin, literacy, or

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virtually nonexistent. It must be re-created from scratch or we will never restore public confidence in elections. I believe that the process of designing, implementing, manufacturing, certifying, selling, acquiring, storing, using, testing and even discarding voting machines must be transparent from cradle to grave, and must adhere to strict performance and security guidelines that should be uniform for federal elections throughout the United States.“

<sup>35</sup> David Jefferson, Aviel D. Rubin, Barbara Simons, David Wagner, Report, “A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE)”, January 2004.

<sup>36</sup> Peter G. Neumann, pg 3, “Computer Related Risks,” publisher Addison-Wesley, 1995.

<sup>37</sup> *Id.*

<sup>38</sup> Verified Voting, <http://www.verifiedvoting.org/>

mental capacity and voter verifiable elections are not incompatible objectives. Today there is no voting technology that will eliminate the need for paper's use in elections. For this reason, systems that produce paper ballots and/or VVPAT must be accessible by those who are language minorities or shoulder the challenge of disabilities. Voter verification should be unassisted verification of votes cast and recorded prior to the voter leaving the voting station. It is our belief that meaningful access to verification of physical ballots and VVPAT by members of the language minority and disabled communities is not an impossible task.

The discussions surrounding the issue of VVPAT have been passionate. The challenge for the Commission is listening to all of the competing voices on the many issues surround verifiable elections and pressing the case for states to pursue creative options to make elections universally reliable, secure, accessible, transparent, accurate, and auditable public elections.

Finally, there are other areas of weakness in the draft version of the voting system guidelines that in their totality would present serious complications for achieving reliable, secure, transparent, accurate, and auditable public elections. The topics outlined in all sections that are also listed in the security section should cross-reference each other. Further, states should be encouraged to act proactively to secure their elections when considering new election processes, or election technology.

Specific areas of concern are that optical scan precinct or central count ballot tabulation systems should document a chain of custody for optical scan marked and unmarked ballots, ballot markers, Precinct-count ballot readers, and automated central tabulating mechanisms. The voluntary guidelines should recommend that the Precinct-count ballot reader and central count tabulators can read to ballot marked with a number two soft lead pencil, which should include a dark stroke crossing the voting target on its long dimension and half the width of the target should register as a vote. In addition, precinct count systems should provide each polling location an optical ballot reader. The ballot reader should have its setting to detect overvotes turned on at the central county facility prior to being sent to polling locations.

Recommendations to election administration should include a directive to test all ballot marking devices to be sure that they meet specifications of the precinct tabulating facility and central tabulating technology. The precinct tabulator and central tabulator technology should be calibrated to read reasonable marks, which should include a dark stroke crossing the voting target on its long dimension and half the width of the target should register as a vote. Finally, all ballot tabulators should be tested and/or calibrated to ignore erasures made by a new gum eraser of a thoroughly blackened pencil mark.

Guidance to states regarding the use of paperless direct recording electronic voting systems should include strong recommendations that at least one poll worker at each polling location should be trained to check the calibration of DRE voting machines

and if necessary recalibrate them. Guidance to manufacturers should include criterion that these systems memory capacity is exceeded or a malfunction that threatens vote capture and retention is detected the voting system shall disallow the reinsertion of voter cards to disallow the appearance of continuing to record votes.

Although this document is only intended to provide “voluntary guidance” to states, it would serve the interest of voters by addressing the use of ballot marking devices and printers used to produce ballots and/or audit trails. We are offering to the Commission a set of recommendations that address these issues as they relate to optical scan and direct recording electronic voting machines.

It is our collective advice to the EAC that elections must require an end-to-end concern for a wide variety of integrity requirements, beginning with the registration process; ballot construction; voting recording and storage; and continuing through vote tabulation and reporting. We recommend that the final document be used to establish a floor and not a ceiling for voting systems. States should be encouraged to experiment on ways to create reliable, secure, accessible, transparent, accurate, and auditable public elections.

The United States is a society of equal rights. On Election Day, this nation must function as a society of equal rights, where a single vote is treated as important as the majority of votes cast.

Thank you,

#### MEMBERS

Peter G. Neumann, Chair \* David Burnham \* David Chaum \* Cindy Cohn \* Lillie Coney \* David L. Dill \* David Jefferson \* Jackie Kane \* Douglas W. Jones \* Stanley A. Klein \* Vincent J. Lipsio \* Justin Moore \* Jamin Raskin \* Marc Rotenberg \* Avi Rubin \* Bruce Schneier \* Paul M. Schwartz \* Barbara Simons \* Sam Smith

#### BACKGROUND

The National Committee on Voter Integrity (NCVI) was established to promote voter-verified balloting and to preserve privacy protections for elections in the United States. The Committee brings together experts on voting issues from across the country.

Appendix 11: 2008 U.S. Election  
Assistance Commission,  
*Voter Information Websites  
Study*



## VOTER INFORMATION WEBSITES STUDY

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## Introduction

Section 245(a) of the Help America Vote Act (HAVA) mandates that the U.S. Election Assistance Commission (EAC) conduct a thorough study of issues and challenges presented by incorporating communications and Internet technologies. Section 245(a)(2)(C) indicates that the EAC may investigate the impact that new communications or Internet technology systems in the electoral process have on voter participation rates, voter education, and public accessibility. In addition, Section 241(b)(9) allows the EAC to periodically study election administration issues, including methods of educating voters on all aspects of voter participation.

Since the 1990s, pioneers in the election community have utilized the Internet to post voter and election information. Many of the approaches have produced impressive results and important insights, including making elections more efficient; but posting voter information on the Internet may have unintended consequences as well.

Early election websites focused on providing static information about the election process, voter registration, or election night results. Voters were often presented with a large amount of information and were expected to filter out inapplicable information themselves – a sometimes overwhelming task. As a result, these websites evolved from providing static election information to presenting dynamic and customized information for and about an individual voter.

This study is based on a review of active voter information websites in the fall of 2005 through 2006, from which 71 sites were identified as voter information websites and selected for in-depth analysis. Common functions of these websites were cataloged and quantified and presented to a panel of experts for discussion and review. The EAC's goal in undertaking this study is to provide guidelines that will assist election administrators in developing Voter Information websites that best serve voters.

Deciding *what* information to provide and *how* to provide it is the most important step in developing a voter information website because the information and method of delivery define the implementation process. The recommendations that follow outline key considerations that can be referenced when election officials consider constructing a voter information website. The suggestions can be used as a how-to guide to assist in developing new projects, or as a reference point for established projects.

## Summary of Findings

In interviews with election officials and the information technology (IT) professionals working for election jurisdictions, some distinct patterns emerged in the development of voter information websites. Projects that were developed with dedicated time and thoughtful consideration stood out. Likewise, projects that came together as add-ons to existing sites rarely received high marks. Many of the projects at the focus of this study were created as a result of use of the Internet and associated technologies in daily operations. The development of computerized voter registration lists and the software to maintain them, removed the barrier to creating a database that a Voter Information website can query.

This change lent itself to the development of voter information websites that were primarily voter registration look-ups. These provided election officials with state-wide access the basic utilities for per-voter reporting required so that election officials could answer the basic question, “Am I registered to vote?” from the authoritative database. A natural progression was to provide voters with the ability to use their Web browser to answer the question themselves.

Several officials commented that voter information websites have reduced calls to the election department on Election Day. Increase in traffic and frequency of lookups against the voter registration database were also cited as evidence of the popularity of the website. Many websites that provided voter registration took the next step to provide voters with ballot information specific to their jurisdiction. Those that did provide voters with information on candidates and contests increased usage of their website.

As voter information websites progress from voter registration lookup to interactive sample ballots, the complexity of the website and its relevance to the voting public increases. Growing public acceptance of these websites as a main source of voter information increases demand and raises expectations.

Additional features make a website more complex, and with complexity challenges that arise. As websites become more popular, there are greater possible usability or privacy issues that arise. A popular website can also strain under heavy usage during high-profile races, performance issues can occur when election officials can least afford them, and planning is required to anticipate spikes. Once voters have grown accustomed to the voter information website, and have integrated it into the routine they follow at each election, election bureaus may have to field calls about uptime and availability.

Well designed and implemented websites can bring in many more users. More users mean more voters will find answers online. If a regular visit to the election jurisdiction’s website is part of a voter’s routine, voters are more likely to assist in the maintenance of voter rolls by checking their registration. A popular and informative voter information website can be an invaluable tool for a jurisdiction to inform voters of changes to election procedures, voting equipment, polling locations, and to encourage informed participation.

## Section 1: Understanding the Audience

### Overview

Understanding voters' interests is critical to effectively communicating with the voting public. A voter information website's utility may be tied to successfully pairing the information election administrators wish to distribute with information voters seek.

To better provide the most useful information, election administrators must understand the different concerns and common interests of the audiences that use voter information websites. Though some questions and concerns apply to all voters, there are concerns specific to subcategories of users. Key audiences break into seven common constituencies: Six categories of voters and two organizational categories.

The seven identified voter information website audiences to consider are:

#### **Voters:**

- First-time voters
- Infrequent voters
- Consistent voters
- Voters with special circumstances
- UOCAVA voters
- Absentee voters

#### **Organizations:**

- Advocacy organizations and Campaigns
- The Media

### **First-Time Voters**

First-time voters require the whole gamut of election information, including any peculiarities of the election or registration process (e.g. first time voters must vote in person, etc.).

### **Infrequent Voters**

Infrequent voters are generally unfamiliar with the election process, and may be concerned that their inactivity will result in de-registration. This group of voters may need to be refreshed on where to vote and whether or not they are still registered.

### **Voters with Special Circumstances**

This group typically uses voter information websites to obtain contact information for local election officials. Accordingly, it is always important for these voters to have easy access to information like phone numbers, mailing addresses, and email addresses.

### **Consistent Voters**

Because of their high interest in the voting process, consistent voters often rely on sources other than official voter information websites to obtain information on upcoming elections. When consistent voters do use an information website, they are usually looking for additional information about an election, such as proposals and sample ballots.

### **UOCAVA Voters**

UOCAVA voters' main concern is typically registration since these voters need to vote from their last official residence. In addition, UOCAVA voters need the ability to check sample ballot information and look for additional candidate information that may not be available from an overseas location. UOCAVA voters also have increased interest in the turnaround time for processing absentee ballot applications. Consequently, this group of voters may find utilities that track absentee ballot processing very useful.

### **Absentee Voters**

Absentee voters want to participate in the election but cannot do so in person on Election Day. These voters need to know how to obtain and fill in an absentee ballot. Usually this can be done with static information (footnote def). In-country absentee ballot voters are often consistent voters, but because the absentee balloting process often takes place weeks before major media coverage, many absentee ballot voters may vote with less detailed information on the election. Absentee voters who hold their ballots until closer to the election greatly benefit from voter information websites that help them access local election information from distant locations.

Voter information websites can also assist absentee voters through the ability to remotely track the absentee ballot process, from application, to delivery, and final processing in order to quickly resolve postal or processing problems.

### **Organizations**

#### **Advocacy Organizations and Campaigns:**

Advocacy organizations and campaigns typically seek information such as bulk registration lists. Real-time access to such lists allows advocacy groups to verify new registrations as they progress. Advocacy groups may also use voter information websites to verify individual voter registrations—this study uncovered two websites that were specifically created to screen for irregularities in voter registrations.<sup>1/2</sup>

#### **Media:**

Media outlets are generally eager to add voter information features to election coverage, but they are hesitant to allow users to leave their own websites. The benefit of partnering with media outlets is that it allows election administrators to reach a larger audience, but media outlets may prefer to display data differently than election administrators.

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<sup>1</sup> "Voting in Memphis", ([www.shelbynet.com/voting](http://www.shelbynet.com/voting) - organization's main page, [www.shelbynet.com/wconnect/vhistfile.htm](http://www.shelbynet.com/wconnect/vhistfile.htm) - voter registration look-up page) was launched to check voter registration in three Tennessee counties against death records (SSID confirmation).

<sup>2</sup> "Sound Politics", ([www.soundpolitics.com](http://www.soundpolitics.com) - organization's main page, [www.soundpolitics.com/voterlookup.html](http://www.soundpolitics.com/voterlookup.html) - voter registration look-up page) was launched with the intention of monitoring reported inaccuracies in King County voter registration.

## Section 2: Common Voter Concerns

### Overview

After reviewing the websites listed in Appendix D, several voter questions consistently emerged as important common voter concerns<sup>3</sup>:

- Am I registered to vote?  
Where do I vote?
- Who/What is on the ballot?
- How do I use voting equipment?
- Did my vote count?

### Am I registered to vote? Voter registration lookup:

The information returned by a voter registration lookup includes items located on a voter registration card, such as name, voting district, and party affiliation. Some lookup tools also include a history of attendance at the polls (but not a record of how they voted). Typically, a voter is required to process a voter registration lookup before a voter information website can display polling place location or sample ballots.

### Where do I vote? Polling place lookup:

Some polling place lookup utilities link the address of a polling place to a public mapping service such as Google Maps®, Yahoo! Maps® or MapQuest®. Several election departments also reference maps generated by internal Geographic Information Systems (GIS) departments. Keep in mind that an address search answers the question: “Where is the polling location near this address?” The only way to answer the question where do *I* vote is to reference a voter registration file.

### Who/What is on the ballot? Sample ballots:

A sample ballot presents voters with information that includes only those contests in which the voter will vote. Sample ballots can either be displayed as web pages or as documents (e.g. downloadable Microsoft Word or Adobe PDF format). These documents and/or Web pages represent the actual ballot style that the voter will see at the polling location.

### Candidate Information:

There are three main ways to supply candidate information: (1) official candidate statements collected by election administrators, (2) links to official candidate websites, and (3) links to third-party information sites, such as the League of Women Voters.

### Candidate Statements:

Collecting candidates’ statements allows voters equal access to candidate messages and provides a benefit to candidates. As voter information websites become more widespread, it is likely that candidates will welcome the opportunity to provide statements on such sites.

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<sup>3</sup> For purposes of this study, the question: “Who won?” was excluded because it does not require tying results to a voter registration lookup utility.

**Links to Candidates' Official Websites:**

One concern about linking to a candidate's website is that it may appear as though election administrators are endorsing one candidate or another. However, this can be alleviated by alerting users when a link takes them to an independent website.

**Links to Third-Party Information:**

Similar to linking to candidates' official websites, election administrators should clearly alert users when they are being directed to websites hosted by third parties to avoid confusion concerning endorsements.

**Other Ballot-Related Information:**

Many elections include initiatives, amendments, or referenda which are required to be worded as they would appear if adopted. Consequently, they often include official legal wording that may pose a challenge to voters with low literacy levels. To help clarify what a legal clause means or what effect it would have, voter information websites may want to provide links to explanations of the official language.

**How do I use voting equipment?**

Poll worker outreach and training campaigns are typically more effective tools for teaching voters how to use voting equipment than voter information websites. Voters commonly expect that voting equipment is either self-explanatory or someone at the polling place will assist users.

**Provisional Ballots: Did my vote count?**

HAVA requires states to provide voters with provisional ballots in certain circumstances. When elections are contested, one of the first areas contenders target are provisional votes. Consequently, it is advisable to create a utility where voters can verify that provisional ballots have been counted.

## Section 3: Preliminary Planning

### Overview

Much of the information voters seek online is static and does not need to reference a database. For example, voter registration forms, absentee voting procedures, election dates, and results are critical components of election information websites, but they do not change over time and are not specific to the voter. Adding information specific to voters requires consideration of several factors that are not presented by static sites.

The first step in creating a voter information website is to decide what information will be posted on the site and how it will be displayed. The project outline for developing and implementing a voter information website will vary depending on these factors and the amount of information each site seeks to convey.<sup>4</sup>

### **Recommendation 3.1: Answer the question “Am I registered to vote?”**

This is one of the key questions voters ask on Election Day. Websites that do not attempt or are currently unable to answer this question will have limited efficacy. In addition, failing to answer this question may lead to third party organizations creating their own utilities to answer the question, reducing election administrators’ ability to control accuracy.

### **Recommendation 3.2: Review legal considerations.**

Consider relevant laws and administrative rules that pertain to public access to voter information. If the law does not currently anticipate public access to voter information online, consult with legal counsel and legislators during the planning stage to ensure continued compliance with laws and rules.

### **Recommendation 3.3: Update voter records as often as possible.**

Due to security concerns outlined in detail in Section 6: Security and Privacy, the registry of record should not be exposed to the Internet. However, as a general rule to ensure accuracy, online records should be updated as often as they are changed on the registry of record. The frequency of updates will be dictated by volume, capacity, and proximity to Election Day. For example, in a jurisdiction with Election Day registration, having pre-existing registrations online on Election Day can greatly increase efficiency and decrease duplicate records

### **Recommendation 3.4: Adopt a neutral voice.**

The most useful voter information website is the one that is updated and maintained regularly during the campaign season by election administrators themselves. Voter information websites should be presented with a neutral voice, and should be absolutely free of candidate promotion.

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<sup>4</sup> This section assumes that the voter information website’s primary audience will be individual voters.

**Recommendation 3.5: Use effective design principles.**

Some of the websites reviewed in this study provided useful information, but the designs made accessing information complicated.<sup>5</sup> A good website will present useful information in a simple and consistent format. This area of planning may be enhanced through the use of an expert consultant who can advise on industry standards. Further discussion on this subject can be found in Section 5: Accessibility.

**Recommendation 3.6: Contract out work as needed.**

Depending on a jurisdiction's resources, IT staff may not have the breadth of knowledge or time to develop a web application internally. Reports from the websites studied indicated that in-house development hours were not regularly documented, and some cost estimates were under reported.<sup>6</sup> Deciding whether to contract out work also requires consideration of the availability of internal staff during peak website usage times.

**Recommendation 3.7: Review contractors' prior work.**

Although voter information websites are a relatively new specialty, it may be useful to consult experts when planning one. Some things to consider when selecting an expert are quality of service, average time websites are inoperable, availability of technicians, cost, and quality of work-product. For many of the websites reviewed in this study, election administrators and internal IT staff worked in concert, so that administrative, technological, and legal concerns could be integrated in the planning.

**Recommendation 3.8: Consider commercial off-the-shelf (COTS) and open source solutions.**

None of the websites in this study used COTS or open source, but many used components of each. Reviewing available options will help ensure that whatever design method adopted conforms to state policy goals.

**Recommendation 3.9: Establish clear goals before development.**

Determine the features of your voter information website during the planning process. Define your desired feature set before you begin development. Have a clear understanding of how you're going to collect the information necessary to build your voter information website before dedicating resources or hiring contractors.

**Recommendation 3.10: Inventory data sources.**

Investigate current data sources and document their location, current file format, frequency of updates, and duplication. This will allow election administrators to coordinate information gathering and aggregating data from disparate sources.

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<sup>5</sup> City of Chicago website (prior to November 2006 revision).

<sup>6</sup> *Example of cost accounting challenges:* CanIVote.org sponsored by the National Association of Secretaries of State was widely reported at cost of under \$10,000, but the actual cost accounting for the functionality of an aggregated website like CanIVote.org requires acknowledgement of the costs of the systems that actually provide the functionality. Although CanIVote.org can be advertised as "being able to provide registration information," its cost is the cost of creating a site that links to that service, not the service itself.

**Recommendation 3.11: Plan for high capacity peaks.**

Promoting a voter information website will increase the site's popularity, especially as Election Day approaches (See Section 5: Marketing and Promotion). Determine in advance if the bandwidth currently available will accommodate increased activities immediately before, during, and after Election Day. In addition, assess IT resources to enable emergent problems with the website to be efficiently resolved.

**Recommendation 3.12: Consider intellectual property and copyright issues.**

Research websites that provide the capabilities each jurisdiction wishes to implement and determine if any of the products currently online are patented, copyrighted, or licensed. Consult with legal advisors to ensure compliance with applicable intellectual property and licensing laws.

**Recommendation 3.13: Document project development and system functionality.**

At each stage of user interface design, project planners should develop and document context-sensitive helpful hints for users. Documenting this information will allow users to self-diagnose problems with the interface and can also serve as technical guidelines for election call center staff, who may be required to assist callers with the website. Documentation also serves to inform potential future staff and contractors who may be hired after the voter information website is developed.

**Recommendation 3.14: Budget for development, hosting, capacity, and promotion.**

It is important when planning a voter information website to account for all resources involved, including production, design, bandwidth, maintenance, programming, data collection, and staff hours. Costs associated with sites that initially start as add-ons to preexisting voter registration databases must take into account changes and maintenance to systems over time. Sites that are built in-house should use time tracking tools to accurately assess staff hours involved. Further, although outside contractors generally track their own hours, election jurisdictions should also incorporate internal staff hours used to supplement contractor work.

In addition to planning and design costs, promotion can be a significant cost. Creating a voter information website and failing to promote it may leave it unused by the public. Investment in a voter information website should include a promotion campaign. The more a voter information website is promoted, the more voters will use it (correspondingly, it should be noted that the more traffic a website receives, the more it will cost to host). General guidelines and promotional considerations are discussed in Section 5: Marketing and Promotion of this report.

**Recommendation 3.15: Track usage patterns.**

Using site-monitoring tools to observe usage patterns is an indispensable tool in keeping a voter information website reflective of voter concerns and relevant. For example, site-monitoring tools can track how long users spend on each page, how they navigate the site, and how often files are downloaded. These patterns can change over time, so continual monitoring is advisable.

## Section 4: Features

### Overview

The following list of features has been collected from various voter information websites across the country.<sup>7</sup> The features listed below answer questions outlined in Section 2: COMMON VOTER QUESTIONS.<sup>8</sup>

#### **Recommendation 4.1: Provide voters with the answer to the question “Where do I vote?”**

Websites that do not attempt to answer “Where do I vote?” have limited efficacy and will result in all voter questions concerning where to vote being routed to a state or local call center. In addition, not answering this question on a voter information website may encourage third party organizations to create their own websites, which can limit accuracy.

Keep in mind that an address search answers the question: “Where is the polling location near this address?” The only way to answer the question where do I vote is to reference a voter registration file. When answering this question, include the street address of the polling place. Some voter files do not provide complete street addresses for polling locations. Websites built on voter files that reference a polling location at a church or a school but do not include the address can make it difficult to plot on a map. If polling places change frequently between elections and the information is not always available, inform voters when the information will be available again.

#### **Recommendation 4.2: Add map links to polling locations.**

Maps are a useful addition to the polling location identification information provided to voters. This is especially beneficial to new residents and when polling places are somewhat obscure. There are many competing services that provide great mapping services for free.<sup>9</sup>

#### **Recommendation 4.3: Do not provide voters with driving directions.**

Driving directions pose a potential privacy and liability risk and could be an unnecessary distraction. Voters wishing to access directions to polling place locations would be better served to use dedicated mapping websites.

#### **Recommendation 4.4: When including mapping programs, use the simplest versions available.**

Many of the websites reviewed in this study included mapping functions that did not seem directly relevant to polling place location. For example, the ability to zoom in and out of a map may not be necessary and could provide a distraction to voters looking for a general geographic orientation. In addition, more features mean more potential for confusion and technical difficulties. The scale of polling place identification maps should be relatively consistent. Despite

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<sup>7</sup> See Appendix D for a list of websites reviewed in this study.

<sup>8</sup> This section assumes that websites will reference an online voter registration file to answer the question, “Am I registered to vote?”

<sup>9</sup> Such as Google Maps© and Yahoo Maps©

features that may be available (zoom-in, city view, 3D, etc.) through state geographical information systems (GIS), highlighting map capabilities over functionality is unnecessary. Be sensitive to avoid providing too much information or too many features.

**Recommendation 4.5: Provide voters with a sample ballot.**

A Sample ballot is the most significant section of voter information website when measured by the time a voter spends reviewing information online. Polling location and registration data can be reviewed quickly; however, sample ballots, especially if linked to additional reference information, can take time to review. Jurisdictions contemplating a voter information website should consider including sample ballot display functionality in its site.

**Recommendation 4.6: Display sample ballots exactly as they will appear on Election Day.**

Including information about races in multiple jurisdictions on a single sample ballot may confuse voters. The goal should be to provide voters with an exact replica of what they will see on Election Day. Voters can react negatively when presented with too much information

**Recommendation 4.7: Link sample ballots to helpful information.**

The most popular feature of the more mature voter information websites studied were “interactive sample ballots.”<sup>10</sup> An interactive sample ballot is a ballot that has been tailored to a specific voter, and provides links to additional information about candidates and proposals. In many cases, these links are to pre-existing published non-partisan voter guides, but they can also be links to campaign websites, campaign finance information and other non-partisan sources. The few sites across the country that have built interactivity into sample ballots have tracked strong user popularity.

**Recommendation 4.8: Do not link to incumbent government websites on a voter guide.**

Linking a sample ballot to an incumbent’s official government-funded website may persuade voters that election administrators are biased or that incumbents are using shared resources to their benefit.

**Recommendation 4.9: Give voters the ability to track absentee ballots online.**

A few voter information websites reviewed in this study included the ability to check the status of an absentee ballot application.<sup>11</sup> The ability to follow the absentee ballot process is especially critical to overseas and military voters.

**Recommendation 4.10: Allow users to check the status of provisional ballots online.**

The websites in this study were primarily focused on delivering voter-specific information prior to an election. The ability to verify the status of a provisional ballot is one voter-specific post-election function that few websites performed.<sup>12</sup> Given the provisions in HAVA that require

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<sup>10</sup> www.publius.org (1996-present)

<sup>11</sup> Macomb County, MI: <http://itaswoaep001.macombcountymi.gov/AbsenteeBallot/faces/SearchAbsentee.jspx>

<sup>12</sup> State of Indiana: <http://www.indianavoters.com/PublicSite/Public/PublicProvisional.aspx>

notification of the status of a provisional ballot, voter information websites provide an easy solution to communicating with voters concerning provisional ballots while lessening the burden on election administrators.

**Recommendation 4.11: Provide instructions for how to use voting equipment.**

Providing information on how to use voting equipment is valuable when there are changes to voting equipment. In addition, providing instructions allows new voters and voters new to the jurisdiction with information that can help alleviate wait times on Election Day. In addition to static files, (word, PDF), interactive examples and videos are good resources as well.

**Recommendation 4.12: Post Election Day times and polling location hours prominently.**

While a single election calendar can cover an entire voting population, do not miss any opportunity to remind voters of these important dates and times.

**Recommendation 4.13: Provide other readily-available information neatly and in a logical manner.**

This list of features is not exhaustive, and there have been many instances of other information presented through a voter registry lookup, such as candidate specific campaign finance information, and disability access. Present other information where it makes sense.

## Section 5: Marketing and Promotion

### Overview

There is a direct relationship between how much promotion a voter information website receives and the capacity such a site has to accommodate immediately prior to Election Day. In nearly every website studied that tracked usage patterns, basic voter usage remained consistent, but a marked increase was noted on or around Election Day. Accordingly, election administrators must address the following issues:

1. How much will the website be promoted?
2. How much traffic should each jurisdiction anticipate?

In the course of reviewing websites for this study, two patterns emerged. First, voter information websites were part of a larger outreach campaign, such as a public service announcement. The other approach used the voter information website as the central point of distribution for election information. The second approach likely maximizes traffic to voter information websites.

### **Recommendation 5.1: Consider different user audiences in promoting a voter information website.**

Understanding the audience of voter information websites is a key to the success of your voter information website. See Section 1: UNDERSTANDING THE AUDIENCE Understanding the Audience, for a breakdown of voter interest categories. There is limited demographic information available concerning usage of voter information websites. However, general trends showing the demographics of the users of the Internet indicate that Internet use shoots up in younger Americans.<sup>13</sup>

### **Recommendation 5.2: Repetition equals reinforcement.**

The single most effective way to promote a voter information website is to reinforce the connection between voter questions and relevant information on a jurisdiction's voter information website.

### **Recommendation 5.3: Use traditional media to promote voter information websites.**

While it is possible to advertise on the Internet, the same principles that apply to political campaigns can help promote voter information websites. Traditional media- radio, television and print advertising can be critical to increase awareness of your services and drive users to your website.

### **Recommendation 5.4: Include your voter information website address on all voter outreach and election materials.**

Any form of voter outreach by election officials and staff should include reference to a voter information website. In addition, it is a good idea when giving interviews to mention the website's address whenever possible.

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<sup>13</sup> "... while total usage in the United States is now at 71.1% of the population, among those in the 16-24 age group it is 90.8%." from the UCLA World Internet Project (2004) <http://www.international.ucla.edu/bcir/research/article.asp?parentid=7488>

**Recommendation 5.5: Encourage election staff to direct voters to the voter information website.**

Encourage election staff (and Secretaries of State or chief election officials) to mention the voter information website as a resource to anyone who asks for information. The amount of traffic you get on the website will vary depending on how much you promote it and how effective your promotion is

**Recommendation 5.6: Adjust your capacity to account for your promotion.**

The amount of traffic on a voter information website will vary depending on how much promotion it receives and how effective the promotion was. During peak times, voter information websites can become inundated with users, while off-peak times may result in few users. Election jurisdictions should plan to meet the high demand times as necessary, without taxing resources too heavily during low demand times.

**Recommendation 5.7: Identify and consider factors that may increase traffic.**

Examples of some factors that may increase traffic are voting age population, popularity of the Internet, and the presence of a college or university within a jurisdiction. As each jurisdiction is different, election administrators should take into account who might be using the site and how demographics may influence usage.

**Recommendation 5.8: Make voter information website addresses simple and easy to remember.**

Many states still have complicated Web addresses. This can be a problem when working a quick reference into an interview, or when a voter tries to recall a voter information website they've heard on the radio. Whatever website address an election jurisdiction chooses should be easy to remember.

There is not enough empirical data to conclusively recommend for or against using a distinct URL. There is an obvious communication advantage to "*statevotes.com*" over "*www.state.us/departments/elections/vote*" but *statevotes.com* can also easily be confused with "*statevotes.org*" which could be a website set up by spammers or spoofers. A ".gov" address may help clarify ownership, but as a precaution, any site that uses domains other than .com address should also purchase the corresponding .com and .org addresses. In order to avoid voters accessing incorrect or deliberately misleading information created by outside parties.

**Recommendation 5.9: Build promotion around a single website address.**

Some proposed models of voter information website design include modular components of statewide systems that are available for use by local jurisdictions. While this allows local jurisdictions flexibility, exposures to multiple official website addresses is also confusing.

**Recommendation 5.10: Allow official voter information websites to be used as a tool for local voter outreach programs.**

Don't underestimate the value a voter information website can have for third party organizations preparing voters for elections, and the benefit such partnerships may present to election jurisdictions. A Web address that is shared across multiple jurisdictions can be especially useful to third-party organizations that often operate in multiple jurisdictions.

## Section 6: Security and Privacy

### Overview

Voter information websites allow access to potentially sensitive information and should be carefully constructed to avoid jeopardizing privacy voters or the integrity and security of the records. Voter information can be compromised by falling into the wrong hands or by being modified to the detriment of accuracy. This section is divided into a discussion of concerns of the privacy of a voter and the security of the website.

The Privacy of an individual voter's record sparked debate during workgroup discussions. There are two schools of thought on the distribution of public information. Because voter registration records are public, it is legal to distribute this information without considering individual privacy. Still, few voters consider the first name, last name, middle name, city of residence, street address and birthday "public" information.

Privacy on the Internet is a high-profile concern in the public consciousness. The fear of exposure to fraud and identity theft inhibits many people from supplying what appears to be personal information.

A voter information website assumes a single voter as the target user. Website language was directed at "you" the voter and the information supplied, registration status, polling locations, disability access, sample ballots, etc, are intended to promote an efficient election day voting experience. When voter information websites begin to combine purposes it is often at the peril of a voter's personal privacy and security.

In general, a succinct transaction seems to be the most secure and efficient method of distributing information about an individual voter. This approach requires voter information websites to ask only for information absolutely needed to complete the request and return only the information a voter absolutely needs. The total information exchanged on a voter information website, input and output, should be as brief as possible, to protect the integrity of the election and the interests of individual voters.

Recommendations in this section are followed by what is threatened in parenthesis.

#### **6.1 EAC Recommendation: Do not expose the official registry file to the Internet.** *(official voter registry file security)*

Information that is available on the Internet is exposed to threats of tampering; computers exposed to the Internet are exposed to denial of service attacks and the threat of intrusion. Create a copy of your authoritative database to use for your voter information website and regularly update it from the authoritative database. No one should ever be able to change a voter's official status by compromising a website.

Security of a voter information website should be maintained and revisited over time. If a voter information website is tampered with, a voter may receive inaccurate information. Regular verification of the accuracy of the data in your exposed database is advised.

**6.2 EAC Recommendation: Do not expose data to the Internet that is not used by your voter information website. (*unused registry data security*)**

This recommendation applies to the security of information that may be in the exposed registry file, but not used in the online transaction. Sensitive data such as driver's license numbers shouldn't be exposed on the Internet if they are not necessary to the function of the website, and application developers should work to avoid using such information. When creating the database that will be accessed online, unnecessary information should be removed completely, not left in place.

**6.3 EAC Recommendation: Avoid asking for too much information. (*online transaction security*)**

Online voter searches should be as efficient as possible. Determine and use the absolute minimum amount of information necessary to accurately identify a voter record. Unnecessary information uses resources. Consider the wasted time, computational cycles, database queries and user attention it takes to input and process six data points for every voter if three will suffice.

Websites that ask for excessive information can deter usage for other reasons. If a website asks too many question end users may avoid it because it seems onerous. Given the increase in identity related crime, users may also be apprehensive about divulging "personal"<sup>14</sup> information over the Internet and asking for too much information may seem invasive to the user and deter use. Election administrators should be judicious when asking for information. Even if information is technically not private, it is not safe to assume that all voters consider their name, address, and birth date open to anonymous online consumption as a matter of public record.

Asking for too much information poses another potential risk. While it seems logical that the more information that can be verified, the greater the accuracy, the possibility exists that identity thieves could set out to collect information about a voter by creating a fake voter information website.<sup>15</sup>

**6.4 EAC Recommendation: Review and comply with your jurisdiction's security policies on encrypting data. (*online transaction security*)**

Review your web policies on passing data through an encrypted connection. When asked, many of the web administrators cited that the information "was public anyway." If a voter information website limits the amount of data requested and granted, the necessity of encryption in this context is arguable, but does not appear to be harmful.

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<sup>14</sup> In this case, information that is perceived as "personal" such as name address and birth date regardless or official public record status.

<sup>15</sup> A theoretical fake website could be an exact duplicate of the official site, but collects information a voter submits then indicate that "the database is unavailable please check back later." If the official government website asks for first name, last name, date of birth and zip code or unique voter ID (or middle name, address, social security number or driver's license number) up front, before demonstrating any functionality voters could submit significant personal information before, if ever, they discover a scam.

**6.5 EAC Recommendation: Make sure you know who is working with your voter information.**  
*(web development security and individual voter privacy)*

Chain of custody is important when dealing with voter registry data. Determine if you will use contractors and who within your organization will spearhead the project. Establish clear boundaries between tasks required of your internal IT department and those of your contractors. Know the chain of custody of your data. If contractors are going to be handling sensitive information, make sure they understand the liability and have a proven track record of security. Review policies on the use of outsourced and overseas contractors when handling sensitive voter data.

**6.6 EAC Recommendation: Use increased security if you set out to vet the voter registry for accuracy, and avoid doing so at the expense of voter security.**  
*(online transaction security and individual voter privacy)*

This recommendation applies to the security of the online transaction and voter privacy. One side of the privacy discussion contends that since voter registration information is public, people are safer if they know that it is available. In addition, the integrity of the voter registration file is enhanced when voters can verify and correct information in the file. This perspective has additional weight when viewed through the lens of states that rely heavily on mail-in balloting. Correct addresses in a mail-in ballot system may affect whether a voter receives a ballot without soliciting one. Advocacy groups have also expressed interest in the publication of addresses to aid in voter registration activities. Address verification required to maintain accurate registration files should be conducted as securely as possible, separate from the ability to verify registration on a voter information website. Unless effort has been made to authenticate a user, it is impossible to keep information about voters in one locality from being accessible everywhere. If a voter information website is designed to be a tool for vetting voter addresses to increase accuracy, it can be at the expense of voter privacy.

Although this school of thought raises important and legitimate concerns, they are not necessarily the provenance of voter information websites. Public access to voter records is necessary as a check on the integrity of the election, but anonymous public access to all data in a record is not necessary to prepare an individual voter for an election. Concern for the safety of voters through unregulated anonymous access to voter records is considerable, as is the potential damage done by identity theft.<sup>16</sup>

**6.7 EAC Recommendation: Display as little information as possible about the voter - just enough to answer the voter's question.**  
*(online transaction security and individual voter privacy)*

A voter registration website should reveal as little as possible about individual voters. While a voter information website can serve as a tool to check the accuracy of voter records, the public right to inspect voter records can be achieved through official documented request, and therefore does not need to be a primary design consideration.

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<sup>16</sup> "We have taken the approach that [information available online to the public] is for the functionality of what you need to do to vote." (David Tom, San Mateo County - June 2006 EAC Working Group meeting)

The goal of limiting disclosure is to provide the voter with accurate information while limiting access to information useful to potential wrongdoers. Make sure you review your website to determine if it poses a threat to voters, or the election process. The key to protecting voters and the integrity of the election when creating a voter information website is to carefully review the questions to be asked and the answers received.

**6.8 EAC Recommendation: Avoid disclosing a voter’s birth date or current address.**  
*(individual voter privacy and security)*

A voter information website that displays a voter’s birth data or address can inadvertently facilitate criminal activity because it is anonymous, and available anywhere, anytime. Although voter addresses and birthdates are public, entering a government office and documenting a request for an individual voter’s information is more involved and can be traced. Most voters recognize if a polling location is near a current or former address, and can confirm “is this in your neighborhood?” Allowing unfettered access to names, addresses and birth dates, is an invitation to abuse them.

**6.9 EAC Recommendation: Make sure your website is not a stalking tool.**  
*(individual voter privacy and security)*

A stalker uses any means available to locate a target, and an anonymously accessible online voter registration file can be a valuable resource. Many states offer stalking victims the option to redact their personal information from publicly accessible registration lists<sup>17</sup>, but to use these programs the voter must opt-in. Since individuals must be aware of potential threats before they can request participation in a redaction program relying on this approach alone leaves voter information exposed for anyone who does not know he or she has been targeted. It is safer to avoid exposing address information.

**6.10 EAC Recommendation: Review you website to make sure it is not useful for identity theft.** *(individual voter privacy and security)*

This recommendation applies to voter privacy and security. Every voter is a potential target of identity theft at any time. Examine how much voter information is disclosed and hypothetically consider if an identity thief used your website, how much information could they obtain and what could be done with it? Armed with a name, address and a birth date, a criminal could easily pursue further information for purposes of obtaining financial records or other information. Name, address and birth date alone may not be sufficient to cause harm, they are starting points for “phishing<sup>18</sup>” and “pretexting<sup>19</sup>,” or other social engineering schemes.

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<sup>17</sup> As in the “Safe at Home” Address Confidentiality Program employed by several states

<sup>18</sup> Fighting Back Against Identity Theft, US Federal Trade Commission: [www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html#Howdothievesstealanidentity](http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html#Howdothievesstealanidentity)

<sup>19</sup> Fighting Back Against Identity Theft, US Federal Trade Commission: [www.ftc.gov/bcp/edu/microsites/idtheft/consumers/pretexting.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/pretexting.html)

**6.11 EAC Recommendation: Make sure your website does not facilitate election fraud.**  
(election security)

Anonymous access to the names, addresses and birth dates of infrequent voters could be the basis for sophisticated Election Day fraud.

**6.12 EAC Recommendation: Use implied information when possible.**  
(individual voter privacy and transaction security)

A valuable method of supplying information without exposing excess information is implied information. Election authorities have all the information in a voter's record so it is possible to design website queries to leverage the information on file without divulging it. An example of implied information: if a voter's identity is confirmed and matches a registration record, that voter's polling location is displayed; if the voter's identity does not match a registration record, the voter is informed that he or she is not registered. The voter is never told explicitly that he or she is registered, but may deduce from the result of a polling location search whether or not that is the case. This approach can be described symbolically as:

*if registered = true then display = polling location*  
*if registered = false then display = not registered*

The scenario: *if registered = true then display = registered* does not need to be displayed. (*Registered* is a characteristic of a voter, whereas *polling location* is an independent data object, generally considered "public" information.) Registration is implied, and by eliminating its display, fewer characteristics of the actual voter are divulged, while the voter still has the necessary information to vote.

In another example, data itself can be confirmed without exposure to the user. A jurisdiction's registrar's office already possesses each voter's name, address and birth date. An address can be verified by the user supplying a street address number, rather than the site displaying the entire address for the user to select. If the street numbers submitted match the registrar's record, then the address can be verified:

*if input = 12345 Street and record = 12345 Street then display = polling location*  
*if input = 12345 Street and record = 56789 Street then display = contact your registrar*

In this case the address record is validated and no additional information about the voter is displayed to the user who inputs the data. There may be special circumstances that apply to specific voters, such as a requirement to vote in person. Take care when displaying information about voters. Depending on the sensitivity of the information, you may want to consider a separate authenticated login.

**6.13 EAC Recommendation: Avoid displaying information about more than one voter.** *(individual voter privacy and transaction security)*

The opposite of a limited disclosure approach might be termed a “multiple disclosure” approach. Multiple disclosures go beyond limited and full disclosures to expose information about more than one voter per query. An example of this type of voter information website implementation would be identifying all voters in residence at a specific address. The site might request the input of an address and display information on the names of the registered voters at the input address:

*if input = 12345 Street then display = voter 1 name, voter 2 name, voter 3 name*

Thus, a user in possession of only an address can find information about multiple voters. An entire apartment building could be exposed in such a case.

**6.14 EAC Recommendation: Avoid using lists** *(individual voter privacy and transaction security)*

This recommendation applies to voter privacy and transaction security. There is no need to expose more than one voter’s information to anyone using the site. Refer to the section in this document on Privacy for more details.

Similarly, using a list to confirm a voter’s identity should be discouraged:

*if input = John Smith then display = did you mean:  
John Smith at 12345 Street in City X  
John Smith at 56789 Street in City X  
John Smith at 45678 Street in City Y  
John Smith at 54321 Street in Town Z*

Here, information for all John Smiths in this particular jurisdiction is exposed.

**6.15 EAC Recommendation: Avoid information over-exposure.** *(individual voter privacy)*

This recommendation applies to voter privacy and transaction security. Secondary clarification prevents the need to manually filter multiple results. A secondary question like: “*What city town or village do you live in?*” or “*What is your middle initial?*” can clarify a voter’s identity without exposing it.

*if input = John Smith then display = What city, town or village do you live in?  
if input = City X and record = City X then display = polling location  
if input = Town Z and record = City X then display = contact your registrar*

**6.16 EAC Recommendation: Avoid asking for obscure information.**  
(*online transaction security*)

This recommendation applies to transaction security. Sites can disrupt the flow of a smooth user experience by asking for information outside of what is expected. Election administrators should be careful to keep the information requested within the end user's understanding of the transaction. Requesting obscure information can be impractical for two reasons: if the information requested is difficult to immediately recall, a user may get frustrated and stop. It is not uncommon for sites to ask for a driver's license number, zip+4, voter ID, DMV ID, or even a specially requested PIN personal identification number; however, doing so forces the user to search for that information before they can obtain information they seek. You may only get one chance at delivering information to a voter online; you don't want to turn them away.

## Section 7: Designing a Postive User Experience

### Overview

Websites must take into account the flow of information from page to page—the “user experience”. A good user experience is critical to the success of a voter information website as it will encourage repeat users and positive word-of-mouth advertisement. A positive user experience is designed with the end-user in mind.

Poor design and complicated layout can deter usage. Common functions should be grouped in high visibility locations, and more obscure or detailed information can be in lower profile locations deeper into the site for committed users, or users seeking answers to very specific questions. In general, simplicity is the key. Voter information Websites should use pictographic artifacts wherever possible to avoid excessive reliance on text.

Crafting the user experience is one of the areas where outside design experts may be a valuable resource. There is also a wealth of user interface research available online, detailing good design practices for page layout and navigation. Two U.S. Government sites that have already addressed Web design and usability for government-related applications are the U.S. Department of Health and Human Services’ *www.usability.gov* and the General Services Administration’s *www.webcontent.gov*.

### **Recommendation 7.1: Move users quickly from general to specific information.**

Move from the general to the specific in your information architecture. Different users will access voter information websites for different reasons. It is imperative that voter information websites move users quickly to the information they require so that users don’t navigate elsewhere.

As an example, not every voter will be a first time voter, so a voter information website should avoid asking every visitor if they are a first time voter. Most website users will not belong to a specialized category, so emphasize these options as alternate branches off the main path a voter will navigate through, not as obstacles. No one wants to fill out a detailed questionnaire before they begin to use the system.

### **Recommendation 7.2: Employ industry standard graphic design principles and highlight the most popular features.**

Graphic design, layout and intuitive flow of the user experience are in their respective industries scientific disciplines. There are experts in the field that can advise election jurisdictions about the most effective way to display material. Awkward design and layout were very common among the websites studied. While there is no one standard format for voter information websites, voters should easily see what information they will be able to access on a voter information website.

### **Recommendation 7.3: Review design to ensure simplicity.**

User interface design can take place parallel to the database and software development. The key concern is whether or not information is logical and available where users expect it. Watch

people use the site – often small assumptions at this stage can result in major user frustration in the end product. The user interface should be tested for use on multiple browser platforms and operating systems. Usability testing should be run on static mock-ups of the website.

**Recommendation 7.4: Use broad and simple language; link to legal detail as necessary.**

Election laws can be complicated especially when every variable and scenario is fully documented. Voter information websites need only display broad concepts and do not need to be presented in full legal detail. When complicated concepts are unavoidable, consider whether an interactive narrated experience can help users navigate. For example:

Are you a first time voter? YES > Are you a student? YES > Did you register in person? etc.

Review the section on Accessibility in this document for a summary of reading comprehension levels and simple, clear and accessible language.

**Recommendation 7.5: Encourage voters with complex questions to contact election administrators.**

Even when a voter’s question cannot be anticipated, it is still possible to provide voters with the means to ask those questions directly. Besides phone numbers, providing email addresses and Web forms for voters to submit questions in their own words can assist election administrators in effectively addressing voters’ needs.

**Recommendation 7.6: Use clear and consistent menus and icons.**

Graphic elements can assist with website legibility and usability. Development of a set of “common language icons” consistently used throughout the site, will contribute to users’ sense of familiarity while researching information.

**Recommendation 7.7: Use simple and recognizable visual language.**

Decreasing text and emphasizing easily identifiable graphics can help users establish *where* and *how* to obtain information and/or move to the next step. Buttons or similar elements that enact a behavior, such as visually depressing when clicked, enhance users’ understanding. An excess of graphics, however, can slow response times considerably during peak usage. Where graphics are not required for navigation or other essential uses, text-based alternatives should also be made available. Also, all graphics should make use of alt text for compatibility with speaking browsers (a Section 508 requirement).

**Recommendation 7.8: Avoid excessive graphic design.**

Poor or awkward design can be a hallmark of an underused website. Because election administrators cannot pre-determine what equipment is used to visit a voter information website, the design and layout should be simple and readable by as many computer and software variations as possible. Confusion or discomfort with voter information websites not only limits what the voter gains by using the site, but may deter further use.

**Recommendation 7.9: Use “Frequently Asked Questions.”**

To address multiple scenarios without overwhelming voters, using “Frequently Asked Questions” pages and links that move from general questions (e.g. “Are you a first-time voter?”, “Do you have a drivers’ license or state ID?”) to more specific is helpful.

**Recommendation 7.10: Avoid asking voters for information that is not readily-available.**

Many people don’t have their driver’s license number or Zip +4 memorized, for example. Asking such questions may deter users from further navigating on a voter information website.

## Section 8: Accessibility

### Overview

Accessibility addresses compliance with Section 508 of the Rehabilitation Act of 1973. It also encompasses emerging technologies intended to enhance user experiences, designing clear user interfaces, designing for people whose first language isn't English, and designing for people with limited literacy or Internet experience. For example, voters who access the Internet through a public library or community library may not have the permission or ability to install special software or browser plug-ins such as Flash or Adobe Reader.

#### **Recommendation 8.1: Establish Section 508 as a minimum requirement for usability.**

Section 508 of the Rehabilitation Act of 1973 requires that federal agencies make their websites accessible to persons with disabilities. Subpart B, 1194.22 of Section 508 sets out standards for website compliance, which are located at: [www.section508.gov](http://www.section508.gov). The United States Access Board is the federal agency that developed the accessibility standards; a standards guide, frequently asked questions, and other resources are available on the Board's website at: [www.access-board.gov](http://www.access-board.gov).

Although Section 508 dictates accessibility for users with disabilities, 508 requirements still may not address usability for all users. Therefore, it is advisable that election jurisdictions implement usability testing, which aims at designing the most practical and easy to use website.

#### **Recommendation 8.2: Follow foreign language requirements for printed materials on the website.**

Many jurisdictions have significant populations for whom English is a second language. In designing a voter information website, election jurisdictions should apply federal, state, and local laws regarding printed material translation equally to online content.

#### **Recommendation 8.3: Ensure that content is written at a basic or intermediate literacy level.**

Functional literacy is measured in gradations by The National Assessment of Adult Literacy (NAAL). NAAL was conducted in 2003 by the U.S. Department of Education to measure English literacy in American adults.<sup>20</sup> The 500 point NAAL scoring system was separated into four ranges: Below Basic, Basic, Intermediate and Proficient. In 2003, the average Document Literacy score for all adults fell within the Intermediate range. More resources are available at: [www.nces.ed.gov](http://www.nces.ed.gov)

Except where specific wording is legally required, written material should not exceed a standard appropriate for the Intermediate level. In addition, since roughly 1 in 5 adults read at the Basic level and 1 in 7 read at Below Basic, use of "short, commonplace prose text" wherever possible is appropriate.

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<sup>20</sup> The National Assessment of Adult Literacy (NAAL) <http://nces.ed.gov/Pubs2007/2007480.pdf>

**Recommendation 8.4: Ensure that website design encompasses users of below-average Internet literacy.**

To accommodate users who may not be familiar with the Internet or have regular access to it, voter information websites should make user interfaces as open as possible so that access to information does not require changes to browser settings or personalization. Voter information websites should not require specific browsers, restrict usage by requiring specific software, or depend on browser features such as cookies or JavaScript to operate properly.

**Recommendation 8.5: Ensure compliance with new technologies when designing a voter information website.**

As access to the Internet continues to grow, users may access voter information websites from PDAs or cell phones. Some of these other forms of access require new considerations such as how their browsers render sites, and what sorts of input mechanisms they allow. Voter information websites should plan for compatibility with different Internet-ready devices because variously-sized display areas, limited input devices, and proprietary browsers will pose an ongoing design challenge to voter information websites.

**Recommendation 8.6: Use simple technologies.**

To guarantee access to voters who use shared computers, limit the use of plug-in technologies that require administrative privileges to install. In addition, election jurisdictions should limit website features that require frequent browser upgrades or special software to operate correctly.

As an example, Adobe Reader is a common browser plug-in used to read Adobe PDF files, but it may not be installed on every computer. If a sample ballot is presented only in PDF format and a voter is using a shared computer without the appropriate software, he or she may not be able to view the ballot. On the other hand, if a voter information database can provide a HTML representation of the ballot, all users will be able to view the ballot.

**Recommendation 8.7: Display pages in printer-friendly formats.**

Printable sample ballots, legible maps of polling places, and short biographies or statements by candidates (in districts where those are supplied) can be saved and/or printed by users who do not have ready access to the Internet, increasing their efficacy. In addition, creating Web pages in printer-friendly formats further allow third party organizations to help election jurisdictions inform voters by passing out information directly from a voter information website.

**Recommendation 8.8: Indicate polling location accessibility information.**

Whenever possible, polling place information should include details about accessibility such as identifying entrances with ramp access or where elevators are located.

## Appendix A: Study Background and Methodology

### HAVA Mandate

In June of 2005, staff at the U.S. Election Assistance Commission (EAC) undertook a survey of public access portals available online to determine trends in voter questions and what entities were sponsoring online portals. The EAC found that there were several public access portals in operation for the 2004 Presidential election. Sponsorship ranged from locally-based governments to the independent sector and private corporations. Many of the websites were found to be duplicative, disorganized, and often erroneous. The EAC also found that voters primarily wanted two questions answered on Election Day: (1) Am I registered? and (2) Where do I vote?

Section 245(a) of the Help America Vote Act (HAVA) mandates that the U.S. Election Assistance Commission (EAC) conduct a thorough study of issues and challenges presented by incorporating communications and Internet technologies. Section 245(a)(2)(C) indicates that the EAC may investigate the impact that new communications or Internet technology systems in the electoral process have on voter participation rates, voter education, and public accessibility. In addition, Section 241(b)(9) allows the EAC to periodically study election administration issues, including methods of educating voters on all aspects voter participation.

To assist with collecting data, the EAC contracted Publius, a non-partisan non-profit organization to organize and conduct a voter information website design study and workgroup. This study is the aggregation of expert opinion at the time the study was conducted. It is ultimately exploratory in nature. The recommendations contained herein outline the current development, function and usefulness of voter information websites.

As election officials define, refine, design and utilize the recommendations to build and maintain voter information websites a more accurate sense of the utility of the recommendations presented and uncovered in this study. Field experience, combined with these initial reference recommendations, and the emergence of controls should result in the possibility of a more quantitative study in the future.

At some point, the time will come to revisit voter information website design and see how well these recommendations hold up.

### Overview:

Preliminary research was conducted online and over the phone. Findings were compiled and presented to a panel of experts to spark comment and discussion. The resulting expert opinion was reviewed and compiled to produce the recommendations in this document.

### Online Research

In November 2005, the EAC began a comprehensive survey of voter information websites. This study reviewed hundreds of election information websites from various jurisdictions across the country. Seventy-one voter information websites<sup>21</sup> chosen for detailed study at a minimum could

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<sup>21</sup> Listed in Appendix D.

answer the question: “Am I registered to vote?” This distinction meant that the site itself had to be able to reference a voter registration file in order to qualify for in-depth study.

From November 2005 through February 2006 the selected voter information websites were reviewed and documented in three stages:

A thorough examination of information available online was categorized and distilled as discrete answers to anticipated voter questions. These anticipated questions were categorized in order to extrapolate the answer to the question: “What questions did the author of this website anticipate answering?” This extrapolated data was averaged across the studied websites and a distinct pattern emerged that substantiated the initial survey research: “Am I registered to vote?” and “Where do I vote?” were found to be the two most anticipated questions from voters.

New vectors were introduced to the aggregate data, focusing on the websites that offered the most detailed information and those that had been in existence the longest. The goal was to see what features may have been anticipated and which features had been added as service expanded. Many of these features indicated that newer full-featured websites are already building on the functionality of more established sites. Features of these more robust sites were categorized and averaged, and the most common question extrapolated from feature-rich websites was: “What is on the ballot?”<sup>22</sup>

Finally, information delivery methods were categorized and averaged to understand how the information was delivered, and extrapolate what concerns were considered in the development of the delivery method. Categories were developed and delivery methodologies cataloged, which resulted in the detailed study of privacy discussed in this document.

### **Phone Interviews**

The study then conducted follow-up phone interviews with the election administrators responsible for the websites identified above to gather further data about the policy and political motivations and execution of these projects. Administrators were asked a variety of questions, such as:

- How did your project come into being?
- Was it done in house?
- What were the obstacles you encountered in setting up your site?
- What went right?
- What would you do differently?
- Do you have future plans for changing or expanding the site?
- How much did it cost to create the site?
- How popular is your site with your constituency?
- Many interviewees were asked other follow-up questions as new issues emerged.

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<sup>22</sup> Publius, Washington State, King County Washington, Johnson County Kansas

As part of the study, the contractor requested detailed website log-file information. However, few of the sites in the study could furnish log-file data, resulting in too few data to generate an accurate sample.

### **General Development Path**

Phone interviews with the administrators who were responsible for the voter information on their websites revealed that there was no uniform path to voter information website development. Some election jurisdictions developed their websites through supplementary riders to their voter registration database development contracts. Some projects also started as add-on functionality to a voter registration file that displayed more information than is recommended in this study. Some of the most user-friendly voter information websites were done in-house, as were some of the most unwieldy ones. Some election jurisdictions contracted out the development of their websites while others hired consultants to assist in development, assessing user experiences and marketing.

### **Project Conclusion**

From April to June 2006, additional websites, many newly created for the 2006 midterm election, were reviewed and added to the study. All 50 state election websites were reviewed for changes at this time.

On June 27, 2006, the EAC hosted the voter information website design workgroup of technology experts, election administrators, advocacy organizations and other stakeholders. Participants were presented with the results of the second research study. A number of discussions that focused on voter education and website design resulted from that meeting and the research study. Feedback and recommendations from that meeting have been documented and are cited throughout this best practices document.

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**Additional Reviewing Experts**

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From July through September 2006, results for the research study and the workgroup comments were reviewed and preliminary findings were developed for presentation to the EAC. On September 21, the preliminary findings were presented to the EAC at a public meeting in St. Louis.<sup>23</sup>

The best practices final report was compiled through October and November 2006, and revised in early 2007. Online comments from workgroup participants were solicited and a third review of all 50 state websites was also done at this time. EAC staff and Publius have worked together to edit the document for final release.

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<sup>23</sup> [http://www.eac.gov/Public\\_Meeting\\_092106.asp](http://www.eac.gov/Public_Meeting_092106.asp)

## Appendix B: Definitions

**Dynamic Data:** Data that is tailored to the individual viewer based on the registration information supplied. For example, dynamically generated ballots make use of a voter's registration information to provide a list of contests exclusive to the individual voter.

Examples of dynamic data include: (1) registration status, (2) polling place location on interactive maps, (3) type of voting equipment specific to each polling place, (4) type of ballot used at a specific polling place, (5) initiatives and amendments specific to each ballot, and (6) calendars of upcoming elections.

**Election Information Website:** A website that provides information about elections and the election process.

**Static Data:** Information displays that are the same for each viewer. For example, static voter information websites display generic sample ballots that may or may not resemble the actual ballot voters will see on Election Day.

Examples of static data include: (1) how to apply for an absentee ballot, (2) election dates, (3) polling place hours of operation, (4) registration deadlines, (5) district maps and boundaries, (6) how to become a poll worker, and (7) instructions and/or frequently asked questions.

**Voter Information Website:** A website that provides information specific to an individual voter by referencing the current voter registration file. Voter information websites are distinct from election information websites in that they utilize public access to official voter registration records.

**Voter Registration Look-up Mechanism:** A utility that determines a voter's identity in order to display voter-specific registration information. Such a utility may require that the user enter identifying information; or information may be retrieved by drilling down through several menus.

**Voters with Special Circumstances:** Voters with special circumstances include voters who recently moved to a new jurisdiction, voters who have had their voting rights restored following a felony, deceased voters, and voters with limited reading comprehension.

## Appendix C: Index of EAC Advisories in this Document

The following are the EAC Recommendations that were presented in this document. Following each recommendation is the page number where it can be found.

### Preliminary Planning – Recommendations

- 3.1: Answer the question “Am I registered to vote?” (P.7)
- 3.2: Review legal considerations. (P.7)
- 3.3: Update voter records as often as possible. (P.7)
- 3.4: Adopt a neutral voice. (P.7)
- 3.5: Use effective design principles. (P.8)
- 3.6: Contract out work as needed. (P.8)
- 3.7: Review contractors’ prior work. (P.8)
- 3.8: Consider commercial off-the-shelf (COTS) and open source solutions. (P.8)
- 3.9: Establish clear goals before development. (P.8)
- 3.10: Inventory data sources. (P.8)
- 3.11: Plan for high capacity peaks. (P.9)
- 3.12: Consider intellectual property and copyright issues. (P.9)
- 3.13: Document project development and system functionality. (P.9)
- 3.14: Budget for development, hosting, capacity, and promotion. (P.9)
- 3.15: Track usage patterns. (P.9)

### Features - Recommendations

- 4.1: Provide voters with the answer to the question “Where do I vote?” (P.10)
- 4.2: Add map links to polling locations. (P.10)
- 4.3: Do not provide voters with driving directions. (P.10)
- 4.4: When including mapping programs, use the simplest versions available. (P.10)
- 4.5: Provide voters with a sample ballot. (P.11)
- 4.6: Display sample ballots exactly as they will appear on Election Day. (P.11)
- 4.7: Link sample ballots to helpful information. (P.11)
- 4.8: Do not link to incumbent government websites on a voter guide. (P.11)
- 4.9: Give voters the ability to track absentee ballots online. (P.11)
- 4.10: Allow users to check the status of provisional ballots online. (P.11)
- 4.11: Provide instructions for how to use voting equipment. (P.12)
- 4.12: Post Election Day times and polling location hours prominently. (P.12)

4.13: Provide other readily-available information neatly and in a logical manner. (P.12)

#### **Marketing and Promotion - Recommendations**

5.1: Consider different user audiences in promoting a voter information website. (P.13)

5.2: Repetition equals reinforcement. (P.13)

5.3: Use traditional media to promote voter information websites. (P.13)

5.4: Include your voter information website address on all voter outreach and election materials. (P.13)

5.5: Encourage election staff to direct voters to the voter information website. (P.14)

5.6: Adjust your capacity to account for your promotion. (P.14)

5.7: Identify and consider factors that may increase traffic. (P.14)

5.8: Make voter information website addresses simple and easy to remember. (P.14)

5.9: Build promotion around a single website address. (P.14)

5.10: Allow official voter information websites to be used as a tool for local voter outreach programs. (P.14)

#### **Security and Privacy - Recommendations**

6.1: Do not expose the official registry file to the Internet. (*official voter registry file security*) (P.15)

6.2: Do not expose data to the Internet that is not used by your voter information website. (*unused registry data security*) (P.16)

6.3: Avoid asking for too much information. (*online transaction security*)(P.16)

6.4: Review and comply with your jurisdiction's security policies on encrypting data. (*online transaction security*) (P.16)

6.5: Make sure you know who is working with your voter information. (*web development security and individual voter privacy*) (P.17)

6.6: Use increased security if you set out to vet the voter registry for accuracy, and avoid doing so at the expense of voter security. (*online transaction security and individual voter privacy*) (P.17)

6.7: Display as little information as possible about the voter - just enough to answer the voter's question. (*online transaction security and individual voter privacy*) (P.17)

6.8: Avoid disclosing a voter's birth date or current address. (*individual voter privacy and security*) (P.18)

6.9: Make sure your website is not a stalking tool. (P.18)  
(individual voter privacy and security)

6.10: Review you website to make sure it does not facilitate identity theft. (*individual voter privacy and security*)(P.18)

- 6.11: Make sure your website does not facilitate election fraud. (*election security*)(P.19)
- 6.12: Use implied information when possible. (*individual voter privacy and transaction security*)(P.19)
- 6.13: Avoid displaying information about more than one voter. (*individual voter privacy and transaction security*)(P.20)
- 6.14: Avoid using lists (*individual voter privacy and transaction security*) (P.20)
- 6.15: Avoid information over-exposure. (*individual voter privacy*) (P.20)
- 6.16: Avoid asking for obscure information. (*online transaction security*) (P.21)

### **Designing a Positive User Experience - Recommendations**

- 7.1: Move users quickly from general to specific information. (P.22)
- 7.2: Employ industry standard graphic design principles and highlight the most popular features. (P.22)
- 7.3: Review design to ensure simplicity. (P.22)
- 7.4: Use broad and simple language; link to legal detail as necessary. (P.23)
- 7.5: Encourage voters with complex questions to contact election administrators. (P.23)
- 7.6: Use clear and consistent menus and icons. (P.23)
- 7.7: Use simple and recognizable visual language. (P.23)
- 7.8: Avoid excessive graphic design. (P.23)
- 7.9: Use “Frequently Asked Questions.” (P.24)
- 7.10: Avoid asking voters for information that is not readily-available. (P.24)

### **Accessibility - Recommendations**

- 8.1: Establish Section 508 as a minimum requirement for usability. (P.25)
- 8.2: Follow foreign language requirements for printed materials on the website. (P.25)
- 8.3: Ensure that content is written at a basic or intermediate literacy level. (P.25)
- 8.4: Ensure that website design encompasses users of below-average Internet literacy. (P.26)
- 8.5: Ensure compliance with new technologies when designing a voter information website. (P.26)
- 8.6: Use simple technologies. (P.26)
- 8.7: Display pages in printer-friendly formats. (P.26)
- 8.8: Indicate polling location accessibility information. (P. 26)

## Appendix D: List of Websites Reviewed in this Study<sup>24</sup>

State	Jurisdiction	Website
Alabama	Mobile County	<a href="http://www.mobile-county.net/probate/">http://www.mobile-county.net/probate/</a>
Arizona	Secretary of State	<a href="https://servicearizona.com/webapp/evoter/select_language.do">https://servicearizona.com/webapp/evoter/select_language.do</a>
Arkansas	Secretary of State	<a href="https://www.voterview.ar-nova.org/">https://www.voterview.ar-nova.org/</a>
Arkansas	Pulaski County	<a href="http://www.pulaskiclerk.com/">http://www.pulaskiclerk.com/</a>
California	San Mateo County	<a href="http://www.shapethefuture.org/voters/default.asp">http://www.shapethefuture.org/voters/default.asp</a>
California	Sacramento County	<a href="http://www.pollingplacelookup.saccounty.net/LookupPollingPlace_SearchByDOB.aspx">http://www.pollingplacelookup.saccounty.net/LookupPollingPlace_SearchByDOB.aspx</a>
Colorado	Adams County	<a href="http://webapps.co.adams.co.us/ElcPoll/VoterSearch.cfm">http://webapps.co.adams.co.us/ElcPoll/VoterSearch.cfm</a>
Colorado	Boulder County	<a href="http://www.co.boulder.co.us/webapps/voter_reg/promptforname.html">http://www.co.boulder.co.us/webapps/voter_reg/promptforname.html</a>
Colorado	El Paso County	<a href="http://car.elpasoco.com/VoteRegQuery.asp">http://car.elpasoco.com/VoteRegQuery.asp</a>
Colorado	Larimer County	<a href="https://www.co.larimer.co.us/elections/voter_inquiry.cfm">https://www.co.larimer.co.us/elections/voter_inquiry.cfm</a>
Colorado	Weld County	<a href="https://www.co.weld.co.us/departments/clerkrecorder/voter_lookup/index.cfm">https://www.co.weld.co.us/departments/clerkrecorder/voter_lookup/index.cfm</a>
Connecticut	Southington County	<a href="http://registrars.southington.org/voterlist/voters.php">http://registrars.southington.org/voterlist/voters.php</a>
Connecticut	Vernon County	<a href="http://www.vernonelections.org/voterlookup.php">http://www.vernonelections.org/voterlookup.php</a>
Delaware	Secretary of State	<a href="https://registertovote.elections.delaware.gov/VoterRegistration/controller?TransName=VOTERREG_MAINMENU">https://registertovote.elections.delaware.gov/VoterRegistration/controller?TransName=VOTERREG_MAINMENU</a>
District of Columbia	Secretary of State	<a href="http://www.dcboee.org/voterreg/vic_step1.asp">http://www.dcboee.org/voterreg/vic_step1.asp</a>
Georgia	Secretary of State	<a href="http://www.sos.state.ga.us/cgi-bin/locator.asp">http://www.sos.state.ga.us/cgi-bin/locator.asp</a>
Illinois	City of Rockford	<a href="http://www.voterockford.com/voters/regStatus.aspx">http://www.voterockford.com/voters/regStatus.aspx</a>
Illinois	DuPage County	<a href="http://cms.dupageelections.com/pages.asp?pageid=984">http://cms.dupageelections.com/pages.asp?pageid=984</a>

<sup>24</sup> Websites reviewed in this study were active as of the study dates: October 2005 through April 2007.

State	Jurisdiction	Website
Illinois	Kane County	<a href="http://www.kanecountyelections.org/VoterInformation/VoterInfo.asp">http://www.kanecountyelections.org/VoterInformation/VoterInfo.asp</a>
Illinois	Lake County	<a href="http://www.co.lake.il.us/cntyclk/elections/voterservices/regvoter.asp">http://www.co.lake.il.us/cntyclk/elections/voterservices/regvoter.asp</a>
Illinois	Vermilion County	<a href="http://www.co.vermilion.il.us/ctyvoterReg.asp">http://www.co.vermilion.il.us/ctyvoterReg.asp</a>
Illinois	Will County	<a href="https://www.willcountydata.com/voternewinquiry/voter_lookup_input.htm">https://www.willcountydata.com/voternewinquiry/voter_lookup_input.htm</a>
Illinois	City of Chicago	<a href="http://chicagoelections.com/voterinfo/default.aspx">http://chicagoelections.com/voterinfo/default.aspx</a>
Illinois	Champaign County	<a href="https://www.champaigncountyclerk.com/elections/registration_status.html">https://www.champaigncountyclerk.com/elections/registration_status.html</a>
Illinois	Cook County	<a href="http://www.voterinfont.com/sub/am_i_registered.asp">http://www.voterinfont.com/sub/am_i_registered.asp</a>
Illinois	Madison County	<a href="http://app1.co.madison.il.us/CountyClerk/VoterPolling/VoterRegistration.cfm">http://app1.co.madison.il.us/CountyClerk/VoterPolling/VoterRegistration.cfm</a>
Indiana	Secretary of State	<a href="http://www.indianavoters.com/PublicSite/Public/PublicVoterRegistration.aspx?AspxAutoDetectCookieSupport=1">http://www.indianavoters.com/PublicSite/Public/PublicVoterRegistration.aspx?AspxAutoDetectCookieSupport=1</a>
Kansas	Secretary of State	<a href="https://myvoteinfo.voteks.org">https://myvoteinfo.voteks.org</a>
Kansas	Johnson County	<a href="http://voter.jocoelection.org/search.aspx">http://voter.jocoelection.org/search.aspx</a>
Kentucky	Secretary of State	<a href="https://cdcbbp.ky.gov/VICWeb/index.jsp">https://cdcbbp.ky.gov/VICWeb/index.jsp</a>
Louisiana	Secretary of State	<a href="http://sos.louisiana.gov/polllocator">http://sos.louisiana.gov/polllocator</a>
Maine	Secretary of State	<a href="http://www.maine.gov/sos/cec/elec/votreg.htm">http://www.maine.gov/sos/cec/elec/votreg.htm</a>
Maine	City of Portland	<a href="http://www.portlandmaine.gov/voter/voterlook.asp">http://www.portlandmaine.gov/voter/voterlook.asp</a>
Maryland	Secretary of State	<a href="http://mdelections.umbc.edu/voter_registration/v2/vote_prod.php">http://mdelections.umbc.edu/voter_registration/v2/vote_prod.php</a>
Massachusetts	City of Boston	<a href="http://www.cityofboston.gov/elections/voter/">http://www.cityofboston.gov/elections/voter/</a>
Michigan	Secretary of State	<a href="https://www.michigan.gov/vote">https://www.michigan.gov/vote</a>

State	Jurisdiction	Website
Michigan	Detroit	<a href="http://detroitvoter.info">http://detroitvoter.info</a>
Michigan	Statewide Non-Governmental	<a href="http://www.publius.org">http://www.publius.org</a>
Missouri	Kansas City	<a href="http://www.kceb.org/electioninfo/electioninfo.php">http://www.kceb.org/electioninfo/electioninfo.php</a>
Montana	Yellowstone	<a href="https://secure.co.yellowstone.mt.us/elections/secure/rvoterinfo.asp">https://secure.co.yellowstone.mt.us/elections/secure/rvoterinfo.asp</a>
Nebraska	Secretary of State	<a href="https://www.votercheck.necvr.ne.gov/">https://www.votercheck.necvr.ne.gov/</a>
Nevada	Clark County	<a href="http://www.accessclarkcounty.com/election/home.asp">http://www.accessclarkcounty.com/election/home.asp</a>
Nevada	Washoe County	<a href="http://www.co.washoe.nv.us/voters/regsearch.php">http://www.co.washoe.nv.us/voters/regsearch.php</a>
North Carolina	Secretary of State	<a href="http://www.sboe.state.nc.us/votersearch/seimsvot.htm">http://www.sboe.state.nc.us/votersearch/seimsvot.htm</a>
North Dakota	Secretary of State	<a href="http://www.nd.gov/sos/forms/pdf/votereg.pdf">http://www.nd.gov/sos/forms/pdf/votereg.pdf</a>
Ohio	Secretary of State	<a href="http://www.sos.state.oh.us/sosapps/elections/voterquery.aspx">http://www.sos.state.oh.us/sosapps/elections/voterquery.aspx</a>
Ohio	Butler County	<a href="http://www.butlercountyelections.org/index.cfm?page=voterSearch">http://www.butlercountyelections.org/index.cfm?page=voterSearch</a>
Ohio	Hancock County	<a href="http://66.194.132.88/search.aspx">http://66.194.132.88/search.aspx</a>
Ohio	Warren County	<a href="http://www.co.warren.oh.us/bdelec/search/where_to_vote/index.htm">http://www.co.warren.oh.us/bdelec/search/where_to_vote/index.htm</a>
Ohio	Wood County	<a href="http://www.co.wood.oh.us/boe/VoterSearch.htm">http://www.co.wood.oh.us/boe/VoterSearch.htm</a>
Ohio	Franklin County	<a href="http://www.co.franklin.oh.us/boe/apps/voter/index.asp">http://www.co.franklin.oh.us/boe/apps/voter/index.asp</a>
Ohio	Hamilton County	<a href="http://www.hamilton-co.org/BOE/votersearchs.asp">http://www.hamilton-co.org/BOE/votersearchs.asp</a>
Pennsylvania	Secretary of State	<a href="http://www.dos.state.pa.us/voting/cwp/view.asp?a=1206&amp;Q=446253">http://www.dos.state.pa.us/voting/cwp/view.asp?a=1206&amp;Q=446253</a>
Pennsylvania	Allegheny County	<a href="http://www.county.allegheny.pa.us/votedistricts/">http://www.county.allegheny.pa.us/votedistricts/</a>
Rhode Island	Secretary of State	<a href="http://www.sec.state.ri.us/vic/">http://www.sec.state.ri.us/vic/</a>

State	Jurisdiction	Website
South Carolina	Secretary of State	<a href="https://webprod.cio.sc.gov/SCSECVoterWeb/voterInformationSearch.do">https://webprod.cio.sc.gov/SCSECVoterWeb/voterInformationSearch.do</a>
Tennessee	City of Memphis	<a href="http://www.shelbynet.com/wconnect/vhistfile.htm">http://www.shelbynet.com/wconnect/vhistfile.htm</a>
Texas	Montgomery County	<a href="http://www.co.montgomery.tx.us/election/vrlookup.asp">http://www.co.montgomery.tx.us/election/vrlookup.asp</a>
Texas	Collin County	<a href="http://www.collincountytexas.gov/elections/voter_registration/voter_registration_card_voter.jsp">http://www.collincountytexas.gov/elections/voter_registration/voter_registration_card_voter.jsp</a>
Texas	Dallas County	<a href="http://dalcoelections.org/voters.asp">http://dalcoelections.org/voters.asp</a>
Texas	Denton County	<a href="http://elections.dentoncounty.com/go.asp?Dept=82&amp;Link=292">http://elections.dentoncounty.com/go.asp?Dept=82&amp;Link=292</a>
Texas	Fort Bend County	<a href="http://vote.co.fort-bend.tx.us/WebVoter/default.asp">http://vote.co.fort-bend.tx.us/WebVoter/default.asp</a>
Texas	Harris County	<a href="http://www.harrisvotes.org/non_frames/geninfo.htm">http://www.harrisvotes.org/non_frames/geninfo.htm</a>
Texas	Midland County	<a href="http://www.co.midland.tx.us/elections/VoterDatabase/input.asp">http://www.co.midland.tx.us/elections/VoterDatabase/input.asp</a>
Texas	Nueces County	<a href="http://www.co.nueces.tx.us/countyclerk/elections/search/">http://www.co.nueces.tx.us/countyclerk/elections/search/</a>
Texas	Tarrant County	<a href="http://inet.tarrantcounty.com:8010/ElectionCGI/gac1fw1p">http://inet.tarrantcounty.com:8010/ElectionCGI/gac1fw1p</a>
Texas	Travis County	<a href="http://www.traviscountytax.org/showVoterSearch.do">http://www.traviscountytax.org/showVoterSearch.do</a>
Utah	Utah County	<a href="http://www.co.utah.ut.us/Dept/ClerkAud/Elections/VoterSearch.asp">http://www.co.utah.ut.us/Dept/ClerkAud/Elections/VoterSearch.asp</a>
Utah	Davis County	<a href="http://www.daviscountyutah.gov/clerkauditor/elections/registered_voter_search/registered_voter_search.cfm">http://www.daviscountyutah.gov/clerkauditor/elections/registered_voter_search/registered_voter_search.cfm</a>
Virginia	State Board of Elections	<a href="http://www.sbe.virginia.gov/cms/Voter_Information/Where_Do_I_Vote/Polling_Place_Lookup_request.asp">http://www.sbe.virginia.gov/cms/Voter_Information/Where_Do_I_Vote/Polling_Place_Lookup_request.asp</a>
Washington	Secretary of State	<a href="https://www.secstate.wa.gov/elections/lookup.aspx">https://www.secstate.wa.gov/elections/lookup.aspx</a>
Washington	King County	<a href="https://www.metrokc.gov/elections/pollingplace/voterlookup.aspx">https://www.metrokc.gov/elections/pollingplace/voterlookup.aspx</a>
Washington	Whatcom County	<a href="http://www.whatcomcounty.us/auditor/election_division/general_information/voter_lookup/IE6/Index.asp">http://www.whatcomcounty.us/auditor/election_division/general_information/voter_lookup/IE6/Index.asp</a>

State	Jurisdiction	Website
Washington	Statewide Non-Governmental	<a href="http://www.soundpolitics.com/voterlookup.html">http://www.soundpolitics.com/voterlookup.html</a>
West Virginia	Secretary of State	<a href="http://www.wvvotes.com/voters/am-i-registered.php">http://www.wvvotes.com/voters/am-i-registered.php</a>

Appendix 12: Wendy Weiser, Renée  
Paradis, and Michael  
Waldman, Brennan Ctr. for  
Justice at NYU School of  
Law, *Voter Registration  
Modernization*

BRENNAN  
CENTER  
FOR JUSTICE

VOTER REGISTRATION  
MODERNIZATION

POLICY SUMMARY

Wendy Weiser, Michael Waldman, and Renée Paradis

## ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

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## I. INTRODUCTION

Since the Florida election debacle in 2000 laid bare the way Americans cast and count votes, lawmakers and officials at federal, state, and local levels have made fitful progress toward building a modern and democratically inclusive election system. But the promise of a renewed democratic system has not been fully realized. Too often, when it comes to our election system, policymaking has devolved into partisan wrangling or become bogged down in arcane technicalities.

Today we have the opportunity for a major breakthrough for effective democracy. The 2008 election saw a record number of new voters. New election technology and the implementation of a recent federal law in the states make it possible to overcome the challenges with our voter registration system – the single greatest cause of voting problems in the United States. We can now truly modernize the voter registration process by upgrading to a system of universal voter registration – a system where all eligible citizens are able to vote because the government has taken the steps to make it possible for them to be on the voter rolls, permanently. Citizens must take responsibility to vote, but government should do its part by clearing away obstacles to their full participation. The current voter registration system – which is governed by a dizzying array of rules and is susceptible to error and manipulation – is the largest source of such obstacles.

In 2001, a task force for a commission chaired by former Presidents Jimmy Carter and Gerald Ford concluded: “The registration laws in force throughout the United States are among the world’s most demanding ... [and are ] one reason why voter turnout in the United States is near the bottom of the developed world.”<sup>1</sup> Currently, eligible voters are not placed on electoral rolls unless they first take the initiative to register and satisfy state-imposed requirements for voter registration.<sup>2</sup> State officials must expend substantial resources manually processing each voter registration form, one-by-one, applying rules and procedures that vary from jurisdiction to jurisdiction. Eligible citizens’ voter registrations may be rejected if technical requirements are not met or canceled without notice. Political operatives may attempt to block certain citizens from the voter rolls by challenging their registrations or seeking to impose new technical hurdles to registration. Once they have registered, voters must start the process all over again virtually every time they move. The result is a system in which many eligible citizens are unable to vote.

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1 Carter and Ford: National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2 “Voter Registration,” August 2001, available at [http://www.tcf.org/Publications/ElectionReform/99\\_full\\_report.pdf](http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf).

2 North Dakota does not require registration.

They fall off the rolls; they never sign up in the first place; they drift further away from electoral participation. Some fifty million eligible American citizens are not registered to vote. Most Americans take this system for granted, but it was not always this way, and it does not have to be this way forever.

The United States is one of the few industrialized democracies that place the onus of registration on the voter. In other democracies, the government facilitates voting by taking upon itself the responsibility to build voter rolls of all eligible citizens. Even in the United States, voter-initiated registration did not exist until the late nineteenth century. It was instituted then in many states with the intention of suppressing unpopular voters, especially former slaves and new European immigrants, and it continues to disenfranchise many Americans to this day.

Fortunately, in part because of new federal laws, states have made it easier to register to vote over the last several decades. The Voting Rights Act of 1965 struck down racially discriminatory barriers to voter registration, but did not require government to take more affirmative steps to ensure registration. The National Voter Registration Act of 1993 (NVRA), popularly known as “Motor Voter,” required government agencies such as departments of motor vehicles and public assistance offices to make voter registration services available to citizens. After the 2000 election, Congress passed the Help America Vote Act (HAVA), which mandated that states maintain computerized voter databases at the state level, rather than county by county. These databases are now in place in every state and can facilitate more complete and accurate voter rolls.

Despite these advances, our voter-initiated registration system continues to impose significant administrative costs and costs on voters. As long as the government continues to rely on citizens to register themselves, opening up access means ceding more control to voters and those who assist them to determine when and how they register. Elections officials may be overwhelmed by the dual demands of processing the typical surge of registrations that come in at the last minute and planning for elections. If the system cannot keep up, votes inevitably will be lost. The patchwork of state rules and practices that serve a gate-keeping function to registration also keeps out eligible voters and makes the system vulnerable to partisan manipulation and error. Our current voter registration system is the single greatest source of disputes and litigation over election administration rules and practices.

This year, when surging citizen participation underscores the deep desire for a change in national direction, we see with renewed urgency the value in building a modern and fully participatory electoral system. A universal voter registration system creates voter rolls that are as comprehensive as possible well in advance of Election Day and provides

a fail-safe mechanism if an eligible voter shows up at the polls but cannot be found on the list. Such a system is routine in other countries, and because of the recent legal and technological advances in voter registration, it is now achievable here.

Federal action can begin to move the country toward this goal in short order. A system of universal registration would build on existing policies and innovations undertaken by state and local officials. The next Congress can substantially speed up the process by:

- **Establishing a national mandate for universal voter registration within each state;**
- **Providing federal funds for states to take steps toward universal voter registration;**
- **Requiring “permanent voter registration” systems, so that once voters are registered, they will stay on the rolls when they move; and**
- **Requiring fail-safe procedures, so that eligible voters whose names do not appear on the voter rolls or whose information is not up to date can correct the rolls and vote on the same day.**

## II. VOTER REGISTRATION TODAY

Our democracy is a source of pride and strength, and our election system typically works reasonably well in determining outcomes. Even so, the election system is marred by gaps and prone to error and manipulation. Nearly a third of eligible citizens are not registered. Officials, in turn, face a biennial or quadrennial crush of new registrants, with attendant problems of list maintenance, political pressure and general confusion. Voters bear the brunt of these challenges.

### A. Registration is a Bureaucratic Obstacle to Voting

Today, the voter registration system is a significant barrier to voting in the United States. In the November 2004 presidential election, fully 28% of eligible Americans simply were not registered to vote. That’s over 50 million citizens who were not on the electoral rolls and could not vote on Election Day.<sup>3</sup> In November 2006, 32% of eligible Americans, or more than 65 million citizens, were not registered to vote.<sup>4</sup>

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<sup>3</sup> U.S. Census Bureau, Current Population Survey, *Voting and Registration in the Election of November 2006*, March 2006.

<sup>4</sup> U.S. Census Bureau, Current Population Survey, *Voting and Registration in the Election of November 2006*, June 2008.

Registration requirements are a barrier to voting for a number of reasons. The current system simply is not designed for a mobile society. In a country where one in six Americans moves in a year, the government does not routinely keep such people registered to vote, even if they stay in their own state. Harvard political scientist Thomas Patterson notes that two-thirds of non-voters in 2000 were ineligible to vote because they hadn't registered. "Of these, one in three was a former registered voter who had moved and hadn't re-registered."<sup>5</sup>

The current system is also prone to error, which can lead to disenfranchisement. For example, in the past few years, some states adopted policies requiring a perfect match between information on a voter registration form and information in other government databases, such as those maintained by motor vehicle authorities or the Social Security Administration, before registering the voter. If a state official made a data entry error, the voter would be disenfranchised by a typo. In jurisdictions with this policy, failures to match information typically barred about 20% of eligible registrants because of typos and similar errors. Typos can also make it difficult to find registered voters on the poll books, which also could lead to mistaken disenfranchisement. Errors in registration processes will not be eliminated by a universal registration system, but that system will substantially reduce errors and will ensure that the burden of those errors do not fall on voters. In a universal registration system, states will have greater ability to ensure more accurate voter rolls since they will be able to regularize their updates to the rolls using more advanced technology instead of processing hundreds of thousands of individual voter registration forms in the weeks before an election. Such a system would also have failsafe procedures like the ability to correct the rolls on Election Day, which means that if the government makes a mistake, it will not become the voter's problem. This will increase the incentive for states not to knock eligible voters off the rolls, because otherwise they will see increased use of fail-safe procedures, which will require greater resources than just getting it right in the first place.

Placing the burden of registration on the voter also leaves our registration systems open to manipulation. Over the past few election cycles, there have been increased efforts to impose new restrictions on voter registration that fall more harshly on certain groups of voters. The "no match, no vote" rule in some states is one example that especially harms Latinos, Asian Americans, and married women, among others. Several states enacted cumbersome restrictions on voter registration drives, which typically target low-income, minority, and young voters, effectively stopping those drives. In Florida, the risk of

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<sup>5</sup> Thomas Patterson, *The Vanishing Voter: Public Involvement in an Age of Uncertainty* (Knopf, 2002), 178.4.

huge fines for failure to meet short deadlines long before an election shut down registration efforts by the state League of Women Voters for the first time in 70 years. Several states refuse to register voters who make technical errors on registration paperwork, like failure to check redundant boxes. Purges of the voter rolls, which are meant to remove people who have died, moved, or otherwise become ineligible, are typically done without standards or oversight, using error-prone processes that are vulnerable to manipulation by unscrupulous officials. A number of states have proposed, and one has enacted, documentation requirements for registering that many otherwise qualified registrants are unable to meet. Many of these barriers to registration can also emerge as misguided attempts to respond to surges in registration and bloated voter rolls. With universal registration, officials can respond to these issues without disenfranchising voters.

The inadequacies of voter-initiated registration hit hardest when voters who thought that they successfully navigated the shoals turn up at the polls and find their names missing from the list. In most states, the only remedy is the opportunity to vote a provisional ballot. If the voter is not registered, her provisional ballot will not count. Even when voters submitted their registrations on time, many provisional ballots are not counted. Once again, the brunt of system failure falls on the voter.

To make matters worse, the burdens of registration do not fall equally on all Americans. Voter-initiated registration has a disproportionate impact on low-income citizens and those who are less educated. Such individuals are more likely to move more often and have to re-register with every move, to have unconventional living situations that do not easily meet residency requirements (such as temporary shelters), to lack access to the Internet with its information on how to register and its easily accessible forms, to lack dependable transportation for registering in person or at a motor vehicle office, and to lack substantial leisure time in which to figure out registration requirements in their state and to fulfill them. They should not be prevented by a bureaucratic requirement from exercising their most fundamental civic right.

Not getting on the voter rolls is an obvious barrier to voting – registration is a necessary prerequisite to voting. But not being on the voter rolls in advance of an election also has repercussions that make it less likely an eligible citizen will vote. Such a citizen will not receive a sample ballot, or the location of their polling place, or other official notice from the state than an election is imminent. They will not receive mailings from candidates or be canvassed by volunteers. They will not be called by pollsters or contacted by non-partisan groups doing voter education. In short, they will not receive any of the individualized contact that we know is *the* most important spur to voter turnout. Requiring government officials to create a complete list of eligible voters draws disenfranchised citizens into the body politic in multiple ways.

## **B. Voter-Initiated Registration Impedes Election Administration**

When voters are required to register themselves, they may make mistakes, including unnecessarily submitting multiple forms. They may not understand how to complete the forms or inadvertently leave off information. They may use a different form of their name than appears in motor vehicle or Social Security databases, making it more difficult to verify their information. They may submit new registration forms when they move instead of filing changes of address. They may believe that they need to re-register for each election. Correcting these mistakes adds time to the official processing of forms; refusing to make corrections – or to allow registrants to make them – bars the voter from the polls for errors that have nothing to do with eligibility.

Leaving registration up to individual voters also makes it harder to keep the lists current. Voters rarely cancel their registration when they move. The names of voters who are no longer qualified to vote in a particular location remain on the list, along with those of voters who have died. Although federal law recognizes the need to clean registration rolls, officials first must complete procedures designed to ensure that they do not delete eligible voters from the rolls. In the meantime, bloated rolls fuel fear-mongering about the potential for fraud, which in turn serves as an excuse for voter suppressive legislation or unlawful purges of the voter rolls.

A voter-initiated or “bottom up” registration system creates special difficulties for administrators in the month before Election Day. They may find it difficult to process the large numbers of forms that invariably are submitted at the close of the registration period. The last-minute rush is wholly predictable – the IRS estimates that more than 20% of taxpayers wait until the last minute to file their taxes – but it nevertheless strains the resources of local officials. They may not be able to process all the forms in time for Election Day. Moreover, not knowing well in advance how many forms will come in makes it difficult rationally to allocate among precincts the necessary voting machines, paper ballots, and poll workers. Long lines and disenfranchised voters are the predictable result.

Currently, voter registration drives by civic groups play a vital role in making sure citizens are registered, especially in low-income, minority, and student communities. Yet a system that depends upon millions of applications, on paper, submitted by individuals or community groups is susceptible to error. In the recent election, some expressed strong concern at reports that individuals attempted to register false names. Those problems would be eliminated if the government created and maintained the voter registration list in the first place.

The current voter registration system is costly and inefficient. Although updating the system will take some time and money, once upgraded, a system of universal voter

registration will be more efficient and less costly to administer. This will free up resources for states to better manage elections in other respects.

### III. A MODERNIZED SYSTEM: UNIVERSAL REGISTRATION

New technologies, new understanding of election administration, and a surge in political interest all create an opportunity for reform the likes of which we have not seen for a long time.

#### A. The Moment for Reform

A move to significant national voter registration legislation makes sense now, for several reasons. Most importantly, the remedy is available, and the potential for political will is strong. Thanks to the Help America Vote Act of 2002, states are now required to maintain computerized statewide voter registration lists. The new databases make it far easier to manage information about voters, including name or address changes that do not affect eligibility. When a person moves within a state, for example, officials can transfer the voter's registration to the appropriate new location with a click of a button. There is no excuse for burdening the voter with responsibility for re-registration, as most states now do.

To strengthen voting and modernize our current voter registration system, we need one fundamental change: responsibility for voter registration must be transferred to the government. That shift would produce two clear improvements over the current process: (1) more eligible citizens would be properly registered and able to vote on Election Day, and (2) election officials could organize the process to avoid last-minute crunches and misallocation of resources. But the shift would have another effect, perhaps less concrete or immediate, but ultimately just as important: because the responsibility would lie with the government, the valence of voter registration would change. It would be the obligation of the government to ensure that every eligible American is able to cast a vote on Election Day if they take responsibility to do so. Rather than a problem the voter herself must solve, the government's obligation to ensure that all eligible voters are registered would become part of the way we think about the right to vote itself.

#### B. Models for Reform

How would the government fulfill its obligation to ensure that all eligible voters are registered? There are several methods states, municipalities, or even the federal government could use to manage this task, including using existing government lists of eligible citizens, enumeration of citizens, running affirmative voter registration drives, fully imple-

menting and expanding the National Voter Registration Act, or some combination of any or all of these.

***Using existing lists.*** The most likely option draws on other governmental lists to build the voter rolls. Although the United States does not have a residence registry or a national health care system that provides a list of all eligible voters, states have a variety of databases that compile information about their citizens—databases maintained by motor vehicle departments, income tax authorities, and social service agencies, for example. States could use these lists to build and update their voter rolls. Many of these lists already include all the information necessary to determine voter eligibility, and those that do not can easily be modified to include that information. Already, many of these agencies are required under the National Voter Registration Act to provide voter registration services, a duty that has been ignored in many states over the last decade. Building a list with existing data would help ensure every eligible citizen gets added to the rolls. The Selective Service uses a similar method to build its list of male citizens over eighteen. States could also fully implement the National Voter Registration Act to move closer to the goal of universal registration.

***Enumeration.*** Another option is a system of enumeration, like a census. Local officials could begin by sending out mail surveys to each address on record in their jurisdiction, asking citizens over the age of 18 to complete, sign, and return a form. They could follow up with those who do not respond by going door-to-door, making a special effort to enumerate those who are unlikely to be reached by a mailing, such as the homeless or those who do not live at fixed addresses. Currently, Massachusetts runs an annual state census along these lines, which is used primarily for creating jury lists. Because the census is conducted on the local level, city officials are able to use other municipal records to guarantee that they reach every citizen within geographic limits.

Under any system of universal voter registration, newly eligible voters must be added to the rolls and already registered voters must be tracked as they move from place to place. To capture newly eligible voters, registration should be made an automatic part of becoming a citizen, turning voting age, or being discharged from prison, probation, and parole. States can update their data by using change of address information filed with the Post Office or other government agencies, tracking changes to the databases they used to build their list, or running periodic censuses. Specific procedures would be necessary for certain groups of voters, such as military and overseas voters, who present special

circumstances. Of course, the ability to “opt-out” from registration must be available for any U.S. citizen who prefers to remain unregistered for whatever reason.<sup>6</sup>

### **C. A Federal Universal Voter Registration Act**

To move the nation toward universal voter registration, federal legislation will most likely be necessary. Such a system, to achieve genuine universality, will need to have several key elements. It would have as its core a national requirement that states take responsibility for registering all eligible citizens, with some flexibility for states to innovate, and the federal financial support necessary to enable states to achieve the goal of universal registration. But there will be manifest complexities. To cite a single example, states will need to ensure that citizens with more than one residence are registered at the correct one for voting purposes.

The new Congress should be prepared to enact a federal bill that phases in universal voter registration. The bill should have four main components: (1) a mandate for states to enact systems of automatic or affirmative voter registration designed to capture all eligible citizens; (2) a requirement that registration be permanent as long as a voter remains resident within the same state; (3) fail-safe mechanisms for eligible citizens whose names are missing from the voter rolls or whose registration information is inaccurate or out of date to correct these errors or omissions before and on Election Day and to vote; and (4) sufficient funding to enable states to transition effectively to universal voter registration.

#### **1. Automatic or Affirmative Registration**

Federal law should require states to establish a program of automatic or affirmative registration of all eligible citizens, phased in over a number of years. While the mandate could be flexible to enable states to experiment with new ways of registering voters, it should ensure that the government assumes the responsibility for building a complete and accurate voter list so that every eligible citizen is able to vote and to have her vote counted. Unless a state devises an alternative program that meets federal standards, the law should require states automatically to include on the voter rolls all eligible citizens found on other selected government lists. Government lists appropriate for automatic registration include the databases maintained by motor vehicle authorities, public assistance agen-

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<sup>6</sup> Some Americans do not register to vote because they want to avoid being put on jury duty lists. To prevent this disincentive, many states no longer use the voter rolls to build their jury lists. In those that do, a system of universal registration would have the added benefit of creating more complete jury lists. Opting into or out of voter registration should have no effect on the obligation to perform jury duty.

cies, disability agencies, and state tax authorities, as well as lists of newly eligible citizens provided by schools, the U.S. Bureau of Citizenship and Immigration Services, and corrections authorities. Voters should have the ability to opt-out of the system, but opt-in should not be required. Because the list would be automatically generated from a variety of sources, there should be a robust process for purging duplicate records, along with robust protections against erroneous purges.

## **2. Permanent Registration**

The second component of a voter registration reform bill is a requirement that states institute statewide permanent registration. Under such a system, once a voter is on the rolls, she would be permanently registered within the state and able to vote without re-registering even if she moved within the state or changed her name. This could be accomplished by automatic address updates using changes of address filed with the Post Office and other government agencies, as is currently done in some form in a number of states. Special registration and address update procedures would be available for military and overseas voters, students, and others whose voting residence may be different from their mailing address. If the state has not tracked the address or name change in the statewide voter registration database before Election Day, the voter would be able to update her registration record at the polling place associated with her current address when she goes to vote. One in six Americans moves every year, most within the state, and now that voter registration databases are maintained at the state level, there is no reason to require voters to re-register every time they cross county or other internal lines.

## **3. Fail-Safe Registration and Correction of the Voter Rolls**

Even under the most aggressive list-building and address update systems administered with the best care, some voters are bound to fall through the cracks. To ensure that eligible voters are not deprived of the franchise simply because of government mistakes, any system of universal registration must include fail-safe procedures to ensure that eligible citizens can correct the voter rolls both before and on Election Day. Allowing registration and voting on the same day, as nine states already do, ensures that voters do not bear the brunt of government mistakes and significantly boosts turnout without imposing major costs. A state with a well-functioning system of automatic and permanent registration will see little use of these fail-safe mechanisms. Because these fail-safes provide a corrective to problems with any voter registration system, they should be implemented immediately.

#### **4. Federal Funding for Voter Registration**

Such a bold national goal must be accompanied by ample national resources to help states complete the transition. Congress provided funds to help states make the technological improvements required under the Help America Vote Act, and a generous federal investment also is essential to the success of voter registration reform. Federal financial support for state universal registration systems should cover all elements of the reform, including automatic, permanent, and fail-safe registration. It should include support for upgrading and making necessary changes to state voter registration databases as well as other state databases used for voter registration purposes. It could also include postage rebates, free access to the National Change of Address database for use in updating registration records, support for efforts to build Internet and telephone portals for checking and updating registration records, and support for any additional staffing needs on Election Day.

States should have latitude to use federal funds for innovative programs that improve voter registration systems. What might work in an area with a predominantly urban population might be less effective in a rural area and vice versa. Congress must appropriate sufficient funding to enable states to devise creative solutions, while requiring that any funded programs demonstrably expand the voter rolls, especially in areas with historically low registration rates.

Appendix 13: Daniel Tokaji, *A New  
Absentee Voting Directive in  
Ohio*, Equal Vote-Moritz  
College of Law

# Equal Vote

**Monday, November 3**

## A New Absentee Voting Directive in Ohio

On the eve of the election, Ohio Secretary of State Jennifer Brunner has issued a new directive, requiring counties to give would-be absentee voters notice if there's a problem that would prevent their absentee ballot from being counted. Directive 2008-109 may be found [here](#). Last-minute directives can sometimes cause more problems than they solve but, in this case, some guidance was necessary ... though it may not be sufficient.

The directive appears designed to deal with what might be called the "Colker Problem," after my friend and colleague Ruth Colker who describes [here](#) the difficulty she experienced in getting her absentee ballot counted. Briefly, Franklin County initially didn't count her absentee ballot, because registration records listed her as having a date of birth than the one on her absentee voter envelope -- specifically, listing her year of birth as 1958 instead of 1956. Had she not checked the county's website before the election, only to find that her ballot hadn't been counted, it might have been rejected without her even knowing. Eventually, Professor Colker was able to persuade Franklin County that their records were wrong and get her vote counted.

Directive 2008-109's stated purpose is "to provide a uniform process by which absentee voters may be given notice that additional information is required to effectuate their vote on an absentee voter's ballot." It directs counties to notify voters of any deficiencies, and give them an opportunity to correct errors. Notice must be given no later than six days after Election Day (November 10). Absentee voters will then have until the tenth day after the election (November 14) to correct any errors or omissions.

This directive helps with one of the problems revealed by Professor Colker's story -- namely, the due process problem that would arise from rejecting an absentee voter's ballot without giving them notice and the opportunity to explain or correct the asserted error. But there are at least two other problems that still exist.

The first is that it leaves open the possibility that absentee ballots could be rejected as "insufficient," and therefore rejected under Ohio law (ORC 3509.07), for overly technical reasons. Professor Colker's ballot was rejected because the birthdate submitted with her absentee ballot didn't match the one in registration records. This may be a plausible reading of the statute, but it's hardly clear that this is required. It's also not clear from this provision how other discrepancies should be treated, such as:

- A discrepancy between the spelling of the voter's name in registration records and the information on the absentee ballot application or envelope (e.g., a voter's last name is listed as "Worzelbacher" in registration records but the absentee voter application or envelope reads "Wuerzelbacher")
- A discrepancy between the address in registration records and the address on the absentee voter application or envelope (e.g., 320 W. Broad St. instead of 302 W. Broad Street).
- A discrepancy between the driver's license number or social security number in registration records and that on the absentee voter application or envelope (e.g., 3543 instead of 3534)

To reject absentee ballot based on such trivial discrepancies would arguably violate Ohio law. In its recent decision requiring the Secretary of State to honor absentee ballot applications with a box that voters neglected to check, the Ohio Supreme Court cautioned against "unduly technical

## Dan Tokaji's Blog



Election reform, the Voting Rights Act, the Help America Vote Act, and related topics -- with special attention to the voting rights of people of color, non-English proficient citizens, and people with disabilities

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### Publications & Working Papers

[Leave it to the Lower Courts: On Judicial Intervention in Election Administration](#), 68 Ohio State Law Journal 1065 (2007)

[The Story of Shaw v. Reno: Representation and Raceblindness](#), Race Law Stories (forthcoming 2007)

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interpretations that imede the public policy favoring free, competitive elections. [Disclosure: I joined a brief supporting relators' position and opposing that taken by the Secretary of State.] Interpreting Ohio law to demand an "exact match" -- with respect to address, date of birth social security number, driver's license number, or address -- might be viewed as just such an overly technical interpretation. Nothing in the directive requires that absentee ballots be rejected for such reasons, but it's not prohibited either.

The other problem is that the ambiguity of the statute -- and the failure, as far as I can tell, of the Secretary of State to issue definitive guidance on what makes an absentee ballot "insufficient" -- gives rise to a potential equal protection problem. Different counties might apply different rules in determining which absentee ballots should count. Some might count those ballots, for example, despite the existence of a trivial difference in the name of the voter as listed in registration records versus that on the absentee voting envelope, while others might not. Some might check the voter's date of birth, as listed on the envelope, against registration records while others might not. You get the idea.

At this point, I can't say for sure what counties' practices are, which is why I describe this is merely a "potential" equal protection problem. It's also hard to say whether this is an Ohio-specific problem or one that extends to other states -- but if I had to bet, I'd say that other states' rules for verifying and counting absentee ballots probably have similar vagueness and ambiguity. In a close, contested election, this type of dispute over absentee ballots could well wind up in litigation.

- posted by Dan Tokaji @ 10:13 PM

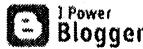
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Appendix 14: United States Election  
Assistance Commission,  
*2006 Election Administration  
and Voting Survey*, 18-21,  
42-43: Casting and Counting  
Provisional Ballots and Data  
Tables

# Casting and Counting Provisional Ballots

This was the second Federal election in which voters in all 50 States, the U.S. territories, and the District of Columbia were allowed to cast a ballot even if their name did not appear on the voter registration rolls or if their eligibility was questioned or challenged. Pursuant to HAVA, the vote was recorded on what is called a provisional ballot. Later, if elections officials determined the person was eligible to vote, the ballot was tallied into the vote count. In some States, specialized (and generally Web-based) systems were created to allow voters to inquire of the status of their provisional vote after the election.

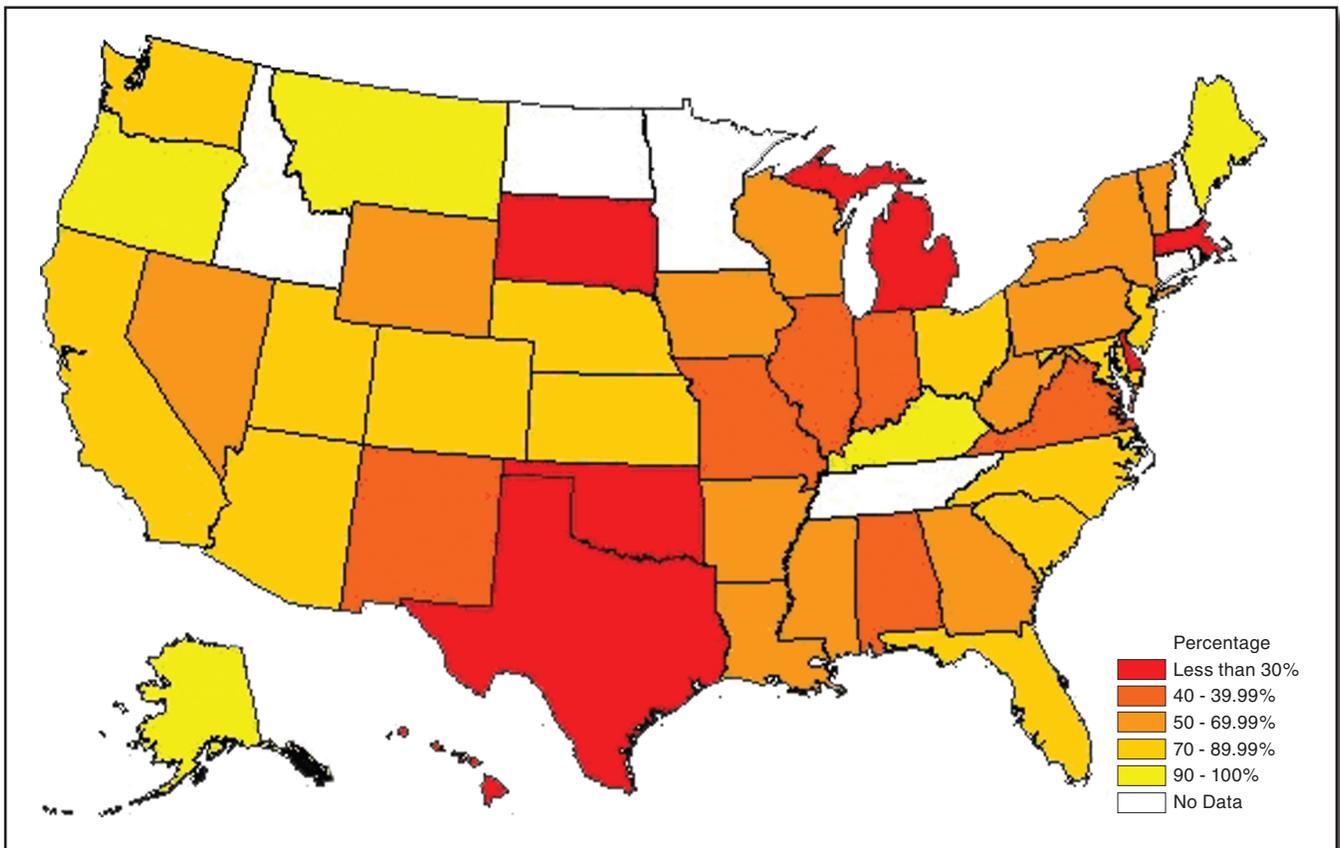
HAVA mandated the use of provisional ballots in Federal elections beginning in 2004. Prior to that, the rules regarding the use of provisional ballots varied among the States. Although HAVA provides

a minimum standard for provisional balloting, the application of how and when individuals may cast a provisional ballot—and how and when the ballot will be counted—still varies across the country. In 2006, provisional ballots could be counted in 15 States if they were cast outside the individual’s home precinct, while in 30 other States they could not be counted.

The seven States with election day registration are not required to offer provisional ballots, but three of these (Maine, Wisconsin, and Wyoming) offered some type of provisional balloting. This also applies to North Dakota, which does not have voter registration.

The *2006 Election Administration and Voting Survey* asked State election officials how many

Figure 5. Percentage of Provisional Ballots Counted of Those Cast November 2006 General Election



**Table C**  
**Provisional Ballots—Cast and Counted**

State	Total Ballots Cast in Polling Places	Total Provisional Ballots Cast	Percentage of Ballots Cast at Polling Places	Total Provisional Ballots Counted	Percentage Provisional Ballots Counted of Cast
Alabama	1,162,063	2,370	0.20%	770	32.5%
Alaska	185,693	11,990	6.46%	11,059	92.2%
Arizona	762,963	73,880	9.68%	52,645	71.3%
Arkansas	567,648	1,155	0.20%	715	61.9%
California	5,526,026	288,213	5.22%	250,685	87.0%
Colorado	702,492	26,455	3.77%	22,505	85.1%
Connecticut	1,168,856	0	0.00%	0	N/A
Delaware	250,434	25	0.01%	4	16.0%
District of Columbia	114,878	4,219	3.67%	2,497	59.2%
Florida	3,385,239	14,550	0.43%	10,693	73.5%
Georgia	1,759,287	4,632	0.26%	2,479	53.5%
Hawaii	318,932	157	0.05%	35	22.3%
Idaho*	402,569	0	0.00%	0	N/A
Illinois	3,418,078	12,611	0.37%	4,572	36.3%
Indiana	1,548,844	2,031	0.13%	905	44.6%
Iowa	836,343	6,027	0.72%	3,305	54.8%
Kansas	678,701	21,097	3.11%	16,426	77.9%
Kentucky	1,305,962	75	0.01%	5	6.7%
Louisiana	911,082	274	0.03%	137	50.0%
Maine	557,734	316	0.06%	316	100.0%
Maryland	1,608,708	41,485	2.58%	36,146	87.1%
Massachusetts	321,527	215	0.07%	49	22.8%
Michigan	2,999,983	1,821	0.06%	347	19.1%
Minnesota*	2,071,289	0	0.00%	0	N/A
Mississippi	480,494	7,073	1.47%	3,853	54.5%
Missouri	2,052,920	7,403	0.36%	3,282	44.3%
Montana	291,049	2,242	0.77%	2,133	95.1%
Nebraska	496,863	7,119	1.43%	6,000	84.3%
Nevada	290,393	501	0.17%	277	55.3%
New Hampshire*	393,056	0	0.00%	0	N/A
New Jersey	1,291,751	11,410	0.88%	10,474	91.8%
New Mexico	172,968	1,378	0.80%	643	46.7%
New York	4,700,632	27,268	0.58%	18,524	67.9%
North Carolina	1,651,063	22,491	1.36%	16,760	74.5%
North Dakota*	185,202	0	0.00%	0	N/A
Ohio	3,592,358	127,758	3.56%	106,212	83.1%
Oklahoma	883,827	563	0.06%	131	23.3%
Oregon	1,395,868	1,408	0.10%	1,386	98.4%
Pennsylvania	3,005,818	12,345	0.41%	7,787	63.1%
Rhode Island	373,472	0	0.00%	0	N/A
South Carolina	1,012,410	3,013	0.30%	2,387	79.2%
South Dakota	247,479	341	0.14%	90	26.4%
Tennessee	983,795	0	0.00%	0	N/A
Texas	2,488,899	5,571	0.22%	1,668	29.9%
Utah	496,408	14,730	2.97%	11,192	76.0%
Vermont	263,025	16	0.01%	10	62.5%
Virginia	2,281,956	1,779	0.08%	646	36.3%
Washington	226,641	18,825	8.31%	16,049	85.3%
West Virginia	372,962	4,358	1.17%	3,279	75.2%
Wisconsin	1,992,291	271	0.01%	168	62.0%
Wyoming	167,364	22	0.01%	15	68.2%
American Samoa	11,132	5	0.04%	0	0.0%
Guam	0	0	N/A	0	N/A
Puerto Rico	0	0	N/A	0	N/A
Virgin Islands	33,478	343	1.02%	293	85.4%
<b>TOTAL</b>	<b>64,400,905</b>	<b>791,831</b>	<b>1.23%</b>	<b>629,554</b>	<b>79.5%</b>

\*States allow election day registration and, therefore, under HAVA, they are exempt from the requirement to provide provisional ballots. North Dakota has no registration.

provisional ballots were cast and how many were counted. Some States did not report information on provisional ballots for all jurisdictions. The States' responses are shown in table C.

California and Ohio had the largest number of provisional ballots of all the States, and accounted for over 52.5 percent of all provisional ballots cast nationwide in the 2006 election. Arizona (at 9.68 percent) and Washington (at 8.31 percent) had the largest percentage of their polling place voters casting provisional ballots. Alaska (6.46 percent), California (5.22 percent), Colorado (3.77 percent), the District of Columbia (3.67 percent), Ohio (3.56 percent), Kansas (3.11 percent), Utah (2.97 percent), and Maryland (2.58 percent) all reported more than twice the nationwide average of polling place voters who cast provisional ballots.

### A Profile of the Provisional Voter Based on the Survey Results

On election day 2006, slightly more than 791,000 individuals cast a provisional ballot, or less than one percent of all persons who voted, and 1.23 percent of those persons who voted in a polling place. (More than 629,000 provisional ballots were counted, or 79.5 percent of all the provisional ballots cast.)

The number of provisional ballots for 2006 was less than half of the levels reported for the 2004 election. Part of the decrease was likely due to the lower participation that is historically evident in off-year elections compared to Presidential elections.

However, according to the survey responses, a significantly larger share of the provisional ballots were counted in 2006 compared to 2004. Only 64.5

#### **2006 Provisional Ballots**

- ▶ 791,763 provisional ballots cast
- ▶ 629,486 provisional ballots counted (79.5 percent of provisional ballots cast)

***On election day 2006, slightly more than 791,000 individuals cast a provisional ballot, or less than one percent of all persons who voted . . .***

percent of provisional ballots were counted in the 2004 election, compared to the 79.5 percent in the 2006 election.

Yet, there are large differences between States on how many provisional ballots are counted. Five States reported more than 90 percent of their provisional ballots were counted, but fifteen States noted that less than half of its provisional ballots were ultimately counted. Because of the different size of States, an average of all State percentages shows that nationwide only 59.2 percent of provisional ballots were counted. A map showing the percentage of provisional ballots that were counted is shown as Figure 5. The raw data for the map are contained in table C, as well as table 28a & 28c in appendix B.

### Jurisdiction-wide Acceptance

In the 15 States<sup>10</sup> that allowed the counting of provisional ballots cast outside a voter's home precinct, 2.34 percent of ballots cast in a polling place were cast as provisional ballots. In the 30 States that disqualified provisional ballots cast outside the home precinct, provisional ballots were only 0.80 percent of ballots cast in a polling place. The States allowing jurisdiction-wide acceptance of provisional ballots also had higher rates of counting provisional ballots, 84.96 percent compared to 71.82 percent of other jurisdictions.

<sup>10</sup>For a summary of the provisions for provisional balloting, see the EAC Web site: [www.eac.gov](http://www.eac.gov).

## Reasons Provisional Ballots were Rejected

The EAC survey asked the States and jurisdictions to report the number of provisional ballots that were rejected (and therefore were not counted) and to specify the reasons why they were rejected. Table D shows the reasons for rejection, sorted in descending order. A strong plurality of the ballots were rejected because the persons attempting to vote were found, upon further research, not to be registered in the jurisdiction. Another 16 percent were voters who sought to vote in a precinct other than where they are registered.

Table D  
Reasons for Rejecting Provisional Ballots

Reason Rejected	Number	Percent of Total Rejected
Not registered	74,490	43.59%
Wrong precinct	26,631	15.59%
Other	15,726	9.20%
Not categorized	9,738	5.70%
Ineligible to vote	9,269	5.42%
No identification provided	5,938	3.48%
Ballot not timely received (absentee)	5,738	3.36%
Incomplete ballot form	5,449	3.19%
Wrong jurisdiction	4,879	2.86%
No signature	3,732	2.18%
Already voted	3,147	1.84%
Registration purged	2,545	1.49%
Missing ballot	1,945	1.14%
Non-matching signature	1,477	0.86%
Multiple ballots in one envelope	74	0.04%
Elector challenged	64	0.04%
Deceased	30	0.02%
<b>Total Rejected</b>	<b>170,872</b>	<b>100.00%</b>

Total number of provisional ballots rejected by category (part A).

2006 Election Administration and Voting Survey  
Table 29a. Provisional Ballots Rejected, Part A

State	[A]		[B]		[C]		[D]		[E]		[F]		[G]		[H]		[I]		[J]	
	Jur.	Already Voted	Untimely Receipt	Jur.	Voter Deceased	Jur.	Electoral Chall.	Jur.	Incomp. Form	Jur.	Voter Ineligible	Jur.	Missing Ballot	Jur.	Multiple Ballots	Jur.	No ID Provided	Jur.	No Voter Sig.	Jur.
Alabama	67	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Alaska	1	6	1	0	0	0	0	0	0	0	96	1	0	0	0	0	0	0	0	0
Arizona	15	339	0	14	0	15	0	1,127	15	2,823	15	64	15	0	0	1,977	15	126	15	0
Arkansas	75	10	51	17	50	9	49	32	50	95	53	5	48	7	48	5	49	39	48	0
California	58	519	29	4,840	6	20	2	1,021	12	3,914	11	1,423	6	49	2	115	6	1,377	27	0
Colorado	64	76	17	141	7	5	0	295	23	81	13	61	9	1	3	231	22	263	29	0
Connecticut	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Delaware	3	0	3	0	3	0	3	1	3	1	3	0	3	0	3	0	3	0	3	0
Dst. of Columbia	1	0	1	0	1	17	1	46	1	0	0	0	1	0	1	0	1	3	1	0
Florida	67	92	67	9	67	1	67	58	67	472	67	187	67	0	67	10	67	198	67	0
Georgia	159	6	129	117	128	2	129	20	132	81	133	4	132	0	129	33	131	10	129	0
Hawaii	4	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Idaho	44	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Illinois	110	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Indiana	92	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Iowa	99	8	99	11	2	0	0	20	99	27	99	0	0	8	5	0	0	0	0	0
Kansas	105	51	104	387	104	15	104	0	0	127	104	0	0	0	0	185	104	654	103	0
Kentucky	120	0	116	0	116	0	116	8	116	0	116	0	116	0	116	3	115	3	116	0
Louisiana	64	6	4	0	2	0	2	8	3	5	5	1	3	0	2	0	2	1	3	0
Maine	16	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0
Maryland	24	193	24	0	0	1	24	113	24	161	24	0	0	0	0	129	24	332	24	0
Massachusetts	14	0	2	0	2	0	2	0	2	21	2	0	2	0	2	0	2	0	2	0
Michigan	83	0	83	0	83	0	83	0	83	0	83	0	83	0	83	112	83	126	83	0
Minnesota	87	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mississippi	82	1	35	18	34	0	37	9	36	165	34	0	37	1	38	0	37	24	34	0
Missouri	116	630	92	0	8	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Montana	56	9	56	33	56	2	56	0	56	7	56	0	56	1	56	6	56	0	56	0
Nebraska	93	8	4	1	3	0	2	21	11	4	5	0	2	0	2	0	2	0	2	0
Nevada	17	0	0	0	0	0	0	0	0	2	1	0	0	0	0	10	3	13	1	0
New Hampshire	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	21	805	17	2	15	0	17	29	17	87	17	1	17	0	16	8	17	20	17	0
New Mexico	33	2	14	19	14	0	14	2	14	75	14	0	14	0	12	63	15	12	14	0
New York	58	0	0	0	0	0	0	1,760	58	0	0	0	0	0	0	0	0	0	0	0
North Carolina	100	18	100	2	95	0	0	0	0	0	0	0	0	0	0	21	100	59	99	0
North Dakota	53	0	53	0	53	0	53	0	53	0	53	0	53	0	53	0	53	0	53	0
Ohio	88	163	88	54	88	1	88	0	82	459	88	181	86	1	87	2,726	88	290	88	0
Oklahoma	77	0	2	0	1	0	1	0	1	0	0	1	1	0	1	0	1	0	1	0
Oregon	36	0	28	0	28	0	28	0	28	0	28	0	28	0	28	0	28	0	28	0
Pennsylvania	67	68	67	0	0	0	0	664	67	0	0	0	0	0	0	0	0	0	0	0
Rhode Island	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina	46	4	3	21	0	0	0	4	4	1	0	0	0	0	0	31	8	14	5	0
South Dakota	66	0	14	0	14	0	14	0	14	21	14	0	14	0	14	0	14	7	15	0
Tennessee	95	1	2	0	1	0	1	12	9	48	16	1	2	2	4	4	4	9	4	0
Texas	254	27	137	12	254	0	136	65	254	413	254	7	254	0	136	28	254	22	254	0
Utah	29	2	10	22	9	0	9	82	14	9	9	0	9	4	10	226	12	69	9	0
Vermont	14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	134	8	10	0	2	0	2	7	6	10	8	2	4	0	2	0	2	9	8	0
Washington	39	68	37	0	37	0	37	30	37	21	37	8	37	0	37	0	37	46	37	0
West Virginia	55	25	8	32	12	1	1	15	2	44	9	0	0	0	12	3	4	1	1	0
Wisconsin	72	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming	23	0	21	0	21	0	21	0	21	0	21	0	21	0	21	3	21	0	21	0
American Samoa	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Guam	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Puerto Rico	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum of Above	3,123	3,147	1,563	5,738	1,351	30	1,118	64	1,027	5,449	1,431	1,945	1,139	74	1,009	5,938	1,401	3,732	1,420	0
Question		q37av	q37b	q37c	q37d	q37e	q37f	q37g	q37h	q37i	q37j	q37k	q37l	q37m	q37n	q37o	q37p	q37q	q37r	q37s

Total number of provisional ballots rejected by category (part B).

2006 Election Administration and Voting Survey  
Table 29b. Provisional Ballots Rejected, Part B

State	[K]		[L]		[M]		[N]		[O]		[P]		[Z]		[1]		[2]	
	Unmatch.	Jur.	Not Register.	Jur.	Purged	Jur.	Wrong Juris.	Jur.	Wrong Precinct	Jur.	Other Reason	Jur.	Total Rejected	Total Cast	Total Rejected	Pct. Rejected		
Alabama	67	0	0	0	0	0	0	0	0	0	0	0	1,548	2,370	65.3			
Alaska	1	0	716	1	0	0	0	1	0	1	108	0	931	11,990	7.8			
Arizona	15	126	6,612	15	199	14	234	14	6,552	15	307	15	21,211	73,880	28.7			
Arkansas	75	108	47	339	59	1	49	26	49	50	3	1	756	1,155	65.5			
California	58	752	15	22,816	42	140	4	1,608	7	1,000	7	1,017	38,984	288,213	13.5			
Colorado	64	49	8	1,603	49	151	11	607	20	1,412	8	6	3,981	26,455	15.0			
Connecticut	8	0	0	0	0	0	0	0	0	0	0	0	543	0	....			
Delaware	3	0	3	15	3	0	3	0	4	3	0	0	21	25	84.0			
Dist. of Columbia	1	0	1	601	1	7	1	0	215	0	0	0	0	4,219	0.0			
Florida	67	61	67	1,203	67	63	67	56	1,038	67	409	66	3,857	14,550	26.5			
Georgia	159	0	129	840	145	37	132	322	135	104	131	130	2,142	4,632	46.2			
Hawaii	4	0	52	2	0	0	0	0	54	1	3	1	121	157	77.1			
Idaho	44	0	1	0	1	0	1	0	0	1	0	1	0	0	....			
Illinois	110	0	1	0	1	0	1	0	0	0	0	1	9,930	12,611	78.7			
Indiana	92	0	0	0	0	0	0	0	0	0	1,126	90	1,126	2,031	55.4			
Iowa	99	0	997	99	0	0	9	9	34	99	19	9	1,104	6,027	18.3			
Kansas	105	38	104	2,794	104	0	0	0	0	0	428	104	4,681	21,097	22.2			
Kentucky	120	0	116	47	116	0	116	0	4	116	2	102	69	75	92.0			
Louisiana	64	0	2	72	19	16	9	28	11	0	0	0	137	274	50.0			
Maine	16	0	15	0	15	0	15	0	0	15	0	7	0	316	0.0			
Maryland	24	0	3,047	24	0	0	0	0	0	0	1,363	24	5,339	41,485	12.9			
Massachusetts	14	0	2	0	2	0	2	67	2	0	0	0	88	215	40.9			
Michigan	83	0	83	0	83	0	83	264	83	360	612	82	1,474	1,821	80.9			
Minnesota	87	0	0	0	0	0	0	0	0	0	0	0	0	0	....			
Mississippi	82	0	35	335	37	86	37	11	34	568	3	10	2,558	7,073	36.2			
Missouri	116	0	2,210	104	0	0	0	0	14	783	0	0	4,119	7,403	55.6			
Montana	56	0	56	27	56	2	56	3	25	56	1	1	116	2,242	5.2			
Nebraska	93	0	2	485	47	76	10	0	271	15	252	16	1,118	7,119	15.7			
Nevada	17	0	0	145	6	0	0	59	1	0	0	0	229	501	45.7			
New Hampshire	10	0	0	0	0	0	0	0	0	0	0	0	0	0	....			
New Jersey	21	13	17	1,360	17	72	17	20	16	4	17	17	3,084	11,410	27.0			
New Mexico	33	0	13	908	16	3	14	4	12	5	14	6	1,477	1,378	107.2			
New York	58	0	0	4,624	58	0	0	0	0	0	1,823	58	8,744	27,268	32.1			
North Carolina	100	0	1	4,423	100	808	100	0	1	226	95	98	6,059	22,491	26.9			
North Dakota	53	0	53	0	53	0	53	0	53	0	53	0	0	0	....			
Ohio	88	14	87	7,384	88	4	80	0	81	10,610	88	83	23,062	127,758	18.1			
Oklahoma	77	0	1	308	45	0	1	1	7	121	21	0	430	563	76.4			
Oregon	36	0	28	0	28	0	28	0	28	0	0	0	22	1,408	1.6			
Pennsylvania	67	0	0	2,539	67	0	0	0	67	67	4,522	67	4,522	12,345	36.6			
Rhode Island	5	0	0	721	1	0	0	0	0	0	193	1	914	0	....			
South Carolina	46	0	0	69	10	0	0	57	6	424	10	66	812	3,013	26.9			
South Dakota	66	0	14	151	42	1	15	13	19	28	19	5	185	341	54.3			
Tennessee	95	0	1	257	38	9	8	11	9	15	5	264	12	633	0	....		
Texas	254	5	254	2,739	254	659	254	176	254	1,540	254	254	5,627	5,571	101.0			
Utah	29	0	9	2,222	16	8	9	8	9	339	14	103	3,392	14,730	23.0			
Vermont	14	0	0	0	0	0	0	0	0	0	0	0	0	16	0.0			
Virginia	134	0	2	505	64	51	15	311	35	126	24	14	1,062	1,779	59.7			
Washington	39	309	37	868	37	124	37	975	37	36	206	36	2,544	18,825	13.5			
West Virginia	55	2	1	417	35	28	8	9	2	641	33	102	1,969	4,358	45.2			
Wisconsin	72	0	0	0	0	0	0	0	0	0	0	0	103	271	38.0			
Wyoming	23	0	21	0	21	0	21	0	21	3	21	0	8	22	36.4			
American Samoa	1	0	1	0	1	0	1	0	1	0	0	0	0	5	0.0			
Guam	1	0	0	0	0	0	0	0	0	0	0	0	0	0	....			
Puerto Rico	1	0	0	0	0	0	0	0	0	0	0	0	0	0	....			
Virgin Islands	1	0	0	0	0	0	0	0	0	0	0	0	0	0	....			
Sum of Above	3,123	1,477	1,242	74,500	12,090	2,545	1,272	4,879	1,226	26,631	1,603	15,726	170,882	791,831	21.6			
Question		q37nm	q37nr	q37r	q37w	q37wj	q37wp	q37wv	q37o	q37p	q36total	q33p	calc					

Appendix 15: United States Election  
Assistance Commission,  
*2004 Election Day Survey  
Report, Part 2 Survey  
Results, Chapter 6:  
Provisional Ballots*

## Chapter 6 Provisional Ballots

Table 6 presents data from the Election Day Survey on provisional ballots. Under the Help America Vote Act of 2002 (HAVA), if an individual appears at the polls on Election Day to cast a ballot but is not listed on the voter registration rolls, that individual is permitted to cast a provisional ballot. And if the individual is later determined to be eligible to vote, the provisional ballot is counted as a vote. The Election Day Survey asked for the number of provisional ballots cast, the number counted, and the five most common reasons for rejecting provisional ballots.

Section 302(a) of HAVA establishes the process of provisional balloting:

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows.

The applicability of provisional balloting covers individuals who appear at the polls on Election Day to cast a ballot but are not listed on the voter registration rolls; in some states, first-time voters who cannot provide identification, as required under HAVA; and in some states, voters who were challenged at the poll. Election administrators are required to notify individuals of their opportunity to cast a provisional ballot.

While all individuals may cast a provisional ballot, the states differed in their interpretation of the phrase “registered voter in the jurisdiction in which the individual desires to vote” as to what defines a valid provisional ballot: is the jurisdiction an individual’s voting precinct, county, or some other jurisdiction? The ambiguity in the HAVA language resulted in controversy in the 2004 election and lawsuits seeking to expand the definition of “jurisdiction” when counting provisional ballots. In 2004, as detailed below, in 18 states provisional ballots were eligible to be counted if cast outside the individual’s home precinct. In 25 states, provisional ballots were disqualified if cast outside the individual’s home precinct. Seven states with Election Day registration were exempt from the HAVA provision, but three of these adopted provisional ballots for some classes of individuals seeking to vote.

If the individual is later determined to be eligible to vote, the provisional ballot is counted as a vote. A 2004 survey of 35 state election administrators by the National Association of Secretaries of State (NASS) revealed that for the 2004 election states begin verification procedures as early as Election Day and as late as one week after the election. The procedure may last as short a period as the completion of Election Day up to more than two weeks.

HAVA requires that states provide individuals casting provisional ballots with free access to a mechanism by which they can determine the disposition of their ballots. The NASS survey revealed that the methods of notification varied among Web sites, toll-free phone lines, and direct contact by local election administrators.

## Applicability and Coverage

HAVA required all states to offer provisional ballots in federal elections beginning in 2004, although some states are exempt because they have no voter registration (North Dakota) or have alternative systems, such as Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming). The states of Maine, Wisconsin, and Wyoming allowed provisional balloting for first-time voters who were unable to provide identification or whose ballots were challenged at the polls. The other four states had no form of provisional balloting and no data was reported for them. New Hampshire and North Dakota allowed voters without identification to sign affidavits swearing to their identity. Minnesota and Idaho did not allow first-time voters without identification to cast ballots.

Mississippi and Pennsylvania failed to provide any data on provisional ballot use in their states. The states of California, Indiana, Iowa, Kansas, Missouri, New Mexico, New York, and West Virginia did not provide full statistics for all their jurisdictions.

Reasons for rejecting provisional ballots vary. In 18 states, provisional ballots are eligible to be counted if cast outside the individual's home precinct. In 25 states, provisional ballots are disqualified if cast outside the individual's home precinct.

States where provisional ballots are eligible to be counted if cast outside the correct precinct:

Alaska	Delaware	New Mexico	Utah
Arizona	Georgia	North Carolina	Vermont
Arkansas	Illinois	Oregon	Washington
California	Louisiana	Pennsylvania	
Colorado	Maryland	Rhode Island	

## Historical Context

Prior to the adoption of HAVA, some states provided for the casting and counting of provisional ballots. The rules regarding the use of "provisional ballots" were uneven among states. For example, Ohio provided a method of provisional balloting to persons who moved within the state but did not reregister at their new address by Election Day. California provided a method of provisional balloting to persons who could not establish their eligibility at the polls. Texas provided a method of provisional balloting for persons who were challenged at the polls. State and local jurisdiction statistics are unavailable as to the incidence of these pre-HAVA forms of provisional balloting.

HAVA mandated the use of provisional ballots in federal elections starting January 1, 2004. The November 2, 2004, election is the first federal election to be conducted with national usage of provisional ballots. Although provisional balloting has provided a minimum standard for provisional balloting, as described above, the application of how and when provisional ballots will be cast and counted varies among the states. Furthermore, some states permit provisional balloting only in federal elections.

## Survey Results

Table 6 presents data on provisional ballots cast and counted from questions 8 and 9 on the Election Day Survey. In the table, the number of provisional ballots cast is calculated as a percentage of reported total registration, and the number of provisional ballots counted is calculated as a percentage of provisional ballots cast. The column headings in Table 6 are as follows:

### Column Headings for Table 6. Provisional Ballots

Col.	Heading	Description
1	Code	State census code
2	Name	Respondent to Election Day Survey
3	Jurisdiction	Number of local election jurisdictions from survey question 22
4	Total Registration	Number of active and inactive registered voters, number of persons who voted on Election Day in six states, and VAP data for North Dakota and jurisdictions in Wisconsin that do not have voter registration, from col. 4 of Table 2, "Registration"
5	Cases	Number of jurisdictions that responded to survey question 1, provided Election Day registration data, or for which VAP data was substituted for voter registration data
6	Ballots Cast in Polling Places	Number of ballots cast in polling places on Election Day, from col. 9 of Table 4, "Turnout Source"
7	Cases	Number of jurisdictions that responded to survey questions 1 and 3, that provided Election Day registration data, and for which VAP data was substituted for voter registration data
8	Total Provisional Cast	Number of provisional ballots cast from survey question 8
9	Cases	Number of jurisdictions that responded to question 8
10	Percent Provisional Cast of Registration	Number of provisional ballots cast (col. 6) divided by the number of registered voters (col. 4)
11	Cases	Number of jurisdictions that responded to survey questions 1 and 8, provided Election Day registration data, or for which VAP data was substituted for voter registration data
12	Cases > 100%	Number of jurisdictions where the reported number of provisional ballots cast (col. 6) is greater than the reported number of registered voters (col. 4)
13	Percent Provisional Cast of Polling Places	Number of provisional ballots cast (col. 8) divided by the number of ballots cast in polling places on Election Day (col. 6)
14	Cases	Number of jurisdictions that responded to survey questions 3 and 8
15	Cases > 100%	Number of jurisdictions where the reported number of provisional ballots cast (col. 8) is greater than the number of ballots cast in polling places on Election Day (col. 6)
16	Total Provisional Counted	Number of provisional ballots counted from survey question 9
17	Cases	Number of jurisdictions that responded to question 9

**Column Headings for Table 6 (cont.)**

<b>Col.</b>	<b>Heading</b>	<b>Description</b>
18	Percent Provisional Counted of Prov Cast	Number of provisional ballots counted (col. 11) divided by the number of provisional ballots cast (col. 6)
19	Cases	Number of jurisdictions that responded to questions 8 and 9
20	Cases > 100%	Number of jurisdictions where the reported number of provisional ballots counted (col. 11) is greater than the reported number of provisional ballots cast (col. 6)

## Analysis of Survey Results

The following is our analysis of the data in Table 6 for each of the 18 cross-tabulation factors described earlier in this report. A description of each factor follows a general summary and a state-level summary of the survey data.

- |  |   |
|--|---|
| 1) Regions                                     | 10) Changed Voting Equipment since 2000   |
| 2) Urban to Rural                              | 11) Statewide Voter Registration Database |
| 3) Size of Jurisdiction                        | 12) Election Day Registration             |
| 4) Race and Ethnicity                          | 13) Provisional Ballot Acceptance         |
| 5) Median Income                               | 14) No Excuse Absentee Balloting          |
| 6) High School Education                       | 15) Early Voting                          |
| 7) Section 203 Language Minority Requirements  | 16) Battleground States                   |
| 8) Section 5 Preclearance of Voting Procedures | 17) Presidential Margin of Victory        |
| 9) Type of Voting Equipment                    | 18) Red versus Blue Jurisdictions         |

This analysis is based only on data that was *reported* to the U.S. Election Assistance Commission on the Election Day Survey. Many state responses to a survey question or part of a question did not cover all local election jurisdictions. In Table 6 as well as other tables in this report, a jurisdiction was excluded from a statistical calculation if its response was missing for one or more of the data items (i.e., columns) used in the calculation. A column labeled “Cases” next to each statistical calculation shows the number of jurisdictions covered by that calculation.

### Summary

Regarding provisional ballots, the Election Day Survey asked for the number of provisional ballots cast, the number counted, and the five most common reasons for rejecting provisional ballots. Overall, at least 1,901,591 individuals sought to cast a provisional ballot in the 2004 election. That amounted to 1.25 percent of all persons registered for the election and 2.56 percent of ballots cast in polling places on Election Day. The states reported that at least 1,225,915 provisional ballots were counted, or 64.50 percent of those provisional ballots cast.

States were also asked to provide the five most common reasons why the provisional ballots were rejected, although the actual numbers of ballots rejected categorized by the reasons for rejection were not requested. The states were not asked to provide this information for their individual jurisdictions, just a statewide summary. The reasons, according to their frequency of mention by states, are as follows:

<b>Reasons for Rejecting Provisional Ballots</b>	<b>Frequency of Mention</b>
Not registered	18
Wrong precinct	14
Improper ID	7
Incomplete ballot form	6
Wrong jurisdiction	5
Already voted	3
Ballot not timely received	3
Ineligible to vote	3
No signature	3
Administrative error	2
Non-matching signature	2

Reasons for Rejecting Provisional Ballots (cont.)	Frequency of Mention
Other	2
Registration purged	2
Deceased	1
Elector challenged	1
First-time voter registering on Election Day	1
Missing ballot	1
Multiple ballots in one envelope	1
Name missing from voter list	1
Nonappearance within 24 hours	1
Nonverifiable signature	1

We calculated three measures of provisional balloting in our analysis: the number of reported provisional ballots cast as a percentage of the voter registration, the number of reported provisional ballots cast as a percentage of ballots cast in polling places, and the report number of provisional ballots that were counted as a percentage of the reported number of provisional ballots cast. Generally we found the same relationships for the number of provisional ballots cast as a percentage of voter registration or as a percentage of ballots cast in polling places.

The patterns of provisional balloting revealed by our analysis suggest that administrative rules and procedures are most related to the casting and counting of provisional ballots. Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions.

Those jurisdictions with statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

Over one million provisional ballots were reportedly cast in Section 203 covered jurisdictions, and correspondingly, there was a higher incidence of provisional ballots cast in Section 203 covered jurisdictions than those jurisdictions not covered. The rate of counting the provisional ballots was slightly higher in Section 203 jurisdictions, but could not offset the much higher incidence of casting provisional ballots.

On a related note, predominantly Hispanic jurisdictions had the highest rate of casting provisional ballots, followed by predominantly non-Hispanic Native American jurisdictions. While the counting of provisional ballots was highest in predominantly Hispanic jurisdictions, predominantly non-Hispanic Native American jurisdictions had a counting rate under 50 percent.

Higher incidences of casting provisional ballots can also be found in urban and high population density areas, but these jurisdictions also had higher rates of counting provisional ballots. Rates of counting provisional ballots also tended to increase with the income and education level within a jurisdiction.

### *States*

Among those jurisdictions reporting, Alaska reported the highest incidence of provisional ballots cast as a percentage of voter registration, at 4.93 percent, followed by California, at 4.08 percent, and Arizona at 3.84 percent. Twenty-four states reported provisional ballots as a percentage of registration at 0.3 percent or lower, with Vermont and Wyoming the lowest at just under 0.03 percent.

As a percentage of votes cast at the polling place, Washington was the highest at 11.29 percent, followed by Alaska, 10.63 percent; Arizona, 8.99 percent; and California, 8.47 percent. The change in the relative order is a consequence of the varied incidence of other methods of voting, such as absentee and early voting. The states with the lowest incidence of provisional balloting were again Vermont and Wyoming at 0.05 percent.

States reported a very wide range of whether the ballots were counted. Maine had the highest rate of provisional ballots counted, and serves as an interesting case, since the state permits first-time voters without required identification to cast a provisional ballot. Maine reports slightly more ballots counted, 486, than cast, 483. This is presumably a consequence of a data-entry error. More generally, nearly all provisional ballots cast in Maine were counted.

After Maine, Alaska reported the highest rate of counting provisional ballots, at 96.60 percent. Thus, even though Alaska had the highest incidence of provisional balloting, those ballots tended to be counted. Oregon followed at 85 percent, and also serves as an interesting case because persons casting a provisional ballot are motivated people who go to their county election administrative offices to cast a ballot if they did not receive one by mail. Washington, Nebraska, and Ohio all reported counting rates near 79 percent.

States with low reported rates of counting provisional ballots were Delaware at 6.3 percent, Hawaii at 7.20 percent, and Oklahoma at 7.70 percent. Table 6A shows the states sorted by the two methods of calculations.

### *Regions*

Jurisdictions in the West reported the highest percentage of provisional ballots cast, 2.94 percent of voter registration or 6.54 percent of votes cast in polling places, but also reported the highest rate of counting those ballots, 74 percent. The Northeast reported the second highest percentage of provisional ballots cast as a percentage of voter registration, 1.34, but reported the lowest rate of counting those ballots, 42.8 percent. As percentage of ballots cast at the polling place, the Northeast reported the lowest incidence of cast provisional ballots at 0.86 percent. The Midwest was next in provisional ballots cast, 0.80 percent of registration or 1.91 of votes cast in polling place, and reported the second highest rate of counting, 69.20 percent. The South reported the lowest rate of casting provisional ballots, at 0.44 percent of registration and 1.01 percent of ballots cast in polling places, and the third highest rate of counting, at 49.90 percent.

### *Urban to Rural*

Urban jurisdictions reported the highest rate of provisional ballots cast, 1.55 percent, followed by suburban jurisdictions at 1.12 percent, small towns at 1.02 percent, and rural jurisdictions, at 0.67 percent. The same pattern was reported when calculated as a percentage of ballots cast in polling places. Suburban jurisdictions reported the highest rate of counting provisional ballots, 73.10

percent, followed by rural jurisdictions at 68.50 percent, urban jurisdictions at 61.60 percent, and small towns at 59.30 percent.

**Table 6a. Provisional Ballot Usage, Sorted**

		Provisional Ballots Cast		Provisional Ballots Counted	
Ranking	Name	Percent Provisional Cast of Registration	Name	Percent Provisional Counted of Prov Cast	
1	Alaska	4.93	Maine	100.0	
2	California	4.08	Alaska	96.6	
3	Arizona	3.84	Oregon	85.3	
4	District of Columbia	2.92	Nebraska	79.1	
5	Kansas	2.69	Washington	79.0	
6	Washington	2.67	Ohio	78.4	
7	New York	2.21	Virgin Islands	77.6	
8	Utah	2.06	Colorado	75.9	
9	Ohio	1.98	California	73.2	
10	Colorado	1.66	Arizona	72.5	
11	Maryland	1.58	District of Columbia	71.1	
12	Nebraska	1.50	Kansas	70.4	
13	North Carolina	1.40	Utah	70.4	
14	New Mexico	1.31	Maryland	65.1	
15	New Jersey	1.28	South Carolina	65.1	
16	West Virginia	1.25	North Carolina	65.0	
17	Puerto Rico	0.88	Puerto Rico	58.4	
18	Iowa	0.69	West Virginia	58.2	
19	Illinois	0.60	Michigan	57.5	
20	Nevada	0.57	New Jersey	55.3	
21	Virgin Islands	0.50	Wisconsin	53.1	
22	Arkansas	0.45	Iowa	52.2	
23	Oregon	0.39	Montana	51.2	
24	Rhode Island	0.30	Illinois	51.2	
25	Georgia	0.30	Arkansas	47.9	
26	Texas	0.27	Rhode Island	45.8	
27	Florida	0.27	New Mexico	44.5	
28	Alabama	0.25	New York	40.3	
29	Massachusetts	0.25	Missouri	40.2	
30	Tennessee	0.23	Nevada	39.8	
31	South Carolina	0.21	Louisiana	39.3	
32	Louisiana	0.20	Tennessee	37.6	
33	Missouri	0.20	Florida	36.1	
34	Indiana	0.14	Connecticut	31.7	
35	Oklahoma	0.12	Georgia	30.8	
36	South Dakota	0.11	Alabama	28.8	
37	Virginia	0.10	Wyoming	25.3	
38	Montana	0.10	Vermont	24.8	
39	Connecticut	0.09	Massachusetts	23.1	
40	Michigan	0.08	Texas	20.2	
41	Delaware	0.07	Indiana	15.9	
42	Hawaii	0.05	Virginia	15.6	
43	Kentucky	0.05	Kentucky	14.8	
44	Maine	0.05	South Dakota	12.4	
45	Wisconsin	0.04	Oklahoma	7.7	
46	Wyoming	0.03	Hawaii	7.2	
47	Vermont	0.03	Delaware	6.3	
48	Idaho		Idaho	0.0	
49	Minnesota		Minnesota		
50	Mississippi		Mississippi		
51	New Hampshire		New Hampshire		
52	North Dakota		North Dakota		
53	Pennsylvania		Pennsylvania		
54	American Samoa		American Samoa		
55	Guam		Guam		
	Total	1.25	Total	64.5	
	Maximum	4.93	Maximum	100.0	
	Average	0.96	Average	47.9	
	Minimum	0.03	Minimum	0.0	

### *Size of Jurisdiction*

The urban-to-rural trend on rate of provisional ballots cast persists for the population size of the jurisdiction. The reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. For percentage of ballots cast in polling places, the percentages ranged from 0.08 percent for the smallest jurisdiction to 6.08 percent for the largest.

The reported rate of counting provisional ballots generally increased with population size of the jurisdiction. Jurisdictions with a population between 1,000 and 3,500 VAP reported the lowest rate of counting provisional ballots, at 52.10 percent, while the largest jurisdictions reported 66.90 percent. However, the trend did not hold for the smallest jurisdictions below 1,000 VAP, which reported 65.40 percent.

### *Race and Ethnicity*

The highest reported incidence of casting provisional ballots among voter registration was in predominantly Hispanic jurisdictions, 2.81 percent, followed by predominantly non-Hispanic Native American jurisdictions, 1.89 percent; predominantly non-Hispanic Black areas, 1.28 percent; and predominantly non-Hispanic White communities, 1.12 percent. The order was the same when calculated as a percentage of ballots cast in polling places, ranging between 6.25 and 2.25 percent.

The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

### *Median Income*

Reported rates of casting provisional ballots as a percentage of voter registration generally rise with the income level of the jurisdiction, from a 0.22 percent rate for jurisdictions with a median income less than \$25,000 to a 1.52 percent rate for median income between \$40,000 and \$45,000. The rate drops off for the highest income jurisdictions, to 1.29 percent for those with a median income above \$50,000. The same pattern holds when calculated as a percentage of ballots cast in polling places, ranging from 0.63 percent for the lowest category to 3.22 percent for jurisdictions with \$40,000–\$45,000 median income, before dropping slightly to 2.49 percent for the highest category.

Generally, higher income jurisdictions counted provisional ballots at nearly twice the rate of lower income communities. The reported rates for counting ballots follows a similar pattern, from a low of 39.80 percent counted in the lowest income category, to a high in the \$45,000 and \$50,000 range of 75.90 percent, and then dropping off slightly for the highest income category to 69.30 percent. However, jurisdictions in the \$35,000 and \$40,000 range break the pattern, dipping to a 42.20 percent counted rate.

### *High School Education*

The greatest variation in reported rates of provisional ballots cast occurs for the two lowest education categories. For the lowest, the rate of casting ballots is 0.23 percent; the rate jumps to 2.37 percent in the next highest category, and then declines to a little more than 1.00 percent for the remainder. The pattern is the same when calculated as a percentage of ballots cast in polling places,

0.84 percent for the lowest category, 5.41 for the next highest, and about 2.00 percent for the remainder.

The reported counting rate of provisional ballots generally shows a positive relationship between ballots counted and education levels, rising from a low of 52.60 percent for the lowest education category and rising to 72.30 percent for the highest. The deviation from the increasing pattern occurs at the medium range of 70–80 percent high school education, with a counting rate dipping to 52.60 percent.

### *Section 203 Language Minority Requirements*

There is a large difference in the reported rate of provisional ballots cast among Section 203 covered jurisdictions. Those covered reported a rate based on voter registration much higher, 2.04 percent, than those that are not covered, 0.82 percent. When calculated as a percentage of ballots cast in polling places, Section 203 covered jurisdictions reported 5.09 versus 1.38 percent for other jurisdictions. Section 203 covered jurisdictions reported a slightly higher rate of counting provisional ballots, 68.4 percent, than those not covered, 59.8 percent.

### *Section 5 Preclearance of Voting Procedures*

Section 5 covered jurisdictions reported a slightly lower rate of casting provisional ballots when calculated as a percentage of voter registration, 1.03 versus 1.25 percent, and a slightly higher rate when calculated for ballots cast in polling places, 2.49 versus 2.42 percent. Section 5 covered jurisdictions reported a slightly higher rate of counting provisional ballots than jurisdictions not covered by Section 5, 68.40 versus 63.20 percent.

### *Type of Voting Equipment*

Among those jurisdictions reporting voting equipment, those with lever machines reported the highest rate of casting provisional ballots when calculated as a percentage of voter registration, at 1.61 percent, but the second lowest when calculated as a percentage of ballots cast in polling places, 0.68 percent. Paper jurisdictions reported the lowest rate by either measure, 0.30 percent for voter registration and 0.39 percent for ballots cast in polling places. Most jurisdictions using other types of voting equipment have similar rates of casting provisional ballots, around 1 percent for voter registration or 2 to 3 percent for ballots cast in polling places.

Lever machine jurisdictions reported the lowest rate of counting those ballots, 41.30 percent, followed by paper jurisdictions, which reported a counting rate of 58 percent. Other jurisdictions ranged between 60 and 70 percent counting rates.

### *Changed Voting Equipment since 2000*

Those jurisdictions that changed voting equipment reported a higher rate of provisional ballots cast— 1.54 percent for voter registration and 3.42 percent for ballots cast in polling places—than those jurisdictions that did not, which measured 1.05 and 1.97 percent, respectively. Those jurisdictions that changed voting equipment also reported a higher rate of provisional ballots counted, 67.50 percent, than those jurisdictions that did not, 62.40 percent.

### *Statewide Voter Registration Database*

Statewide voter registration databases lead to almost half the number of provisional ballots being cast. Those jurisdictions with statewide voter registration databases reported a lower rate of casting provisional ballots, 0.59 percent for voter registration and 1.21 percent for ballots cast in polling places, than other jurisdictions, 1.37 and 2.86 percent, respectively. Both types of jurisdictions reported similar levels of counting provisional ballots, slightly above 64 percent.

### *Election Day Registration*

Those jurisdictions with Election Day registration might reasonably be assumed to not need provisional ballots because voters can register at the polls. However, for three of the seven Election Day registration states—Maine, Wisconsin, and Wyoming—provisional balloting was provided for first-time voters who were unable to provide identification or voters whose ballots were challenged at the polls. As the numbers show, this was a rare event in these three states. In those states with Election Day registration the reported incidence of provisional ballots cast was 0.03 percent or registration or 0.04 percent of ballots cast in polling places, and 78 percent of these ballots were counted. For states without Election Day registration, the reported incidence of provisional ballots cast was 1.22 percent of registration or 2.50 percent of ballots cast in polling places, and 64.3 percent were counted.

### *Provisional Ballot Acceptance*

Jurisdictions with jurisdictionwide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdictionwide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent.

### *No Excuse Absentee Balloting*

Jurisdictions with no excuse absentee balloting reported more than twice the rate of casting provisional ballots, 1.94 percent of registration or 4.20 of ballots cast in polling places, than those jurisdictions that did not, 0.74 and 1.14 percent, respectively. Jurisdictions with no excuse absentee balloting reported a higher rate of counting provisional ballots, 71.7 percent, than those jurisdictions that did not, 52.5 percent.

### *Early Voting*

Jurisdictions with early voting reported a higher incidence of provisional ballots cast, 1.52 percent of registration and 3.430 percent of ballots cast in polling places, than those jurisdictions that did not, 0.93 and 1.45 percent, respectively. Jurisdictions with early voting reported a higher rate of provisional ballots counted, 68.40 percent, compared to other jurisdictions, 58.60 percent.

### *Battleground States*

Jurisdictions in battleground states reported a slightly lower incidence of casting provisional ballots, 1.04 percent of registration and 2.39 of ballots cast in polling places, than those jurisdictions that were not battleground states, which measured 1.27 and 2.46 percent, respectively. Jurisdictions in battleground states reported a higher rate of counting provisional ballots, 71.30 percent, than those jurisdictions that were not in battleground states, at 61.80 percent.

### *Presidential Margin of Victory*

No clear pattern emerges for provisional balloting and presidential margin of victory. The reported incidence of casting provisional ballots ranged from 0.78 to 1.32 percent of registration and 1.68 to 2.86 percent of ballots cast in polling places. The reported rate of counting provisional ballots ranged from 62.60 to 79.60 percent. Of note, the range where either presidential candidate won by between 5.00 to 7.50 percent reported both the highest incidence of provisional ballot casting and rate of counting.

### *Red versus Blue Jurisdictions*

Jurisdictions in which Bush won a plurality of the vote reported the lowest incidence of casting provisional ballots, 0.37 percent of registration and 0.51 percent of ballots cast in polling places, while those that were won by Kerry by more than 55 percent reported the highest incidence of casting provisional ballots, 1.65 and 3.28 percent, respectively. For the other categories, the incidence of casting provisional ballots was slightly less than 1 percent for registration and around 2 percent for ballots cast in polling places.

Jurisdictions in which Bush won a plurality of the vote reported the lowest rate of counting provisional ballots, 54.5 percent, while those that were won by Bush with between 50 and 55 percent reported the highest rate of counting provisional ballots, 73.2 percent. Those that were won by Kerry by more than 55 percent reported the second highest rate of counting ballots, at 71.0 percent. The remainder of jurisdictions varied between 59.9 percent and 68.2 percent.

## **REFERENCES**

National Association of Secretaries of State. 2004. *Summaries and Highlights: NASS Survey of the Election Community Regarding Provisional Ballots*. Washington, DC.

Provisional

EAC Election Day Survey		Cases = Number of Jurisdictions Reporting Subject Matter																	
Provisional Ballots 2004 General Election		Provisional Ballots Cast										Provisional Ballots Counted							
Updated: 09/19/2005 13:04:16		Election Administration Jurisdictions	Total Registration	Cases	Ballots Cast In Polling Place	Cases	Total Provisional Cast	Cases	Percent Provisional Cast of Registration	Cases	Cases >100%	Percent Provisional Cast of Polling Place	Cases	Cases >100%	Total Provisional Counted	Cases	Percent Provisional Counted of Prov Cast	Cases	Cases >100%
01	Alabama	67	2,597,629	67	6,478	67	6,478	0.25	67					1,865	67	28.8	64		
02	Alaska	1	472,160	1	23,285	1	23,285	4.93	1		10.63	1		22,498	1	96.6	1		
04	Arizona	15	2,642,120	15	101,536	15	101,536	3.84	15		8.99	15		73,658	15	72.5	15		
05	Arkansas	75	1,699,934	75	7,675	75	7,675	0.45	75		0.56	61		3,678	75	47.9	75		
06	California	58	16,646,555	58	668,408	51	668,408	4.08	51		8.47	48		491,765	55	73.2	51		
08	Colorado	64	3,101,956	64	51,529	64	51,529	1.66	64		4.88	59		39,086	64	75.9	61		
09	Connecticut	169	1,831,567	169	1,573	169	1,573	0.09	169		0.11	169		498	169	31.7	84		
10	Delaware	3	553,917	3	384	3	384	0.07	3		0.11	3		24	3	6.3	3		
11	District of Columbia	1	383,919	1	11,212	1	11,212	2.92	1		5.51	1		7,977	1	71.1	1		
12	Florida	67	10,300,942	67	27,742	67	27,742	0.27	67		0.57	67		10,007	67	36.1	67		
13	Georgia	159	4,248,802	159	12,895	159	12,895	0.30	159		0.49	159		3,976	159	30.8	129	3	
15	Hawaii	5	647,238	4	346	4	346	0.05	4		0.11	4		25	4	7.2	4		
16	Idaho	44	915,637	44	0	44	0		44			44		0	44	0.0			
17	Illinois	110	7,195,882	104	43,464	110	43,464	0.60	104					22,238	110	51.2	98		
18	Indiana	92	4,296,602	92	5,707	89	5,707	0.14	89		0.26	89		910	89	15.9	80		
19	Iowa	99	2,226,721	98	15,406	97	15,406	0.69	97		1.44	96		8,038	97	52.2	97		
20	Kansas	105	1,695,457	105	45,535	104	45,535	2.69	104		4.78	102		32,079	104	70.4	104		
21	Kentucky	120	2,794,286	120	1,494	120	1,494	0.05	120					221	120	14.8	85		
22	Louisiana	64	2,932,142	64	5,880	64	5,880	0.20	64		0.33	64		2,312	64	39.3	60		
23	Maine	517	1,026,219	517	483	516	483	0.05	516		0.06	516		486	515	100.0	92	1	
24	Maryland	24	3,105,370	24	48,936	24	48,936	1.58	24		2.20	24		31,860	24	65.1	24		
25	Massachusetts	351	4,098,634	351	10,060	351	10,060	0.25	351		0.36	351		2,319	351	23.1	234		
26	Michigan	83	7,164,047	83	5,610	83	5,610	0.08	83		0.17	83		3,227	83	57.5	71		
27	Minnesota	87	2,977,496	87															
28	Mississippi	82	1,469,608	66															
29	Missouri	116	4,194,416	116	8,183	116	8,183	0.20	116					3,292	116	40.2	99		
30	Montana	56	638,474	56	623	56	623	0.10	56		0.16	56		378	56	51.2	38	1	
31	Nebraska	93	1,160,193	93	17,421	93	17,421	1.50	93		2.59	93		13,788	93	79.1	77		
32	Nevada	17	1,073,869	17	6,153	17	6,153	0.57	17		1.58	17		2,446	17	39.8	11		
33	New Hampshire	242	950,292	241															
34	New Jersey	21	5,011,693	21	64,226	21	64,226	1.28	21		1.88	21		35,493	21	55.3	21		
35	New Mexico	33	505,356	20	6,410	20	6,410	1.31	19		3.59	19		2,914	19	44.5	17	1	
36	New York	58	11,837,068	58	243,450	56	243,450	2.21	56					98,003	56	40.3	56		
37	North Carolina	100	5,526,981	100	77,469	100	77,469	1.40	100		3.21	100		50,370	100	65.0	100		
38	North Dakota	53	490,179	53															
39	Ohio	88	7,965,110	88	157,714	88	157,714	1.98	88		3.16	88		123,716	88	78.4	88		
40	Oklahoma	77	2,143,978	77	2,615	77	2,615	0.12	77		0.20	77		201	77	7.7	60		
41	Oregon	36	2,141,249	36	8,298	36	8,298	0.39	36		0.52	36		7,077	36	85.3	31		
42	Pennsylvania	67	8,366,455	67															
44	Rhode Island	39	707,234	39	2,147	39	2,147	0.30	39		0.51	39		984	39	45.8	39		
45	South Carolina	46	2,318,235	46	4,930	46	4,930	0.21	46					3,207	46	65.1	28		
46	South Dakota	66	502,261	66	533	66	533	0.11	66					66	66	12.4	49		
47	Tennessee	95	3,748,235	95	8,778	95	8,778	0.23	95		0.68	95		3,298	95	37.6	92		
48	Texas	254	13,098,329	254	35,282	254	35,282	0.27	254		0.97	254		7,141	254	20.2	225		
49	Utah	29	1,278,912	29	26,389	29	26,389	2.06	29		0.45	5		18,575	29	70.4	29		
50	Vermont	246	444,508	246	121	246	121	0.03	246		0.05	245		30	246	24.8	40		
51	Virginia	134	4,515,675	134	4,609	134	4,609	0.10	134		0.15	134		728	134	15.6	118	1	
53	Washington	39	3,508,208	39	93,781	39	93,781	2.67	39		11.29	34	1	74,100	39	79.0	39		
54	West Virginia	55	1,168,694	55	14,658	55	14,658	1.25	55		1.98	55		8,496	54	58.2	54	1	
55	Wisconsin	1,910	4,179,774	1,894	374	66	374	0.04	66					119	36	53.1	36		
56	Wyoming	23	273,950	23	95	23	95	0.03	23		0.05	23		24	23	25.3	19		
60	American Samoa	1																	
66	Guam	1																	
72	Puerto Rico	110	2,440,131	110	21,440	110	21,440	0.88	110		1.10	110		12,525	110	58.4	110		
78	Virgin Islands	1	50,731	1	254	1	254	0.50	1		0.84	1		197	1	77.6	1		
1	Total	6,568	177,265,030	6,512	1,901,591	4,161	1,901,591	1.25	4,154		2.55	3,458	1	1,225,915	4,132	64.5	2,977	8	
2	Maximum	1,910	16,646,555	1,894	668,408	516	668,408	4.93	516		11.29	516	1	491,765	515	100.0	234	3	
3	Average	119	3,344,623	122	39,616	86	39,616	0.96	86		2.18	86	1	25,539	86	47.9	63	1	
4	Minimum	1	50,731	1	0	1	0	0.03	1		0.05	1	1	0	1	0.0	1	1	

Provisional

EAC Election Day Survey		Cases = Number of Jurisdictions Reporting Subject Matter																	
Provisional Ballots 2004 General Election		Provisional Ballots Cast										Provisional Ballots Counted							
Code	Name	Election Administration Jurisdictions	Total Registration	Cases	Ballots Cast In Polling Place	Cases	Total Provisional Cast	Cases	Percent Provisional Cast of Registration	Cases	Cases >100%	Percent Provisional Cast of Polling Place	Cases	Cases >100%	Total Provisional Counted	Cases	Percent Provisional Counted of Prov Cast	Cases	Cases >100%
<b>Election Administration</b>																			
<b>Voting Equipment Used in 2004 General Election</b>																			
	None / Unknown	908	14,484,493	877	7,286,032	248	159,860	260	1.16	259		2.19	242		112,497	250	70.3	230	1
	Punch card	260	15,767,547	259	3,875,388	132	155,157	238	1.06	237		2.33	132	1	105,075	238	67.7	204	
	Lever	394	21,662,619	390	3,700,759	287	268,706	349	1.61	349		0.68	287		111,043	348	41.3	249	
	Paper	1,734	3,085,167	1,733	1,044,700	1,011	6,830	883	0.30	883		0.39	854		3,905	881	58.0	261	1
	Optical scan	2,541	69,198,628	2,523	28,352,237	1,617	855,694	1,735	1.39	1,730		3.27	1,409		597,380	1,719	69.5	1,433	2
	Electronic	608	40,068,685	608	17,384,983	441	364,916	595	0.97	595		2.06	439		235,489	595	64.5	504	3
	Multiple Systems	123	12,997,891	122	5,959,893	114	90,428	101	0.73	101		1.60	95		60,526	101	66.9	96	1
<b>Changed Voting Equipment Since 2000 General Election</b>																			
	Yes	1,753	51,149,755	1,746	21,652,417	874	727,717	824	1.54	821		3.42	696		491,529	814	67.5	556	6
	No	4,815	126,115,275	4,766	45,951,575	2,976	1,173,874	3,337	1.05	3,333		1.96	2,762	1	734,386	3,318	62.4	2,421	2
<b>State Wide Voter Registration System in Place</b>																			
	Yes	1,335	37,384,852	1,321	19,051,011	1,089	203,421	1,234	0.59	1,233		1.20	1,001		131,619	1,232	64.7	895	5
	No	5,233	139,880,178	5,191	48,552,981	2,761	1,698,170	2,927	1.37	2,921		2.86	2,457	1	1,094,296	2,900	64.3	2,082	3
<b>Election Day Registration</b>																			
	Yes	2,823	10,323,368	2,806	4,701,563	912	952	649	0.03	649		0.04	583		629	618	78.1	147	1
	No	3,745	166,941,662	3,706	62,902,429	2,938	1,900,639	3,512	1.22	3,505		2.49	2,875	1	1,225,286	3,514	64.3	2,830	7
<b>Provisional Ballot Acceptance</b>																			
	In Overall Jurisdiction	1,162	65,077,741	1,143	23,631,193	917	1,178,607	1,075	2.09	1,068		4.67	912	1	845,145	1,078	71.5	812	4
	In Precinct Only	4,350	103,336,604	4,316	37,233,762	1,880	700,807	2,415	0.72	2,415		1.17	1,875		367,562	2,384	52.5	1,962	3
	None	1,056	8,850,685	1,053	6,739,037	1,053	22,177	671	0.50	671		0.68	671		13,208	670	59.5	203	1
<b>No Excuse Absentee Balloting</b>																			
	Yes	3,781	64,333,790	3,750	27,451,170	1,746	1,172,134	1,859	1.94	1,858		4.20	1,685	1	842,965	1,831	71.7	1,067	3
	No	2,787	112,931,240	2,762	40,152,822	2,104	729,457	2,302	0.74	2,296		1.13	1,773		382,950	2,301	52.5	1,910	5
<b>Early Voting Allowed</b>																			
	Yes	1,701	73,710,075	1,686	32,353,422	1,657	1,106,561	1,624	1.52	1,623		3.43	1,597		760,108	1,626	68.4	1,260	6
	No	4,867	103,554,955	4,826	35,250,570	2,193	795,030	2,537	0.93	2,531		1.44	1,861	1	465,807	2,506	58.6	1,717	2
<b>Covered By Section 203, Language Minority Requirements</b>																			
	Yes	468	50,756,496	453	18,294,853	414	1,002,817	437	2.04	436		5.09	408		688,397	440	68.4	393	1
	No	6,100	126,508,534	6,059	49,309,139	3,436	898,774	3,724	0.82	3,718		1.37	3,050	1	537,518	3,692	59.8	2,584	7
<b>Covered By Section 5 of Voting Rights Act</b>																			
	Yes	880	40,868,855	864	15,774,405	681	405,262	788	1.03	788		2.49	672		277,405	788	68.4	687	4
	No	5,688	136,396,175	5,648	51,829,587	3,169	1,496,329	3,373	1.25	3,366		2.41	2,786	1	948,510	3,344	63.2	2,290	4

Provisional

EAC Election Day Survey		Cases = Number of Jurisdictions Reporting Subject Matter																	
Provisional Ballots 2004 General Election		Provisional Ballots Cast								Provisional Ballots Counted									
Code	Name	Election Administration Jurisdictions	Total Registration	Cases	Ballots Cast In Polling Place	Cases	Total Provisional Cast	Cases	Percent Provisional Cast of Registration	Cases	Cases >100%	Percent Provisional Cast of Polling Place	Cases	Cases >100%	Total Provisional Counted	Cases	Percent Provisional Counted of Prov Cast	Cases	Cases >100%
<b>Demographics</b>																			
<b>Region</b>																			
	Northeast	1,710	34,273,670	1,709	9,736,138	1,583	322,060	1,398	1.34	1,398		0.86	1,341		137,813	1,397	42.8	566	1
	South	1,423	62,606,676	1,407	25,158,163	1,094	271,037	1,341	0.44	1,341		1.01	1,094		135,361	1,340	49.9	1,185	5
	Midwest	2,902	44,048,138	2,879	16,057,271	696	299,947	912	0.80	906		1.88	551		207,473	882	69.2	799	
	West	420	33,845,684	406	14,674,575	366	986,853	399	2.94	398		6.54	361	1	732,546	402	74.0	316	2
	Territories	113	2,490,862	111	1,977,845	111	21,694	111	0.87	111		1.10	111		12,722	111	58.6	111	
<b>Urban to Rural</b>																			
	Urban	567	63,441,314	566	23,932,272	286	894,564	341	1.55	340		2.80	276		551,182	322	61.6	276	
	Suburban	871	47,552,530	868	18,338,813	486	466,973	491	1.12	490		2.44	442		341,398	485	73.1	387	
	Small Towns	1,710	44,193,768	1,690	15,783,352	1,133	404,198	1,244	1.02	1,243		2.42	1,007		242,128	1,243	59.3	941	2
	Rural	3,307	19,586,556	3,277	7,571,710	1,834	114,162	1,974	0.67	1,970		1.55	1,622	1	78,485	1,971	68.5	1,262	6
	Not Available - Territories	113	2,490,862	111	1,977,845	111	21,694	111	0.87	111		1.10	111		12,722	111	58.6	111	
<b>Size of Jurisdiction (VAP)</b>																			
	< 1,000	1,761	895,006	1,757	181,680	535	236	466	0.10	466		0.08	459		90	465	65.4	55	1
	>=1,000 to <3,500	1,165	2,182,148	1,164	818,638	638	2,081	566	0.19	566		0.30	519		1,081	560	52.1	234	
	>=3,500 to <10,000	1,043	5,966,645	1,037	2,618,360	764	12,298	820	0.26	819		0.47	667		6,606	810	53.2	602	3
	>=10,000 to <50,000	1,704	31,472,681	1,681	12,888,120	1,245	115,002	1,513	0.41	1,508		0.86	1,166		69,882	1,502	60.3	1,321	4
	>=50,000 to <250,000	586	48,992,270	582	18,301,533	419	306,278	528	0.69	527		1.42	403	1	199,874	528	64.6	509	
	>=250,000 to <1,000,000	140	51,396,493	139	20,669,035	106	619,796	122	1.39	122		2.85	103		384,099	122	62.0	121	
	>=1,000,000	25	33,867,508	25	10,147,890	19	824,206	24	2.51	24		6.05	19		551,561	24	66.9	24	
	Not Available	144	2,492,279	127	1,978,736	124	21,694	122	0.87	122		1.10	122		12,722	121	58.6	111	
<b>Race and Ethnicity</b>																			
	Predominantly NH White	6,264	163,662,585	6,234	60,592,039	3,627	1,622,859	3,913	1.12	3,907		2.24	3,240	1	1,017,790	3,885	62.6	2,761	7
	Predominantly NH Black	85	3,098,023	81	1,460,762	42	35,430	64	1.28	64		2.37	42		20,751	64	58.6	50	1
	Predominantly NH Native American	24	231,022	24	82,833	11	3,746	15	1.89	15		4.82	8		1,895	16	48.7	12	
	Predominantly Hispanic	50	7,749,995	45	3,480,693	45	217,449	46	2.81	45		6.25	45		172,429	45	79.3	42	
	Not Available	145	2,523,405	128	1,987,665	125	22,107	123	0.88	123		1.11	123		13,050	122	59.0	112	
<b>Median Income</b>																			
	< \$25,000	298	2,504,552	287	607,157	168	4,906	238	0.22	237		0.63	164		1,952	237	39.8	147	1
	>=\$25,000 to <\$30,000	884	8,917,739	871	3,268,500	594	39,738	694	0.48	693		1.16	568		21,588	693	54.3	482	2
	>=\$30,000 to <\$35,000	1,372	22,970,583	1,366	7,393,539	842	114,745	983	0.61	981		1.43	785		74,899	982	65.1	732	2
	>=\$35,000 to <\$40,000	1,215	40,443,694	1,213	11,981,812	703	443,747	768	1.23	768		2.17	619	1	189,262	764	42.2	554	2
	>=\$40,000 to <\$45,000	881	37,780,840	877	16,288,261	452	545,436	457	1.52	454		3.21	388		401,079	453	73.5	341	
	>=\$45,000 to <\$50,000	587	21,218,675	587	8,091,829	292	263,544	270	1.39	270		3.09	241		200,092	267	75.9	182	1
	>=\$50,000	1,180	40,936,586	1,178	17,994,126	672	467,781	628	1.29	628		2.47	570		324,321	614	69.3	428	
	Not Available	151	2,492,361	133	1,978,768	127	21,694	123	0.87	123		1.10	123		12,722	122	58.6	111	
<b>High School Education</b>																			
	< 60%	126	1,817,027	124	456,226	73	3,973	107	0.23	107		0.84	70		2,088	107	52.6	73	
	>=60% to <70%	661	14,944,978	648	6,195,326	421	338,669	543	2.37	542		5.41	416		215,147	542	63.5	444	3
	>=70% to <80%	1,646	49,285,773	1,631	15,020,134	959	513,390	1,120	1.13	1,116		2.12	885		272,695	1,120	52.6	854	2
	>=80% to <90%	3,111	93,198,279	3,105	36,448,287	1,692	886,040	1,753	1.08	1,751		2.20	1,491	1	623,535	1,738	70.3	1,197	3
	>=90%	873	15,495,512	871	7,496,339	578	137,412	514	1.06	514		1.99	472		99,400	502	72.3	297	
	Not Available	151	2,523,461	133	1,987,680	127	22,107	124	0.88	124		1.11	124		13,050	123	59.0	112	

Provisional

EAC Election Day Survey		Cases = Number of Jurisdictions Reporting Subject Matter																	
Provisional Ballots 2004 General Election		Provisional Ballots Cast										Provisional Ballots Counted							
Code	Name	Election Administration Jurisdictions	Total Registration	Cases	Ballots Cast In Polling Place	Cases	Total Provisional Cast	Cases	Percent Provisional Cast of Registration	Cases	Cases >100%	Percent Provisional Cast of Polling Place	Cases	Cases >100%	Total Provisional Counted	Cases	Percent Provisional Counted of Prov Cast	Cases	Cases >100%
<b>Political</b>																			
<b>Battleground States in 2004 Presidential Election</b>																			
	<b>Yes</b>	<b>3,093</b>	64,166,639	3,062	23,916,154	960	505,069	838	1.04	837		2.37	630	1	359,854	806	71.3	761	2
	<b>No</b>	<b>3,475</b>	113,098,391	3,450	43,687,838	2,890	1,396,522	3,323	1.27	3,317		2.46	2,828		866,061	3,326	61.8	2,216	6
<b>Margin of Victory in 2004 Presidential Election</b>																			
	< 2.5%	<b>515</b>	15,923,548	513	5,750,849	291	110,895	283	0.78	281		1.64	246		72,213	282	65.1	175	
	>=2.5% to < 5.0%	<b>476</b>	11,133,130	472	3,999,669	266	89,616	266	0.99	265		1.95	235		56,003	261	62.6	154	
	>=5.0% to < 7.5%	<b>510</b>	13,830,932	508	5,578,649	276	169,276	292	1.31	292		2.86	245		134,658	288	79.5	203	
	>=7.5% to < 10.0 %	<b>429</b>	8,833,490	428	3,452,732	235	65,284	229	0.83	229		1.78	199		47,317	228	72.5	138	
	>=10.0 %	<b>4,492</b>	125,044,988	4,463	46,839,469	2,664	1,444,826	2,978	1.29	2,974		2.63	2,420	1	903,002	2,960	62.3	2,196	8
<b>Red vs Blue Jurisdictions Won By in 2004 Presidential Election</b>																			
	<b>Bush &gt; 55%</b>	<b>3,115</b>	68,178,580	3,094	26,081,362	1,780	604,309	2,094	0.97	2,091		2.22	1,622	1	374,479	2,087	61.5	1,672	7
	<b>Bush 50% to 55%</b>	<b>982</b>	26,682,203	979	9,749,715	516	227,774	521	0.95	521		2.25	426		166,657	517	73.2	358	
	<b>Bush &lt; 50%</b>	<b>136</b>	2,041,746	135	654,013	85	6,534	86	0.37	85		0.51	75		3,556	85	54.4	34	
	<b>Kerry &lt; 50%</b>	<b>150</b>	4,850,492	150	1,743,644	91	58,781	89	1.29	89		2.43	83		43,771	89	74.5	47	
	<b>Kerry 50% to 55%</b>	<b>872</b>	23,160,396	866	8,518,800	508	196,453	504	0.95	502		1.93	454		134,011	498	68.2	307	
	<b>Kerry &gt; 55%</b>	<b>1,161</b>	49,846,628	1,154	18,869,951	746	786,041	748	1.82	747		3.28	679		490,714	737	62.4	447	1
	<b>Tied</b>	<b>25</b>	14,032	21	8,659	12	5	8	0.06	8		0.10	8		5	8	100.0	1	

Appendix 16: November 2008 Election  
Results, Virginia State Board  
of Elections

Go

Virginia.gov

November 2008 Official Results

- Voter Information
- Absentee Voting
- Election Information
- Candidate Information
- Deadlines, News, and Events
- Statistics and Polling Places
- Campaign Finance Disclosure
- Online Services

[President](#)
[Congress](#)
[Referendums](#)
[Local Office](#)
[Voter Turnout Report](#)
[My County/City](#)

Congressional District | Congressional Locality

District	Active Registered	Total Registered	In Person	In Person Curbside	Absentee	Provisional	Total Voted	% Active Voter Turnout	% Total Voter Turnout
01	487,587	499,963	327,588	656	49,700	421	378,365	77.60%	75.68%
02	388,528	401,372	248,207	659	33,835	773	283,474	72.96%	70.63%
03	399,069	411,802	268,933	2,064	35,920	562	307,479	77.05%	74.67%
04	463,995	472,818	312,100	283	46,216	444	359,043	77.38%	75.94%
05	435,905	443,740	293,367	1,016	35,593	285	330,261	75.76%	74.43%
06	426,191	433,786	292,996	648	29,654	288	323,586	75.93%	74.60%
07	486,922	495,503	347,579	688	41,566	570	390,403	80.18%	78.79%
08	443,277	460,033	257,019	476	81,777	549	339,821	76.66%	73.87%
09	405,458	412,446	254,386	935	22,172	136	277,629	68.47%	67.31%
10	501,068	516,119	329,039	196	61,102	245	390,582	77.95%	75.68%
11	474,971	487,078	302,566	210	69,137	302	372,215	78.37%	76.42%
<b>District Totals</b>	<b>4,912,971</b>	<b>5,034,660</b>	<b>3,233,780</b>	<b>7,831</b>	<b>506,672</b>	<b>4,575</b>	<b>3,752,858</b>	<b>76.39%</b>	<b>74.54%</b>

Appendix 17: Chart showing range of provisional voting and counting rates in Ohio's counties, provided by David Kimball

<b>county</b>	<b>PV rate in 2004 (%)</b>	<b>PV counted in 2004 (%)</b>	<b>PV rate in 2008 (%)</b>	<b>PV counted in 2008 (%)</b>
Adams	2.1	74.4	3.7	62.7
Allen	2.2	79.2	3.4	81.5
Ashland	2.5	87.8	3.2	79.3
Ashtabula	2.5	80.5	2.9	83.3
Athens	8.3	87.6	5.0	90.7
Auglaize	2.8	88.2	3.1	81.1
Belmont	3.1	60.1	2.5	72.9
Brown	1.6	75.8	3.4	77.1
Butler	3.6	78.6	4.5	85.3
Carroll	2.1	81.4	2.4	74.3
Champaign	3.0	90.5	2.4	86.1
Clark	2.2	79.3	4.0	82.4
Clermont	2.0	80.4	3.5	85.1
Clinton	2.0	91.7	3.5	80.3
Columbiana	2.6	89.4	2.3	72.5
Coshocton	1.7	90.9	1.3	89.8
Crawford	1.9	89.3	2.8	83.8
Cuyahoga	3.7	66.2	4.3	74.3
Darke	2.6	88.5	2.3	82.5
Defiance	3.9	74.6	4.0	73.2
Delaware	2.3	77.9	2.1	85.7
Erie	2.4	86.2	2.8	82.0
Fairfield	2.2	72.4	2.7	73.3
Fayette	2.5	84.4	3.6	86.3
Franklin	2.7	83.8	5.0	81.9
Fulton	1.7	83.5	2.9	85.0
Gallia	4.5	69.6	3.0	88.9
Geauga	1.3	89.1	1.9	87.5
Greene	2.7	81.3	3.3	81.2
Guernsey	3.1	91.6	2.6	84.2
Hamilton	3.4	70.5	4.5	79.5
Hancock	2.4	95.4	2.4	88.0
Hardin	2.5	88.0	3.1	85.6
Harrison	1.1	96.6	1.5	88.1
Henry	1.6	85.1	2.3	85.3
Highland	2.8	88.1	3.8	81.1
Hocking	1.1	77.7	2.7	67.9
Holmes	1.5	95.4	1.6	92.0
Huron	2.6	83.0	2.4	69.8
Jackson	3.0	89.2	4.4	79.0
Jefferson	1.8	95.1	2.0	82.5
Knox	2.5	89.1	2.7	82.2
Lake	1.6	90.0	3.9	89.6
Lawrence	2.1	85.9	2.7	61.9
Licking	1.9	85.7	2.5	80.3
Logan	3.0	88.3	3.6	87.1
Lorain	2.9	73.1	2.9	73.8
Lucas	3.4	58.9	4.7	76.8

Madison	2.2	82.9	3.7	85.8
Mahoning	2.1	84.4	2.5	89.6
Marion	3.0	89.4	3.6	81.4
Medina	1.5	74.2	3.1	82.2
Meigs	2.2	93.0	2.4	73.7
Mercer	4.4	91.5	2.9	78.3
Miami	3.1	89.2	3.4	86.7
Monroe	1.7	98.5	2.4	92.0
Montgomery	3.2	79.7	4.4	83.4
Morgan	2.3	81.3	2.2	80.8
Morrow	1.9	91.9	2.5	89.5
Muskingum	2.2	83.8	2.3	91.4
Noble	1.1	97.3	2.0	89.9
Ottawa	2.0	87.5	2.3	85.1
Paulding	2.3	87.2	2.7	86.8
Perry	2.8	82.6	2.1	77.5
Pickaway	2.4	76.9	2.9	81.6
Pike	2.2	91.2	2.4	96.8
Portage	1.9	88.4	2.6	82.9
Preble	1.8	84.7	2.0	87.4
Putnam	1.3	88.6	1.9	83.4
Richland	2.1	90.0	3.1	89.1
Ross	1.8	93.5	2.5	92.8
Sandusky	2.4	87.9	2.7	88.1
Scioto	2.5	81.5	3.3	79.8
Seneca	1.7	88.5	1.9	85.0
Shelby	3.4	70.4	3.5	82.9
Stark	3.1	78.7	3.1	81.8
Summit	2.1	75.9	2.9	81.4
Trumbull	2.4	68.5	3.2	77.2
Tuscarawas	2.3	86.5	2.7	84.7
Union	1.9	88.7	2.8	66.9
Van Wert	1.9	92.2	2.0	76.9
Vinton	2.1	75.2	2.6	72.8
Warren	2.0	83.2	2.6	81.4
Washington	2.1	86.2	2.3	85.2
Wayne	1.7	88.3	1.5	87.1
Williams	3.7	92.3	3.3	86.1
Wood	4.2	82.4	4.3	75.0
Wyandot	1.2	72.5	1.9	83.4

Appendix 18: David C. Kimball,  
*Provisional Voting in Ohio*

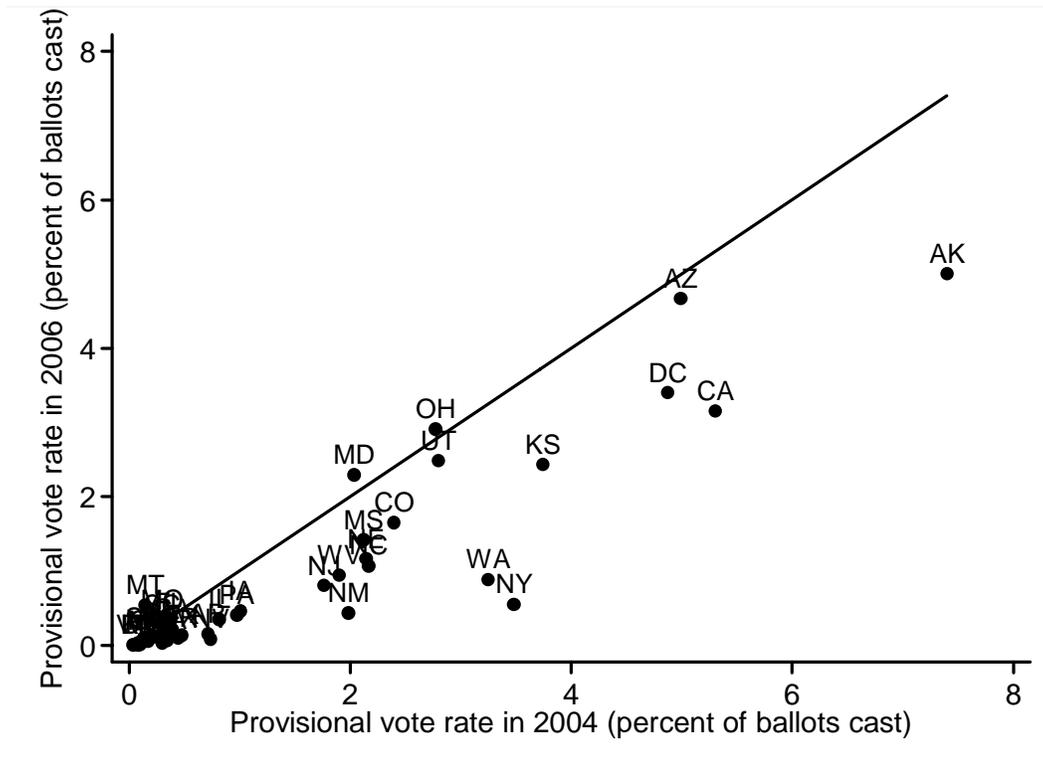
## Provisional Voting in Ohio

David C. Kimball

### Provisional Voting Rates are Fairly Consistent over Time

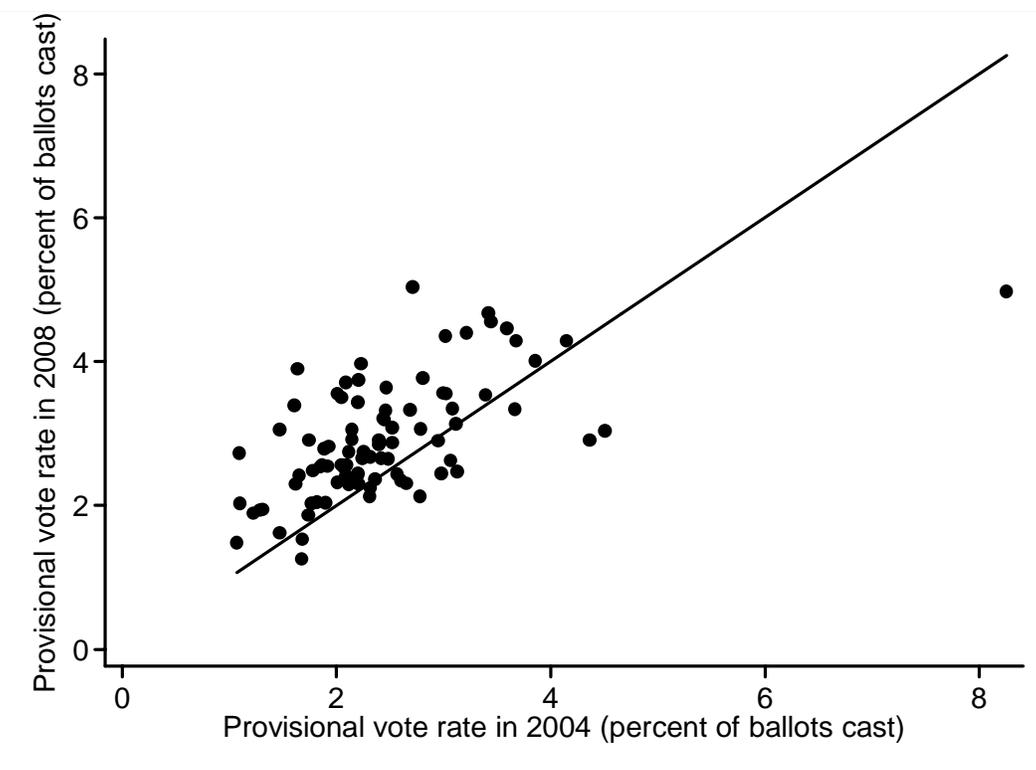
There is not much data available on provisional voting in other states in 2008. However, based on data from the 2004 and 2006 general elections, provisional voting is more common in Ohio than in much of the rest of the country. As Figure 1 shows, the relative frequency of provisional voting in American states is fairly consistent from one election to the next. States with high rates of provisional voting in 2004 also tend to have high rates of provisional voting in 2006. In most states, less than one percent of ballots cast are provisional ballots. Only three states and the District of Columbia posted a higher rate of provisional voting than Ohio in the 2006 general election. In the 2008 election, 3.6% of ballots cast in Ohio were provisional ballots, a slightly higher rate than posted in Ohio in 2004 (2.8%) and 2006 (2.9%).

**Figure 1**  
**Rates of Provisional Voting in States, 2004 and 2006**



As Figure 2 below indicates, rankings of provisional voting rates in Ohio counties are fairly consistent from one election to the next. Counties that had high rates of provisional voting in 2004 also had high rates of provisional voting in 2008. Counties with relatively low rates of provisional voting in 2004 also had low rates of provisional voting in 2008. The line in Figure 2 marks where provisional voting rates were equal in both general elections. Most observations are above the line, indicating that provisional voting rates increased in most Ohio counties in 2008.

**Figure 2**  
**Rates of Provisional Voting in Ohio Counties, 2004 and 2008**

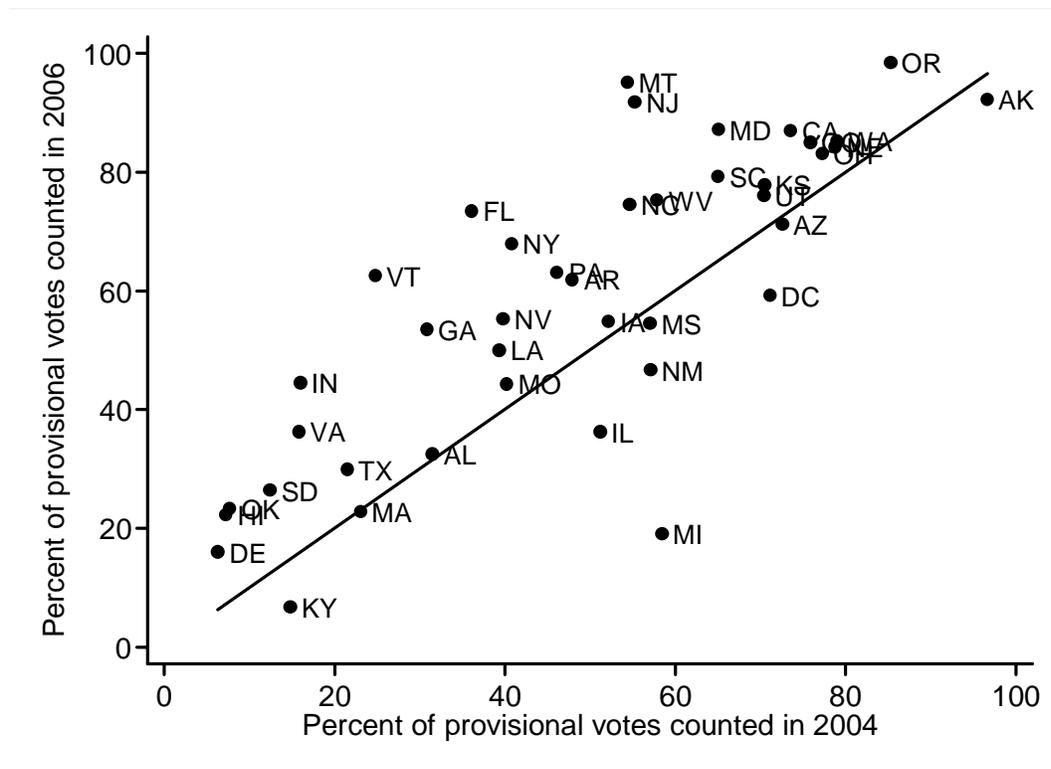


A county's rate of provisional voting in previous general elections is one of the most reliable predictors of provisional voting in the 2008 election. Other predictors of provisional voting include race and age. Provisional voting is more common in counties with large percentages of non-white residents and more stable populations, and provisional voting is less common in counties with large percentages of elderly residents. Finally, provisional voting does not appear to be closely related to median household income.

Consistency over Time in Rates of Accepting Provisional Ballots

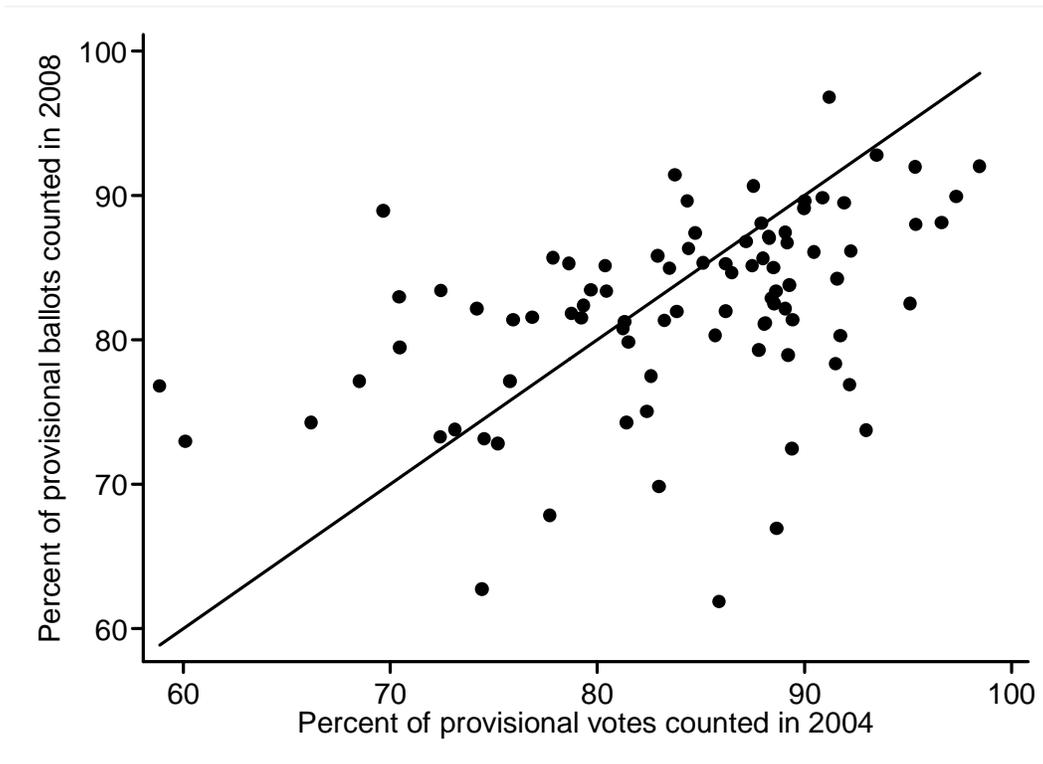
As Figure 3 below indicates, there is consistency in the relative frequency with which states accept provisional ballots. States that accepted a large share of provisional ballots in 2004 also accepted a large share of provisional votes in 2006. States accepting a relatively low percentage of provisional ballots in 2004 also had low acceptance rates in 2006. The line in Figure 3 marks where provisional ballot acceptance rates were equal in both general elections. Most observations are above the line, indicating that most states accepted a higher percentage of provisional ballots in 2006 than in 2004. In 2008, roughly 81% of provisional ballots in Ohio were accepted, similar to figures in Ohio for 2004 (77%) and 2006 (83%).

**Figure 3**  
**Counting Provisional Votes in States, 2004 and 2006**



A similar pattern exists for rates of counting provisional ballots in Ohio counties. As Figure 4 shows, counties that accepted a relatively large share of provisional ballots in 2004 also did so in 2008. Counties that rejected a relatively large portion of provisional ballots in 2004 also rejected a large amount in 2008.

**Figure 4**  
**Counting Provisional Votes in Ohio Counties, 2004 and 2008**



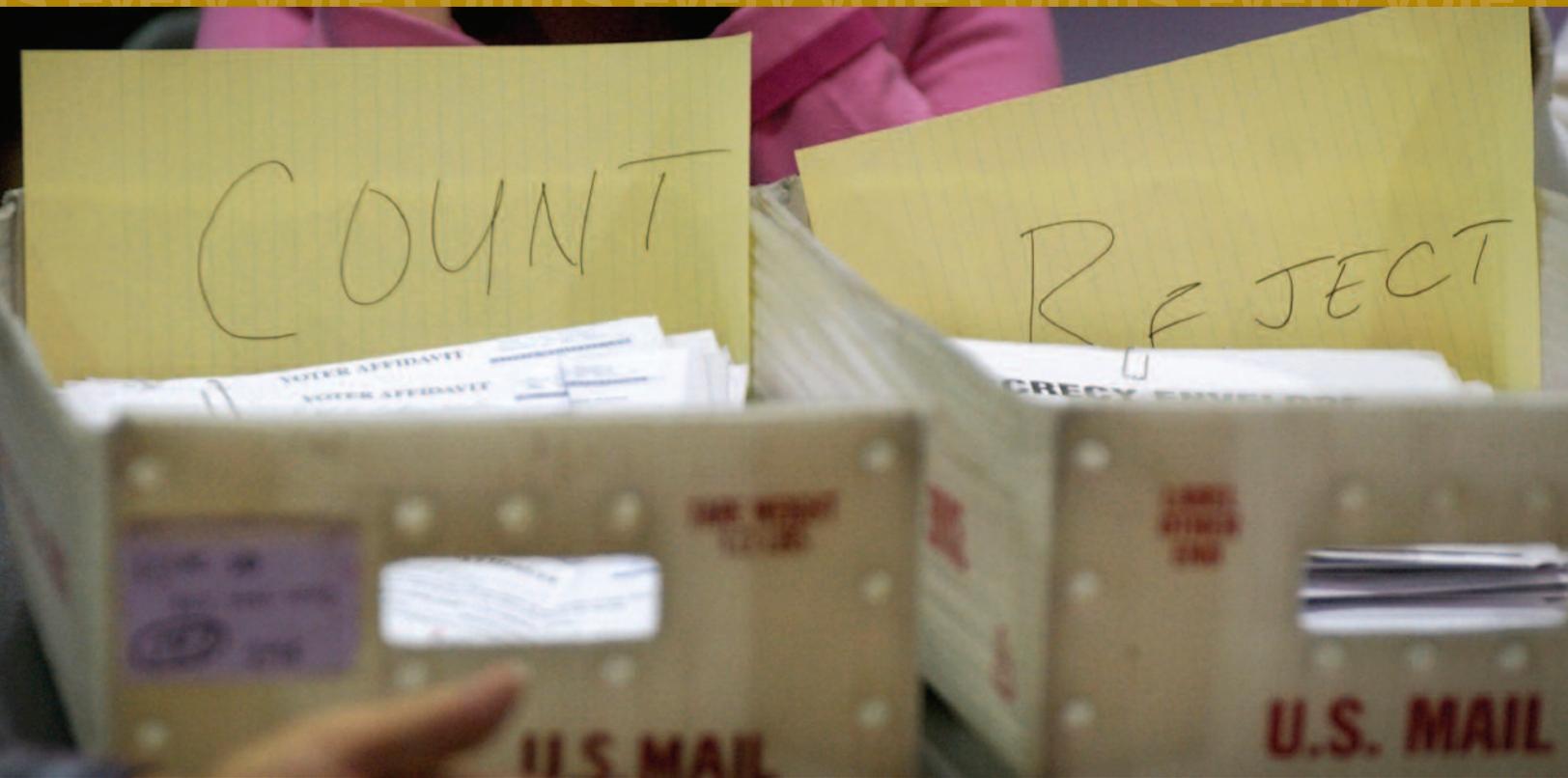
A county's rate of accepting provisional ballots in previous general elections is the most reliable predictor of provisional ballot acceptance rates in the 2008 election. Other predictors of provisional voting acceptance rates include age and population stability. Provisional ballot acceptance rates are slightly higher in counties with more stable populations, and acceptance rates are slightly lower in counties with large percentages of elderly residents. Rates of accepting provisional ballots do not appear to be closely related to median household income or race.

Appendix 19: Advancement Project,  
*Provisional Voting: Fail-Safe  
Voting or Trapdoor to  
Disenfranchisement?*

# Provisional Voting:

Fail-Safe Voting or Trapdoor  
to Disenfranchisement?

September 2008



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

# Executive Summary

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

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

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

Moreover, the rejection rates varied greatly across the country. While some states reported low rejection rates (none in the District of Columbia, Maine, and Vermont, and less than 2% in Oregon), several had rejection rates of over 50% (Alabama, Arkansas, Delaware, Hawaii,

Illinois, Indiana, Kentucky, Michigan, Missouri, Oklahoma, South Dakota, and Virginia), with some over 80% (Delaware at 84%, Michigan at 80.9%, and Kentucky at 92%). Indeed, two states reported rejecting more provisional ballots than were actually cast! New Mexico had a rejection rate of 107.2%, and Texas had a rejection rate at 101%. This data—which establishes the use of provisional voting and the high rates of rejection—illustrate the issues raised by the provisional voting system, nationwide, in the 2006 election.

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

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

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

To protect voters’ rights in the November 2008 election—which will likely include a record number of voters<sup>5</sup> and many very close races—against the problems that existed in the past with provisional voting, Advancement Project recommends the following changes and improvements:

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

1 See *Voting – What Is, What Could Be*, Caltech-MIT Voting Technology Project, July 2001, at 8.

2 See *id.*

3 *Conference Report on H.R.3295, Help America Vote Act of 2002 Before House*, 107th Cong. 133 (2002), 148 Cong. Rec. H7837 (daily ed. Oct. 10, 2002) (statement of Rep. Ney).

4 There is no clear explanation as to why “total rejected” exceeds “total cast” for any of these states, although record-keeping and/or survey reporting may account for the discrepancy. See *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 45.

5 Report after report shows that voter registration and voter turnout may be at record levels by the time of the November 2008 election. In 2008, almost 60 million Americans nationwide—more than one in four of all eligible voters—participated in a primary or caucus, shattering the previous record of 35 million in 1988 and well above the 33 million voters who participate in the 2000 primaries. See *America Goes to the Polls – A Report on Voter Turnout in the 2008 Presidential Primary*, Nonprofit Voter Engagement Network, July 2008, at 1. Voter registration has continued to increase at a brisk pace since March 2008, and many experts predict that first-time voters will participate at unprecedented levels in the November 2008 election. *Heavy November turnout could pose problems*, UPI, Jul. 21, 2008, available at [http://www.upi.com/Top\\_News/2008/07/21/Heavy\\_November\\_turnout\\_could\\_pose\\_problems/UPI-66041216617564/](http://www.upi.com/Top_News/2008/07/21/Heavy_November_turnout_could_pose_problems/UPI-66041216617564/).

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

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

# About the Study

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

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

<sup>6</sup> Advancement Project obtained these public records directly from election authorities in the specified jurisdictions.

<sup>7</sup> Because elections are still administered primarily at the local level, the data obtained from each jurisdiction varies as a result of different record keeping, its specific disclosure rules and policies, and/or different interpretations of those rules and policies by the relevant custodians of records.

**every  
vote  
counts**

# Summary of Findings

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

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

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

## II. MISINTERPRETATION AND MISAPPLICATION OF THE “WRONG” PRECINCT RULE RESULTED IN THE DISENFRANCHISEMENT OF VOTERS.

Although Advancement Project and other voting rights experts agree that HAVA allows the counting of provisional ballots cast in the “wrong” precincts, at least with respect to races that are not precinct-specific, some states have interpreted HAVA differently, leading to the arguably unlawful rejection of provisional ballots and inconsistent rules across the country. As the U.S. Election Assistance Commission found, in 2006, 15 states counted provisional ballots cast outside an individual’s home precinct, while 30 states rejected

them out of hand. See generally *The 2006 Election Administration and Voting Survey*, U.S. Election Assistance Commission, Dec. 2007, at 18. This misinterpretation of the law has led to the disenfranchisement of voters for races that are not precinct-specific (e.g., the presidency and Senate seats).

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

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

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

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

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

#### IV. THE PROVISIONAL VOTING PROCESS IS NOT SCRUTINIZED OR TRANSPARENT, RESULTING IN CONTINUED PROBLEMS.

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

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

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

# General Recommendations

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

## I. REDUCE THE USE OF PROVISIONAL VOTING, IN THE FIRST INSTANCE, BY ELIMINATING BARRIERS TO VOTER REGISTRATION.

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

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

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

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

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

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

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

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

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

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

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

### III. IMPROVE POLL WORKER TRAINING.

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

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

- The limited circumstances under which it is appropriate and lawful to use provisional ballots;
- The procedures for identifying a voter’s correct precinct and directing the voter to that precinct prior to issuing the voter a provisional ballot;

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

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

### IV. IMPROVE THE ADMINISTRATION OF PROVISIONAL VOTING ON ELECTION DAY.

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

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

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

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

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

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

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

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

\* \* \*

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

**every  
vote  
counts**

# Ohio

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

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

The analysis also shows that Ohio's "wrong" precinct rule, coupled with apparently ineffective directions by poll workers to voters, resulted in the disenfranchisement of thousands of eligible voters. As discussed below, the envelopes show that the ballots of hundreds of voters were rejected because the voters were in the "wrong" precinct but the correct polling place, or because they cast their provisional ballots at a polling location that was less than 2 miles from their correct polling place. If poll workers had properly

instructed these voters to move over one table, to the other side of the room, or to travel a short distance to another precinct, their provisional ballots would have been counted. These findings suggest that Ohio's statutory requirement that poll workers direct voters to the correct precinct is not being enforced, leading to distortion and overuse of Ohio's wrong precinct rule.

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

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

## I. PROVISIONAL VOTING UNDER OHIO LAW

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

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

12 *Id.*

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

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

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

name; (8) a voter was challenged without resolution; or (9) a challenged voter's registration status hearing was postponed.<sup>16</sup>

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

## II. ADVANCEMENT PROJECT'S PUBLIC RECORDS REQUESTS IN OHIO

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

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

## III. OHIO'S PROVISIONAL BALLOTS IN THE 2006 GENERAL ELECTION

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

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

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

<sup>16</sup> OHIO REV. CODE ANN. § 3505.181 (LexisNexis 2007).

<sup>17</sup> § 3505.183(D) (requiring "individual's name and signature," but not date of birth, to be included in the written affirmation in order to validate ballot).

<sup>18</sup> *Id.* at (B)(1).

<sup>19</sup> *Id.*

<sup>20</sup> 42 U.S.C. § 15482 (2002). Contrary to this interpretation, HAVA's legislative history makes clear that the intent of HAVA's "free access" provision is to maintain privacy of voters' identification numbers, not the names and addresses of voters who cast provisional ballots. Interpreting HAVA to permit election officials to withhold the names, addresses, and/or phone numbers of voters who cast provisional ballots frustrates an important objective of HAVA, which is to ensure that provisional ballots are properly handled. Such an interpretation also denies voters and voter protection advocates the ability to investigate the administration of provisional ballots, including whether election officials wrongfully issued or rejected certain provisional ballots.

<sup>21</sup> This category of rejected provisional ballots, labeled "Ineligible to Vote," accounted for 459 provisional ballots rejected. Some of these ineligible voters may have been previously incarcerated for felony convictions and subsequently released. Ohio law requires the cancellation of felons' registrations, and such voters must re-register upon their release. OHIO REV. CODE ANN. § 3503.18 (LexisNexis 2007). Absent public education for these voters, many ex-offenders may have been unaware that they were required to re-register. As a result, these individuals would likely be deemed ineligible to vote, and their provisional ballots rejected.

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

#### IV. COUNTY-BY-COUNTY DATA AND ANALYSIS

##### A. CUYAHOGA COUNTY

Cuyahoga County is Ohio’s largest county and includes the state’s most populous city, Cleveland. Cuyahoga County has a large African American population, representing 28.9% of the county’s residents.<sup>26</sup>

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

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

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

##### 1. **The Issuance of Provisional Ballots**

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

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

<sup>23</sup> *Id.*

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

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

<sup>26</sup> [www.factfinder.census.gov](http://www.factfinder.census.gov). Source: 2005 American Community Survey Data Highlights.

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

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

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

## 2. Provisional Ballots Rejected

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

### a. “Wrong” Precinct Errors

Provisional ballots cast by voters in the “wrong” precinct account for 2,541 (61%) of the rejected provisional ballots in Cuyahoga County. Cuyahoga County provided Advancement Project with copies of the envelopes for 985 of the 4,168 provisional ballots rejected. Advancement Project’s review of those envelopes reveals that of the 204 provisional ballots rejected for “wrong” precinct, 70 were cast by voters who were actually in the correct polling place but the “wrong” precinct, and 62 were cast by voters who were less than 2 miles from their correct precinct. In many instances, if poll workers had

properly instructed these voters to move over one table or to the other side of the room, or to travel a short distance to another precinct, the voters’ provisional ballots would have been counted. For example:

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

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

According to the county’s data, 1,282 (31%) of all rejected ballots were rejected because the voter was deemed “not registered.” Of the 985 envelopes produced, approximately 600 (more than 60%) were rejected because the voter was “not registered.”<sup>29</sup> Of those 600 envelopes, 185 envelopes indicated that the voter was issued a

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

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

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

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

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

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

### *c. Incomplete Provisional Ballot Envelopes*

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

envelopes were complete would have avoided the rejection of these ballots.<sup>34</sup>

## **B. FRANKLIN COUNTY**

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

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

### **1. The Issuance of Provision Ballots**

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

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

<sup>31</sup> See [www.cuyahogavoting.org](http://www.cuyahogavoting.org) for background on the panel.

<sup>32</sup> Cuyahoga County Election Review Panel, *Final Report*, July 30, 2006. [http://www.cuyahogavoting.org/CERP\\_Final\\_Report\\_20060720.pdf](http://www.cuyahogavoting.org/CERP_Final_Report_20060720.pdf).

<sup>33</sup> *Id.* at 30-34.

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

<sup>35</sup> [www.factfinder.census.gov](http://www.factfinder.census.gov). Source: 2005 American Community Survey Data Highlights.

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

## 2. Provisional Ballots Rejected

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

### a. "Wrong" Precinct Errors

Poll worker comments reveal that poll workers may have contributed to voters' casting provisional ballots in the "wrong" precincts. In at least three separate instances, poll workers sent a voter to several different precincts before the voter insisted on casting a provisional ballot. For example, poll workers directed two Columbus voters, whose addresses were located in Ward 34, Precinct C, to Ward 68, Precinct C (68-C), after other poll workers had directed them to three different precincts. In the report, a poll worker wrote: "They

[the voters] said, 'they weren't going any further.'" The poll worker contacted the Board of Elections and was told "to vote them provisionally in 68-C." The poll worker noted the voter was "adamant about getting her vote counted." This ballot must have been rejected since it was cast in the "wrong" precinct; however, without access to the names of provisional voters and their provisional ballot envelopes, Advancement Project was unable to ascertain the disposition of ballots.

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

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

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

<sup>36</sup> This document is located at <http://www.co.franklin.oh.us/boe> (2007).

<sup>37</sup> Advancement Project learned about Ms. Banner's experience during a conversation with Ms. Banner after the election.

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

#### *b. Incomplete/Inaccurate Voter Rolls*

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

#### *c. Incomplete Provisional Ballot Envelopes*

Franklin County poll worker comments suggest that poll workers did not take adequate steps to ensure that voters clearly printed and signed their names on their provisional ballot envelopes. Poll workers cited at least 45 instances of voters having failed to complete a provisional ballot envelope or to complete it legibly.<sup>42</sup> As a result, poll workers were often unable to discern the name of the voter who

cast the provisional ballot from the voter's signature, likely resulting in the rejection of those ballots.

#### *d. Other Flaws in Election Administration*

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

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

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

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

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

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

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

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

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

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

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

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

## C. LUCAS COUNTY

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

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

## 1. The Issuance of Provisional Ballots

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

## 2. Provisional Ballots Rejected

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

## D. SUMMIT COUNTY

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

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

<sup>46</sup> *Id.*

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

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

As Table 1.5 reflects, and consistent with the other three counties identified in this report, the top two reasons for rejecting provisional ballots in Summit County were that the voter cast the ballot in the

“wrong” precinct (601) or was “not registered” (278). Additionally, Summit County rejected 128 provisional ballots on the ground that the voter was “ineligible to vote.” Summit County was the only county of the four Ohio counties profiled in this report that employed this basis for rejection of a provisional ballot.

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

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

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

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

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

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

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

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

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

## V. RECOMMENDATIONS FOR OHIO

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

### A. ELIMINATE THE “WRONG” PRECINCT RULE.

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

- The Ohio Secretary of State should issue a statewide directive clarifying that current Ohio law creates an affirmative duty binding election officials to direct voters to the correct precinct and ordering county boards of election to count provisional ballots that are cast in the “wrong” precinct unless the voter was directed by election workers to the correct precinct and refused to go.

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

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

<sup>49</sup> § 3505.181(C)(1).  
<sup>50</sup> § 3505.183.

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

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

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

- Election officials should establish a provisional ballot station in each polling place that is situated away from the “check-in” location and that is staffed by a poll worker who has expertise in provisional voting and is assigned solely to this station. The poll worker should receive specialized training in making sure voters are in the correct precinct, assisting voters in casting provisional ballots, and ensuring that voters correctly complete their provisional ballot envelopes. This station should have online and/or paper resources to enable the poll worker to verify voters’ correct voting location, including, minimally, access to the statewide voter registration list, a countywide voter roster, a street guide with designated precincts, a list of polling places with assigned precincts, and directions to those polling places. The station should have a separate hotline, and the hotline should be staffed by a provisional ballot expert at the county board of

elections. No provisional ballots should be issued by poll workers at any other station.

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

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

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

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

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

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

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

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

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

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

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

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

# Florida

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

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

Under Florida law, a provisional ballot cast in the “wrong” precinct must be rejected. The ballot envelopes that Advancement Project examined show that this law is misguided and fundamentally unfair, disenfranchising voters through no fault of their own. As discussed below, election officials or poll workers often did not provide voters

with accurate information, or any information whatsoever, about the location of the voter’s precinct. Poll workers appeared ill equipped-lacking in training, resources, and an understanding of the rules related to voters who move-to provide voters with accurate information about their correct precincts.

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

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

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

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

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

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

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

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

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

#### I. PROVISIONAL VOTING UNDER FLORIDA LAW

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

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

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

#### II. COUNTY-BY-COUNTY ANALYSIS

##### A. **DUVAL COUNTY**

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

##### 1. **The Issuance of Provisional Ballots**

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

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

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

<sup>57</sup> § 101.048(2)(a).

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

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

<sup>60</sup> § 101.048(2)(b).

<sup>61</sup> § 101.045.

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

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

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

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

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

Poll workers issued a provisional ballot to 416 voters because of an indication in the register that the voter did not surrender an absentee ballot and because the poll worker was not able to ascertain whether the supervisor's office had received the ballot. It seems unlikely that

poll workers would not be able to confirm whether the supervisor's office received the voter's absentee ballot for such a large number of voters. The large number of these voters seems to suggest a number of possible problems:

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

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

*b. Errors in Precinct Registers and Records*

The provisional ballot envelopes also reveal errors in state or county registration records<sup>65</sup> and errors related to the issuance of absentee ballots:

<sup>62</sup> § 101.69.

<sup>63</sup> *Id.* If the voter's absentee ballot is subsequently received, it remains in its envelope and is marked "rejected as illegal."

<sup>64</sup> Although the voter's provisional ballot was counted, poll workers should not have required her to cast a provisional ballot. When a voter returns an absentee ballot, it should be marked as cancelled, and the voter should vote by regular ballot. § 101.69.

<sup>65</sup> The EIRS data includes reports from several voters that they did not appear on the voter rolls in their correct precincts.

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

## 2. Provisional Ballots Rejected

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

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

### a. Problems with Voter Registration

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

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

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

<sup>66</sup> See § 97.053(6).

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

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

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

#### *b. Errors Regarding Precincts*

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

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

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

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

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

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

## **B. PALM BEACH COUNTY**

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

<sup>68</sup> See National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg - 3; § 97.057 (2002).

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

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

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

### 1. The Issuance of Provisional Ballots

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

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

Palm Beach County's records indicate that 545 people, nearly one-third of all voters who cast provisional ballots, were issued provisional ballots because the register indicated that each of these voters had requested an absentee ballot. Several of the voter affirmations reveal

that voters were unaware that if they requested an absentee ballot for a given election, they would in most cases receive absentee ballots for future elections as well.<sup>71</sup> For example, some voters wrote on their envelopes that they requested an absentee ballot for the primary election only, suggesting that they did not want or intend to vote by absentee ballot in the general election.

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

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

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

<sup>71</sup> § 101.62(1).

<sup>72</sup> § 101.69.

<sup>73</sup> Comments in Election Day phone logs received from the supervisor's office, many of which appear to be from poll workers, confirm that it was difficult to contact the supervisor's office by phone.

<sup>74</sup> The EIRS data also indicates that poll workers did not correctly administer Florida's absentee ballot rules. One voter called to report that although she had not requested an absentee ballot, a poll worker told her that she had requested an absentee ballot and instructed her to retrieve it and return to the polls with it. But under Florida law, even if the voter had requested an absentee ballot, the poll worker should not have sent the voter away from the polls because she did not have an absentee ballot in her possession.

See FLA. STAT. § 101.69 (2007).

### *b. Errors Regarding Voters Who Had Moved*

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

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

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

Voters who change their name after they registered to vote are entitled to cast a regular ballot on Election Day if they complete an affidavit.<sup>76</sup> Poll workers should issue a provisional ballot to those

voters only if their eligibility, registration, or precinct is in question.<sup>77</sup> According to Palm Beach County records, four voters were issued provisional ballots, which were counted, because they had changed their names.

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

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

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

## **2. Provisional Ballots Rejected**

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

<sup>75</sup> § 101.045 (2007).

<sup>76</sup> § 101.045.

<sup>77</sup> *Id.*

<sup>78</sup> Comments in Election Day phone logs received from the supervisor's office, many of which appear from poll workers, confirm the difficulty that poll workers had in contacting the supervisor's office by telephone on Election Day.

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

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

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

*a. Registration Problems*

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

*b. Precinct Errors*

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

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

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

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

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

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

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

## **C. ORANGE COUNTY**

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

### **1. The Issuance of Provisional Ballots**

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

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

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

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

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

## 2. Provisional Ballots Rejected

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

### a. Problems with Registration

The most common reason for rejecting a provisional ballot was that the voter was not registered to vote. While the provisional ballot envelopes do not provide much guidance or explanation of the voters’ registration status, the envelopes from Orange County, as in Duval and Palm Beach counties, indicate possible failures by the DHSMV to fulfill its duties under state and federal law to assist voters in registering to vote.<sup>82</sup> In Orange County, at least four voters or poll

workers recorded on a provisional ballot envelope that the voter believed s/he had registered while obtaining his/her driver’s license.

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

### b. Precinct Errors

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

<sup>81</sup> Registered voters who moved into the county should have been allowed to vote by regular ballot if they completed an affidavit with their new address and the poll worker verified that they were registered, eligible, and entitled to vote in that precinct. FLA. STAT. § 101.045 (2007).

<sup>82</sup> See National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg; FLA. STAT. § 97.057 (2002).

<sup>83</sup> See *supra* note 67 and accompanying text.

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

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

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

*c. Unexplained Rejections*

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

III. RECOMMENDATIONS FOR FLORIDA

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

**A. ELIMINATE UNNECESSARY BARRIERS TO REGISTRATION.**

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

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

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

#### **B. ELIMINATE "WRONG" PRECINCT RULE.**

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

#### **C. IMPROVE POLL WORKER TRAINING.**

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

#### **D. ENHANCE ASSISTANCE AND INFORMATION AT POLLING SITES.**

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

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

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

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

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

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

#### **G. IMPROVE VOTER EDUCATION.**

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

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

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

# Conclusion

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

Appendix 20: Chart showing correlation between Ohio's rates of provisional voting and proportion of non-white residents, data provided by David Kimball, Associate Professor of Political Science at the U. of Missouri-St. Louis

county	Percent non-white	PV rate in 2008 (%)	PV rate in 2004 (%)	PV counted in 2004 (%)	PV counted in 2008 (%)
Cuyahoga	32.6	4.3	3.7	66.2	74.3
Hamilton	27.1	4.5	3.4	70.5	79.5
Franklin	24.5	5.0	2.7	83.8	81.9
Montgomery	23.4	4.4	3.2	79.7	83.4
Lucas	22.5	4.7	3.4	58.9	76.8
Mahoning	19.0	2.5	2.1	84.4	89.6
Summit	16.5	2.9	2.1	75.9	81.4
Allen	15.1	3.4	2.2	79.2	81.5
Lorain	14.5	2.9	2.9	73.1	73.8
Clark	11.9	4.0	2.2	79.3	82.4
Richland	11.8	3.1	2.1	90.0	89.1
Erie	11.4	2.8	2.4	86.2	82.0
Greene	10.8	3.3	2.7	81.3	81.2
Trumbull	9.8	3.2	2.4	68.5	77.2
Stark	9.7	3.1	3.1	78.7	81.8
Butler	8.8	4.5	3.6	78.6	85.3
Ross	8.3	2.5	1.8	93.5	92.8
Madison	8.2	3.7	2.2	82.9	85.8
Pickaway	8.1	2.9	2.4	76.9	81.6
Marion	7.9	3.6	3.0	89.4	81.4
Sandusky	7.8	2.7	2.4	87.9	88.1
Jefferson	7.5	2.0	1.8	95.1	82.5
Noble	7.5	2.0	1.1	97.3	89.9
Defiance	7.4	4.0	3.9	74.6	73.2
Athens	6.5	5.0	8.3	87.6	90.7
Morgan	6.3	2.2	2.3	81.3	80.8
Muskingum	6.1	2.3	2.2	83.8	91.4
Ashtabula	5.9	2.9	2.5	80.5	83.3
Delaware	5.8	2.1	2.3	77.9	85.7
Portage	5.6	2.6	1.9	88.4	82.9
Warren	5.3	2.6	2.0	83.2	81.4
Wood	5.2	4.3	4.2	82.4	75.0
Scioto	5.1	3.3	2.5	81.5	79.8
Belmont	5.0	2.5	3.1	60.1	72.9
Seneca	5.0	1.9	1.7	88.5	85.0
Hancock	4.9	2.4	2.4	95.4	88.0
Fairfield	4.9	2.7	2.2	72.4	73.3
Union	4.8	2.8	1.9	88.7	66.9
Gallia	4.7	3.0	4.5	69.6	88.9
Henry	4.7	2.3	1.6	85.1	85.3
Lake	4.6	3.9	1.6	90.0	89.6
Fayette	4.4	3.6	2.5	84.4	86.3
Licking	4.4	2.5	1.9	85.7	80.3
Fulton	4.3	2.9	1.7	83.5	85.0
Champaign	4.3	2.4	3.0	90.5	86.1
Miami	4.2	3.4	3.1	89.2	86.7
Paulding	4.1	2.7	2.3	87.2	86.8
Huron	4.0	2.4	2.6	83.0	69.8

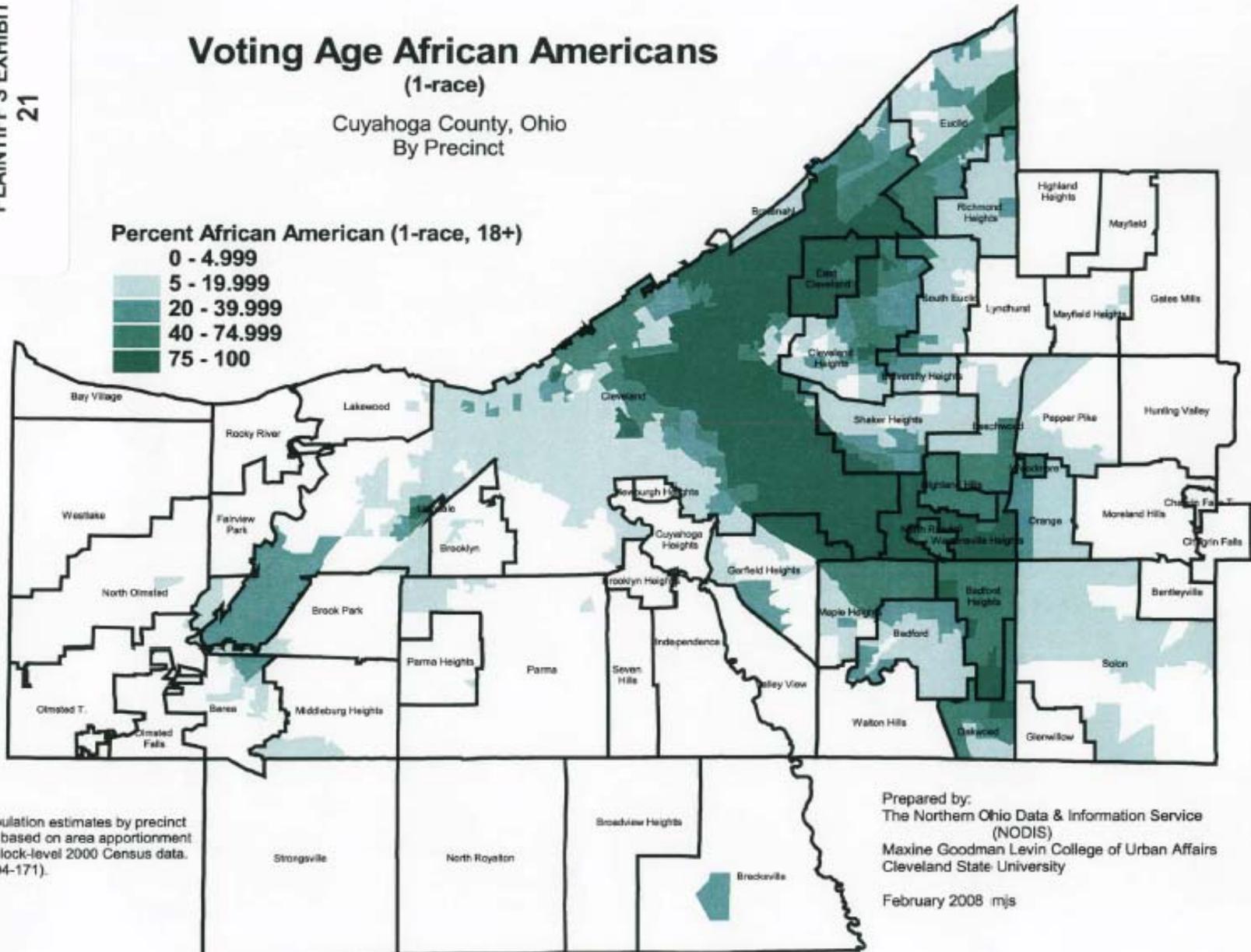
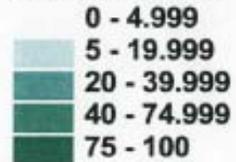
Clinton	4.0	3.5	2.0	91.7	80.3
Shelby	4.0	3.5	3.4	70.4	82.9
Logan	3.9	3.6	3.0	88.3	87.1
Putnam	3.7	1.9	1.3	88.6	83.4
Guernsey	3.7	2.6	3.1	91.6	84.2
Columbiana	3.6	2.3	2.6	89.4	72.5
Harrison	3.5	1.5	1.1	96.6	88.1
Williams	3.5	3.3	3.7	92.3	86.1
Wayne	3.5	1.5	1.7	88.3	87.1
Lawrence	3.4	2.7	2.1	85.9	61.9
Ottawa	3.4	2.3	2.0	87.5	85.1
Pike	3.3	2.4	2.2	91.2	96.8
Highland	3.1	3.8	2.8	88.1	81.1
Clermont	2.9	3.5	2.0	80.4	85.1
Medina	2.7	3.1	1.5	74.2	82.2
Washington	2.7	2.3	2.1	86.2	85.2
Coshocton	2.6	1.3	1.7	90.9	89.8
Geauga	2.6	1.9	1.3	89.1	87.5
Van Wert	2.6	2.0	1.9	92.2	76.9
Hardin	2.5	3.1	2.5	88.0	85.6
Ashland	2.5	3.2	2.5	87.8	79.3
Hocking	2.5	2.7	1.1	77.7	67.9
Knox	2.3	2.7	2.5	89.1	82.2
Meigs	2.3	2.4	2.2	93.0	73.7
Adams	2.2	3.7	2.1	74.4	62.7
Tuscarawas	2.1	2.7	2.3	86.5	84.7
Jackson	2.1	4.4	3.0	89.2	79.0
Wyandot	2.1	1.9	1.2	72.5	83.4
Crawford	2.0	2.8	1.9	89.3	83.8
Vinton	1.9	2.6	2.1	75.2	72.8
Brown	1.9	3.4	1.6	75.8	77.1
Darke	1.9	2.3	2.6	88.5	82.5
Auglaize	1.9	3.1	2.8	88.2	81.1
Carroll	1.8	2.4	2.1	81.4	74.3
Morrow	1.6	2.5	1.9	91.9	89.5
Mercer	1.6	2.9	4.4	91.5	78.3
Preble	1.5	2.0	1.8	84.7	87.4
Perry	1.5	2.1	2.8	82.6	77.5
Monroe	1.3	2.4	1.7	98.5	92.0
Holmes	1.0	1.6	1.5	95.4	92.0

Appendix 21: Maps showing voting age  
African-American population  
and precincts with the highest  
incidence of provisional  
balloting due to voting in the  
wrong location, provided by  
Eben 'Sandy' McNair,  
Member, Cuyahoga County  
Board of Elections

# Voting Age African Americans (1-race)

Cuyahoga County, Ohio  
 By Precinct

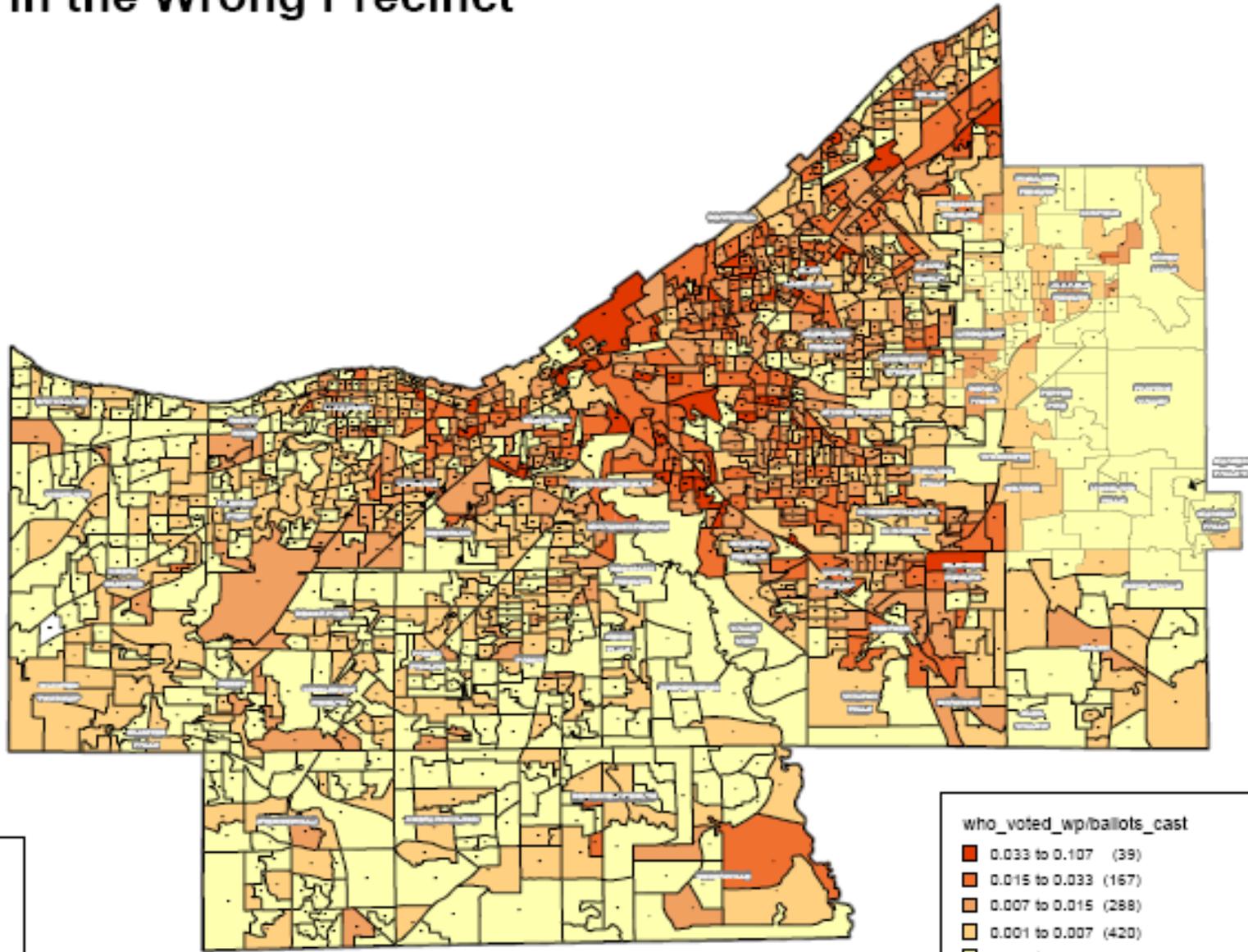
Percent African American (1-race, 18+)



Population estimates by precinct are based on area apportionment of block-level 2000 Census data. (P194-171).

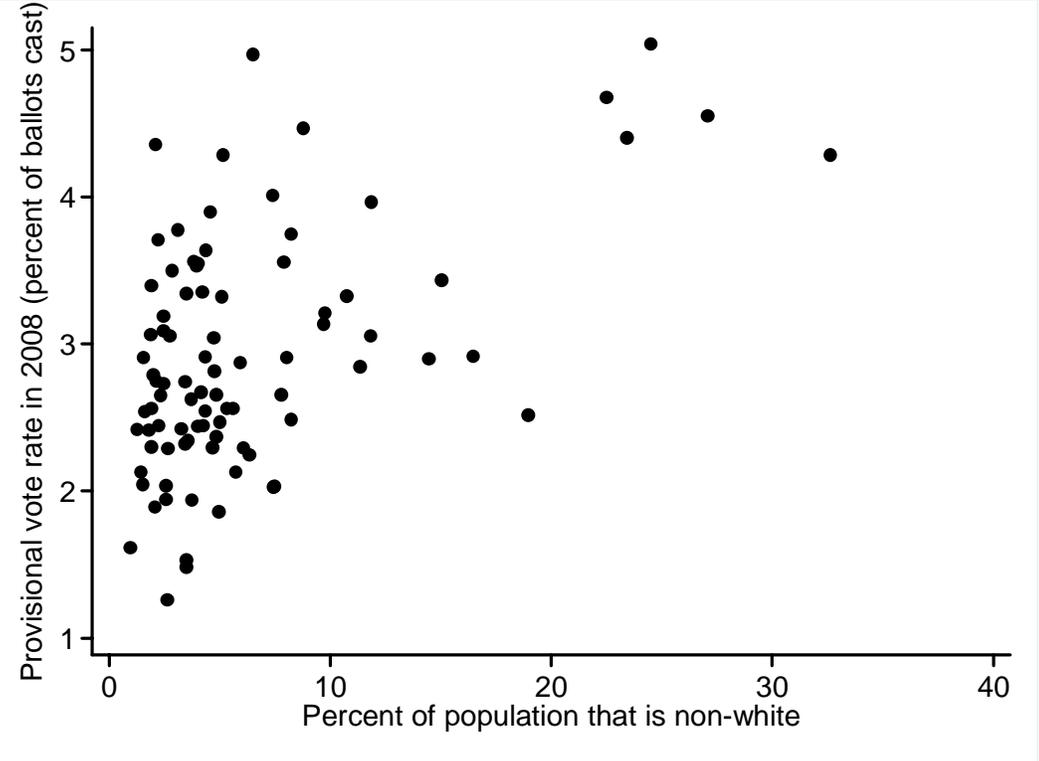
Prepared by:  
 The Northern Ohio Data & Information Service (NODIS)  
 Maxine Goodman Levin College of Urban Affairs  
 Cleveland State University  
 February 2008 mjs

# Most affected Precincts by people who voted in the Wrong Precinct

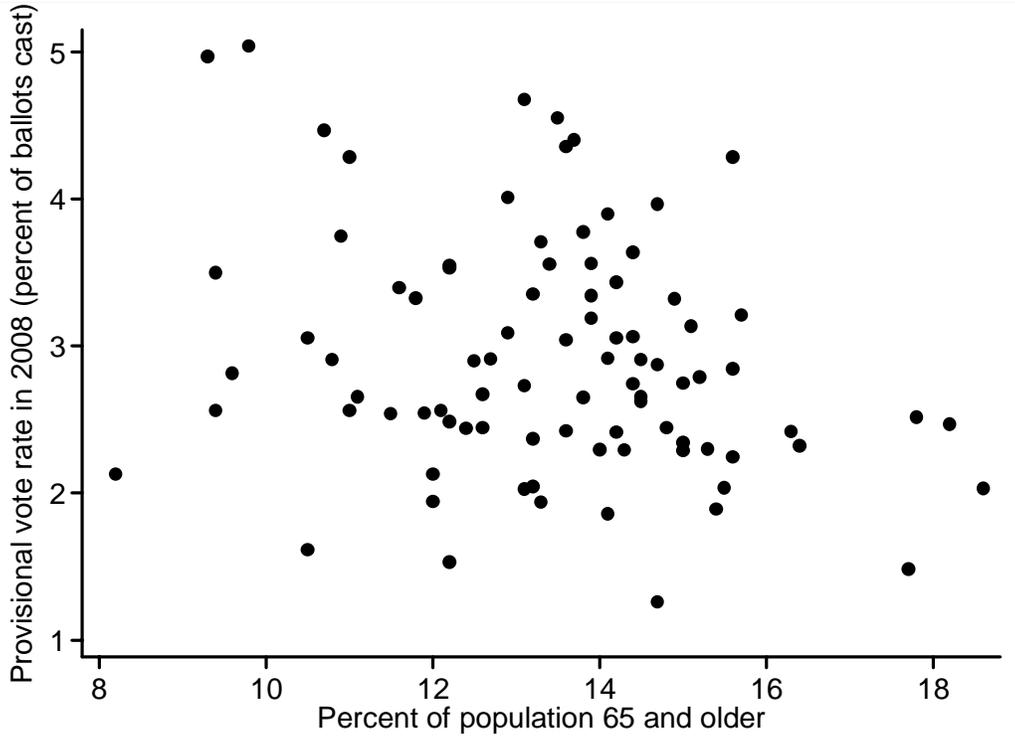


Appendix 22: Provisional Voting Rates by  
Age and Race, figures  
provided by David Kimball,  
Associate Professor of  
Political Science at the U. of  
Missouri-St. Louis

**Figure**  
**Provisional Voting Rates in Ohio Counties by Race, 2008**



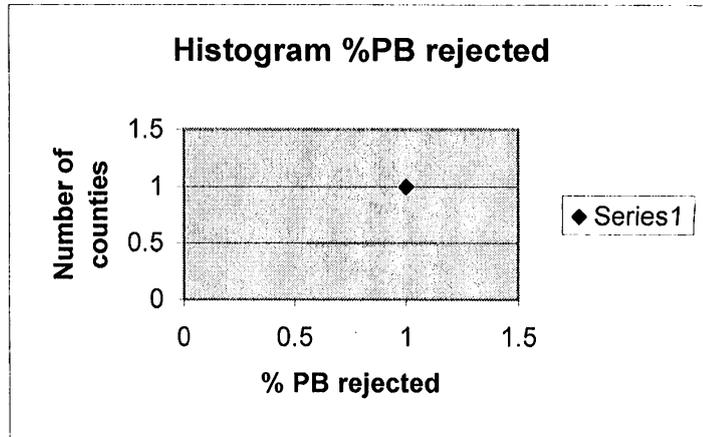
**Figure**  
**Provisional Voting Rates in Ohio Counties by Age, 2008**



Appendix 23: Provisional ballot and  
absentee ballot rejection  
percentages, data provided by  
Norman Robbins, Former  
Study Leader of the Greater  
Cleveland Voter Coalition

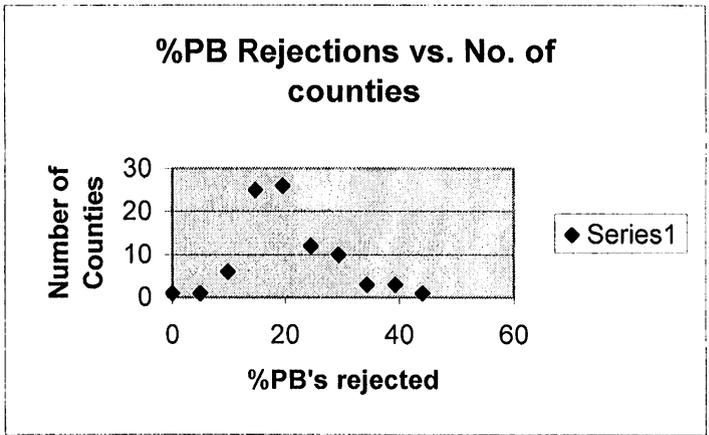
%PB  
rejected

Monroe County	0.0
Pike County	3.2
Ashtabula County	6.5
Ross County	7.1
Holmes County	8.0
Morrow County	8.2
Muskingum County	8.6
Athens County	8.9
Noble County	10.1
Coshocton County	10.2
Mahoning County	10.4
Lake County	10.4
Williams County	10.7
Richland County	10.9
Stark County	10.9
Gallia County	11.1
Harrison County	11.9
Sandusky County	11.9
Hancock County	12.0
Geauga County	12.5
Preble County	12.6
Wayne County	12.9



<i>Bin</i>	<i>Frequency</i>
0	1
4.90918	1
9.81836	6
14.72754	25
19.63672	26
24.5459	12
29.45508	10
34.36426	3
39.27344	3
44	1

Logan County	13.1
Paulding County	13.2
Miami County	13.3
Fayette County	13.7
Champaign County	13.9
Delaware County	14.3
Hardin County	14.4
Medina County	14.4
Madison County	14.6
Henry County	14.7
Butler County	14.7
Ottawa County	14.9
Clermont County	14.9
Seneca County	15.0
Fulton County	15.1
Franklin County	15.4
Guernsey County	15.8
Crawford County	16.2
Montgomery County	16.5
Wyandot County	16.6
Putnam County	16.6
Shelby County	17.1
Portage County	17.1
Jefferson County	17.5
Clark County	17.6





Marion County	17.7
Knox County	17.8
Erie County	18.0
Allen County	18.3
Morgan County	18.5
Pickaway County	18.5
Summit County	18.6
Auglaize County	18.9
Highland County	18.9
Warren County	18.9
Darke County	19.2
Scioto County	19.4
Clinton County	19.7
Licking County	20.3
Hamilton County	20.5
Jackson County	20.5
Ashland County	20.6
Washington County	20.8
Mercer County	21.7
Greene County	22.8
Perry County	22.8
Van Wert County	23.1
Vinton County	23.1
Lucas County	23.2
Wood County	25.0



Tuscarawas County	25.3
Carroll County	25.7
Lorain County	26.2
Meigs County	26.3
Fairfield County	26.7
Belmont County	27.1
Defiance County	27.2
Cuyahoga County	27.5
Columbiana County	27.5
Huron County	30.2
Trumbull County	33.3
Hocking County	33.5
Union County	35.9
Lawrence County	37.2
Adams County	37.3
Brown County	44.2



Appendix 24: Written Statement of Karen  
Neuman and Sarah Brannon,  
Fair Elections Legal Network

# FAIR · ELECTIONS · LEGAL · NETWORK

## **STATEMENT OF THE FAIR ELECTIONS LEGAL NETWORK RECOMMENDING CHANGING OHIO'S VOTER ID LAW TO ALLOW STUDENT ID**

This statement is submitted by the Fair Elections Legal Network (FELN)<sup>1</sup> in connection with the Ohio Election Summit 2008 convened by Secretary of State Brunner. It is limited to our observations about the impact of Ohio's voter identification law<sup>2</sup> on student voters. We commend the Secretary of State for holding the Election Summit and soliciting public input about the need for election reform.

We recommend that the legislature amend Section 3505.18, the current voter ID law, to expressly allow the use of student IDs issued by both public and private institutions of higher learning within Ohio as well as Ohio public and private high schools. This change would remove an unnecessary impediment to voting for students and would minimize the burden for poll workers. It would also minimize the burden on school administrators wishing to assist their students with voting.

### **Current Law:**

All Ohio voters must present identification at the polls when they vote.<sup>3</sup> Any of the following is acceptable: a current and valid photo, military ID, a copy of a current utility bill (including a cell phone bill), bank statement, government check, paycheck, or other government document (other than a notice of an election or a voter registration

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<sup>1</sup> FELN is a national nonpartisan network of election lawyers whose staff and network of 200 lawyers work to improve election administration and remove barriers to voter participation by traditionally under-participating constituencies – poor, elderly, minority and student voters.

<sup>2</sup> Ohio Rev. Code § 3505.18.

<sup>3</sup> The identification required for absentee in-person voting is slightly different, as a voter may provide only their Ohio driver's license number or their social security number on their absentee ballot application. These numbers are verified before the voter's absentee ballot is counted. *See* Ohio Rev. Code § 3509.05.

notification sent by a Board of Elections) that shows the name *and current address* of the voter.<sup>4</sup> The address displayed on the ID must match the address listed in the poll book for that voter.<sup>5</sup> The law contains only one exception to the “current address” requirement for voters who present an Ohio driver’s license or Ohio state issued ID. These voters’ IDs must be accepted and “the precinct election official shall mark the poll list or signature book to indicate that the elector has provided a driver’s license or state identification card with a former address and record the last four digits of . . . the number.”<sup>6</sup>

While a student ID is theoretically acceptable under Ohio’s voter ID identification law, the practical effect of the current address requirement prevents those IDs from being used because student IDs do not display an address. Student IDs typically display a photo, identification number, the name of the school, a date to indicate that the ID is current, and occasionally the address of the school.

**The Current ID Law is Burdensome to Student Voters, School Administrators and Poll Workers.**

*1. Burden on School Administrators.*

The current ID law places a burden on any school administrators wishing to assist their students with voting. Not only must those schools make the effort to issue additional documentation to their students, but given the complicated nature of the current ID law they must take on the added responsibility of correctly interpreting Ohio election law regarding voter ID in order to provide the proper documentation. The Ohio Secretary of State issued a memorandum explaining what school-issued documents

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<sup>4</sup> Ohio Rev. Code, § 3505.18; Ohio Secretary of State Website, Voter Services, *available at* <http://www.sos.state.oh.us/sos/upload/publications/election/VRform.pdf> (last visited June 16, 2008).

<sup>5</sup> Ohio Rev. Code § 3509.05 (requiring that all electors vote at the precinct for their current residence).

<sup>6</sup> Ohio Rev. Code § 3505.18(a).

institutions of higher learning may provide to their students to comply with the state's voter ID law to help schools, students and election officials with interpreting the election law.<sup>7</sup> The memorandum is helpful but only as to those schools willing to expend the resources required to issue the necessary documents.

As explained in the memorandum, public schools are government entities, so any documentation issued by them is considered a "government document" and complies with the law. Public schools, therefore, can provide their students with the necessary identification by issuing any letter to students that reflects their name and current residential address.<sup>8</sup> But this usually requires a specific effort on the part of the institution because often regular correspondence is sent to a student's P.O. Box or mailing address, and, therefore, does not reflect the student's residential address.

Private schools, on the other hand, are not government entities and, therefore, letters issued by them do not qualify under the law. These schools may issue utility bills for such services, such as internet and cable.<sup>9</sup> These utility bills must also display a student's current physical address.<sup>10</sup> In most instances utility bills are not issued to students because the costs of utilities are included in periodic room and board payments. Because schools do not typically issue separate utility bills to students, these schools must take extra steps to make up a separate bill. This process is unnecessarily burdensome to these institutions and could be eliminated by the amendment we propose.

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<sup>7</sup> 2/25/08 Memorandum Re: Clarification of Utility Bills as Voter Identification for College Students, available at <http://www.sos.state.oh.us/SOS/Upload/elections/memos/2008/08-Memo0225.pdf> (last visited July 7, 2008).

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

2. *Burden on Students.*

The law also imposes an unnecessary burden on college and university students in Ohio.<sup>11</sup> Most students carry their student ID with them at all times and it is typically the most accurate, current form of identification they have. Instead of using these IDs, however, students must find additional time in their schedules to identify and track down the administrator responsible for issuing the documentation, request the appropriate documentation, and then return to retrieve it. It is very likely that many students will choose to avoid taking time from their studies and other academic obligations and forego undertaking this unnecessarily time consuming process.

3. *Burden on Poll Workers.*

Finally, current law unnecessarily burdens poll workers who must add to the list of laws and regulations they are required to learn by familiarizing themselves with exactly what type of documentation from student voters is acceptable from what type of school for voter ID purposes. On the other hand, if Ohio law simply authorized as acceptable all valid student IDs, poll workers would not have to become bogged down with scrutinizing college issued documents and ascertaining whether those documents are acceptable forms of ID. A rule allowing student IDs would be very simple and would help to eliminate some of the confusion that poll workers currently face regarding all the different types of identification that can be provided.

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<sup>11</sup> In addition to college/university students, this law also imposes a burden on high school students eligible to vote. Many high school students do not have driver's licenses, and often they do not have a state issued ID card. High schools students also may not have utility bills, bank statements, paychecks or other documents. High schools students, however, will usually have a student ID issued by their school.

### **Most States Accept Student ID.**

Student ID is an acceptable form of identification in most states – even in Indiana and Georgia, two states with the most restrictive voter ID laws in this country.<sup>12</sup> Many other states that require identification at the polls will accept a current or valid photo ID issued to the voter from high school or any institute of higher learning located within the state, including Missouri, Michigan, Florida, Pennsylvania, and Colorado.<sup>13</sup> It is also worth noting that a student ID complies with federal voter ID requirements.<sup>14</sup>

The stated purpose in Section 3505.18 for the ID requirement is confirmation of the voter's identity, and student IDs are a reliable form of voter identification that satisfy this purpose. Because they display a photograph, student IDs allow confirmation of the voter's identity. Student IDs also establish that the individual is enrolled in an institution within the state of Ohio, thus proving the voter's residence within the state of Ohio. The added requirement that student IDs display a current address therefore serves no useful purpose.

### **Proposed Language.**

We recommend that Section 3505.18 of the Ohio Election Code be amended to include a provision that specifically authorizes use of any current student ID from any

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<sup>12</sup> Ind. Stat. §3-5-2-40; Indiana Secretary of State website, Election Division, *available at* <http://www.in.gov/sos/photooid/> (last visited October 8, 2008). Ga. Code § 21-2-417; Georgia Secretary of State's website, *available at* <http://sos.georgia.gov/gphotooid/FAQ.html> (last checked on August 12, 2008).

<sup>13</sup> Mo. Rev. Stat. § 115.427(2002); Mich. Comp. Laws § 168.523; Fla. Stat. §101.043; 25 P.S. § 3050; Colo. Rev. Stat. § 1-7-103.

<sup>14</sup> See 42 U.S.C. § 15483(a)(5).

Ohio high school or institution of higher learning.<sup>15</sup> As follows:

Electors may provide precinct officials with a current and valid student identification from a high school located within the State of Ohio or an accredited institution of higher education located within the State of Ohio even if that identification does not display a current address, as long as the elector also provides the last four digits of the elector's driver's license number, state identification number or social security number.

This proposed language follows the existing exception in Section 3505.18 allowing use of Ohio driver's license and ID cards that do not show the voter's current address, along with current practice of allowing the use of social security numbers when voting by absentee ballot.<sup>16</sup>

We are available to discuss any questions you may have about our proposal and are available to assist with revising the proposed language or otherwise working with you as you deem necessary.

Respectfully submitted,



Karen L. Neuman, Legal Director  
Sarah Brannon, Staff Attorney  
Fair Elections Legal Network  
1730 Rhode Island Avenue, N.W., Suite 712  
Washington, D.C. 20036  
202.331.0114

Date: January 6, 2009

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<sup>15</sup> Although not addressed in this statement, we also recommend considering authorizing the use of passports for voter ID purposes. Like student IDs, passports do not have addresses and, therefore, currently is not an acceptable form of ID for voting in Ohio.

<sup>16</sup> See Ohio Rev. Code §§ 3505.18 and 3509.05.

Appendix 25: Ohio Secretary of State's  
Office, *Data on Provisional  
Ballots Cast and Counted  
2000-2008*

## Provisional Ballots - General Election 2000

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	23	181	204	175
ALLEN	227	679	906	880
ASHLAND	162	206	368	366
ASHTABULA	57	897	954	792
ATHENS	73	2,470	2,543	2,401
AUGLAIZE	11	583	594	563
BELMONT			0	
BROWN	13	250	263	239
BUTLER	302	4,655	4,957	4,398
CARROLL	51	179	230	190
CHAMPAIGN	105	359	464	427
CLARK	60	1,221	1,281	1,133
CLERMONT	270	1,220	1,490	1,385
CLINTON	11	288	299	260
COLUMBIANA	60	875	935	874
COSHOCTON	45	141	186	182
CRAWFORD	48	353	401	385
CUYAHOGA			0	
DARKE	86	401	487	463
DEFIANCE	7	392	399	373
DELAWARE	59	1,551	1,610	1,398
ERIE	167	641	808	760
FAIRFIELD	104	922	1,026	936
FAYETTE	33	168	201	188
FRANKLIN	1,135	11,495	12,630	10,168
FULTON	39	278	317	295
GALLIA	42	256	298	287
GEAUGA	173	439	612	576
GREENE	182	1,796	1,978	1,947
GUERNSEY	23	54	77	72
HAMILTON	1,408	12,738	14,146	13,796
HANCOCK	232	474	706	672
HARDIN	47	149	196	191
HARRISON	15	59	74	74
HENRY	12	221	233	224
HIGHLAND	13	261	274	257
HOCKING	54	210	264	247
HOLMES	35	87	122	117
HURON	104	316	420	400
JACKSON	103	105	208	204
JEFFERSON	78	509	587	584
KNOX	122	379	501	466
LAKE	520	980	1,500	1,382
LAWRENCE	72	309	381	377
LICKING	74	1,107	1,181	1,073
LOGAN	73	327	400	374
LORAIN			0	
LUCAS	514	2,895	3,409	3,409
MADISON	18	239	257	242
MAHONING	323	1,159	1,482	1,434
MARION	0	550	550	526
MEDINA	234	799	1,033	961
MEIGS	30	187	217	213
MERCER	42	578	620	465

## Provisional Ballots - General Election 2000

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	103	474	577	555
MONROE	4	143	147	144
MONTGOMERY	209	6,824	7,033	6,051
MORGAN	10	62	72	65
MORROW	25	171	196	183
MUSKINGUM	129	761	890	855
NOBLE	6	26	32	31
OTTAWA	41	358	399	375
PAULDING			0	
PERRY	62	120	182	176
PICKAWAY	60	247	307	278
PIKE	82	133	215	215
PORTAGE	76	1,072	1,148	1,145
PREBLE	6	336	342	312
PUTNAM	26	144	170	167
RICHLAND	189	633	822	822
ROSS	129	380	509	470
SANDUSKY	64	551	615	592
SCIOTO	242	410	652	617
SENECA	4	360	364	333
SHELBY	64	410	474	435
STARK	587	3,242	3,829	3,359
SUMMIT	85	5,278	5,363	4,306
TRUMBULL	474	1,657	2,131	1,935
TUSCARAWAS	13	739	752	735
UNION	89	288	377	356
VAN WERT	65	235	300	288
VINTON	34	12	46	43
WARREN	244	1,136	1,380	1,257
WASHINGTON	221	308	529	502
WAYNE	127	678	805	761
WILLIAMS	43	461	504	464
WOOD	161	1,587	1,748	1,419
WYANDOT	9	271	280	258
<b>TOTALS</b>	<b>11,374</b>	<b>87,095</b>	<b>98,469</b>	<b>89,305</b>

## Provisional Ballots - General Election 2001

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	5	95	100	88
ALLEN	53	103	156	155
ASHLAND	22	41	63	62
ASHTABULA	0	0	0	792
ATHENS	12	382	394	378
AUGLAIZE	0	127	127	116
BELMONT	1	118	119	111
BROWN	14	77	91	85
BUTLER	40	964	1,004	784
CARROLL	67	12	79	70
CHAMPAIGN	30	60	90	88
CLARK	2	149	151	145
CLERMONT	42	180	222	193
CLINTON	1	79	80	77
COLUMBIANA	12	267	279	279
COSHOCTON	11	42	53	51
CRAWFORD	8	36	44	44
CUYAHOGA	230	4,512	4,742	4,296
DARKE	28	48	76	75
DEFIANCE	8	77	85	80
DELAWARE	1	161	162	146
ERIE	105	47	152	147
FAIRFIELD	51	236	287	281
FAYETTE	8	28	36	33
FRANKLIN	0	1,735	1,735	1,706
FULTON	5	52	57	57
GALLIA	14	190	204	203
GEAUGA	63	160	223	199
GREENE	32	327	359	357
GUERNSEY	102	30	132	117
HAMILTON	318	4,503	4,821	4,725
HANCOCK	33	48	81	79
HARDIN	6	31	37	36
HARRISON	8	28	36	36
HENRY	11	43	54	54
HIGHLAND	3	121	124	114
HOCKING	27	43	70	62
HOLMES	11	29	40	39
HURON	30	57	87	87
JACKSON	41	50	91	90
JEFFERSON	7	7	14	14
KNOX	14	61	75	73
LAKE	94	169	263	251
LAWRENCE	25	15	40	40
LICKING	10	268	278	261
LOGAN	8	91	99	94
LORAIN	71	536	607	585
LUCAS	95	731	826	822
MADISON	9	47	56	53
MAHONING	122	214	336	333
MARION	2	115	117	117
MEDINA	65	103	168	168
MEIGS	14	37	51	51
MERCER	0	237	237	221

## Provisional Ballots - General Election 2001

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	15	0	15	15
MONROE	4	46	50	50
MONTGOMERY	15	1,192	1,207	965
MORGAN	3	53	56	47
MORROW	6	170	176	167
MUSKINGUM	29	136	165	153
NOBLE	0	23	23	13
OTTAWA	19	149	168	158
PAULDING	6	49	55	54
PERRY	10	21	31	27
PICKAWAY	12	39	51	46
PIKE	28	20	48	44
PORTAGE	34	140	174	172
PREBLE	2	85	87	80
PUTNAM	11	41	52	51
RICHLAND	44	164	208	208
ROSS	45	53	98	90
SANDUSKY	11	83	94	89
SCIOTO	82	118	200	190
SENECA	11	126	137	131
SHELBY	5	92	97	83
STARK	134	814	948	906
SUMMIT	116	39	155	152
TRUMBULL	49	476	525	501
TUSCARAWAS	8	109	117	117
UNION	24	49	73	72
VAN WERT	8	63	71	68
VINTON	5	28	33	25
WARREN	39	198	237	224
WASHINGTON	82	132	214	196
WAYNE	18	125	143	140
WILLIAMS	9	65	74	70
WOOD	22	311	333	332
WYANDOT	4	54	58	57
<b>TOTALS</b>	2,901	23,182	26,083	25,313

## Provisional Ballots - General Election 2002

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	6	78	84	66
ALLEN	91	392	483	477
ASHLAND	50	84	134	132
ASHTABULA	86	0	86	77
ATHENS	21	1,059	1,080	1,038
AUGLAIZE	0	359	359	342
BELMONT	25	217	242	192
BROWN	24	135	159	149
BUTLER	197	1,802	1,999	1,765
CARROLL	105	13	118	112
CHAMPAIGN	20	167	187	179
CLARK	110	598	708	648
CLERMONT	170	512	682	577
CLINTON	6	109	115	95
COLUMBIANA	29	361	390	379
COSHOCTON	12	91	103	101
CRAWFORD	21	148	169	166
CUYAHOGA	348	7,553	7,901	7,549
DARKE	56	307	363	348
DEFIANCE	15	131	146	137
DELAWARE	30	830	860	737
ERIE	275	35	310	287
FAIRFIELD	143	416	559	543
FAYETTE	15	82	97	91
FRANKLIN	368	5,858	6,226	6,206
FULTON	28	150	178	169
GALLIA	13	173	186	149
GEAUGA	120	260	380	360
GREENE	60	921	981	938
GUERNSEY	66	112	178	170
HAMILTON	395	4,952	5,347	5,067
HANCOCK	69	191	260	256
HARDIN	15	96	111	111
HARRISON	3	36	39	39
HENRY	13	74	87	84
HIGHLAND	6	153	159	149
HOCKING	26	89	115	112
HOLMES	10	71	81	81
HURON	35	159	194	187
JACKSON	34	83	117	105
JEFFERSON	20	225	245	245
KNOX	141	117	258	253
LAKE	317	400	717	699
LAWRENCE	43	146	189	178
LICKING	22	489	511	450
LOGAN	40	176	216	212
LORAIN	71	631	702	620
LUCAS	146	2,004	2,150	2,015
MADISON	32	150	182	173
MAHONING	581	425	1,006	926
MARION	2	280	282	270
MEDINA	295	323	618	575
MEIGS	28	82	110	104
MERCER	4	427	431	374

## Provisional Ballots - General Election 2002

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	*	*	*	*
MONROE	8	44	52	51
MONTGOMERY	105	3,599	3,704	3,399
MORGAN	10	65	75	69
MORROW	11	103	114	103
MUSKINGUM	37	286	323	313
NOBLE	4	25	29	19
OTTAWA	22	177	199	190
PAULDING	8	51	59	59
PERRY	5	98	103	91
PICKAWAY	28	114	142	133
PIKE	48	43	91	91
PORTAGE	123	421	544	538
PREBLE	8	122	130	127
PUTNAM	11	77	88	87
RICHLAND	56	555	611	13
ROSS	100	158	258	247
SANDUSKY	30	307	337	304
SCIOTO	108	192	300	294
SENECA	33	162	195	194
SHELBY	26	237	263	0
STARK	243	2,009	2,252	2,079
SUMMIT	161	192	353	327
TRUMBULL	245	949	1,194	1,161
TUSCARAWAS	13	321	334	334
UNION	27	179	206	201
VAN WERT	8	80	88	85
VINTON	12	37	49	47
WARREN	24	747	771	715
WASHINGTON	85	187	272	256
WAYNE	61	296	357	343
WILLIAMS	33	13	46	41
WOOD	29	911	940	865
WYANDOT	2	66	68	64
<b>TOTALS</b>	<b>6,582</b>	<b>47,555</b>	<b>54,137</b>	<b>50,304</b>

\*Miami County unable to provide information

## Provisional Ballots - General Election 2003

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	0	0	0	0
ALLEN	45	235	280	266
ASHLAND	52	70	122	122
ASHTABULA	27	288	315	242
ATHENS	7	511	518	497
AUGLAIZE	1	233	234	223
BELMONT	0	157	157	134
BROWN	24	135	159	149
BUTLER	25	1,059	1,084	963
CARROLL	14	98	112	96
CHAMPAIGN	15	113	128	118
CLARK	11	421	432	383
CLERMONT	23	267	290	247
CLINTON	3	93	96	84
COLUMBIANA	16	228	244	241
COSHOCTON	14	61	75	74
CRAWFORD	13	94	107	104
CUYAHOGA	394	4,514	4,908	4,554
DARKE	50	131	181	175
DEFIANCE	19	138	157	153
DELAWARE	5	484	489	395
ERIE	60	250	310	288
FAIRFIELD	84	247	331	310
FAYETTE	10	27	37	34
FRANKLIN	75	2,426	2,501	2,377
FULTON	8	120	128	119
GALLIA	25	127	152	145
GEAUGA	38	103	141	138
GREENE	121	372	493	479
GUERNSEY	21	283	304	259
HAMILTON	289	3,036	3,325	3,208
HANCOCK	39	79	118	116
HARDIN	17	85	102	100
HARRISON	13	40	53	51
HENRY	12	49	61	61
HIGHLAND	4	87	91	84
HOCKING	0	79	79	74
HOLMES	4	28	32	30
HURON	21	96	117	108
JACKSON	35	54	89	86
JEFFERSON	12	137	149	148
KNOX	37	142	179	159
LAKE	140	300	440	428
LAWRENCE	52	121	173	171
LICKING	1	394	395	347
LOGAN	40	74	114	111
LORAIN	134	1,132	1,266	1,168
LUCAS	90	1,242	1,332	1,199
MADISON	12	87	99	94
MAHONING	68	240	308	308
MARION	3	148	151	137
MEDINA	61	347	408	341
MEIGS	4	37	41	38
MERCER	24	192	216	193

## Provisional Ballots - General Election 2003

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	0	269	269	269
MONROE	9	80	89	89
MONTGOMERY	35	1,907	1,942	1,430
MORGAN	6	52	58	53
MORROW	15	100	115	107
MUSKINGUM	33	212	245	225
NOBLE	16	10	26	23
OTTAWA	14	98	112	109
PAULDING	8	82	90	81
PERRY	5	105	110	89
PICKAWAY	21	65	86	73
PIKE	32	49	81	81
PORTAGE	268	21	289	289
PREBLE	3	63	66	59
PUTNAM	15	40	55	55
RICHLAND	40	350	390	375
ROSS	56	108	164	160
SANDUSKY	22	320	342	334
SCIOTO	142	4	146	143
SENECA	21	123	144	142
SHELBY	0	143	143	117
STARK	184	1,389	1,573	1,234
SUMMIT	85	75	160	157
TRUMBULL	130	517	647	624
TUSCARAWAS	3	282	285	285
UNION	14	93	107	104
VAN WERT	1	129	130	128
VINTON	13	6	19	18
WARREN	45	245	290	280
WASHINGTON	54	113	167	147
WAYNE	42	249	291	276
WILLIAMS	18	131	149	138
WOOD	11	293	304	288
WYANDOT	3	72	75	70
<b>TOTALS</b>	<b>3,676</b>	<b>29,306</b>	<b>32,982</b>	<b>30,181</b>

## Provisional Ballots - General Election 2004

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	36	222	258	192
ALLEN	309	1,017	1,326	1,098
ASHLAND	173	458	631	554
ASHTABULA	127	1,195	1,322	1,073
ATHENS	315	2,209	2,524	2,210
AUGLAIZE	10	640	650	573
BELMONT	12	1,047	1,059	641
BROWN	46	280	326	247
BUTLER	109	5,958	6,067	4,771
CARROLL	70	236	306	247
CHAMPAIGN	18	550	568	514
CLARK	112	1,452	1,564	1,241
CLERMONT	409	1,431	1,840	1,479
CLINTON	12	363	375	344
COLUMBIANA	71	1,241	1,312	1,173
COSHOCTON	33	263	296	269
CRAWFORD	61	359	420	375
CUYAHOGA	1,248	24,061	25,309	16,750
DARKE	108	608	716	634
DEFIANCE	55	672	727	542
DELAWARE	66	1,813	1,879	1,463
ERIE	204	768	972	838
FAIRFIELD	322	1,220	1,542	1,117
FAYETTE	38	257	295	249
FRANKLIN	1,072	13,390	14,462	12,124
FULTON	45	343	388	324
GALLIA	148	501	649	452
GEAUGA	131	538	669	597
GREENE	302	1,864	2,166	1,761
GUERNSEY	135	423	558	511
HAMILTON	528	14,036	14,564	11,035
HANCOCK	20	828	848	809
HARDIN	93	249	342	301
HARRISON	6	83	89	86
HENRY	64	184	248	211
HIGHLAND	85	444	529	467
HOCKING	0	248	248	216
HOLMES	44	129	173	165
HURON	125	545	670	556
JACKSON	114	331	445	397
JEFFERSON	93	563	656	624
KNOX	245	434	679	605
LAKE	671	1,343	2,014	1,813
LAWRENCE	100	502	602	517
LICKING	52	1,489	1,541	1,321
LOGAN	108	543	651	575
LORAIN	383	3,833	4,216	3,096
LUCAS	428	7,163	7,591	4,469
MADISON	62	330	392	325
MAHONING	634	2,152	2,786	2,350
MARION	22	876	898	803
MEDINA	225	1,041	1,266	939
MEIGS	25	218	243	226
MERCER	116	815	931	852

## Provisional Ballots - General Election 2004

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	50	1,559	1,609	1,435
MONROE	11	121	132	130
MONTGOMERY	400	8,857	9,257	7,375
MORGAN	12	148	160	130
MORROW	22	287	309	284
MUSKINGUM	74	800	874	732
NOBLE	14	61	75	73
OTTAWA	55	415	470	413
PAULDING	27	207	234	204
PERRY	5	426	431	356
PICKAWAY	131	422	553	425
PIKE	70	215	285	260
PORTAGE	165	1,287	1,452	1,284
PREBLE	31	362	393	333
PUTNAM	57	189	246	218
RICHLAND	164	1,193	1,357	1,221
ROSS	181	388	569	532
SANDUSKY	96	617	713	627
SCIOTO	357	530	887	723
SENECA	40	439	479	424
SHELBY	38	753	791	577
STARK	673	5,308	5,981	4,710
SUMMIT	374	5,679	6,053	4,596
TRUMBULL	471	2,229	2,700	1,850
TUSCARAWAS	5	982	987	854
UNION	50	391	441	391
VAN WERT	66	229	295	272
VINTON	68	61	129	97
WARREN	246	1,706	1,952	1,625
WASHINGTON	217	428	645	556
WAYNE	182	707	889	785
WILLIAMS	29	668	697	643
WOOD	180	2,481	2,661	2,192
WYANDOT	12	126	138	100
<b>TOTALS</b>	<b>14,613</b>	<b>144,029</b>	<b>158,642</b>	<b>123,548</b>

## Provisional Ballots - General Election 2005

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
ADAMS	3	49	52	39
ALLEN	60	289	349	341
ASHLAND	80	75	155	148
ASHTABULA	32	299	331	311
ATHENS	7	493	500	470
AUGLAIZE	0	191	191	170
BELMONT	20	222	242	202
BROWN	12	57	69	61
BUTLER	82	1,213	1,295	1,073
CARROLL	5	98	103	
CHAMPAIGN	0	175	175	175
CLARK	53	437	490	410
CLERMONT	48	294	342	330
CLINTON	0	77	77	
COLUMBIANA	18	249	267	259
COSHOCTON	27	32	59	57
CRAWFORD	4	109	113	107
CUYAHOGA	431	5,031	5,462	3,897
DARKE	16	166	182	171
DEFIANCE	26	203	229	198
DELAWARE	21	490	511	432
ERIE	33	254	287	265
FAIRFIELD	66	299	365	337
FAYETTE	28	47	75	71
FRANKLIN			2,745	
FULTON	9	127	136	132
GALLIA	38	135	173	145
GEAUGA	56	163	219	206
GREENE	97	455	552	526
GUERNSEY	31	190	221	29
HAMILTON	193	3,000	3,193	2,745
HANCOCK	70	144	214	204
HARDIN	46	47	93	47
HARRISON	7	21	28	28
HENRY	14	72	86	85
HIGHLAND	26	52	78	77
HOCKING	0	71	71	61
HOLMES	6	42	48	45
HURON	9	123	132	120
JACKSON	32	72	104	80
JEFFERSON	8	141	149	149
KNOX	2	152	154	147
LAKE	100	175	275	265
LAWRENCE	53	184	237	237
LICKING	17	414	431	385
LOGAN	39	72	111	107
LORAIN	62	923	985	967
LUCAS	116	2,273	2,389	2,017
MADISON	18	130	148	140
MAHONING	239	667	906	754
MARION	16	113	129	127
MEDINA	107	244	351	322
MEIGS	13	63	76	68
MERCER	5	175	180	171

## Provisional Ballots - General Election 2005

County Name	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day	Total number of provisional ballots issued	Number of valid provisional ballots
MIAMI	0	261	261	231
MONROE	9	53	62	
MONTGOMERY	25	1,688	1,713	1,455
MORGAN	8	42	50	40
MORROW	12	103	115	102
MUSKINGUM	37	159	196	189
NOBLE	8	32	40	31
OTTAWA	21	140	161	155
PAULDING	11	45	56	52
PERRY	110	4	114	99
PICKAWAY	47	121	168	154
PIKE	35	30	65	65
PORTAGE	42	252	294	294
PREBLE	3	99	102	86
PUTNAM	22	64	86	86
RICHLAND	57	338	395	13
ROSS	62	106	168	161
SANDUSKY	28	192	220	204
SCIOTO	34	146	180	175
SENECA	9	128	137	132
SHELBY	18	118	136	123
STARK	202	1,169	1,371	887
SUMMIT	53	69	1,126	1,080
TRUMBULL	119	549	668	602
TUSCARAWAS	5	253	258	244
UNION	15	92	107	94
VAN WERT	12	59	71	69
VINTON	11	26	37	31
WARREN	84	507	591	530
WASHINGTON	49	130	179	156
WAYNE	84	204	288	281
WILLIAMS	19	158	177	161
WOOD	13	462	475	432
WYANDOT	2	40	42	35
<b>TOTALS</b>	<b>3,767</b>	<b>29,128</b>	<b>36,644</b>	<b>28,359</b>

## GENERAL ELECTION 2006

<b>Absentee and Provisional Ballot Report</b>				
<b>County Name</b>	<b>Absentee</b>		<b>Provisional</b>	
	<b>Ballots Cast</b>	<b>Ballots Counted</b>	<b>Ballots Cast</b>	<b>Ballots Counted</b>
ADAMS	1,504	1,393	267	196
ALLEN	4,709	4,368	1,098	1,047
ASHLAND	3,030	2,815	499	440
ASHTABULA	4,993	4,620	862	778
ATHENS	2,765	2,623	1,739	1,543
AUGLAIZE	1,918	1,750	672	635
BELMONT	5,082	4,837	441	287
BROWN	1,949	1,813	358	274
BUTLER	14,786	13,208	5,150	4,145
CARROLL	1,649	1,564	236	170
CHAMPAIGN	1,647	1,527	285	253
CLARK	6,978	6,420	1,218	1,151
CLERMONT	10,393	9,689	2,348	1,550
CLINTON	1,878	1,740	330	303
COLUMBIANA	4,143	3,823	650	574
COSHOCTON	2,707	2,563	118	117
CRAWFORD	2,626	2,447	294	264
CUYAHOGA	106,456	93,602	17,656	11,683
DARKE	2,144	1,975	458	426
DEFIANCE	1,731	1,554	468	391
DELAWARE	14,937	13,639	1,537	1,344
ERIE	5,776	5,507	666	613
FAIRFIELD	9,509	8,539	1,563	1,388
FAYETTE	1,219	1,154	163	141
FRANKLIN	103,119	88,979	19,612	16,973
FULTON	2,086	1,943	381	332
GALLIA	1,553	1,442	211	204
GEAUGA	7,103	6,575	745	707
GREENE	11,068	10,094	2,094	1,878
GUERNSEY	2,336	2,178	299	257
HAMILTON	47,969	42,301	12,569	10,331
HANCOCK	3,853	3,629	580	543
HARDIN	1,288	1,242	213	179
HARRISON	846	799	25	23
HENRY	1,404	1,320	191	171
HIGHLAND	1,888	1,805	470	468
HOCKING	1,759	1,620	373	298
HOLMES	1,162	1,097	85	81
HURON	3,165	2,632	627	523
JACKSON	2,012	1,820	302	228
JEFFERSON	3,679	3,491	348	308
KNOX	4,538	4,334	687	639
LAKE	18,690	17,844	1,847	1,553
LAWRENCE	4,009	3,373	409	302
LICKING	10,399	9,459	1,426	1,224
LOGAN	2,648	2,128	382	261
LORAIN	15,716	15,462	2,712	1,880
LUCAS	22,101	20,448	4,881	3,531
MADISON	2,230	2,074	385	235
MAHONING	16,983	15,907	2,048	1,627
MARION	3,404	3,278	423	396

## Absentee and Provisional Ballot Report

County Name	Absentee		Provisional	
	Ballots Cast	Ballots Counted	Ballots Cast	Ballots Counted
MEDINA	10,851	10,127	1,206	1,083
MEIGS	1,101	1,035	127	115
MERCER	1,635	1,489	542	477
MIAMI	4,791	4,331	897	735
MONROE	1,367	1,289	144	142
MONTGOMERY	23,609	20,377	6,554	5,304
MORGAN	1,328	1,267	142	120
MORROW	1,808	1,696	271	238
MUSKINGUM	4,867	4,557	538	478
NOBLE	1,430	1,408	66	62
OTTAWA	2,693	2,555	323	286
PAULDING	1,107	1,043	144	130
PERRY	1,550	1,473	304	280
PICKAWAY	2,762	2,545	400	320
PIKE	2,499	2,287	151	144
PORTAGE	7,666	6,837	1,343	1,134
PREBLE	1,731	1,606	217	183
PUTNAM	1,421	1,310	184	112
RICHLAND	7,430	7,031	1,243	1,150
ROSS	4,410	4,123	551	512
SANDUSKY	2,545	2,385	615	571
SCIOTO	4,606	4,209	882	729
SENECA	2,184	2,044	371	353
SHELBY	2,132	1,964	368	307
STARK	18,455	17,276	4,069	3,621
SUMMIT	33,165	29,553	5,405	3,820
TRUMBULL	11,353	10,482	2,162	1,604
TUSCARAWAS	4,154	3,924	621	529
UNION	2,577	2,448	439	390
VAN WERT	1,589	1,475	135	121
VINTON	1,119	1,048	86	73
WARREN	9,670	8,794	1,877	1,539
WASHINGTON	3,042	2,805	456	427
WAYNE	5,223	4,646	826	779
WILLIAMS	1,618	1,497	284	249
WOOD	5,919	5,189	1,963	1,487
WYANDOT	912	847	125	112
<b>TOTALS:</b>	<b>707,856</b>	<b>639,416</b>	<b>129,432</b>	<b>104,581</b>

## Absentee and Provisional Ballot Report

County Name	Absentee					Absentee		Provisional	
	Domestic	Overseas	Domestic	Overseas		Ballots Cast	Ballots Counted	Ballots Issued	Ballots Counted
	Cast	Cast	Counted	Counted	Counted				
ADAMS	726	1	714	0	0	727	714	132	76
ALLEN	1921	0	1833	0	0	1,921	1,833	447	398
ASHLAND	1278	0	1279	0	1	1,278	1,280	166	141
ASHTABULA	1858	1	1662	0	0	1,859	1,662	381	346
ATHENS	1328	4	1200	2	2	1,332	1,204	500	461
AUGLAIZE	841	0	833	0	0	841	833	336	310
BELMONT	2507	0	2507	0	0	2,507	2,507	264	168
BROWN	1006	1	966	1	0	1,007	967	146	102
BUTLER	7228	2	6977	1	1	7,230	6,979	1,430	1,262
CARROLL	431	2	429	2	0	433	431	75	51
CHAMPAIGN	679	1	671	1	0	680	672	128	119
CLARK	1898	5	1898	0	5	1,903	1,903	288	204
CLERMONT	4228	1	4228	1	0	4,229	4,229	620	461
CLINTON	1474	3	1385	1	1	1,477	1,387	241	191
COLUMBIANA	1716	1	1640	0	0	1,717	1,640	290	234
COSHOCTON	1454	0	1454	0	0	1,454	1,454	66	65
CRAWFORD	1414	2	1388	2	0	1,416	1,390	137	129
CUYAHOGA	29112	18	29112	14	4	29,130	29,130	4,032	3,140
DARKE	617	1	613	1	0	618	614	146	123
DEFIANCE	860	0	858	0	0	860	858	172	160
DELAWARE	2122	1	2058	1	0	2,123	2,059	266	229
ERIE	2867	4	2853	1	3	2,871	2,857	406	342
FAIRFIELD	3963	2	3806	1	1	3,965	3,808	532	439
FAYETTE	550	0	550	0	0	550	550	71	65
FRANKLIN	25763	49	24614	27	5	25,812	24,646	4,579	3,922
FULTON	935	0	935	0	0	935	935	140	111
GALLIA	755	0	584	0	0	755	584	87	75
GEAUGA	2068	3	2066	3	0	2,071	2,069	271	265
GREENE	2531	9	2492	7	1	2,540	2,500	417	377
GUERNSEY	1128	0	1071	0	0	1,128	1,071	131	109
HAMILTON	31203	49	29893	43	0	31,252	29,936	4,705	3,878
HANCOCK	2123	2	2105	2	0	2,125	2,107	151	108
HARDIN	819	1	809	1	0	820	810	83	71
HARRISON	484	0	484	0	0	484	484	20	14
HENRY	7	1	7	0	1	8	8	91	77
HIGHLAND	903	0	876	0	0	903	876	118	108
HOCKING	1220	0	1183	0	0	1,220	1,183	137	77
HOLMES	667	0	658	0	0	667	658	39	38
HURON	781	1	766	1	0	782	767	109	93
JACKSON	2348	2	2268	2	0	2,350	2,270	293	206
JEFFERSON	2113	0	2107	0	0	2,113	2,107	278	252

KNOX	1368	3	1340	0	0	1,371	1,340	142	139
LAKE	5388	1	5220	1	0	5,389	5,221	778	745
LAWRENCE	3786	1	3498	1	0	3,787	3,499	241	131
LICKING	4360	1	4298	1	0	4,361	4,299	508	442
LOGAN	916	2	884	2	0	918	886	163	142
LORAIN	6922	0	5977	5	2	6,922	5,984	995	677
LUCAS	9030	13	8206	11	0	9,043	8,217	1,933	1,538
MADISON	648	0	627	0	0	648	627	144	93
MAHONING	6368	0	6388	0	0	6,368	6,388	605	577
MARION	1529	1	1529	1	0	1,530	1,530	189	168
MEDINA	3469	55	3242	11	6	3,524	3,259	252	212
MEIGS	471	0	464	0	0	471	464	32	15
MERCER	645	0	645	0	0	645	645	152	112
MIAMI	1418	2	1418	2	0	1,420	1,420	336	268
MONROE	669	0	361	0	0	669	361	118	8
MONTGOMERY	6698	8	6698	8	0	6,706	6,706	1,700	1,410
MORGAN	657	0	657	0	0	657	657	31	27
MORROW	835	0	837	0	0	835	837	117	103
MUSKINGUM	2460	2	2404	2	0	2,462	2,406	203	171
NOBLE	1103	0	1103	0	0	1,103	1,103	39	35
OTTAWA	1540	2	1483	0	1	1,542	1,484	177	155
PAULDING	589	0	587	0	0	589	587	60	52
PERRY	616	0	616	0	0	616	616	100	90
PICKAWAY	949	0	907	0	0	949	907	167	145
PIKE	1291	2	1283	1	1	1,293	1,285	66	55
PORTAGE	2001	4	1973	2	2	2,005	1,977	363	297
PREBLE	574	0	574	0	0	574	574	93	78
PUTNAM	725	0	725	0	0	725	725	100	92
RICHLAND	3578	5	3570	4	0	3,583	3,574	464	392
ROSS	2625	3	2615	2	1	2,628	2,618	199	185
SANDUSKY	1802	1	1801	0	1	1,803	1,802	256	212
SCIOTO	1802	1	1801	0	1	1,803	1,802	256	212
SENECA	1304	0	1304	0	0	1,304	1,304	171	152
SHELBY	703	0	703	0	0	703	703	204	161
STARK	7767	8	7767	6	2	7,775	7,775	1,520	1,309
SUMMIT	8386	13	8094	12	1	8,399	8,107	1,265	1,023
TRUMBULL	3962	4	3899	4	0	3,966	3,903	597	494
TUSCARAWAS	2727	3	2595	3	0	2,730	2,598	499	457
UNION	1053	3	1053	3	0	1,056	1,056	197	166
VAN WERT	1007	1	1007	1	0	1,008	1,008	5	51
VINTON	593	0	579	0	0	593	579	34	24
WARREN	3518	6	3426	2	4	3,524	3,432	380	265
WASHINGTON	1436	0	1419	0	0	1,436	1,419	210	179
WAYNE	1769	2	1679	2	0	1,771	1,681	255	238
WILLIAMS	375	0	675	0	0	375	675	134	128
WOOD	2401	2	2401	1	1	2,403	2,403	385	285

WYANDOT	465	0	465	0	0	465	465	104	92
TOTALS:						262,540	254,880	39,860	32,999

**Provisional Ballots Statistics for November 4, 2008 General Election**

COUNTY	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day at polls and BOE office	Total provisional ballots issued	Total provisional ballots counted	Total provisional ballots rejected	Reasons for Rejection of Provisional Ballots									
						Voter not registered in the state	Voter registered in state, but voted in wrong county or precinct	Failure to provide acceptable identification	Challenge to voter's eligibility or registration upheld	No voter signature on envelope	Non-matching voter signature on envelope	No printed name on envelope	Printed name and/or signature in wrong place on envelope	Voter already voted	Other Reasons*
ADAMS	76	356	432	271	161	41	18	63	0	0	0	0	0	0	39
ALLEN	490	1,260	1,750	1,426	324	170	103	2	0	4	5	0	0	3	37
ASHLAND	232	582	812	644	168	100	32	17	0	6	0	0	0	1	12
ASHTABULA	140	1,175	1,315	1,096	219	116	97	0	0	3	0	0	0	0	3
ATHENS	213	1,360	1,573	1,426	147	70	63	0	0	3	7	0	0	0	4
AUGLAIZE	23	709	732	594	138	55	53	1	0	1	0	0	0	0	28
BELMONT	124	693	817	596	221	115	73	15	0	0	0	0	0	1	17
BROWN	93	602	695	536	159	89	65	3	0	0	0	0	0	2	0
BUTLER	1,050	6,771	7,822	6,671	1,151	662	422	9	0	21	0	0	0	20	17
CARROLL	71	271	342	254	88	52	26	10	0	0	0	0	0	0	0
CHAMPAIGN	110	358	468	403	65	55	7	3	0	0	0	0	0	0	0
CLARK	426	2,255	2,681	2,209	472	240	165	20	0	38	0	0	0	0	9
CLERMONT	432	2,941	3,373	2,871	502	232	247	14	0	6	0	0	0	0	3
CLINTON	90	605	695	558	137	69	35	22	0	6	0	0	0	2	3
COLUMBIANA	69	1,086	1,155	837	318	148	91	28	0	0	0	0	0	4	47
COSHOCTON	11	205	216	194	22	22	0	0	0	0	0	0	0	0	0
CRAWFORD	92	506	598	501	97	53	32	5	0	5	0	0	0	0	2
CUYAHOGA	2,495	26,332	28,827	21,417	7,410	3,238	3,423	29	0	282	0	0	0	91	347
DARKE	93	507	600	495	105	73	27	4	0	1	0	0	0	0	0
DEFIANCE	102	669	771	564	207	110	45	44	0	2	0	0	0	6	0
DELAWARE	360	1,620	1,980	1,697	283	196	68	4	0	7	0	0	0	4	4
ERIE	332	855	1,187	973	214	142	69	2	0	1	0	0	0	0	0
FAIRFIELD	288	1,641	1,929	1,413	516	298	196	13	0	4	2	0	0	1	2
FAYETTE	101	330	431	372	59	33	25	0	0	1	0	0	0	0	0
FRANKLIN	3,670	24,792	28,462	23,318	5,144	1,362	1,139	585	0	425	56	813	113	134	517
FULTON	127	518	645	548	97	52	39	3	0	1	0	0	0	0	2
GALLIA	64	352	416	370	46	31	9	5	0	0	0	0	0	1	0
GEAUGA	197	807	1,004	878	126	119	1	2	0	0	0	0	0	2	2
GREENE	495	2,308	2,803	2,277	526	298	208	9	0	9	0	0	0	0	2
GUERNSEY	154	309	463	390	73	44	28	0	0	0	0	0	0	1	0
HAMILTON	2,041	17,489	19,530	15,523	4,007	1,905	1,767	0	0	91	30	0	0	98	116
HANCOCK	250	633	883	777	106	75	20	11	0	0	0	0	0	0	0
HARDIN	68	343	411	352	59	26	30	0	0	3	0	0	0	0	0
HARRISON	21	97	118	104	14	12	1	0	0	1	0	0	0	0	0
HENRY	84	257	341	291	50	31	19	0	0	0	0	0	0	0	0
HIGHLAND	227	509	736	597	139	75	39	1	0	3	6	3	3	3	6



**Provisional Ballots Statistics for November 4, 2008 General Election**

COUNTY	Provisional Ballots issued prior to election day	Provisional Ballots issued on election day at polls and BOE office	Total provisional ballots issued	Total provisional ballots counted	Total provisional ballots rejected	Reasons for Rejection of Provisional Ballots									
						Voter not registered in the state	Voter registered in state, but voted in wrong county or precinct	Failure to provide acceptable identification	Challenge to voter's eligibility or registration upheld	No voter signature on envelope	Non-matching voter signature on envelope	No printed name on envelope	Printed name and/or signature in wrong place on envelope	Voter already voted	Other Reasons*
<b>SCIOTO</b>	205	901	1,106	883	223	122	87	14	0	0	0	0	0	0	0
<b>SENECA</b>	87	432	519	441	78	46	32	0	0	0	0	0	0	0	0
<b>SHELBY</b>	227	623	850	705	145	113	32	0	0	0	0	0	0	0	0
<b>STARK</b>	1,181	4,769	5,950	4,867	1,083	450	518	85	0	23	1	0	0	2	4
<b>SUMMIT</b>	2,363	5,829	8,192	6,667	1,525	1,055	404	21	0	0	0	0	0	19	26
<b>TRUMBULL</b>	607	2,874	3,481	2,686	795	306	362	122	0	2	0	0	0	2	1
<b>TUSCARAWAS</b>	56	1,143	1,199	1,015	184	121	50	5	0	4	0	0	0	2	2
<b>UNION</b>	103	607	710	475	235	86	30	116	0	1	0	0	0	1	1
<b>VAN WERT</b>	85	218	303	233	70	32	35	3	0	0	0	0	0	0	0
<b>VINTON</b>	40	111	151	110	41	17	12	7	0	0	0	0	0	2	3
<b>WARREN</b>	90	2,650	2,740	2,229	511	292	179	25	0	6	0	0	0	9	0
<b>WASHINGTON</b>	3	695	698	595	103	90	3	8	0	1	0	0	0	1	0
<b>WAYNE</b>	322	487	809	705	104	93	0	11	0	0	0	0	0	0	0
<b>WILLIAMS</b>	126	494	620	534	86	44	27	13	0	1	0	0	0	0	1
<b>WOOD</b>	354	2,459	2,813	2,111	702	380	158	152	0	2	5	0	5	0	0
<b>WYANDOT</b>	16	195	211	176	35	27	5	3	0	0	0	0	0	0	0
<b>TOTALS</b>	<b>33,386</b>	<b>173,474</b>	<b>206,859</b>	<b>166,870</b>	<b>39,989</b>	<b>18,860</b>	<b>14,335</b>	<b>1,990</b>	<b>71</b>	<b>1,130</b>	<b>118</b>	<b>832</b>	<b>121</b>	<b>577</b>	<b>1,955</b>

\* Individual county reports are available detailing "other reasons" for rejection.

Appendix 26: Ohio Secretary of State's  
Office, *Data on Absentee  
Ballots Cast and Counted  
2000-2008*



## Absentee Ballots - General Election 2000

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	5,634	5,314	42	10	9	6	0	5,329
Armed Forces	43	55	8	15	12	3	0	70
<b>CLINTON</b>								
Civilian	1,110	1,060	14	8	7	1	0	1,068
Armed Forces	54	37	3	0	0	0	0	37
<b>COLUMBIANA</b>								
Civilian	3,432	3,292	31	10	6	4	0	3,302
Armed Forces	113	93	6	34	21	2	0	116
<b>COSHOCTON</b>								
Civilian	1,585	1,533	6	0	0	0	0	1,533
Armed Forces	0	0	0	60	49	4	1	53
<b>CRAWFORD</b>								
Civilian	1,603	1,560	7	1	1	0	9	1,561
Armed Forces	57	35	2	14	6	2	1	43
<b>CUYAHOGA</b>								
Civilian								0
Armed Forces								0
<b>DARKE</b>								
Civilian	1,864	1,809	11	1	1	0	0	1,810
Armed Forces	58	49	0	7	7	0	0	56
<b>DEFIANCE</b>								
Civilian	1,444	1,296	23	5	3	0	0	1,299
Armed Forces	43	26	3	13	3	5	0	34
<b>DELAWARE</b>								
Civilian	4,676	4,449	62	26	17	17	11	4,483
Armed Forces	49	38	6	33	23	22	9	83
<b>ERIE</b>								
Civilian	3,989	3,920	25	16	12	0	0	3,932
Armed Forces	92	71	3	21	14	3	0	88
<b>FAIRFIELD</b>								
Civilian	4,719	4,051	73	4	4	0	0	4,055
Armed Forces	99	75	4	41	31	4	1	110
<b>FAYETTE</b>								
Civilian	696	664	3	9	8	0	0	672
Armed Forces	8	3	0	0	0	0	0	3
<b>FRANKLIN</b>								
Civilian	33,193	27,590	200	412	250	76	1	27,916

## Absentee Ballots - General Election 2000

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	813	588	14	232	118	47	24	753
<b>FULTON</b>								
Civilian	1,369	1,328	9	14	12	0	0	1,340
Armed Forces	50	39	3	7	3	0	0	42
<b>GALLIA</b>								
Civilian	1,295	1,158	10	0	0	0	0	1,158
Armed Forces	14	12	0	5	4	1	0	17
<b>GEAUGA</b>								
Civilian	4,373	4,132	57	40	37	0	0	4,169
Armed Forces	8	7	3	23	17	3	3	27
<b>GREENE</b>								
Civilian	5,469	5,298	57	86	79	1	0	5,378
Armed Forces	283	216	15	30	27	2	0	245
<b>GUERNSEY</b>								
Civilian	1,474	1,383	6	0	0	0	0	1,383
Armed Forces	29	20	0	14	11	2	1	33
<b>HAMILTON</b>								
Civilian	37,049	35,512	101	411	370	223	8	36,105
Armed Forces	486	367	6	160	103	351	6	821
<b>HANCOCK</b>								
Civilian	2,940	2,850	2	16	13	0	2	2,863
Armed Forces	49	41	0	21	18	3	0	62
<b>HARDIN</b>								
Civilian	949	925	1	8	4	3	0	932
Armed Forces	20	16	0	0	0	0	0	16
<b>HARRISON</b>								
Civilian	781	749	5	2	2	0	0	751
Armed Forces	33	24	0	5	2	0	0	26
<b>HENRY</b>								
Civilian	960	932	9	5	5	0	0	937
Armed Forces	40	32	3	6	3	0	3	35
<b>HIGHLAND</b>								
Civilian	1,508	1,454	1	0	0	0	0	1,454
Armed Forces	34	27	0	20	13	0	0	40
<b>HOCKING</b>								
Civilian	1,141	1,107	10	0	0	0	0	1,107

## Absentee Ballots - General Election 2000

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	30	24	1	5	3	0	0	27
<b>HOLMES</b>								
Civilian	741	712	5	10	9	1	0	722
Armed Forces	16			7	4		0	4
<b>HURON</b>								
Civilian	1,993	1,772	14	9	6	2	0	1,780
Armed Forces	55	39	1	24	17	3	2	59
<b>JACKSON</b>								
Civilian	1,351	1,341	6	2	0	1	0	1,342
Armed Forces	40	35	0	6	5	0	0	40
<b>JEFFERSON</b>								
Civilian	3,740	3,071	18	13	13	0	1	3,084
Armed Forces	104	67	4	25	19	1	0	87
<b>KNOX</b>								
Civilian	2,204	2,103	16	23	22	0	1	2,125
Armed Forces	53	44	1	16	11	0	0	55
<b>LAKE</b>								
Civilian	9,474	8,918	114	50	36	4	0	8,958
Armed Forces	140	94	7	59	47	1	0	142
<b>LAWRENCE</b>								
Civilian	2,888	2,526	22	9	6	0	0	2,532
Armed Forces	57	46	3	17	16	0	0	62
<b>LICKING</b>								
Civilian	4,966	4,827	40	39	29	5	1	4,861
Armed Forces	107	82	5	33	25	0	0	107
<b>LOGAN</b>								
Civilian	1,595	1,534	19	0	0	0	0	1,534
Armed Forces	49	33	3	13	9	0	0	42
<b>LORAIN</b>								
Civilian								0
Armed Forces								0
<b>LUCAS</b>								
Civilian	24,052	22,815	319	81	67	0	5	22,882
Armed Forces	310	229	14	135	94	0	5	323



## Absentee Ballots - General Election 2000

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	3,605	3,482	32	8	5	1	0	3,488
Armed Forces	77	59	0	12	7	4	0	70
<b>NOBLE</b>								
Civilian	728	718	2	2	1	0	0	719
Armed Forces	13	11	0	4	4	0	0	15
<b>OTTAWA</b>								
Civilian	2,262	2,175	16	2	2	0	0	2,177
Armed Forces	43	31	0	18	14	2	0	47
<b>PAULDING</b>								
Civilian								0
Armed Forces								0
<b>PERRY</b>								
Civilian	948	948	1	14	13	1	1	962
Armed Forces	39	38	1	13	11	1	1	50
<b>PICKAWAY</b>								
Civilian	1,300	1,237	10	11	10	0	0	1,247
Armed Forces	46	32	4	2	1	0	0	33
<b>PIKE</b>								
Civilian	1,634	1,478	6	0	0	0	0	1,478
Armed Forces	17	16	1	0	0	0	0	16
<b>PORTAGE</b>								
Civilian	4,288	3,937	33	47	70	3	0	4,010
Armed Forces	100	64	0	37	23	3	0	90
<b>PREBLE</b>								
Civilian	1,332	1,278	12	9	8	0	1	1,286
Armed Forces	38	27	0	10	6	2	0	35
<b>PUTNAM</b>								
Civilian	1,322	1,275	5	2	2	0	0	1,277
Armed Forces	28	22	1	8	3	2	0	27
<b>RICHLAND</b>								
Civilian	4,477	4,330	147	16	15	0	0	4,345
Armed Forces	0	0	0	45	30	2	3	32
<b>ROSS</b>								
Civilian	2,532	2,426	36	12	7	0	0	2,433

## Absentee Ballots - General Election 2000

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	51	40	11	22	15	0	0	55
<b>SANDUSKY</b>								
Civilian	1,923	1,864	11	14	9	2	0	1,875
Armed Forces	57	12	1	17	5	3	1	20
<b>SCIOTO</b>								
Civilian	3,405	3,286	26	3	3	0	0	3,289
Armed Forces	86	63	5	16	11	0	5	74
<b>SENECA</b>								
Civilian	2,196	2,112	32	0	0	0	0	2,112
Armed Forces	71	53	1	16	13	0	0	66
<b>SHELBY</b>								
Civilian	1,629	1,672	26	10	5	0	4	1,677
Armed Forces	9	8	0	0	0	0	0	8
<b>STARK</b>								
Civilian	13,269	12,872	79	85	53	11	1	12,936
Armed Forces	336	229	12	69	43	10	2	282
<b>SUMMIT</b>								
Civilian	17,090	16,044	225	214	169	23	0	16,236
Armed Forces	365	266	25	108	73	10	0	349
<b>TRUMBULL</b>								
Civilian	8,394	8,268	76	55	51	4	0	8,323
Armed Forces	196	196	0	63	58	5	0	259
<b>TUSCARAWAS</b>								
Civilian	3,338	3,286	23	13	9	0	1	3,295
Armed Forces	84	74	6	27	2	2	1	78
<b>UNION</b>								
Civilian	1,193	1,157	7	19	17	0	0	1,174
Armed Forces	25	19	0	11	5	2	0	26
<b>VAN WERT</b>								
Civilian	1,304	1,124	13	6	6	0	0	1,130
Armed Forces	27	22	3	15	11	0	0	33
<b>VINTON</b>								
Civilian	659	648	2	0	0	0	0	648
Armed Forces	9	7	1	1	1	0	0	8

## Absentee Ballots - General Election 2000

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
<b>WARREN</b>								
Civilian	5,428	5,160	47	54	41	2	1	5,203
Armed Forces	80	61	1	35	21	3	1	85
<b>WASHINGTON</b>								
Civilian	1,981	1,894	12	12	9	3	1	1,906
Armed Forces	40	24	2	27	20	3	0	47
<b>WAYNE</b>								
Civilian	3,908	3,746	29	38	32	2	0	3,780
Armed Forces	99	77	5	77	61	1	5	139
<b>WILLIAMS</b>								
Civilian	1,125	1,071	16	6	6	0	0	1,077
Armed Forces	41	35	0	8	5	2	1	42
<b>WOOD</b>								
Civilian	4,211	4,012	51	28	24	3	0	4,039
Armed Forces	106	79	0	32	28	2	1	109
<b>WYANDOT</b>								
Civilian	646	614	7	10	7	3	0	624
Armed Forces	15	15	0	4	3	1	0	19
<b>Total Civilian</b>	352,980	330,947	3,011	2,614	2,050	486	59	333,483
<b>Total Armed Forces</b>	8,506	6,560	280	2,425	1,677	576	85	8,813
<b>Grand Total</b>	361,486	337,507	3,291	5,039	3,727	1,062	144	342,296



## Absentee Ballots - General Election 2001

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	1,668	1,591	12	0	0	0	0	1,591
Armed Forces	9	7	1	1	0	0	1	7
<b>CLINTON</b>								
Civilian	537	510	4	0	0	0	0	510
Armed Forces	2	2	0	0	0	0	0	2
<b>COLUMBIANA</b>								
Civilian	1,164	1,127	0	1	1	0	0	1,128
Armed Forces	1	1	0	0	0	0	0	1
<b>COSHOCTON</b>								
Civilian	782	731	7	0	0	0	0	731
Armed Forces	0	0	0	3	2	0	0	2
<b>CRAWFORD</b>								
Civilian	559	519	1	0	0	0	0	519
Armed Forces	0	0	0	0	0	0	0	0
<b>CUYAHOGA</b>								
Civilian	29,869	249	326	22	18	3	0	270
Armed Forces	19	0	0	12	10	2	0	12
<b>DARKE</b>								
Civilian	391	384	0	0	0	0	0	384
Armed Forces	1	1	0	0	0	0	0	1
<b>DEFIANCE</b>								
Civilian	606	560	16	0	0	0	0	560
Armed Forces	3	2	1	0	0	0	0	2
<b>DELAWARE</b>								
Civilian	1,039	959	14	1	0	0	0	959
Armed Forces	7	4	1	0	0	0	0	4
<b>ERIE</b>								
Civilian	1,739	1,621	17	0	0	0	0	1,621
Armed Forces	6	5	0	0	0	0	0	5
<b>FAIRFIELD</b>								
Civilian	1,784	1,566	5	0	0	0	0	1,566
Armed Forces	2	2	0	3	2	1	0	5
<b>FAYETTE</b>								
Civilian	314	297	0	1	1	0	0	298
Armed Forces	1	0	1	1	0	1	0	1
<b>FRANKLIN</b>								
Civilian	11,976	10,980	145	2	1	1	0	10,982

## Absentee Ballots - General Election 2001

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Armed Forces	4	2	0	2	0	1	1	3
<b>FULTON</b>								
Civilian	373	360	2	0	0	0	0	360
Armed Forces	0	0	0	1	0	0	0	0
<b>GALLIA</b>								
Civilian	606	562	7	0	0	0	0	562
Armed Forces	2	0	0	0	0	0	0	0
<b>GEAUGA</b>								
Civilian	1,806	1,697	37	0	0	0	0	1,697
Armed Forces	3	2	0	0	0	0	0	2
<b>GREENE</b>								
Civilian	1,655	1,614	9	3	1	0	0	1,615
Armed Forces	3	1	1	1	1	0	0	2
<b>GUERNSEY</b>								
Civilian	728	679	12	0	0	0	0	679
Armed Forces	1	1	0	0	0	0	0	1
<b>HAMILTON</b>								
Civilian	15,737	15,717	20	13	10	2	1	15,729
Armed Forces	15	15	0	5	2	3	0	20
<b>HANCOCK</b>								
Civilian	754	717	4	0	0	0	0	717
Armed Forces	4	4	0	2	1	0	0	5
<b>HARDIN</b>								
Civilian	430	420	1	0	0	0	0	420
Armed Forces	2	1	0	0	0	0	0	1
<b>HARRISON</b>								
Civilian	367	353	4	0	0	0	0	353
Armed Forces	4	4	0	1	1	0	0	5
<b>HENRY</b>								
Civilian	380	356	3	0	0	0	0	356
Armed Forces	4	3	0	0	0	0	0	3
<b>HIGHLAND</b>								
Civilian	636	602	20	0	0	0	0	602
Armed Forces	0	0	0	0	0	0	0	0
<b>HOCKING</b>								
Civilian	753	707	0	0	0	0	0	707

## Absentee Ballots - General Election 2001

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Armed Forces	6	4	0	0	0	0	0	4
<b>HOLMES</b>								
Civilian	285	261	4	0	0	0	0	261
Armed Forces	0	0	0	0	0	0	0	0
<b>HURON</b>								
Civilian	802	790	1	1	1	0	0	791
Armed Forces	2	1	1	0	0	0	0	1
<b>JACKSON</b>								
Civilian	1,372	1,175	8	1	1	0	0	1,176
Armed Forces	7	4	0	1	1	0	0	5
<b>JEFFERSON</b>								
Civilian	1,750	1,486	13	0	0	0	0	1,486
Armed Forces	5	3	2	0	0	0	0	3
<b>KNOX</b>								
Civilian	675	642	3	0	0	0	0	642
Armed Forces	0	0	0	0	0	0	0	0
<b>LAKE</b>								
Civilian	3,639	3,396	22	1	1	0	0	3,397
Armed Forces	7	6	0	2	2	0	0	8
<b>LAWRENCE</b>								
Civilian	2,423	2,063	38	0	0	0	0	2,063
Armed Forces	3	0	0	2	0	0	0	0
<b>LICKING</b>								
Civilian	1,985	1,868	19	1	1	0	0	1,869
Armed Forces	5	4	0	0	0	0	0	4
<b>LOGAN</b>								
Civilian	462	453	3	0	0	0	0	453
Armed Forces	0	0	0	0	0	0	0	0
<b>LORAIN</b>								
Civilian	6,222	5,533	40	3	0	0	0	5,533
Armed Forces	0	0	0	1	0	0	0	0
<b>LUCAS</b>								
Civilian	12,094	11,676	47	7	6	0	0	11,682
Armed Forces	0	0	0	3	0	3	0	3



## Absentee Ballots - General Election 2001

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Civilian	1,403	1,297	12	1	0	0	0	1,297
Armed Forces	5	3	0	0	0	0	0	3
<b>NOBLE</b>								
Civilian	425	420	0	0	0	0	0	420
Armed Forces	7	5	1	0	0	0	0	5
<b>OTTAWA</b>								
Civilian	1,111	1,072	11	1	1	0	0	1,073
Armed Forces	0	0	0	0	0	0	0	0
<b>PAULDING</b>								
Civilian	244	234	4	0	0	0	0	234
Armed Forces	4	4	0	1	0	0	0	4
<b>PERRY</b>								
Civilian	286	278	8	10	8	1	1	287
Armed Forces	3	0	0	4	4	0	0	4
<b>PICKAWAY</b>								
Civilian	471	437	2	0	0	0	0	437
Armed Forces	0	0	0	1	0	0	0	0
<b>PIKE</b>								
Civilian	1,287	1,149	15	0	0	0	0	1,149
Armed Forces	0	0	0	2	0	0	0	0
<b>PORTAGE</b>								
Civilian	1,575	1,457	10	4	2	0	0	1,459
Armed Forces	2	1	0	1	0	0	0	1
<b>PREBLE</b>								
Civilian	634	580	4	3	2	0	0	582
Armed Forces	2	2	0	0	0	0	0	2
<b>PUTNAM</b>								
Civilian	365	331	4	0	0	0	0	331
Armed Forces	0	0	0	0	0	0	0	0
<b>RICHLAND</b>								
Civilian	1,812	1,776	1	4	0	0	0	1,776
Armed Forces	10	8	1	0	0	0	0	8
<b>ROSS</b>								
Civilian	1,281	1,122	0	1	1	0	0	1,123



## Absentee Ballots - General Election 2001

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<b>WARREN</b>								
Civilian	1,352	1,292	13	2	1	1	0	1,294
Armed Forces	1	1	0	0	0	0	0	1
<b>WASHINGTON</b>								
Civilian	818	745	18	0	0	0	0	745
Armed Forces	8	4	0	2	0	2	0	6
<b>WAYNE</b>								
Civilian	1,202	1,140	6	1	1	0	0	1,141
Armed Forces	1	1	0	0	0	0	0	1
<b>WILLIAMS</b>								
Civilian	550	525	7	0	0	0	0	525
Armed Forces	5	5	0	2	0	0	0	5
<b>WOOD</b>								
Civilian	1,559	1,478	8	2	1	0	0	1,479
Armed Forces	3	3	0	0	0	0	0	3
<b>WYANDOT</b>								
Civilian	276	253	0	0	0	0	0	253
Armed Forces	5	4	1	0	0	0	0	4
<b>Total Civilian</b>	180,488	140,758	1,758	126	82	8	4	140,848
<b>Total Armed Forces</b>	290	179	15	90	37	19	4	235
<b>Grand Total</b>	180,778	140,937	1,773	216	119	27	8	141,083



## Absentee Ballots - General Election 2002

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	2,539	2,480	8	1	1	0	0	2,481
Armed Forces	20	18	0	3	0	0	0	18
<b>CLINTON</b>								
Civilian	645	611	5	3	2	0	0	613
Armed Forces	8	4	0	0	0	0	0	4
<b>COLUMBIANA</b>								
Civilian	1,732	1,667	10	4	3	0	0	1,670
Armed Forces	28	22	1	5	1	0	0	23
<b>COSHOCTON</b>								
Civilian	928	866	3	0	0	0	0	866
Armed Forces	5	3	0	4	2	2	0	7
<b>CRAWFORD</b>								
Civilian	888	840	4	0	0	0	0	840
Armed Forces	4	4	0	3	1	0	0	5
<b>CUYAHOGA</b>								
Civilian	36,637	34,485	443	76	52	18	1	34,555
Armed Forces	94	55	3	36	17	9	1	81
<b>DARKE</b>								
Civilian	790	772	12	2	2	0	0	774
Armed Forces	6	5	0	3	3	0	0	8
<b>DEFIANCE</b>								
Civilian	637	623	3	0	0	0	0	623
Armed Forces	9	7	0	0	0	0	0	7
<b>DELAWARE</b>								
Civilian	2,182	2,028	33	6	6	0	0	2,034
Armed Forces	13	10	0	2	2	1	0	13
<b>ERIE</b>								
Civilian	2,166	2,031	4	1	0	0	0	2,031
Armed Forces	20	15	0	5	0	1	0	16
<b>FAIRFIELD</b>								
Civilian	2,657	2,284	5	31	4	0	0	2,288
Armed Forces	18	17	0	8	1	1	0	19
<b>FAYETTE</b>								
Civilian	388	378	3	1	1	0	0	379
Armed Forces	1	0	1	0	0	0	0	0
<b>FRANKLIN</b>								
Civilian	24,876	17,728	301	78	49	4	0	17,781

## Absentee Ballots - General Election 2002

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Armed Forces	0	0	0	35	27	3	0	30
<b>FULTON</b>								
Civilian	566	524	10	3	3	0	0	527
Armed Forces	6	4	0	3	2	0	0	6
<b>GALLIA</b>								
Civilian	813	735	6	0	0	0	0	735
Armed Forces	7	4	0	0	0	0	0	4
<b>GEAUGA</b>								
Civilian	2,367	2,212	36	2	1	1	0	2,214
Armed Forces	9	9	0	3	3	0	0	12
<b>GREENE</b>								
Civilian	2,518	2,457	8	21	15	3	0	2,475
Armed Forces	27	20	0	10	4	2	0	26
<b>GUERNSEY</b>								
Civilian	853	787	12	0	0	0	0	787
Armed Forces	13	6	0	0	0	0	0	6
<b>HAMILTON</b>								
Civilian	20,531	19,386	1,190	51	37	0	2	19,423
Armed Forces	67	39	5	22	12	0	0	51
<b>HANCOCK</b>								
Civilian	1,397	1,355	7	4	4	0	0	1,359
Armed Forces	8	5	0	6	3	2	0	10
<b>HARDIN</b>								
Civilian	546	533	1	0	0	0	0	533
Armed Forces	5	3	0	0	0	0	0	3
<b>HARRISON</b>								
Civilian	467	454	6	1	1	0	0	455
Armed Forces	8	5	0	0	0	0	0	5
<b>HENRY</b>								
Civilian	490	466	0	1	1	0	0	467
Armed Forces	10	8	0	1	8	0	0	16
<b>HIGHLAND</b>								
Civilian	865	811	13	0	0	0	0	811
Armed Forces	6	4	0	0	0	0	0	4
<b>HOCKING</b>								
Civilian	620	609	0	0	0	0	0	609

## Absentee Ballots - General Election 2002

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	3	2	0	0	0	0	0	2
<b>HOLMES</b>								
Civilian	385	356	6	0	0	0	0	356
Armed Forces	0	0	0	2	0	0	1	0
<b>HURON</b>								
Civilian	1,192	1,146	4	1	0	1	0	1,147
Armed Forces	5	4	0	1	1	0	0	5
<b>JACKSON</b>								
Civilian	989	861	13	0	0	0	0	861
Armed Forces	5	4	1	0	0	0	0	4
<b>JEFFERSON</b>								
Civilian	1,841	1,769	11	1	0	0	0	1,769
Armed Forces	18	12	0	6	3	0	0	15
<b>KNOX</b>								
Civilian	1,219	1,166	5	2	2	0	0	1,168
Armed Forces	6	4	0	3	3	0	0	7
<b>LAKE</b>								
Civilian	5,093	4,813	42	11	11	0	0	4,824
Armed Forces	18	18	0	8	7	1	0	26
<b>LAWRENCE</b>								
Civilian	2,147	1,775	77	0	0	0	0	1,775
Armed Forces	7	4	2	3	2	0	0	6
<b>LICKING</b>								
Civilian	2,855	2,692	21	4	3	1	0	2,696
Armed Forces	22	11	0	5	2	0	0	13
<b>LOGAN</b>								
Civilian	684	652	5	0	0	0	0	652
Armed Forces	5	3	1	0	0	0	0	3
<b>LORAIN</b>								
Civilian	3,585	3,419	20	3	2	1	0	3,422
Armed Forces	26	14	0	0	0	0	0	14
<b>LUCAS</b>								
Civilian	15,651	14,740	667	13	9	1	0	14,750
Armed Forces	52	25	3	9	2	1	0	28



## Absentee Ballots - General Election 2002

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	2,014	1,879	12	5	2	1	0	1,882
Armed Forces	15	12	0	4	2	0	0	14
<b>NOBLE</b>								
Civilian	435	425	1	1	1	0	0	426
Armed Forces	5	0	0	0	0	0	0	0
<b>OTTAWA</b>								
Civilian	1,402	1,320	13	0	0	0	0	1,320
Armed Forces	5	5	0	5	4	0	0	9
<b>PAULDING</b>								
Civilian	385	369	4	0	0	0	0	369
Armed Forces	6	6	2	2	2	0	0	8
<b>PERRY</b>								
Civilian	475	463	1	3	3	0	0	466
Armed Forces	0	0	0	0	0	0	0	0
<b>PICKAWAY</b>								
Civilian	677	623	0	0	0	0	0	623
Armed Forces	6	2	0	0	0	0	0	2
<b>PIKE</b>								
Civilian	1,111	978	12	0	0	0	0	978
Armed Forces	3	2	0	0	0	0	0	2
<b>PORTAGE</b>								
Civilian	2,093	1,988	13	10	9	0	0	1,997
Armed Forces	12	9	0	5	1	1	0	11
<b>PREBLE</b>								
Civilian	602	571	3	2	2	0	0	573
Armed Forces	4	3	0	5	4	0	1	7
<b>PUTNAM</b>								
Civilian								
Armed Forces								
<b>RICHLAND</b>								
Civilian	3,159	3,083	18	0	0	0	0	3,083
Armed Forces	31	31	0	9	0	9	0	40
<b>ROSS</b>								
Civilian	1,523	1,448	20	2	1	0	0	1,449

## Absentee Ballots - General Election 2002

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	14	10	0	4	2	0	0	12
<b>SANDUSKY</b>								
Civilian	1,076	999	18	3	2	1	0	1,002
Armed Forces	2	1	0	0	0	0	0	1
<b>SCIOTO</b>								
Civilian	2,336	2,148	40	0	0	0	0	2,148
Armed Forces	24	22	2	1	0	0	1	22
<b>SENECA</b>								
Civilian	1,187	1,141	6	2	1	0	0	1,142
Armed Forces	12	4	0	1	1	0	0	5
<b>SHELBY</b>								
Civilian	1,055	986	16	0	0	0	0	986
Armed Forces	4	4	0	0	0	0	0	4
<b>STARK</b>								
Civilian	7,512	7,412	52	23	8	4	0	7,424
Armed Forces	34	19	2	10	4	1	0	24
<b>SUMMIT</b>								
Civilian	9,495	9,014	111	38	17	12	0	9,043
Armed Forces	48	25	5	22	6	6	0	37
<b>TRUMBULL</b>								
Civilian	4,472	4,235	30	11	6	2	3	4,243
Armed Forces	36	18	2	7	2	0	5	20
<b>TUSCARAWAS</b>								
Civilian	1,739	1,683	4	2	1	1	0	1,685
Armed Forces	16	12	0	2	1	1	0	14
<b>UNION</b>								
Civilian	583	476	3	3	0	1	0	477
Armed Forces	6	4	0	4	0	0	0	4
<b>VAN WERT</b>								
Civilian	694	671	6	1	1	0	0	672
Armed Forces	3	3	0	0	0	0	0	3
<b>VINTON</b>								
Civilian	508	474	4	0	0	0	0	474
Armed Forces	0	0	0	1	0	0	0	0

## Absentee Ballots - General Election 2002

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
<b>WARREN</b>								
Civilian	2,904	2,752	25	10	7	1	1	2,760
Armed Forces	21	16	0	3	2	0	0	18
<b>WASHINGTON</b>								
Civilian	989	947	11	0	0	0	0	947
Armed Forces	11	4	0	0	0	0	0	4
<b>WAYNE</b>								
Civilian	1,935	1,846	7	6	6	0	0	1,852
Armed Forces	13	13	0	12	6	0	1	19
<b>WILLIAMS</b>								
Civilian	583	539	7	2	2	0	0	541
Armed Forces	2	2	0	0	0	0	0	2
<b>WOOD</b>								
Civilian	3,339	3,124	30	8	8	0	0	3,132
Armed Forces	17	12	2	5	3	0	0	15
<b>WYANDOT</b>								
Civilian	305	290	2	1	1	0	0	291
Armed Forces	6	6	0	0	0	0	0	6
<b>Total Civilian</b>	247,929	228,121	3,828	532	325	64	11	228,510
<b>Total Armed Forces</b>	1,174	771	40	353	186	45	16	1,002
<b>Grand Total</b>	249,103	228,892	3,868	885	511	109	27	229,512



## Absentee Ballots - General Election 2003

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	1,981	1,850	12	0	0	0	0	1,850
Armed Forces	9	5	0	0	0	0	0	5
<b>CLINTON</b>								
Civilian	455	430	1	2	2	0	0	432
Armed Forces	1	1	0	0	0	0	0	1
<b>COLUMBIANA</b>								
Civilian	1,163	1,128	14	1	1	0	0	1,129
Armed Forces	7	7	4	2	0	0	0	7
<b>COSHOCTON</b>								
Civilian	917	860	6	1	1	0	0	861
Armed Forces	3	3	0	3	1	0	0	4
<b>CRAWFORD</b>								
Civilian	716	558	4	0	0	0	0	558
Armed Forces	1	1	0	0	0	0	0	1
<b>CUYAHOGA</b>								
Civilian	27,982	25,087	341	32	19	0	0	25,106
Armed Forces	30	13	0	17	6	9	0	28
<b>DARKE</b>								
Civilian	570	552	4	0	0	0	0	552
Armed Forces	3	3	0	0	0	0	0	3
<b>DEFIANCE</b>								
Civilian	616	561	10	1	0	1	0	562
Armed Forces	4	3	0	0	0	0	0	3
<b>DELAWARE</b>								
Civilian	1,353	1,259	20	3	2	1	0	1,262
Armed Forces	4	4	0	0	0	0	0	4
<b>ERIE</b>								
Civilian	1,648	1,530	20	0	0	0	0	1,530
Armed Forces	5	4	0	0	0	0	0	4
<b>FAIRFIELD</b>								
Civilian	2,030	1,779	22	0	0	0	0	1,779
Armed Forces	6	3	2	2	2	0	0	5
<b>FAYETTE</b>								
Civilian	303	279	0	0	0	0	0	279
Armed Forces	2	1	0	1	1	0	0	2
<b>FRANKLIN</b>								
Civilian	11,388	10,105	151	64	61	3	0	10,169

## Absentee Ballots - General Election 2003

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Armed Forces	0	0	0	37	31	6	0	37
<b>FULTON</b>								
Civilian	499	472	1	0	0	0	0	472
Armed Forces	1	1	0	3	1	0	0	2
<b>GALLIA</b>								
Civilian	788	699	11	0	0	0	0	699
Armed Forces	3	0	0	0	0	0	0	0
<b>GEAUGA</b>								
Civilian	1,468	1,354	15	1	0	1	0	1,355
Armed Forces	4	4	0	3	0	3	0	7
<b>GREENE</b>								
Civilian	1,975	1,951	6	13	0	1	1	1,952
Armed Forces	5	0	0	16	0	3	2	3
<b>GUERNSEY</b>								
Civilian	861	802	10	0	0	0	0	802
Armed Forces	9	5	0	0	0	0	0	5
<b>HAMILTON</b>								
Civilian	14,268	13,154	32	78	54	0	1	13,208
Armed Forces	28	23	0	38	35	3	0	61
<b>HANCOCK</b>								
Civilian	1,196	1,137	0	3	2	0	0	1,139
Armed Forces	4	2	0	7	2	0	0	4
<b>HARDIN</b>								
Civilian	408	399	0	0	0	0	0	399
Armed Forces	0	0	0	0	0	0	0	0
<b>HARRISON</b>								
Civilian	499	483	10	0	0	0	0	483
Armed Forces	1	1	0	1	1	0	0	2
<b>HENRY</b>								
Civilian	469	441	15	0	0	0	0	441
Armed Forces	9	8	0	1	1	0	0	9
<b>HIGHLAND</b>								
Civilian	672	616	1	0	0	0	0	616
Armed Forces	0	1	0	3	1	0	0	2
<b>HOCKING</b>								
Civilian	845	801	0	0	0	0	0	801

## Absentee Ballots - General Election 2003

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Armed Forces	8	7	0	4	2	2	0	11
<b>HOLMES</b>								
Civilian	244	220	1	0	0	0	0	220
Armed Forces	0	0	0	0	0	0	0	0
<b>HURON</b>								
Civilian	1,017	1,005	12	0	0	0	0	1,005
Armed Forces	3	2	0	1	0	1	0	3
<b>JACKSON</b>								
Civilian	1,862	1,578	21	0	0	0	0	1,578
Armed Forces	4	2	1	2	1	0	0	3
<b>JEFFERSON</b>								
Civilian	1,634	1,551	18	0	0	0	0	1,551
Armed Forces	10	5	2	1	0	0	0	5
<b>KNOX</b>								
Civilian	780	741	1	0	0	0	0	741
Armed Forces	1	1	1	0	0	0	0	1
<b>LAKE</b>								
Civilian	4,376	4,055	32	2	2	0	0	4,057
Armed Forces	5	3	2	1	1	0	0	4
<b>LAWRENCE</b>								
Civilian	2,605	2,071	34	0	0	0	0	2,071
Armed Forces	2	2	0	0	0	0	0	2
<b>LICKING</b>								
Civilian	2,225	2,108	18	5	3	0	0	2,111
Armed Forces	11	5	2	6	4	0	1	9
<b>LOGAN</b>								
Civilian	616	595	3	0	0	0	0	595
Armed Forces	6	2	4	0	0	0	0	2
<b>LORAIN</b>								
Civilian	6,332	5,926	44	5	1	0	0	5,927
Armed Forces	23	7	3	9	4	4	5	15
<b>LUCAS</b>								
Civilian	10,002	9,087	981	9	7	0	0	9,094
Armed Forces	9	7	0	2	0	0	0	7



## Absentee Ballots - General Election 2003

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Civilian	1,409	1,352	12	2	0	0	0	1,352
Armed Forces	5	3	0	2	0	2	0	5
<b>NOBLE</b>								
Civilian	520	518	2	1	1	0	0	519
Armed Forces	10	9	1	0	0	0	0	9
<b>OTTAWA</b>								
Civilian	1,074	922	8	2	0	1	0	923
Armed Forces	1	1	0	2	1	1	0	3
<b>PAULDING</b>								
Civilian	386	377	0	0	0	0	0	377
Armed Forces	0	0	0	0	0	0	0	0
<b>PERRY</b>								
Civilian	285	282	2	0	0	0	0	282
Armed Forces	2	2	0	0	0	0	0	2
<b>PICKAWAY</b>								
Civilian	580	472	2	1	1	0	0	473
Armed Forces	0	0	0	0	0	0	0	0
<b>PIKE</b>								
Civilian	1,165	950	25	0	0	0	0	950
Armed Forces	0	0	0	0	0	0	0	0
<b>PORTAGE</b>								
Civilian	1,489	1,386	5	3	1	0	0	1,387
Armed Forces	9	4	0	0	0	0	0	4
<b>PREBLE</b>								
Civilian	386	358	6	2	1	1	0	360
Armed Forces	1	1	0	1	0	1	0	2
<b>PUTNAM</b>								
Civilian	431	414	7	1	0	0	0	414
Armed Forces	5	4	0	1	0	1	0	5
<b>RICHLAND</b>								
Civilian	2,388	2,319	20	4	2	0	0	2,321
Armed Forces	17	13	1	1	0	0	0	13
<b>ROSS</b>								
Civilian	1,628	1,522	29	4	1	0	0	1,523

## Absentee Ballots - General Election 2003

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Armed Forces	11	11	0	0	0	0	0	11
<b>SANDUSKY</b>								
Civilian	657	612	7	1	0	0	0	612
Armed Forces	0	0	0	0	0	0	0	0
<b>SCIOTO</b>								
Civilian	1,660	1,525	12	3	3	0	0	1,528
Armed Forces	4	3	0	11	11	0	0	14
<b>SENECA</b>								
Civilian	685	664	2	0	0	0	0	664
Armed Forces	2	2	0	0	0	0	0	2
<b>SHELBY</b>								
Civilian	544	509	10	0	0	0	0	509
Armed Forces	1	0	0	0	0	0	0	0
<b>STARK</b>								
Civilian	5,312	5,028	40	13	9	4	1	5,041
Armed Forces	14	13	1	2	2	0	0	15
<b>SUMMIT</b>								
Civilian	7,671	7,073	104	10	2	6	0	7,081
Armed Forces	11	7	1	5	0	4	0	11
<b>TRUMBULL</b>								
Civilian	2,924	2,766	27	7	3	1	0	2,770
Armed Forces	17	13	0	8	2	1	0	16
<b>TUSCARAWAS</b>								
Civilian	774	692	3	2	2	0	0	694
Armed Forces	5	5	0	5	5	0	0	10
<b>UNION</b>								
Civilian	455	392	5	1	0	0	0	392
Armed Forces	3	1	0	2	2	0	0	3
<b>VAN WERT</b>								
Civilian	903	871	9	1	0	1	0	872
Armed Forces	6	5	0	1	0	0	0	5
<b>VINTON</b>								
Civilian	398	387	7	0	0	0	0	387
Armed Forces	2	1	0	0	0	0	0	1

## Absentee Ballots - General Election 2003

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<b>WARREN</b>								
Civilian	1,513	1,367	4	1	1	0	0	1,368
Armed Forces	5	2	0	4	1	1	0	4
<b>WASHINGTON</b>								
Civilian	836	781	3	1	1	0	0	782
Armed Forces	9	6	0	0	0	0	0	6
<b>WAYNE</b>								
Civilian	1,585	1,560	25	5	4	1	0	1,565
Armed Forces	26	26	0	3	3	0	0	29
<b>WILLIAMS</b>								
Civilian	358	333	9	0	0	0	0	333
Armed Forces	1	0	0	2	1	0	0	1
<b>WOOD</b>								
Civilian	1,965	1,842	38	10	7	0	1	1,849
Armed Forces	5	4	0	2	1	0	0	5
<b>WYANDOT</b>								
Civilian	279	260	1	0	0	0	0	260
Armed Forces	3	2	0	3	2	1	1	5
<b>Total Civilian</b>	199,145	166,275	2,648	359	241	28	10	166,544
<b>Total Armed Forces</b>	479	334	27	243	141	46	9	521
<b>Grand Total</b>	199,624	166,609	2,675	602	382	74	19	167,065



## Absentee Ballots - General Election 2004

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	8,572	8,194	77	33	31	1	1	8,226
Armed Forces	192	135	0	99	77	1	1	213
<b>CLINTON</b>								
Civilian	1,626	1,573	12	16	16	0	0	1,589
Armed Forces	86	66	2	31	21	2	0	89
<b>COLUMBIANA</b>								
Civilian	4,708	4,337	49	30	21	7	0	4,365
Armed Forces	147	106	5	72	48	12	2	166
<b>COSHOCTON</b>								
Civilian	2,275	2,190	7	4	4	0	0	2,194
Armed Forces	68	50	0	4	0	4	0	54
<b>CRAWFORD</b>								
Civilian	2,284	2,176	18	14	12	1	0	2,189
Armed Forces	52	37	0	35	23	4	0	64
<b>CUYAHOGA</b>								
Civilian	89,469	82,316	668	2,065	1,358	326	29	84,000
Armed Forces	1,097	808	42	597	325	79	0	1,212
<b>DARKE</b>								
Civilian	2,340	2,249	29	14	13	0	1	2,262
Armed Forces	73	56	3	41	31	0	0	87
<b>DEFIANCE</b>								
Civilian	1,805	1,676	25	13	8	4	0	1,688
Armed Forces	63	42	2	29	22	3	0	67
<b>DELAWARE</b>								
Civilian	8,162	7,731	96	107	94	4	2	7,829
Armed Forces	83	61	0	60	54	3	1	118
<b>ERIE</b>								
Civilian	5,240	4,927	13	33	28	2	0	4,957
Armed Forces	111	84	2	49	33	3	0	120
<b>FAIRFIELD</b>								
Civilian	6,696	6,492	83	63	58	0	5	6,550
Armed Forces	140	111	9	74	61	0	1	172
<b>FAYETTE</b>								
Civilian	1,089	1,034	7	1	1	0	0	1,035
Armed Forces	32	26	1	22	14	2	0	42
<b>FRANKLIN</b>								
Civilian	50,573	45,481	612	1,084	783	68	6	46,332

## Absentee Ballots - General Election 2004

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	702	377	0	499	377	27	5	781
<b>FULTON</b>								
Civilian	1,976	1,841	18	18	13	3	1	1,857
Armed Forces	62	48	2	18	13	2	0	63
<b>GALLIA</b>								
Civilian	1,322	1,189	29	2	1	1	0	1,191
Armed Forces	41	30	6	12	9	0	0	39
<b>GEAUGA</b>								
Civilian	6,579	6,161	93	107	91	13	0	6,265
Armed Forces	76	61	5	27	16	3	5	80
<b>GREENE</b>								
Civilian	8,733	8,225	146	190	164	4	5	8,393
Armed Forces	316	252	29	142	110	6	2	368
<b>GUERNSEY</b>								
Civilian	2,209	2,073	9	0	0	0	0	2,073
Armed Forces	59	45	3	20	13	0	0	58
<b>HAMILTON</b>								
Civilian	46,858	44,026	401	770	552	115	7	44,693
Armed Forces	572	430	15	330	208	31	3	669
<b>HANCOCK</b>								
Civilian	4,096	3,959	33	25	23	0	0	3,982
Armed Forces	115	92	1	35	24	3	2	119
<b>HARDIN</b>								
Civilian	1,305	1,258	18	6	5	1	0	1,264
Armed Forces	24	21	3	8	5	1	2	27
<b>HARRISON</b>								
Civilian	951	915	4	2	0	2	0	917
Armed Forces	58	54	2	0	0	0	0	54
<b>HENRY</b>								
Civilian	1,418	1,371	17	16	16	0	0	1,387
Armed Forces	34	31	2	13	9	3	0	43
<b>HIGHLAND</b>								
Civilian	2,173	2,049	19	4	3	0	1	2,052
Armed Forces	58	43	0	32	18	6	0	67
<b>HOCKING</b>								
Civilian	1,577	1,548	8	0	0	0	0	1,548

## Absentee Ballots - General Election 2004

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	30	30	0	13	11	0	0	41
<b>HOLMES</b>								
Civilian	1,188	1,134	14	20	16	4	0	1,154
Armed Forces	23	21	1	13	7	2	0	30
<b>HURON</b>								
Civilian	2,858	2,735	30	15	12	0	1	2,747
Armed Forces	73	59	2	35	25	5	0	89
<b>JACKSON</b>								
Civilian	1,920	1,772	25	5	4	1	0	1,777
Armed Forces	25	16	0	11	6	0	0	22
<b>JEFFERSON</b>								
Civilian	4,692	4,489	31	35	29	5	0	4,523
Armed Forces	97	78	5	44	35	3	0	116
<b>KNOX</b>								
Civilian	3,636	3,427	29	56	49	0	1	3,476
Armed Forces	67	51	3	41	26	0	0	77
<b>LAKE</b>								
Civilian	14,318	13,879	146	104	94	2	1	13,975
Armed Forces	235	185	1	95	78	3	1	266
<b>LAWRENCE</b>								
Civilian	4,758	4,338	50	16	14	2	0	4,354
Armed Forces	73	60	1	45	27	5	0	92
<b>LICKING</b>								
Civilian	8,285	7,817	99	88	66	7	0	7,890
Armed Forces	198	158	9	86	54	6	0	218
<b>LOGAN</b>								
Civilian	1,931	1,868	14	22	19	2	0	1,889
Armed Forces	52	34	3	37	27	2	0	63
<b>LORAIN</b>								
Civilian	15,184	14,054	260	242	181	43	8	14,278
Armed Forces	338	242	0	136	88	8	0	338
<b>LUCAS</b>								
Civilian	31,325	29,144	352	195	145	22	6	29,311
Armed Forces	431	299	32	211	130	16	4	445



## Absentee Ballots - General Election 2004

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	4,271	4,100	23	30	23	3	0	4,126
Armed Forces	98	86	2	55	36	11	0	133
<b>NOBLE</b>								
Civilian	958	942	1	1	1	0	0	943
Armed Forces	16	15	0	11	9	0	1	24
<b>OTTAWA</b>								
Civilian	2,992	2,902	9	18	13	1	1	2,916
Armed Forces	62	52	3	14	8	0	0	60
<b>PAULDING</b>								
Civilian	984	936	9	7	6	0	0	942
Armed Forces	38	25	5	15	11	0	1	36
<b>PERRY</b>								
Civilian	1,337	1,286	7	5	3	0	0	1,289
Armed Forces	20	18	0	36	19	9	1	46
<b>PICKAWAY</b>								
Civilian	2,190	2,096	10	16	10	2	0	2,108
Armed Forces	53	40	2	21	17	0	0	57
<b>PIKE</b>								
Civilian	1,974	1,850	12	2	2	0	0	1,852
Armed Forces	14	11	2	12	7	1	1	19
<b>PORTAGE</b>								
Civilian	6,840	6,384	58	140	110	23	7	6,517
Armed Forces	179	130	9	94	58	13	1	201
<b>PREBLE</b>								
Civilian	1,834	1,774	11	18	18	0	0	1,792
Armed Forces	38	29	3	31	25	3	0	57
<b>PUTNAM</b>								
Civilian	1,903	1,803	16	9	5	3	0	1,811
Armed Forces	53	44	1	22	13	4	1	61
<b>RICHLAND</b>								
Civilian	6,785	6,540	65	115	102	2	0	6,644
Armed Forces	200	166	6	86	57	0	0	223
<b>ROSS</b>								
Civilian	3,959	3,830	21	7	6	0	0	3,836

## Absentee Ballots - General Election 2004

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	89	71	0	54	38	1	0	110
<b>SANDUSKY</b>								
Civilian	2,836	2,706	22	30	27	1	0	2,734
Armed Forces	70	51	0	33	22	4	0	77
<b>SCIOTO</b>								
Civilian	5,408	4,903	43	11	10	0	0	4,913
Armed Forces	88	22	0	56	45	1	0	68
<b>SENECA</b>								
Civilian	2,612	2,456	53	19	16	0	0	2,472
Armed Forces	79	59	3	40	16	11	0	86
<b>SHELBY</b>								
Civilian	2,491	2,281	29	9	6	1	0	2,288
Armed Forces	38	31	1	32	17	9	0	57
<b>STARK</b>								
Civilian	19,836	19,000	94	123	53	34	3	19,087
Armed Forces	344	236	14	235	127	17	5	380
<b>SUMMIT</b>								
Civilian	29,982	28,074	301	477	316	92	3	28,482
Armed Forces	563	438	36	325	130	90	5	658
<b>TRUMBULL</b>								
Civilian	12,454	11,944	108	121	108	8	0	12,060
Armed Forces	290	239	9	117	83	2	0	324
<b>TUSCARAWAS</b>								
Civilian	5,234	4,707	42	40	29	2	0	4,738
Armed Forces	87	71	0	48	22	25	1	118
<b>UNION</b>								
Civilian	1,775	1,687	17	15	12	2	0	1,701
Armed Forces	49	42	0	24	19	1	0	62
<b>VAN WERT</b>								
Civilian	1,917	1,845	8	15	9	3	0	1,857
Armed Forces	38	33	1	20	14	1	0	48
<b>VINTON</b>								
Civilian	879	805	2	1	1	0	0	806
Armed Forces	15	9	0	5	0	2	0	11

## Absentee Ballots - General Election 2004

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
<b>WARREN</b>								
Civilian	8,962	8,463	107	122	103	9	0	8,575
Armed Forces	150	115	3	100	77	6	2	198
<b>WASHINGTON</b>								
Civilian	3,065	2,914	25	14	12	0	0	2,926
Armed Forces	119	93	6	40	31	3	0	127
<b>WAYNE</b>								
Civilian	5,006	4,865	69	66	61	2	1	4,928
Armed Forces	78	70	8	68	61	4	0	135
<b>WILLIAMS</b>								
Civilian	1,706	1,619	29	18	17	0	0	1,636
Armed Forces	49	45	0	27	18	1	0	64
<b>WOOD</b>								
Civilian	6,156	5,407	103	103	86	7	0	5,500
Armed Forces	159	101	7	72	45	1	0	147
<b>WYANDOT</b>								
Civilian	983	929	10	6	6	0	0	935
Armed Forces	25	21	0	9	5	4	0	30
<b>Total Civilian</b>	626,756	587,019	5,947	8,429	6,247	994	101	594,260
<b>Total Armed Forces</b>	11,684	8,849	406	6,143	3,956	571	190	13,376
<b>Grand Total</b>	638,440	595,868	6,353	14,572	10,203	1,565	291	607,636



## Absentee Ballots - General Election 2005

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Civilian	2,299	2,188	0	0	0	0	0	2,188
Armed Forces	2	2	0	2	2	0	0	4
<b>CLINTON</b>								
Civilian	452	436	8	0	0	0	0	436
Armed Forces	0	0	0	1	1	0	0	1
<b>COLUMBIANA</b>								
Civilian	1,371	1,317	14	0	0	0	0	1,317
Armed Forces	5	3	0	2	1	0	1	4
<b>COSHOCTON</b>								
Civilian	1,262	1,165	8	3	2	0	0	1,167
Armed Forces	3	0	0	3	2	2	2	4
<b>CRAWFORD</b>								
Civilian	1,089	1,027	5	1	1	0	0	1,028
Armed Forces	0	0	0	0	0	0	0	0
<b>CUYAHOGA</b>								
Civilian	32,618	29,917	20	13	1	3	1	29,921
Armed Forces	20	13	0	27	10	6	1	29
<b>DARKE</b>								
Civilian	800	757	4	0	0	0	0	757
Armed Forces	0	0	0	1	0	0	1	0
<b>DEFIANCE</b>								
Civilian	887	833	10	0	0	0	0	833
Armed Forces	4	3	0	0	0	0	0	3
<b>DELAWARE</b>								
Civilian	2,049	1,878	33	5	3	0	0	1,881
Armed Forces	0	0	0	3	2	0	0	2
<b>ERIE</b>								
Civilian	2,188	2,146	22	3	2	0	1	2,148
Armed Forces	2	2	0	5	5	0	0	7
<b>FAIRFIELD</b>								
Civilian	2,646	2,392	36	0	0	0	0	2,392
Armed Forces	2	1	0	0	2	0	0	3
<b>FAYETTE</b>								
Civilian	478	436	4	1	0	0	0	436
Armed Forces	3	2	0	1	0	0	0	2
<b>FRANKLIN</b>								
Civilian	15,261	14,737	524	10	10	0	0	14,747

## Absentee Ballots - General Election 2005

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	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	915	915	0	34	22	10	2	947
<b>FULTON</b>								
Civilian	592	563	4	1	0	0	0	563
Armed Forces	2	1	0	0	0	0	0	1
<b>GALLIA</b>								
Civilian	1,360	1,139	34	0	0	0	0	1,139
Armed Forces	11	5	1	3	2	0	0	7
<b>GEAUGA</b>								
Civilian	2,521	2,330	69	0	0	0	0	2,330
Armed Forces	74	11	1	20	2	0	0	13
<b>GREENE</b>								
Civilian	2,588	2,489	36	70	2	4	1	2,495
Armed Forces	193	34	3	104	10	3	2	47
<b>GUERNSEY</b>								
Civilian	944	899	0	0	0	0	0	899
Armed Forces	4	4	0	2	1	0	0	5
<b>HAMILTON</b>								
Civilian	16,018	14,615	207	278	23	10	0	14,648
Armed Forces	453	50	3	186	23	4	0	77
<b>HANCOCK</b>								
Civilian	1,432	1,338	17	2	2	0	0	1,340
Armed Forces	10	5	0	0	0	0	0	5
<b>HARDIN</b>								
Civilian	486	459	0	0	0	0	0	459
Armed Forces	2	2	0	0	0	0	0	2
<b>HARRISON</b>								
Civilian	593	546	18	2	0	0	0	546
Armed Forces	1	1	0	1	1	0	0	2
<b>HENRY</b>								
Civilian	477	438	0	0	0	0	0	438
Armed Forces	0	0	0	0	0	0	0	0
<b>HIGHLAND</b>								
Civilian	742	697	17	1	0	0	0	697
Armed Forces	0	0	0	0	0	0	0	0
<b>HOCKING</b>								
Civilian	786	744	0	0	0	0	0	744

## Absentee Ballots - General Election 2005

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Armed Forces	0	0	0	0	0	0	0	0
<b>HOLMES</b>								
Civilian	479	456	5	0	0	0	0	456
Armed Forces	1	1	0	0	0	0	0	1
<b>HURON</b>								
Civilian	1,109	862	7	0	0	0	0	862
Armed Forces	6	2	4	0	0	0	0	2
<b>JACKSON</b>								
Civilian	1,447	1,177	18	1	1	0	0	1,178
Armed Forces	3	0	0	1	0	0	0	0
<b>JEFFERSON</b>								
Civilian	1,936	1,839	36	1	0	1	0	1,840
Armed Forces	4	2	2	0	0	0	0	2
<b>KNOX</b>								
Civilian	1,096	1,036	5	2	1	1	0	1,038
Armed Forces	0	0	0	1	0	0	0	0
<b>LAKE</b>								
Civilian	5,265	4,920	20	2	2	0	0	4,922
Armed Forces	6	3	1	0	0	0	0	3
<b>LAWRENCE</b>								
Civilian	4,050	3,097	22	0	0	0	0	3,097
Armed Forces	5	4	0	2	2	0	0	6
<b>LICKING</b>								
Civilian	2,278	2,102	40	3	2	0	1	2,104
Armed Forces	6	3	0	4	2	0	2	5
<b>LOGAN</b>								
Civilian	658	610	0	0	0	0	0	610
Armed Forces	0	0	0	0	0	0	0	0
<b>LORAIN</b>								
Civilian	6,433	5,884	94	6	6	0	0	5,890
Armed Forces	5	2	0	2	2	0	0	4
<b>LUCAS</b>								
Civilian	16,133	14,548	217	13	6	0	0	14,554
Armed Forces	12	7	0	8	4	0	0	11



## Absentee Ballots - General Election 2005

County Name	In-Country			Overseas				Total absentee ballots cast and counted
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Civilian	1,631	1,569	9	0	0	0	0	1,569
Armed Forces	5	4	0	0	0	0	0	4
<b>NOBLE</b>								
Civilian	583	567	3	0	0	0	0	567
Armed Forces	3	2	0	3	1	1	0	4
<b>OTTAWA</b>								
Civilian	1,271	1,217	10	0	0	0	0	1,217
Armed Forces	2	2	0	1	1	0	0	3
<b>PAULDING</b>								
Civilian	514	497	3	0	0	0	0	497
Armed Forces	1	0	0	1	0	0	0	0
<b>PERRY</b>								
Civilian	545	543	2	0	0	0	0	543
Armed Forces	0	0	0	0	0	0	0	0
<b>PICKAWAY</b>								
Civilian	1,013	946	5	0	0	0	0	946
Armed Forces	1	0	0	0	0	0	0	0
<b>PIKE</b>								
Civilian	1,681	1,468	6	0	0	0	0	1,468
Armed Forces	2	0	0	0	0	0	0	0
<b>PORTAGE</b>								
Civilian	2,358	2,187	28	40	6	1	0	2,194
Armed Forces	138	17	3	63	3	1	1	21
<b>PREBLE</b>								
Civilian	566	540	5	0	0	0	0	540
Armed Forces	0	0	0	1	0	0	0	0
<b>PUTNAM</b>								
Civilian	569	543	6	0	0	0	0	543
Armed Forces	1	1	0	0	0	0	0	1
<b>RICHLAND</b>								
Civilian	2,310	2,170	19	0	0	0	0	2,170
Armed Forces	18	15	0	0	0	0	0	15
<b>ROSS</b>								
Civilian	1,699	1,616	17	2	2	0	0	1,618

## Absentee Ballots - General Election 2005

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
Armed Forces	0	0	0	2	0	0	0	0
<b>SANDUSKY</b>								
Civilian	970	926	4	1	0	0	1	926
Armed Forces	0	0	0	1	0	0	0	0
<b>SCIOTO</b>								
Civilian	1,864	1,740	16	0	0	0	0	1,740
Armed Forces	2	2	0	0	0	0	0	2
<b>SENECA</b>								
Civilian	763	723	10	0	0	0	0	723
Armed Forces	0	0	0	0	0	0	0	0
<b>SHELBY</b>								
Civilian	642	609	12	0	0	0	0	609
Armed Forces	1	1	0	0	0	0	0	1
<b>STARK</b>								
Civilian	6,026	5,801	84	11	2	5	1	5,808
Armed Forces	5	2	1	0	0	0	0	2
<b>SUMMIT</b>								
Civilian	7,699	7,269	0	8	4	4	0	7,277
Armed Forces	5	3	0	2	2	0	0	5
<b>TRUMBULL</b>								
Civilian	4,269	4,049	29	4	2	0	0	4,051
Armed Forces	16	9	0	4	3	0	1	12
<b>TUSCARAWAS</b>								
Civilian	1,710	1,590	0	2	1	0	0	1,591
Armed Forces	1	1	0	1	1	0	0	2
<b>UNION</b>								
Civilian	503	478	0	3	3	0	0	481
Armed Forces	2	1	1	1	1	0	0	2
<b>VAN WERT</b>								
Civilian	797	763	11	1	1	0	0	764
Armed Forces	33	10	2	12	4	0	8	14
<b>VINTON</b>								
Civilian	442	392	1	0	0	0	0	392
Armed Forces	11	0	0	0	0	0	0	0

## Absentee Ballots - General Election 2005

County Name	In-Country			Overseas				Total absentee ballots cast and counted
	Ballots Supplied	Ballots Counted	Ballots returned late - not counted	Ballots Sent	Ballot returned prior to Election day	Ballot returned within 10 days of Election day	Ballots returned late - not counted	
<b>WARREN</b>								
Civilian	3,248	2,994	17	35	2	0	0	2,996
Armed Forces	83	20	1	31	4	1	0	25
<b>WASHINGTON</b>								
Civilian	1,001	945	20	0	0	0	0	945
Armed Forces	5	2	1	0	0	0	0	2
<b>WAYNE</b>								
Civilian	1,810	1,682	12	0	0	0	0	1,682
Armed Forces	1	1	0	0	0	0	0	1
<b>WILLIAMS</b>								
Civilian	489	454	6	0	0	0	0	454
Armed Forces	0	0	0	0	0	0	0	0
<b>WOOD</b>								
Civilian	2,438	2,328	75	3	0	1	0	2,329
Armed Forces	4	2	0	3	1	0	0	3
<b>WYANDOT</b>								
Civilian	406	389	1	0	0	0	0	389
Armed Forces	1	1	0	0	0	0	0	1
<b>Total Civilian</b>	227,666	209,629	2,599	671	131	38	10	209,798
<b>Total Armed Forces</b>	2,631	1,247	29	882	172	45	24	1,464
<b>Grand Total</b>	230,297	210,876	2,628	1,553	303	83	34	211,262

## GENERAL ELECTION 2006

<b>Absentee and Provisional Ballot Report</b>				
<b>County Name</b>	<b>Absentee</b>		<b>Provisional</b>	
	<b>Ballots Cast</b>	<b>Ballots Counted</b>	<b>Ballots Cast</b>	<b>Ballots Counted</b>
ADAMS	1,504	1,393	267	196
ALLEN	4,709	4,368	1,098	1,047
ASHLAND	3,030	2,815	499	440
ASHTABULA	4,993	4,620	862	778
ATHENS	2,765	2,623	1,739	1,543
AUGLAIZE	1,918	1,750	672	635
BELMONT	5,082	4,837	441	287
BROWN	1,949	1,813	358	274
BUTLER	14,786	13,208	5,150	4,145
CARROLL	1,649	1,564	236	170
CHAMPAIGN	1,647	1,527	285	253
CLARK	6,978	6,420	1,218	1,151
CLERMONT	10,393	9,689	2,348	1,550
CLINTON	1,878	1,740	330	303
COLUMBIANA	4,143	3,823	650	574
COSHOCTON	2,707	2,563	118	117
CRAWFORD	2,626	2,447	294	264
CUYAHOGA	106,456	93,602	17,656	11,683
DARKE	2,144	1,975	458	426
DEFIANCE	1,731	1,554	468	391
DELAWARE	14,937	13,639	1,537	1,344
ERIE	5,776	5,507	666	613
FAIRFIELD	9,509	8,539	1,563	1,388
FAYETTE	1,219	1,154	163	141
FRANKLIN	103,119	88,979	19,612	16,973
FULTON	2,086	1,943	381	332
GALLIA	1,553	1,442	211	204
GEAUGA	7,103	6,575	745	707
GREENE	11,068	10,094	2,094	1,878
GUERNSEY	2,336	2,178	299	257
HAMILTON	47,969	42,301	12,569	10,331
HANCOCK	3,853	3,629	580	543
HARDIN	1,288	1,242	213	179
HARRISON	846	799	25	23
HENRY	1,404	1,320	191	171
HIGHLAND	1,888	1,805	470	468
HOCKING	1,759	1,620	373	298
HOLMES	1,162	1,097	85	81
HURON	3,165	2,632	627	523
JACKSON	2,012	1,820	302	228
JEFFERSON	3,679	3,491	348	308
KNOX	4,538	4,334	687	639
LAKE	18,690	17,844	1,847	1,553
LAWRENCE	4,009	3,373	409	302
LICKING	10,399	9,459	1,426	1,224
LOGAN	2,648	2,128	382	261
LORAIN	15,716	15,462	2,712	1,880
LUCAS	22,101	20,448	4,881	3,531
MADISON	2,230	2,074	385	235
MAHONING	16,983	15,907	2,048	1,627
MARION	3,404	3,278	423	396

## Absentee and Provisional Ballot Report

County Name	Absentee		Provisional	
	Ballots Cast	Ballots Counted	Ballots Cast	Ballots Counted
MEDINA	10,851	10,127	1,206	1,083
MEIGS	1,101	1,035	127	115
MERCER	1,635	1,489	542	477
MIAMI	4,791	4,331	897	735
MONROE	1,367	1,289	144	142
MONTGOMERY	23,609	20,377	6,554	5,304
MORGAN	1,328	1,267	142	120
MORROW	1,808	1,696	271	238
MUSKINGUM	4,867	4,557	538	478
NOBLE	1,430	1,408	66	62
OTTAWA	2,693	2,555	323	286
PAULDING	1,107	1,043	144	130
PERRY	1,550	1,473	304	280
PICKAWAY	2,762	2,545	400	320
PIKE	2,499	2,287	151	144
PORTAGE	7,666	6,837	1,343	1,134
PREBLE	1,731	1,606	217	183
PUTNAM	1,421	1,310	184	112
RICHLAND	7,430	7,031	1,243	1,150
ROSS	4,410	4,123	551	512
SANDUSKY	2,545	2,385	615	571
SCIOTO	4,606	4,209	882	729
SENECA	2,184	2,044	371	353
SHELBY	2,132	1,964	368	307
STARK	18,455	17,276	4,069	3,621
SUMMIT	33,165	29,553	5,405	3,820
TRUMBULL	11,353	10,482	2,162	1,604
TUSCARAWAS	4,154	3,924	621	529
UNION	2,577	2,448	439	390
VAN WERT	1,589	1,475	135	121
VINTON	1,119	1,048	86	73
WARREN	9,670	8,794	1,877	1,539
WASHINGTON	3,042	2,805	456	427
WAYNE	5,223	4,646	826	779
WILLIAMS	1,618	1,497	284	249
WOOD	5,919	5,189	1,963	1,487
WYANDOT	912	847	125	112
<b>TOTALS:</b>	<b>707,856</b>	<b>639,416</b>	<b>129,432</b>	<b>104,581</b>

## Absentee and Provisional Ballot Report

County Name	Absentee					Absentee		Provisional	
	Domestic	Overseas	Domestic	Overseas		Ballots Cast	Ballots Counted	Ballots Issued	Ballots Counted
	Cast	Cast	Counted	Counted	Counted				
ADAMS	726	1	714	0	0	727	714	132	76
ALLEN	1921	0	1833	0	0	1,921	1,833	447	398
ASHLAND	1278	0	1279	0	1	1,278	1,280	166	141
ASHTABULA	1858	1	1662	0	0	1,859	1,662	381	346
ATHENS	1328	4	1200	2	2	1,332	1,204	500	461
AUGLAIZE	841	0	833	0	0	841	833	336	310
BELMONT	2507	0	2507	0	0	2,507	2,507	264	168
BROWN	1006	1	966	1	0	1,007	967	146	102
BUTLER	7228	2	6977	1	1	7,230	6,979	1,430	1,262
CARROLL	431	2	429	2	0	433	431	75	51
CHAMPAIGN	679	1	671	1	0	680	672	128	119
CLARK	1898	5	1898	0	5	1,903	1,903	288	204
CLERMONT	4228	1	4228	1	0	4,229	4,229	620	461
CLINTON	1474	3	1385	1	1	1,477	1,387	241	191
COLUMBIANA	1716	1	1640	0	0	1,717	1,640	290	234
COSHOCTON	1454	0	1454	0	0	1,454	1,454	66	65
CRAWFORD	1414	2	1388	2	0	1,416	1,390	137	129
CUYAHOGA	29112	18	29112	14	4	29,130	29,130	4,032	3,140
DARKE	617	1	613	1	0	618	614	146	123
DEFIANCE	860	0	858	0	0	860	858	172	160
DELAWARE	2122	1	2058	1	0	2,123	2,059	266	229
ERIE	2867	4	2853	1	3	2,871	2,857	406	342
FAIRFIELD	3963	2	3806	1	1	3,965	3,808	532	439
FAYETTE	550	0	550	0	0	550	550	71	65
FRANKLIN	25763	49	24614	27	5	25,812	24,646	4,579	3,922
FULTON	935	0	935	0	0	935	935	140	111
GALLIA	755	0	584	0	0	755	584	87	75
GEAUGA	2068	3	2066	3	0	2,071	2,069	271	265
GREENE	2531	9	2492	7	1	2,540	2,500	417	377
GUERNSEY	1128	0	1071	0	0	1,128	1,071	131	109
HAMILTON	31203	49	29893	43	0	31,252	29,936	4,705	3,878
HANCOCK	2123	2	2105	2	0	2,125	2,107	151	108
HARDIN	819	1	809	1	0	820	810	83	71
HARRISON	484	0	484	0	0	484	484	20	14
HENRY	7	1	7	0	1	8	8	91	77
HIGHLAND	903	0	876	0	0	903	876	118	108
HOCKING	1220	0	1183	0	0	1,220	1,183	137	77
HOLMES	667	0	658	0	0	667	658	39	38
HURON	781	1	766	1	0	782	767	109	93
JACKSON	2348	2	2268	2	0	2,350	2,270	293	206
JEFFERSON	2113	0	2107	0	0	2,113	2,107	278	252

KNOX	1368	3	1340	0	0	1,371	1,340	142	139
LAKE	5388	1	5220	1	0	5,389	5,221	778	745
LAWRENCE	3786	1	3498	1	0	3,787	3,499	241	131
LICKING	4360	1	4298	1	0	4,361	4,299	508	442
LOGAN	916	2	884	2	0	918	886	163	142
LORAIN	6922	0	5977	5	2	6,922	5,984	995	677
LUCAS	9030	13	8206	11	0	9,043	8,217	1,933	1,538
MADISON	648	0	627	0	0	648	627	144	93
MAHONING	6368	0	6388	0	0	6,368	6,388	605	577
MARION	1529	1	1529	1	0	1,530	1,530	189	168
MEDINA	3469	55	3242	11	6	3,524	3,259	252	212
MEIGS	471	0	464	0	0	471	464	32	15
MERCER	645	0	645	0	0	645	645	152	112
MIAMI	1418	2	1418	2	0	1,420	1,420	336	268
MONROE	669	0	361	0	0	669	361	118	8
MONTGOMERY	6698	8	6698	8	0	6,706	6,706	1,700	1,410
MORGAN	657	0	657	0	0	657	657	31	27
MORROW	835	0	837	0	0	835	837	117	103
MUSKINGUM	2460	2	2404	2	0	2,462	2,406	203	171
NOBLE	1103	0	1103	0	0	1,103	1,103	39	35
OTTAWA	1540	2	1483	0	1	1,542	1,484	177	155
PAULDING	589	0	587	0	0	589	587	60	52
PERRY	616	0	616	0	0	616	616	100	90
PICKAWAY	949	0	907	0	0	949	907	167	145
PIKE	1291	2	1283	1	1	1,293	1,285	66	55
PORTAGE	2001	4	1973	2	2	2,005	1,977	363	297
PREBLE	574	0	574	0	0	574	574	93	78
PUTNAM	725	0	725	0	0	725	725	100	92
RICHLAND	3578	5	3570	4	0	3,583	3,574	464	392
ROSS	2625	3	2615	2	1	2,628	2,618	199	185
SANDUSKY	1802	1	1801	0	1	1,803	1,802	256	212
SCIOTO	1802	1	1801	0	1	1,803	1,802	256	212
SENECA	1304	0	1304	0	0	1,304	1,304	171	152
SHELBY	703	0	703	0	0	703	703	204	161
STARK	7767	8	7767	6	2	7,775	7,775	1,520	1,309
SUMMIT	8386	13	8094	12	1	8,399	8,107	1,265	1,023
TRUMBULL	3962	4	3899	4	0	3,966	3,903	597	494
TUSCARAWAS	2727	3	2595	3	0	2,730	2,598	499	457
UNION	1053	3	1053	3	0	1,056	1,056	197	166
VAN WERT	1007	1	1007	1	0	1,008	1,008	5	51
VINTON	593	0	579	0	0	593	579	34	24
WARREN	3518	6	3426	2	4	3,524	3,432	380	265
WASHINGTON	1436	0	1419	0	0	1,436	1,419	210	179
WAYNE	1769	2	1679	2	0	1,771	1,681	255	238
WILLIAMS	375	0	675	0	0	375	675	134	128
WOOD	2401	2	2401	1	1	2,403	2,403	385	285

WYANDOT	465	0	465	0	0	465	465	104	92
TOTALS:						262,540	254,880	39,860	32,999



## Absentee Ballots Statistics for November 4, 2008 General Election

County Name	Absentee Ballots - In-Country							Absentee Ballots - Overseas							Total absentee ballots (civilian & armed service) cast	Total absentee ballots (civilian & armed service) counted
	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls and <u>counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls <u>and counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov. 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>		
Civilian	3,497	3,475	3,384	3,322	6	8	48	5	5	5	5	0	0	0	3,436	3,380
Armed Forces	39	39	39	36	3	0	0	13	13	8	8	0	0	0		
<b>Total</b>	<b>3,536</b>	<b>3,514</b>	<b>3,423</b>	<b>3,358</b>	<b>9</b>	<b>8</b>	<b>48</b>	<b>18</b>	<b>18</b>	<b>13</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>CHAMPAIGN</b>																
Civilian	5,043	5,043	4,988	4,898	0	14	76	16	16	16	12	0	0	4	5,045	4,947
Armed Forces	29	29	22	20	0	0	2	21	21	19	16	1	0	2		
<b>Total</b>	<b>5,072</b>	<b>5,072</b>	<b>5,010</b>	<b>4,918</b>	<b>0</b>	<b>14</b>	<b>78</b>	<b>37</b>	<b>37</b>	<b>35</b>	<b>28</b>	<b>1</b>	<b>0</b>	<b>6</b>		
<b>CLARK</b>																
Civilian	17,732	17,706	17,278	17,065	22	12	179	79	79	68	63	3	1	1	17,521	17,322
Armed Forces	140	140	109	102	3	2	2	104	104	66	57	7	0	2		
<b>Total</b>	<b>17,872</b>	<b>17,846</b>	<b>17,387</b>	<b>17,167</b>	<b>25</b>	<b>14</b>	<b>181</b>	<b>183</b>	<b>183</b>	<b>134</b>	<b>120</b>	<b>10</b>	<b>1</b>	<b>3</b>		
<b>CLERMONT</b>																
Civilian	27,399	27,399	26,256	25,913	163	94	86	73	73	56	38	14	4	0	26,460	26,271
Armed Forces	159	159	101	95	3	3	0	93	93	47	35	10	2	0		
<b>Total</b>	<b>27,558</b>	<b>27,558</b>	<b>26,357</b>	<b>26,008</b>	<b>166</b>	<b>97</b>	<b>86</b>	<b>166</b>	<b>166</b>	<b>103</b>	<b>73</b>	<b>24</b>	<b>6</b>	<b>0</b>		
<b>CLINTON</b>																
Civilian	5,349	5,349	5,229	5,106	0	11	112	25	25	24	11	7	3	3	5,305	5,170
Armed Forces	53	53	41	37	0	2	2	19	19	11	7	2	1	1		
<b>Total</b>	<b>5,402</b>	<b>5,402</b>	<b>5,270</b>	<b>5,143</b>	<b>0</b>	<b>13</b>	<b>114</b>	<b>44</b>	<b>44</b>	<b>35</b>	<b>18</b>	<b>9</b>	<b>4</b>	<b>4</b>		
<b>COLUMBIANA</b>																
Civilian	7,617	7,612	7,270	7,237	0	12	21	30	30	23	23	0	0	0	7,435	7,375
Armed Forces	101	100	69	67	0	0	2	73	73	73	48	0	4	21		
<b>Total</b>	<b>7,718</b>	<b>7,712</b>	<b>7,339</b>	<b>7,304</b>	<b>0</b>	<b>12</b>	<b>23</b>	<b>103</b>	<b>103</b>	<b>96</b>	<b>71</b>	<b>0</b>	<b>4</b>	<b>21</b>		
<b>COSHOCTON</b>																
Civilian	5,557	5,557	5,373	5,325	17	9	22	5	5	5	4	1	0	0	5,448	5,417
Armed Forces	40	40	29	25	4	0	0	49	49	41	41	0	0	0		
<b>Total</b>	<b>5,597</b>	<b>5,597</b>	<b>5,402</b>	<b>5,350</b>	<b>21</b>	<b>9</b>	<b>22</b>	<b>54</b>	<b>54</b>	<b>46</b>	<b>45</b>	<b>1</b>	<b>0</b>	<b>0</b>		
<b>CRAWFORD</b>																
Civilian	5,731	5,549	5,394	5,348	13	7	26	15	15	13	9	4	0	0	5,471	5,435
Armed Forces	60	60	39	36	3	0	0	28	28	25	17	5	0	3		
<b>Total</b>	<b>5,791</b>	<b>5,609</b>	<b>5,433</b>	<b>5,384</b>	<b>16</b>	<b>7</b>	<b>26</b>	<b>43</b>	<b>43</b>	<b>38</b>	<b>26</b>	<b>9</b>	<b>0</b>	<b>3</b>		
<b>CUYAHOGA</b>																
Civilian	292,911	288,219	270,639	261,374	2,211	1,539	5,515	2,088	1,899	1,573	889	536	56	92	273,123	265,887
Armed Forces	903	895	582	478	76	20	8	494	487	329	229	94	1	5		
<b>Total</b>	<b>293,814</b>	<b>289,114</b>	<b>271,221</b>	<b>261,852</b>	<b>2,287</b>	<b>1,559</b>	<b>5,523</b>	<b>2,582</b>	<b>2,386</b>	<b>1,902</b>	<b>1,118</b>	<b>630</b>	<b>57</b>	<b>97</b>		
<b>DARKE</b>																
Civilian	5,491	5,430	5,321	5,251	29	13	28	22	20	17	16	1	0	0		

## Absentee Ballots Statistics for November 4, 2008 General Election

County Name	Absentee Ballots - In-Country							Absentee Ballots - Overseas							Total absentee ballots (civilian & armed service) cast	Total absentee ballots (civilian & armed service) counted
	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls and <u>counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls <u>and counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov. 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>		
Armed Forces	45	45	34	30	2	1	1	24	22	16	13	0	1	2	5,388	5,342
<b>Total</b>	5,536	5,475	5,355	5,281	31	14	29	46	42	33	29	1	1	2		
<b>DEFIANCE</b>																
Civilian	4,724	4,721	4,585	4,507	5	10	63	4	4	4	3	1	0	0	4,720	4,600
Armed Forces	94	94	94	45	2	46	1	67	67	37	35	2	0	0		
<b>Total</b>	4,818	4,815	4,679	4,552	7	56	64	71	71	41	38	3	0	0		
<b>DELAWARE</b>																
Civilian	34,343	34,343	32,481	32,162	315	4	0	159	159	101	90	7	1	3	32,680	32,669
Armed Forces	85	85	63	54	8	0	1	51	51	35	24	9	0	2		
<b>Total</b>	34,428	34,428	32,544	32,216	323	4	1	210	210	136	114	16	1	5		
<b>ERIE</b>																
Civilian	13,180	13,061	12,836	12,746	59	0	31	49	48	42	34	7	1	0	12,989	12,956
Armed Forces	99	99	76	75	1	0	0	53	53	35	31	3	1	0		
<b>Total</b>	13,279	13,160	12,912	12,821	60	0	31	102	101	77	65	10	2	0		
<b>FAIRFIELD</b>																
Civilian		26,477	25,595	25,052	74	0	469		87	67	54	6	1	6	25,838	25,349
Armed Forces		164	120	106	3	0	11		97	56	44	10	0	2		
<b>Total</b>		26,641	25,715	25,158	77	0	480		184	123	98	16	1	8		
<b>FAYETTE</b>																
Civilian	2,726	2,726	2,666	2,653	5	0	8	9	9	7	6	0	0	1	2,695	2,685
Armed Forces	18	18	15	11	3	0	1	9	9	7	7	0	0			
<b>Total</b>	2,744	2,744	2,681	2,664	8	0	9	18	18	14	13	0	0	1		
<b>FRANKLIN</b>																
Civilian	273,807	267,284	251,722	239,987	8,274	733	3,461	1,378	1,225	1,171	840	285	15	31	253,686	250,124
Armed Forces	803	648	482	377	62	23	43	514	463	311	216	83	2	10		
<b>Total</b>	274,610	267,932	252,204	240,364	8,336	756	3,504	1,892	1,688	1,482	1,056	368	17	41		
<b>FULTON</b>																
Civilian	5,308	5,293	5,093	5,053	36	0	4	12	12	12	8	3	1	0	5,139	5,131
Armed Forces	36	36	24	20	2	1	1	15	15	10	8	1	0	1		
<b>Total</b>	5,344	5,329	5,117	5,073	38	1	5	27	27	22	16	4	1	1		
<b>GALLIA</b>																
Civilian	3,328	3,328	2,782	2,782	0	0	0	0	0	0	0	0	0	0	2,784	2,784
Armed Forces	3	3	0	0	0	0	0	3	3	2	2	0	0	0		
<b>Total</b>	3,331	3,331	2,782	2,782	0	0	0	3	3	2	2	0	0	0		
<b>GEAUGA</b>																
Civilian	13,232	13,232	13,021	12,665	307	3	46	135	135	121	90	29	1	1	13,205	13,153
Armed Forces	71	71	41	35	6	0	0	27	27	22	15	6	1	0		

## Absentee Ballots Statistics for November 4, 2008 General Election

County Name	Absentee Ballots - In-Country							Absentee Ballots - Overseas							Total absentee ballots (civilian & armed service) cast	Total absentee ballots (civilian & armed service) counted
	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls and <u>counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>	Ballot requests received	Ballot requests sent	Number of ballots cast	Ballots returned prior to close of polls <u>and counted</u>	Ballots returned after Nov. 4, 2008, but prior to Nov. 15, 2008 and <u>counted</u>	Ballots returned after Nov. 14, 2008 and <u>not counted</u>	* Ballots rejected as not valid and <u>not counted</u>		
<b>Total</b>	13,303	13,303	13,062	12,700	313	3	46	162	162	143	105	35	2	1		
<b>GREENE</b>																
Civilian	24,649	24,613	23,356	23,025	221	79	31	241	241	198	175	15	0	8	23,874	23,727
Armed Forces	283	283	233	202	7	16	8	121	121	87	75	7	0	5		
<b>Total</b>	24,932	24,896	21,626	23,227	228	95	39	362	362	285	250	22	0	13		
<b>GUERNSEY</b>																
Civilian	4,051	4,048	3,895	3,790	87	0	18	4	4	2	2	0	0	0	3,944	3,926
Armed Forces	68	68	43	41	2	0	0	13	13	4	2	2	0	0		
<b>Total</b>	4,119	4,116	3,938	3,831	89	0	18	17	17	6	4	2	0	0		
<b>HAMILTON</b>																
Civilian	117,167	117,152	110,462	106,544	1,367	8	2,543	516	516	440	338	91	2	9	111,445	108,872
Armed Forces	541	541	392	344	42	0	6	243	243	151	122	24	1	4		
<b>Total</b>	117,708	117,693	110,854	106,888	1,409	8	2,549	759	759	591	460	115	3	13		
<b>HANCOCK</b>																
Civilian	11,913	11,913	11,699	11,600	35	30	34	44	44	34	29	4	1	0	11,819	11,748
Armed Forces	57	57	49	43	4	2	0	50	50	37	28	5	1	3		
<b>Total</b>	11,970	11,970	11,748	11,643	39	32	34	94	94	71	57	9	2	3		
<b>HARDIN</b>																
Civilian	3,651	3,645	3,579	3,542	19	2	16	10	10	10	6	0	0	4	3,629	3,601
Armed Forces	31	31	29	22	4	0	3	18	18	11	8	0	0	3		
<b>Total</b>	3,682	3,676	3,608	3,564	23	2	19	28	28	21	14	0	0	7		
<b>HARRISON</b>																
Civilian	1,791	1,791	1,741	1,719	9	3	10	7	7	7	7	0	0	0	1,783	1,767
Armed Forces	31	31	27	23	2	2	0	11	11	8	6	1	1	0		
<b>Total</b>	1,822	1,822	1,768	1,742	11	5	10	18	18	15	13	1	1	0		
<b>HENRY</b>																
Civilian	4,392	4,377	4,324	4,291	12	4	17	9	9	9	8	1	0	0	4,370	4,349
Armed Forces	35	35	28	27	1	0	0	0	0	9	9	0	0	0		
<b>Total</b>	4,427	4,412	4,352	4,318	13	4	17	9	9	18	17	1	0	0		
<b>HIGHLAND</b>																
Civilian	5,964	5,958	5,857	5,847	6	0	4	11	11	10	10	0	0	0	5,907	5,902
Armed Forces	36	36	30	28	2	0	0	15	15	10	9	0	0	1		
<b>Total</b>	6,000	5,994	5,887	5,875	8	0	4	26	26	20	19	0	0	1		
<b>HOCKING</b>																
Civilian	4,488	4,451	4,317	4,209	10	0	98	7	7	7	5	0	0	2	4,343	4,242
Armed Forces	16	16	10	9	0	0	1	14	14	9	9	0	0	0		
<b>Total</b>	4,504	4,467	4,327	4,218	10	0	99	21	21	16	14	0	0	2		





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Armed Forces	10	10	8	0	0	0	0	5	6	5	3	2	0	0	2,240	2,237
<b>Total</b>	2,237	2,336	2,235	2,224	8	4	4	5	6	5	3	2	0	0		
<b>MONTGOMERY</b>																
Civilian	75,322	76,054	72,032	71,430	111	162	329	408	408	330	322	5	3	0	73,061	72,562
Armed Forces	564	560	413	377	36	0	0	383	383	286	279	2	5	0		
<b>Total</b>	75,886	76,614	72,445	71,807	147	162	329	791	791	616	601	7	8	0		
<b>MORGAN</b>																
Civilian	2,097	2,097	1,988	1,980	6	0	2	2	2	2	2	0	0	0	1,998	1,996
Armed Forces	8	8	7	6	1	0	0	1	1	1	0	1	0	0		
<b>Total</b>	2,105	2,105	1,995	1,986	7	0	2	3	3	3	2	1	0	0		
<b>MORROW</b>																
Civilian	4,058	4,056	3,883	3,859	16	8	0	8	8	7	7	0	0	0	3,927	3,919
Armed Forces	24	24	26	26	0	0	0	15	15	11	11	0	0	0		
<b>Total</b>	4,082	4,080	3,909	3,885	16	8	0	23	23	18	18	0	0	0		
<b>MUSKINGUM</b>																
Civilian	12,172	12,172	11,946	11,795	28	24	99	38	38	32	30	2	0	0	12,067	11,941
Armed Forces	73	73	65	57	6	0	2	35	35	24	19	4	0	1		
<b>Total</b>	12,245	12,245	12,011	11,852	34	24	101	73	73	56	49	6	0	1		
<b>NOBLE</b>																
Civilian	2,168	2,168	2,103	2,094	3	4	2	3	3	3	3	0	0	0	2,122	2,116
Armed Forces	13	13	13	13	0	0	0	3	3	3	3	0	0	0		
<b>Total</b>	2,181	2,181	2,116	2,107	3	4	2	6	6	6	6	0	0	0		
<b>OTTAWA</b>																
Civilian	5,844	5,844	5,753	5,677	25	7	44	34	34	30	26	3	0	1	5,833	5,777
Armed Forces	45	45	34	27	4	1	2	21	21	16	10	5	1	0		
<b>Total</b>	5,889	5,889	5,787	5,704	29	8	46	55	55	46	36	8	1	1		
<b>PAULDING</b>																
Civilian	2,356	2,342	2,302	2,290	3	2	7	3	3	3	3	0	0	0	2,324	2,314
Armed Forces	27	27	17	14	2	0	1	3	3	2	2	0	0	0		
<b>Total</b>	2,383	2,369	2,319	2,304	5	2	8	6	6	5	5	0	0	0		
<b>PERRY</b>																
Civilian	3,865	3,865	3,871	3,854	17	0	0	2	2	2	2	0	0	0	3,900	3,900
Armed Forces	27	27	21	19	2	0	0	6	6	6	3	3	0	0		
<b>Total</b>	3,892	3,892	3,892	3,873	19	0	0	8	8	8	5	3	0	0		
<b>PICKAWAY</b>																
Civilian	8,000	7,510	7,294	7,174	32	23	65	20	20	19	14	1	0	4	7,359	7,264
Armed Forces	38	38	30	28	1	0	1	27	27	16	13	1	0	2		

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<b>Total</b>	8,038	7,548	7,324	7,202	33	23	66	47	47	35	27	2	0	6		
<b>PIKE</b>																
Civilian	4,534	4,534	4,162	4,092	45	0	25	3	3	3	3	0	0	0	4,173	4,148
Armed Forces	3	3	3	3	0	0	0	10	10	5	5	0	0	0		
<b>Total</b>	4,537	4,537	4,165	4,095	45	0	25	13	13	8	8	0	0	0		
<b>PORTAGE</b>																
Civilian	19,216	19,215	18,831	18,445	131	53	202	133	133	130	111	16	2	1	19,108	18,844
Armed Forces	140	140	94	87	3	4	0	79	79	53	47	4	0	2		
<b>Total</b>	19,356	19,355	18,925	18,532	134	57	202	212	212	183	158	20	2	3		
<b>PREBLE</b>																
Civilian	4,158	4,105	4,001	3,994	0	2	5	10	10	6	6	0	0	0	4,043	4,031
Armed Forces	34	34	27	22	0	1	4	17	17	9	9	0	1	0		
<b>Total</b>	4,192	4,139	4,028	4,016	0	3	9	27	27	15	15	0	1	0		
<b>PUTNAM</b>																
Civilian	3,745	3,745	3,651	3,619	23	0	9	10	10	7	7	0	0	0	3,695	3,682
Armed Forces	25	25	19	18	0	0	1	25	25	18	14	1	0	3		
<b>Total</b>	3,770	3,770	3,670	3,637	23	0	10	35	35	25	21	1	0	3		
<b>RICHLAND</b>																
Civilian	9,103	8,969	8,642	8,524	53	0	65	89	70	69	69	1	0	0	8,864	8,802
Armed Forces	158	151	115	108	6	0	1	59	42	38	38	3	0	1		
<b>Total</b>	9,261	9,120	8,757	8,632	59	0	66	148	112	107	107	4	0	1		
<b>ROSS</b>																
Civilian	11,350	11,337	10,276	10,241	4	11	20	18	18	14	14	0	0	0	10,357	10,326
Armed Forces	68	67	42	42	0	0	0	31	31	25	25	0	0	0		
<b>Total</b>	11,418	11,404	10,318	10,283	4	11	20	49	49	39	39	0	0	0		
<b>SANDUSKY</b>																
Civilian	6,767	6,767	6,580	6,573	0	0	7	22	22	14	13	1	0	0	6,645	6,637
Armed Forces	47	47	22	22	0	0	0	34	34	29	26	2	1	0		
<b>Total</b>	6,814	6,814	6,602	6,595	0	0	7	56	56	43	39	3	1	0		
<b>SCIOTO</b>																
Civilian	7,192	7,053	6,840	6,792	14	7	27	19	19	7	6	0	1	0	6,913	6,878
Armed Forces	55	55	48	42	6	0	0	33	33	18	13	5	0	0		
<b>Total</b>	7,247	7,108	6,888	6,834	20	7	27	52	52	25	19	5	1	0		
<b>SENECA</b>																
Civilian	5,561	5,561	5,463	5,443	10	10	0	26	26	20	20	0	0	0	5,555	5,542
Armed Forces	61	61	51	46	2	3	0	32	32	21	21	0	0	0		
<b>Total</b>	5,622	5,622	5,514	5,489	12	13	0	58	58	41	41	0	0	0		



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Civilian	9,258	9,119	8,709	8,649	26	22	12	13	13	12	12	0	0	0	8,825	8,791
Armed Forces	104	93	75	73	2	0	0	36	34	29	27	2	0	0		
<b>Total</b>	9,362	9,212	8,784	8,722	28	22	12	49	47	41	39	2	0	0		
<b>WAYNE</b>																
Civilian	6,223	6,223	6,078	5,936	117	24	1	147	147	129	126	0	3	0	6,309	6,281
Armed Forces	116	116	87	87	0	0	0	29	29	15	15	0	0	0		
<b>Total</b>	6,339	6,339	6,165	6,023	117	24	1	176	176	144	141	0	3	0		
<b>WILLIAMS</b>																
Civilian	4,309	4,266	4,078	3,913	20	0	145	12	12	7	7	0	0	0	4,118	3,970
Armed Forces	22	22	19	18	0	0	1	14	14	14	11	1	0	2		
<b>Total</b>	4,331	4,288	4,097	3,931	20	0	146	26	26	21	18	1	0	2		
<b>WOOD</b>																
Civilian	15,381	15,148	14,569	14,265	81	0	223	132	132	109	90	16	0	3	14,788	14,559
Armed Forces	111	111	76	69	6	0	1	51	51	34	28	4	1	1		
<b>Total</b>	15,492	15,259	14,645	14,334	87	0	224	183	183	143	118	20	1	4		
<b>WYANDOT</b>																
Civilian	2,255	2,253	2,177	2,161	14	2	0	9	9	4	4	0	0	0	2,198	2,196
Armed Forces	14	14	12	12	0	0	0	11	11	5	5	0	0	0		
<b>Total</b>	2,269	2,267	2,189	2,173	14	2	0	20	20	9	9	0	0	0		
Total Civilian	1,804,569	1,796,826	1,726,588	1,681,712	18,545	4,170	22,991	9,070	8,525	7,493	5,679	1,366	170	250		
Total Armed Forces	9,461	9,238	6,991	6,056	517	216	226	5,192	5,059	3,681	2,935	446	122	186		
<b>Grand Total</b>	1,814,030	1,806,064	1,733,579	1,687,768	19,062	4,386	23,217	14,262	13,584	11,174	8,614	1,812	292	436	1,744,753	1,717,256

Appendix 27: State Early Voting Policy Chart, provided by the Early Voting Information Center and supplemented with information from the Brennan Center

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
AK						<i>Unable to obtain data before publication of preliminary report</i>	The director designates locations for early voting.	<i>Unable to obtain data before publication of preliminary report</i>
AZ	3	52.9%	Y	Y	N	About 27 days (For general and primary elections, starts 33 days before election day and ends 5pm the Friday before election day.)	The county recorder may establish on-site early voting locations at the recorder's office, and may also establish any other locations the recorder deems necessary.	Data presented for early voting returns by day. No information on how early voting stations are established.
AR						<i>Unable to obtain data before publication of preliminary report</i>	The county board of election commissioners may decide to hold early voting at additional polling sites outside the office of the county clerk, if it chooses.	<i>Unable to obtain data before publication of preliminary report</i>
CA	5	44.8%	Y	Y	Y	29 days prior to election (application for a vote by mail voter's ballot shall be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election.) Voters can submit ballots up to election day.	Left up to election officials. Clerks must have EV available at offices, but law allows remote balloting locations. "Any voter using a vote by mail ballot may, prior to the close of the polls on election day, vote the ballot at the office of the elections official... For purposes of this section, the office of an elections official may include satellite locations.	Data available from a number of counties. Early voting in California requires the use of DREs, as specified in the elections code (per Joe Holland). With the decertification of DREs, "remote" early voting has virtually died out (per Steve Weir), but all counties are required to have it available at the county office. Most counties rely far more heavily on no-excuse absentee balloting. Ballots are sent out 29 days ahead of time.
CO	6	78.9%	Y	Y	Y	15 days prior to general; 10 days prior to primary or special	Each county clerk and recorder must provide one or more EV polling places. In the event the county clerk and recorder determines the number of EV polling places is insufficient due to the number of eligible electors using early ballot, the county clerk and recorder may establish additional sites for convenience. They must give adequate notice to electors of such sites.	No data sent from Colorado. In person early voting is reducing as no-excuse absentee balloting has become available and more popular (per Scott Doyle of Larimer County). Site selection is handled by the county clerks. Doyle suggests a two week long early voting period since so few voters are using this method.

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
FL	10	51.8%	Y	Y	N	15 days prior to election	<p>Early voters may vote in the main or branch office of the supervisor of elections. The supervisor may also designate any city hall or permanent public library facility as EV sites; however, the sites must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as practicable.</p>	<p>Data available from the state, but only for in-person early voting.</p> <p>Very thoughtful response from Don Palmer outlining the various criteria that can be used to determine how to site early voting locations. ON the one hand, it is difficult not to rely on the on the ground expertise of the local official, who is trying to adapt to turnout patterns, accessibility issues, commuting patterns, etc. On the other hand, Palmer acknowledges the potential for fairness concerns. He suggests some "fundamentals" that can be established by the state with flexibility by the locals, but does not propose what these fundamentals should be.</p> <p>Palmer cites some anecdotes from various county officials that provide some starting points for these fundamentals. (ED: Might suggest that states poll or have focus groups or email lists among their local officials when thinking about rules and regulations.)</p>

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
GA	11	57.6%	Y	Y	N	"Early voting" 45 days prior to election; "Advance voting" 7 days prior to election.	"Early Voting" must be available during working hours at the voter registration office. Counties are allowed to have as many "Advance Voting" sites as they wish and they have the flexibility of holding them on every day of the week including Saturday and with whatever hours they determine. The additional sites must be a branch of the county courthouse, a courthouse annex, a government service center providing general government services, or another government building generally accessible to the public.	Not much data on early voting by date in Georgia. No rules are in place for the placement of early voting sites, other than the constraints of the early voting period (per Gary Smith of Forsyth County). Hours are expected to be normal working hours. There are no limits on the number of sites. Determination varies, sometimes by a Board of Elections and sometimes by a Chief Elections Officer. No controversy regarding early voting stations up to this point. G. Smith suggests that geospatial data be utilized to assure that there is no partisan, racial, other inequities in the use of / placement of early voting stations.
HI	12	38.5%	Y	Y	N	At least 10 days prior to election	EV polling places shall be established at the office of the respective clerks, and may be established at such other sites designated by the clerk.	<i>Unable to obtain data before publication of preliminary report</i>
ID						<i>Unable to obtain data before publication of preliminary report</i>	County clerks shall provide one or more "absent electors' voting places" as determined necessary by each county.	<i>Unable to obtain data before publication of preliminary report</i>
IL						<i>Unable to obtain data before publication of preliminary report</i>	Upon request by an election official, a unit of local government which does not include school districts, shall make available as permanent or temporary EV polling places without charge. Must be made accessible to handicapped and elderly voters.	<i>Unable to obtain data before publication of preliminary report</i>

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
IN						Unable to obtain data before publication of preliminary report	A county election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices in the county where voters may cast absentee ballots. The resolution must be adopted by a unanimous vote of the board.	Unable to obtain data before publication of preliminary report
IA						No more than 40 days preceding the election.	Early voting at the commissioner's office. Satellite EV stations may be established throughout cities and counties at the direction of the commissioner and shall be established upon receipt of a petition signed by not less than one hundred eligible electors requesting and describing the polling place. (Commissioner is not required to establish satellite locations for special elections).	Unable to obtain data before publication of preliminary report
KS	17	34.7%	Y	Y	N	The county election officer is required to begin transmitting mailed advance ballots on the twentieth day before the election, but no earlier. [KSA 25-1123(a)] For in-person advance voting in the election office, the election officer must begin the process on Tuesday one week before election day, but may begin it earlier, any time up to twenty days before the election. (See the Advance Voting Timetable at the end of this section.) [KSA 25-1122(c)] Early voting ends at noon on the Monday before an election.	In-person advance voting is normally conducted in the county election office. However, in counties with populations exceeding 250,000 (as of the 2000 census, only Johnson and Sedgwick), the election officer may designate additional sites as needed to accommodate the number of advance voters. Any such sites must operate under the same rules as voting in the election office, including the presence of election boards appointed and trained by the county election officer. [KSA 25-1122(c)]	State Law allows up to 20 days prior to election, but local election officials can shorten that if they wish.
LA						Unable to obtain data before publication of preliminary report	One site, either at the registrar's office or at an alternate location if the registrar's office is insufficient.	Unable to obtain data before publication of preliminary report

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
ME						<i>Unable to obtain data before publication of preliminary report</i>	One site at county clerk's office, except in administering ballots to nursing homes.	<i>Unable to obtain data before publication of preliminary report</i>
MT	27	40.2%	Y	Y	Y	30 days prior to election	Only at office of the administrator	<i>Unable to obtain data before publication of preliminary report</i>
NE						<i>Unable to obtain data before publication of preliminary report</i>	One site at the county clerk's office, except in administering ballots to nursing homes.	<i>Unable to obtain data before publication of preliminary report</i>
NV	29	66.9%	Y	Y	N	About 13 days prior to election (third Saturday before an election, extending through the Friday before Election Day)	The permanent and temporary polling places for EV will be selected by the county clerk who shall provide the rule and regulation for the selecting criteria to the board of county commissioners and inform the board of the sites selected.	<i>Unable to obtain data before publication of preliminary report</i>
NJ						<i>Unable to obtain data before publication of preliminary report</i>	One site per county	<i>Unable to obtain data before publication of preliminary report</i>
NM	32	62.3%	Y	Y	N	About 16 days (Commencing on the third Saturday prior to an election)	Established by county clerk. In class A counties with more than 200,000 registered voters, the county clerk shall establish not less than twelve alternate voting locations. For class A counties with 200,000 registered voters or fewer, the county clerk shall establish not less than four alternate voting locations. In non-class A counties with more than 10,000 registered voters, the county clerk shall establish at least one alternate voting location. In non-class A counties with 10,000 or fewer voters, early voting shall be conducted in the office of the county clerk or at such alternate locations designated by the clerk.	<i>Unable to obtain data before publication of preliminary report</i>

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
NC	34	60.3%	Y	Y	N	About 17 days (Beginning on the third Thursday before an election and ending at 1pm on the last Saturday before that election)	No stated limit. Sattelite centers must be established by unanimous vote of County board, and approved by the state board. There are appeal procedures.	Lots of data provided on the date that the ballot was processed, in person and by mail voting. State Board of Elections in NC is a 5 member commission appointed by the governor from a list of names submitted by the two political parties. No more than 3 from any party. Local boards are appointed by the SBOE from similar lists, no more than 2 from one party. The law requires unanimous agreement for siting in the local board; but the local chair can petition the state board which only needs a majority vote to decide. Some controversies have arisen over siting as well as the use of the county offices, which are sometimes not outfitted to handle early voting. Provisions have been suggested to allow alternative sites that are "proximate" to the county site.
ND	35	37.2%	Y	Y	N	At least 15 days prior to election	Left to discretion of county auditors.	<i>Unable to obtain data before publication of preliminary report</i>
OH	36	25.2%	Y	Y	N	"Those ballots shall be designated as "Absent Voter's Ballots" and shall be printed and ready for use on the thirty-fifth day before the day of the election, except that those ballots shall be printed and ready for use on the twenty-fifth day before the day of a presidential primary election." [3509.01]	Only one site per county at the local county board of elections.	<i>Unable to obtain data before publication of preliminary report</i>

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
OK						<i>Unable to obtain data before publication of preliminary report</i>	Law uses language of a single place, and does not state instructions for allowing additional places. Statute states: a registered voter may apply for an in person absentee ballot at a location designated by the Secretary of the County Election Board.	<i>Unable to obtain data before publication of preliminary report</i>
OR	38	100.0%	N	Y	Y	About 21 days prior to election	All Vote By Mail	<i>Unable to obtain data before publication of preliminary report</i>
SD						<i>Unable to obtain data before publication of preliminary report</i>	Only one site per county.	<i>Unable to obtain data before publication of preliminary report</i>
TN	43	60.8%	Y	Excuse	N	15 days (20 to 5 days prior to election)	A voter who desires to vote early shall go to the county election commission office	No data. Why? Don't we have this already. No information on legislation or early voting periods.

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
TX	44	67.6%	Y	Excuse	N	14 days prior to election (The period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day)	<p>Texas law requires at least one early voting location for each state legislative district in larger, urban counties. (Atlanta Journal-Constitution, 11/9/08) Voting is conducted at county clerk's office, or an office within the voting area that is determined by the county clerk or the clerk's superiors. There is no designation for satellite locations. (In an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005, the main early voting polling place shall be located in any room selected by the early voting clerk in the building that houses the main business office of the county clerk or city secretary, as applicable. However, if the commissioners court or city governing body determines that locating the polling place in that building is impracticable, the commissioners court or city governing body may designate a different location in the city in which the business office is located that is as near as practicable to the business office.</p>	<i>Unable to obtain data before publication of preliminary report</i>
UT						<i>Unable to obtain data before publication of preliminary report</i>	<p>The election officer designates one or more EV polling places provided that: each polling place is located in a government building or office, unless the election officer determines the building cannot be available during EV hours, or does not have the physical facilities necessary to accommodate EV requirements, or does not have adequate space for EV equipment and pollworkers.</p>	<i>Unable to obtain data before publication of preliminary report</i>

State	Code	Abs/EV %	NE-EIP	Abs	Perm Abs	Duration	Distribution of centers	Comments from Administrators
VT						<i>Unable to obtain data before publication of preliminary report</i>	One site at Town Clerk's office	<i>Unable to obtain data before publication of preliminary report</i>
WA	48	82.9%	N	Y	Y	Ballots must be available "at least twenty days before any primary, general election, or special election."	All Vote By Mail	Locations not applicable because voting by mail.
WV						<i>Unable to obtain data before publication of preliminary report</i>	Language does not discuss multiple sites, but does not seem to disallow it.	<i>Unable to obtain data before publication of preliminary report</i>
WI						<i>Unable to obtain data before publication of preliminary report</i>	Only one site per county, but statute allows choosing an alternate site to the office of the county clerk or board of elections commissioners as the location.	<i>Unable to obtain data before publication of preliminary report</i>
WY						<i>Unable to obtain data before publication of preliminary report</i>	One site at county clerk's office.	<i>Unable to obtain data before publication of preliminary report</i>

Appendix 28: Paul Gronke and James  
Hicks, *Early and Absentee  
Voting in the 2008 General  
Election*



Appendix 29: Oregon Mail-In Ballot  
Envelope, provided by  
Marion County, Oregon  
Board of Elections

BACK

DELINCO EB LON TLM I RO YAD NOLCETE W:D 00:8 AB ELISDORD

# DO NOT REMOVE ANY PORTION OF THIS ENVELOPE

**IMPORTANT!** FAILURE TO SIGN BELOW WILL INVALIDATE YOUR BALLOT.  
YOUR BALLOT MUST BE RECEIVED BY 8:00 P.M. ON ELECTION DAY TO BE COUNTED.

**POSTAL CLERK:**  
Deliver to address on other side.

## SIGN HERE

### VOTER'S STATEMENT

- By signing I certify that:
- I am the person to whom this ballot was issued.
  - I am legally qualified to vote in the county that issued this ballot.
  - I still live where I am registered to vote.
  - I voted my ballot and (did not unnecessarily show it to anyone);
  - This is the only ballot I have voted this election.

### SIGNATURE OF VOTER

**WARNING: SIGNING ANOTHER PERSON'S NAME TO THIS ENVELOPE IS A CLASS C FELONY.**

Voter! **DO NOT** remove label

### OFFICIAL BALLOT DROP SITES - SEE CURRENT VOTER PAMPHLET FOR ADDRESSES OF LOCATIONS AVAILABLE THIS ELECTION:

- |                          |                   |                           |                              |                     |
|--------------------------|-------------------|---------------------------|------------------------------|---------------------|
| Salem:                   | Aurora City Hall  | Hubbard City Hall         | Mill City - U.S. Bank        | Sublimity City Hall |
| Marion County Elections  | Donald City Hall  | Jefferson Fire Department | Mt. Angel, St. Mary's School | Turner City Hall    |
| Marion County Courthouse | Gerrais City Hall | Keizer City Hall          | Silverton City Hall          | Woodburn City Hall  |
| Marion County Extension  |                   |                           | Slayton Public Library       |                     |

FRONT

### RETURN / SECRECY ENVELOPE

**IMPORTANT!** FAILURE TO SIGN BACK OF ENVELOPE WILL INVALIDATE YOUR BALLOT.

MARION COUNTY ELECTIONS  
4263 COMMERCIAL ST SE STE 300  
SALEM OR 97302-3987

# BALLOT ENCLOSED



Postage Required Post Office will not deliver without proper postage.

MARION COUNTY CLERK

Appendix 30: Written Statement from  
Marilyn Jacobcik, Deputy  
Director, Lorain County  
Board of Elections

## Summary of Marilyn A. Jacobcik ID Requirements / Additional Forms of ID

### 1. Identification Requirements:

Specified in ORC 3503.14: Simply: DL# if any; or last 4 digits of SS#, if any; or one of a list of other acceptable documents.

Is ID needed? How was the requirement accepted by the public? Most of the objections proffered at the time the legislature enacted the ID requirements has quelled. The feedback from our voters is that they overwhelmingly welcomed the ID requirement. They expressed that they liked having assurance (at least the perception) that all voters will be “legitimate.”

In addition to the typical voter that might be found anywhere in Ohio, we found that the acceptance of the ID requirement was just as high with other groups that we were not so sure would adopt the requirement as readily. For example, we have a large Hispanic population in Lorain County. We heard numerous times how Mexico has implemented an ID system that requires voters to have a voter identification card, which is obtained after appearing in person to obtain the card. That card is then used when the person votes. This has been credited with greatly improving the integrity of the elections in Mexico. Their feedback to us was along the lines of “it’s about time” since the system they came from is viewed as superior to our former system, which operated with little verification other than what the registrant offered. At the time the ID requirement was enacted, members of our local Federation of the Blind and the local Hearing Impaired organization both indicated that their constituencies had no issues or problems as a result of the requirement. Overwhelmingly, the experiences we have with concerns about the ID requirement appear to emanate from a small, although vocal, group of people who oppose the requirement. This could be attributed to reluctance to change or from a fear that having to show ID will somehow disenfranchise voters. The argument that it would discriminate against the disadvantaged has not been borne out in our experience. In the 2008 general election, several busloads of homeless people, who we feared may be unlikely to have utility bills, bank statements mailed to their home address, etc. were actually able to register and to vote without hindrance.

The list of acceptable forms in addition to the DL# and SS#4 appears to be sufficient, since there is no evidence that individuals do not have at least one of the forms. We average 2000– 5000 provisional ballots per election. Most provisionals continue to be from voters who moved within Ohio and are using the provisional ID document to change their addresses. Since the ID requirement was enacted we can recall receiving fewer than 5 from voters who refused to provide the ID – and in those cases the person said he had DL # but chose not to give it. The perception that the ID requirement assures us all of integrity of the voter lists would be greatly improved with a verification of DL#/SS#, DOB, etc. upon registration. Most discrepancies would undoubtedly results from simple error – typographical or other easily-explained and verified error, which would be corrected in a timely manner if the verification process were ongoing and a routine part of the procedures employed by BOE’s. Due to the number of voters in our county who have ballots mailed to other states and out of the country (hundreds in major elections) I think a state-to-state database would be useful in reducing the number of people who are voting in two states. Voter fraud cannot be determined if one looks only at the rate of convictions, which is often used as the measurement. Convictions are not

the test, since we usually are unable to locate the person who is voting fraudulently, or the person is not prosecuted due to the lack of resources we have in our law enforcement agencies that simply do not allow prosecutions of non-violent crimes. While voter fraud should not be confused with voter registration fraud, which are two different things, the use of identifiers is clearly a tool that helps with both instances.

## 2. Correction of errors on Absentee Envelopes

Absentee Ballot requirements are generally found in ORC 3509 and 3511

For many years, our Board operated on the premise that we should make every effort to ensure that ballots should be counted where there is no evidence of fraud, tampering, or other misuse. If an absentee voter neglected to provide some information that was required on either his application or voted ballot ID envelope, we would mail a new document to be completed as long as there was sufficient time to do so, or we would call the voters for whom a telephone number could be found. At least one member of each political party would listen while the voter related the required information. Our staff would then write the information in red on the document and both employees would initial it. This facilitated voting with minimal effort on the voters' parts, and was done with the least disruption and cost to our offices as well. We believe this solution was one that most boards employed and which provided the best in customer service to our voters.

Like many areas of government, we in the elections arena began regulating procedures for routine processes, and like many areas of government, the more we regulate and add parties to the relationship of voter and BOE, the more likely we are to lose flexibility that allows us to serve our voters well. A case in point is the requirement that letters must be sent to voters who have neglected to complete some portion of their ID envelope. They usually respond with a phone call to our staffs and they often express displeasure, while they explain why they cannot come in to provide the information, and they are angry that their ballot will not count. Often, ballots are mailed out of state, so the mail solution is not practical for the voter and wastes Board time. So, in our effort to provide some consistent means of dealing with a problem, we have actually created the problem and limited our ability to solve it in the voters' best interests. Lack of this information was not in and of itself a problem unless we could not contact the voter or resolve the deficiency in time for the ballot to be counted. Now, we treat the deficiency on the ID envelope as a problem immediately and limit the means of resolving it. Good customer service to voters has declined and it has done so by our own doing.

Our county is fortunate to have a board in which the members employ a solid understanding of the law, coupled with a desire to facilitate voting rather than to hinder it. The more that they are removed from the right to make decisions, including setting policies, that employ a common sense approach and their sense of fair play when dealing with the ballots cast by residents of our county, the less we are doing to make sure that all eligible voters can cast votes that will count. Will every board be this fair and treat voters with integrity? Possibly not, but most will – and the voters in their counties – that is in most counties in Ohio - benefit when fewer restrictions are placed on them.

In this situation, I believe the most effective solution is the easiest. Local boards should adopt a policy which recognizes that voters will make inadvertent errors and omissions

and that the Board will use 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.

### 3. Notification Given to Provisional Voters

Federal Court rulings have dictated much of the procedural requirements pertaining to provisional ballots, including notification given to them.

There are two separate notifications that are required for provisional voters. One contains the 800-number to call and a date range that can be used to learn if one's provisional ballot has been counted. It is given to all provisional voters. The second notice is provided to voters who must provide the Board of Elections with identification information within 10 days after the election. In order to simplify the steps that our pollworkers must learn and follow, and to minimize the confusion of voters, the forms have been combined. It is provided to all provisional voters.

The first requirement (the 800- number and date range) emanates from a federal lawsuit during the 2004 Presidential election, so any discussion of its value or format would be somewhat moot, since the requirement and the form were provided in the court order. The second requirement (for supplemental information) arose when ID requirements were enacted, so it is a necessary step in the provisional voting process for a limited number of voters.

We have found that few people actually call to see if their ballots counted. This year, it was fewer than 25 calls from the approximately 4500 provisional ballots. This may be a product of an election that was not viewed as having a close outcome. I suspect that if voters are happy with an outcome, they take no further action. If the Presidential election had been within recount range, perhaps we would have received a greater number of inquiries.

### 4. Processing of Provisional Ballots.

Ah, where to begin..... First of all, my perspective on Provisionals is that they are not inherently a restriction to voters, but are actually a tool which gives Boards of Elections the ability to make every attempt to be able to count a ballot for a person who somehow is not registered, the category that overwhelmingly accounts for rejection of ballots. Lorain County had 697 voters whose ballots were rejected because they were not registered to vote. We find this incredible, particularly in this election year. Clearly, this election did not sneak up on anyone – the campaign lasted for two years and had daily references in virtually every medium possible. Yet, we had 16% of the provisionals we issued rejected because there was no registration for the voters. Nearly all were people who had no registration in our county – most had never registered at any time at all, or who had registered but had not voted in quite a number of years – anywhere from 6 to 12 years. If they had even voted in the last Presidential 4 years ago, in all likelihood, we would have sufficient information to have our Board accept the ballots. Others used a prior address in another state and freely acknowledged they had lived in Ohio for more than a year but did not register here. Our pollworkers issue a ballot anyway, even though there is no way the ballot could be counted. Thus, our statistics for provisionals are cited,

and conveyed in a manner that makes it appear that we willingly throw out ballots for eligible voters. In fact, we make attempts to find any valid registration that would enable us to count these ballots. We actually don't ask much of voters in Ohio. Just register. If you do that, you are "good to go" for several years. We had comments from some of our college students who come from other states that they vote here in Ohio because it is easier than doing so in their home states. So the question is how can we improve the system so that fewer provisionals are issued, and when they are issued, they have a greater likelihood of being counted. I suspect there will always be a certain number of people who procrastinate until Election Day, then hope that we will somehow enable them to vote. The 16% of provisionals that I cited as being rejected for having no registration at all represented less than one half of one percent of votes cast in our county. Can the Boards of Elections solve the problem for 100% of voters while maintaining any type of integrity of the rolls? Probably not, but we give our best efforts to ensure that every vote counts. Probably the most difficult aspect of processing is actually the issuing of the provisionals by our pollworkers. The forms are complicated, when we consider that the pollworkers often have a number of voters before them, in this election many had unruly, rude and intrusive observers creating issues throughout the day at their tables, and voters who needed extraordinary help. Our pollworkers did a good job of juggling all the tasks before them, but working to achieve a simpler method of issuing the provisionals would be helpful. Having a consistent set of procedures from election to election would show positively in our results. We ask a great deal of pollworkers, and then make changes each election, and often adding requirements with marginal benefits. This is a topic with many differing opinions. Clearly we can make improvements to the forms used, simplification of the procedures, and perhaps better communication to voters, but ultimately we must also acknowledge that voters must assume some responsibility to at least file a form that registers them to vote. But, we all know that usually a last-minute knee jerk change does not work well, and often results in unintended consequences. Hopefully, a thoughtful review by the various parties involved will help us improve this process for the future, but changes must be made with care and in sufficient time to fully educate the voters, pollworkers and BOE staffs.

## 5. Determination of Ballot Validity

This is an area of Elections administration in which the more direction we receive in how to handle ballots, the less consideration we are able to give to our voters. Boards, which have long operated under the law in a bi-partisan manner, have been able to consider different types of problems and errors and have developed policies that enable us to give the best possible service to our voters – who are residents of our local communities – and to do so in a manner that is reliant on our good faith effort. Unfortunately, as we receive more and more direction on what we must do, we find that fewer ballots are issued or counted. I talked about how we handle errors. Obviously, minor errors represent the majority of reasons why a voter will not be issued a ballot – or why his voted ballot will not be counted. Quite frankly, we should first of all take a common sense approach. If a voter receives an absentee ballot, votes it, completes the ID envelope and signs it, places the ballot inside it, then places the ID into the mailing envelope for return to the BOE, then seals it, affixes postage and mails it, then we receive it from the post office – still sealed – and open it to find that the ID envelop was not sealed, I cannot be convinced that this voter's ballot should not be counted. Further, I cannot be convinced that it is good public service to mail the voter a letter telling him to come in and seal the envelope so we

can open it and count his ballot. And, if he cannot come in, his ballot will be rejected. Quite frankly, our Boards have long been quite competent to work in a bipartisan fashion that would have had a member of both political parties initial and seal the ID envelope until it was time to begin processing absentee ballots for the unofficial count. This represents one example, but one that I hope demonstrates that micromanagement is often not a substitute for sound local management. Since real votes cast by real people are at stake, the system with a bi-partisan checks and balances is probably going to be the one that provides the best service to our voters.

### Summary:

Evaluating where we are and how it is working requires us to look at our system in a historical perspective. Clearly, the ID requirements are a natural progression of today's lifestyles and technological capabilities. Thirty or forty years ago, when one registered to vote, one gave his name, address, and signed the form, often in the presence of a "deputy registrar." In order to be eligible to vote in an election, the voter had to be registered in the precinct in which he lived at least 30 days before an election. If he moved to another precinct, the address change was required to be received by the Board of Elections no later than 30 days before the election. The voter did have the option of going to his "old" precinct if he did not meet the requirement in time. With Motor Voter (1993) came the end of individuals as registrars, who were replaced by designated agencies, such as BMV, and other government offices, libraries and schools. Date of birth was added as a requirement about that time, while eliminating the section on the registration form pertaining to citizenship and naturalization. Motor Voter resulted in registrations being submitted by voters throughout the year, rather than a grand rush just before elections. It also coincided with Ohio's expansion of provisional ballots, which began around 1992 for voters who moved within a county and did not change their addresses on time, to allow people moving from county to county within the state. At the same time, voters were given the option of coming to the Board of Elections to vote provisionally or to the polling place where they now live. Federal HAVA requirements, which came about after the 2000 presidential election, actually made few changes for Ohioans, since we had the major components in place prior to their enactment federally. Changes have been made regarding the number of registered voters in a precinct, which had been limited to 400 people in the early 1990's. By 2008 that number has been increased to no more than 1400 voters per precinct, as a result of at least two step increases in the intervening years. No longer do pollworkers in the precinct see 95% or more of the voters, often their neighbors, on Election Day, with the others elderly or disabled people who voted absentee ballots by mail or in nursing homes. The most dramatic contributing factor for this increase is the "No-Fault Absentee" voting recently enacted in Ohio, in which most counties saw many thousands of voters choose this option, usually by mail. In the most recent election, we all saw huge numbers of people come to the Board-designated sites. So, the result is that voting is no longer a local, neighborhood activity at which we appear before pollworkers, at least one of whom we are likely to know. Lifestyles changes unrelated to voting have occurred throughout our society due to advancements in transportation, education, technology and many other factors. Today, people do not reside their whole lives within the same communities as they did when we were a largely rural state. The bottom line is that we have adapted to the changing environment by creating more options for voters and more restrictions to help maintain the integrity of the election process as our climate changes. Our right to vote a secret ballot freely is one of the most important rights we offer in our republic. Its value of course, requires that the system be

operated with integrity so that each person's one vote is complemented by or countered by another's one vote to ultimately express the will of the majority. We must carefully evaluate what we are doing – right or wrong – and how improvements can be made and what each of those improvements will cost – in dollars, certainly, but also in our ability to offer a system that is accessible to all.

#### Post-Summit Observations:

I found the most valuable feature of the panel discussions to be the presentation of the wide array of opinions that exist concerning the various topics. It was enlightening to learn of the different perspectives, and often the reasons for them. As is true in human nature, our opinions often emanate from some personal experience. As applied to this summit, we saw that these experiences often incorporated a perception about the elections officials' motives and actions. As an election official, I was somewhat surprised and disheartened to see that some people perceive that "we" attempt to create stumbling blocks that prevent eligible persons from voting or from having their ballot count when they do vote. The perspective of most election officials is that we go to great lengths to assist voters to make sure that all ballots do count, even when the voter has made little or no attempt to enable him or herself. For example, someone who has lived in the state of Ohio for two or three years and has simply never registered to vote tends to blame the local Board of Elections when his ballot does not count, and that ballot rejection is cited in the statistics that tend to be interpreted by some as a failure of the BOE's even though Ohio has a system of laws and procedures that make voter registration and voting easier than in many other states.

I think that perhaps we may have tried to cover too many topics within each panel, since some subtopics were not covered at all. That is probably simply a reflection that one or two of the other sub-topics actually generated greater interest and used the allotted time. However, the listing as it was presented contained items that all merit discussion. At the least, it was demonstrated that there is a great interest in many more issues than could be covered in a one-day forum.

I do think that more elections officials should be included in future events. The only panel that actually finished ahead of schedule was the one with no election officials on the panel. It appeared that the questions posed were not answered fully because they required knowledge that would have been available from election officials who have administrative experience. And, of course, there will be no change administered without us!

Appendix 31: Oregon Secretary of State's  
Office, *Vote by Mail*  
*Procedures Manual*, 53-54:  
Security and 75-83: Ballot  
Inspection Process

# Security



By January 31st  
of each year  
and within one busi-  
ness day  
of any change

### Analyze security needs.

See Appendix 2 for a Sample Security Plan.

Any change in a Security Plan **must be submitted** to the Elections Division.

- 1 Prepare an overall Security Plan and file it with the Elections Division.
- 2 Establish a written agreement for security measures with any vendor handling ballots.
- 3 Design security for periods of ballot transportation (e.g. from print shop to location of insertion; from mailing house to Post Office and from Post Office to elections office other than regular mail delivery).
- 4 Design security for ballots during processing.
- 5 Design security for ballot dropsites.
- 6 Establish guidelines for security involving observers.
- 7 Review office work area, building and ballot storage to assure security (alarms, cameras, special keys, limited keys).
- 8 Review security for vote tally systems, computer access security and off-site storage for system backups.
- 9 Consider having a “backup” county with the same ballot counting capabilities (may want to exchange backups of the election set-up).
- 10 Establish post-election ballot security.

To the greatest extent possible, security plans should consider possible emergency circumstances and course of action.

*Security plans are exempt from disclosure under the public records law.  
ORS 254.074 and 192.502(31)*

Before  
the election

### Establish security.

At all times, ballots **must** be maintained in a secure location in accordance with the security plan filed with the Secretary of State. Adequate supervision must be provided during all processing activities.

Use a log to maintain who has access (keys, electronic codes, etc.) to secure areas.

To prevent unauthorized access an option is to install secondary locks accessible only to authorized Elections Officials for election-specific dates.

*continued on next page*

If the ballots are kept in a separate locked room, it is not necessary to seal the transport carriers. If a secure room is not available, then ballots need to be secured in locked or sealed ballot carriers. Use disposable numbered locks if available. If ballots are being transported within the same building, it is not necessary to seal transport carriers.

**! Reminder**

*Use of motion detectors, video cameras, alarm systems and other technology may be appropriate supplements to locks.*

**Before  
the election**

**Establish supervision procedures and train staff.**

Ensure that all election personnel follow standardized procedures.

Ensure that adequate staffing and space are available during the processing period. A manageable supervisor/staff ratio should be established and maintained for each election.

**During  
the election**

**Maintain an audit trail.**

There must be an audit trail throughout the process. Consider maintaining logs for processing the ballots through different steps. Maintain all statistical information for each precinct. This may include:

- election date
- precinct number or name
- number of ballots issued
- number of ballots received
- number of ballots counted
- name, team number or person
- date and time processed (if a precinct is processed more than once, the information needs to be maintained for the individual dates and times)
- number of challenged ballots
- number of out-of-county ballots
- number of write-ins and duplicated ballots
- number of envelopes that do not contain a ballot
- number of envelopes containing more than one ballot
- number of provisional ballots counted and not counted
- number of ballots emailed or faxed
- number of rejected ballots
- number of defective ballots
- number of unaccepted ballots

# Ballot Inspection Process



NST 7 days before  
the election

### **Begin inspecting ballots.**

In all cases inspection boards must determine whether ballots should be counted, rejected or duplicated. The object of ballot inspection is to ensure that all ballots are machine-readable and that the voter's actual vote will be recorded accurately. If the ballot has damage or defects that would cause problems in tallying, duplicate as directed in this rule.

All counties, regardless of vote tally system, need to inspect ballots to determine voter intent. The responsibility for determining voter intent lies with the inspection board, under the supervision of the County Elections Official. Ensure that a team of at least two board members of differing political party affiliation work together to determine voter intent.

*See following pages in this section for guidelines in determining voter intent.*

Any extraneous marks, such as names, signatures or initials of the voter should be disregarded unless they have a bearing on the vote cast. Ballots shall be rejected if a write-in is voted using a rubber stamp, sticker or another marking device, except writing which bears the name of a person and is used to vote for a person whose name is not on the printed ballot.

If ballots are counted by precinct, process ballots one precinct at a time. All rejected ballots **must** be accounted for on log sheets or as directed by the County Elections Official and placed in the "rejected ballot" envelope.

*Use guidelines for staffing in the "Opening Return Identification Ballot Envelopes" section on page 71.*

## Counties Using Optical Scan Equipment

### → **Inspecting**

Check for questionable marks and write-in votes at the same inspection.

Questionable marks are:

- 1** marks that cannot be read by the ballot counting equipment
  - 2** a checkmark or an "X" in the voting area
  - 3** voting area completed too lightly
  - 4** voter's choice not marked in the voting area, such as a write-in with an unmarked arrow or circle
  - 5** extraneous marks made by the voter in the header code, clock areas or other scanned areas
  - 6** marks indicating the voter's change of mind
- and/or**
- 7** comments marked in the voting area

*continued on the next page*

Inspect entire ballot and sort into three stacks:

- **clearly marked machine-readable ballots** (they can be placed in the carrier, ready for counting)
- **ballots with questionable marks**
- **ballots with unmarked write-ins**

Sort the ballots with questionable marks into two stacks:

- **ballots that can be enhanced**
- **ballots that must be duplicated**

### → Enhancing

#### **Reminder**

*Process one ballot at a time during this and subsequent steps to avoid confusion about what has or has not been enhanced or duplicated.*

Questionable marks **2,4,5,6** and **7** may require that the ballot be duplicated.

Election personnel process the ballots to be “enhanced” making them machine-readable and reflecting the voter’s intent by:

- placing “enhanced” mark on the ballot, ensuring that the ballot can be identified as enhanced
- marking the voting area in a manner instructed by the County Elections Official for questionable marks **1,2,3** and **4**
- placing opaque enhancement, when appropriate, over questionable marks **4,5,6** and **7** that affected ballot readability

#### **Reminder**

*An opaque enhancement will cover the marks, making the mark unreadable to the ballot counter. The opaque marks must be removable for review during a recount.*

Enhanced ballots are added to the ballots in the carrier ready for ballot counting.

## Determining Voter Intent

If the inspection board agrees on the voter’s intent, the ballot should be enhanced or duplicated in the manner reflecting the voter’s intent and the enhanced or duplicate ballot counted.

If it is possible to enhance the ballot, use the enhancement process. If enhancement is not possible, duplicate the ballot.

If the inspection board does not agree on the voter’s intent, the ballot should not be duplicated but processed as is.

*continued on the next page*

Voter intent in any single contest may not be determined based upon a pattern of partisan voting on the ballot.

If a note is included in the return identification ballot envelope or written on the ballot label and it indicates a change the person wishes to make in voting:

→ follow instructions for **duplicating** a ballot to reflect the intent of the voter

**and**

→ place duplicate number on all associated pieces and place together in the “defective and irregular” envelope

Any time a note is utilized to determine voter intent, the ballot must be duplicated. All received parts must be assigned a tracking number and kept in the event of a recount.

If a note is included that is not relevant to voter intent, do not retain the note.

## Optical Scan Ballots

Only official ballots and ballot labels can be counted. *See ORS 254.185.*

**Two (or more) ovals or arrows have been marked and one mark has been erased, but enough residue is left that the scanner may read an overvote.**



**Yes**



**No** (*erasure has been done*)

Opaque enhance (white sticker) the erasure so that the scanner only “sees” one vote.

Duplicate the ballot, if necessary, to reflect only the “dark” vote.

**One response is indicated with a heavy line or dark oval and a second response is marked with a narrow line or pale oval, but no erasure has been attempted.**



**Yes**



**No** (*no erasure has been done*)

Since there is no attempt to erase either mark, leave as is and allow scanner to count as an overvote.

**The arrow or oval has been completed for one response and a dot or partially completed arrow or oval is marked for the other.**



**Yes**



**No**

Mark may or may not have some erasure—usually there is none.

Opaque enhance or duplicate the ballot to eliminate the overvote due to the partial mark or dot.

**The arrow or oval has not been marked, but the response is circled.**



Enhance or duplicate the ballot by completing the oval or arrow beside the circled vote.

Enhancement cannot permanently obscure the original marks of the voter.

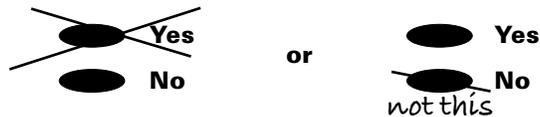
Sometimes duplication is necessary because the circle overlaps the voting area.

**The arrow or oval has not been marked but there is a connective line between the response and the arrow or oval to indicate the vote.**



Enhance the ballot by completing the oval or arrow beside the indicated response.

**More than one arrow or oval has been completed, but a word or mark is used to indicate the correct vote.**



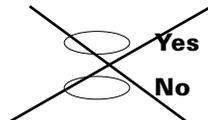
Duplicate or enhance the ballot to correct the overvote so that the correct vote can be counted.

**A word has been used to indicate the vote instead of completing the arrow or the oval.**



Duplicate the ballot, completing the arrow or oval for the indicated vote.

**The entire response area for a contest is crossed out.**



Duplicate or opaque the ballot, leaving all ovals and arrows uncompleted to indicate an undervote.

**Corrections are made with liquid white-out.**



Opaque enhance or duplicate the ballot to eliminate the overvote due to the white-out.

## Machine-Rejected Defective Ballot Resolution

Ballots that are not machine-readable must be inspected. The inspection process should consist of at least two election board members, each of a different political party affiliation.

Machine-rejected ballots are defective ballots that are not machine-readable, including a ripped or torn ballot, a ballot voted with an instrument that cannot be read by the machine or a ballot with extraneous marks within the read head path.

These ballots are out-stacked/rejected while the machine is in standard counting mode.

If the vote tally system requires sorting by precinct, then election personnel will only inspect **one** precinct of “unread” defective ballots at a time.

*See “Enhancing” on page 76 and “Duplication” below.*

## Duplication

Duplication boards, regardless of the vote tally system used, process ballots requiring duplication, making a duplicate ballot that is machine-readable and reflects the voter’s intent.

Duplicating and proofing must be done by at least two election personnel each with a different party affiliation. Each worker must initial both ballots.

- 1 Sort by ballot style if there are multiple ballot styles for the precinct.
- 2 Select the appropriate blank ballot style that matches the ballot to be duplicated.
- 3 Clearly indicate on the ballots which ballot is the defective original ballot and which ballot is the duplicate ballot.
  - Do not place “Duplicate” stamp in read head path or voting area.
  - If the County Elections Official uses duplication teams with unique team identification numbers both the original defective ballot and the duplicated ballot must have the team’s identifying number on it. The County Elections Official must keep a record of each team identifying number and must clearly record the name of each team member.
- 4 Assign a matching number to the original and duplicate ballot and ballot stubs and to any other material bearing on voter intent. The number can only be used once in a given precinct (unless mixed mode).
  - If it is necessary to duplicate a duplicated ballot because the duplicate ballot becomes damaged, duplicate from the original ballot using the same tracking number.
- 5 Use a control log to track the assigned numbers.
- 6 One board member or team duplicates the entire ballot accurately reflecting the voter’s intent and initials both ballots.

*continued on next page*

- 7 The second board member or team proofs the duplicate ballot against the original defective ballot, initials both ballots and places the original defective ballot in the “Defective Ballot Envelope” for that precinct or batch processing.

If other material is included with the ballot or is attached to the secrecy envelope, inspect to determine if it has bearing on voter intent.

- If the material has bearing, duplicate the ballot as necessary and place original ballot and the material in the “Defective Ballot Envelope” for that precinct.
- If the material has no bearing, discard the material.

The duplicate ballot is added to ballots in the carrier for ballot counting.

## Write-In Processing

This section describes the general procedures for processing write-in ballots. Following are examples to illustrate processing write-in votes for all counties and vote tally systems.

Our examples simulate an optical scan ballot but are a guide for all ballot types.

Per ORS 254.505(1), “If it can be ascertained from the ballot for whom the vote was intended” it should be counted.

Follow the enhancing and duplicating instructions from the previous pages, when necessary, for all write-in examples.

### **No candidate name or office written-in, but box, oval or arrow is marked and no other candidate is selected**

 **Fred Neal**  
 **John Lindback**  
 \_\_\_\_\_ *write-in*

When the write-in line is blank, but the box is marked on the paper ballot or the oval/arrow is marked on the optical scan ballot, the vote is counted as an undervote.

#### → **Paper Ballot**

Ignore marks and tally as an undervote.

#### → **Optical Scan Ballot**

Enhance or duplicate the ballot so the vote is counted as undervote.

If a full recount is conducted, any undervotes that made their way into the write-in pool can be identified and recategorized.

**A candidate is selected and no name is written-in, but box, oval or arrow is marked.**

- Fred Neal**
- John Lindback**
- \_\_\_\_\_ *write-in*

When a candidate is selected and the write-in mark is also filled in, the vote is counted for the selected candidate. It is **not** an overvote because no name is written-in.

→ **Paper Ballot**

Ignore marks and tally as a vote for the selected candidate.

→ **Optical Scan Ballot**

Enhance or duplicate the ballot so the vote is counted as a vote for the selected candidate.

**A real or fictitious name is written-in.**

- |  |           |  |
|--|-----------|--|
| <input type="radio"/> <b>Fred Neal</b>                                     |           | <input type="radio"/> <b>Fred Neal</b>                                     |
| <input type="radio"/> <b>John Lindback</b>                                 | <b>or</b> | <input type="radio"/> <b>John Lindback</b>                                 |
| <input checked="" type="radio"/> <u>Brenda Bayes</u> _____ <i>write-in</i> |           | <input checked="" type="radio"/> <u>Mickey Mouse</u> _____ <i>write-in</i> |

When a real or fictitious name is written-in, whether or not the corresponding mark is completed, the vote is counted as a write-in (ORS 254.145(6) states that the elector is not required to place a mark in the voting square corresponding to a name written in a blank space.)

The Board shall not attempt to determine whether the name is real or fictitious. If a write-in is questionable, the write-in name provided may be validated against the voter registration file within the district if contest is not landowner qualified.

If no such registered voter exists, tally as a miscellaneous vote. For example, if the write-in is Mickey Mouse, Thomas Cruz or John Donovan and if the County Elections Official validates no such active or inactive voter is registered by that name, the write-in may be tallied as miscellaneous or as a candidate.

If the non-registered candidate receives the majority of the votes, that name may be certified to the appropriate special district indicating the status of the winning candidate. For example, ORS 255.295(2) states the district will indicate whether the candidate is qualified to hold the office.

→ **Paper Ballot**

If the name of a candidate is written-in, count the vote as a write-in

→ **Optical Scan Ballot**

If the name of a candidate is written-in, enhance or duplicate the ballot so that the vote is counted as a write-in.

*continued on next page*

**A candidate is selected and a name is written-in.**



When a candidate is selected and a different name is written-in, it is counted as an overvote. The Board may make a different determination only if the voter added instructions clarifying intent.

→ **Paper Ballot**

If corresponding write-in mark is not completed, count as an overvote.

→ **Optical Scan**

If corresponding write-in mark is not completed, enhance vote so it is counted as an overvote.

**The write-in line contains a name that is the same as the one that is printed on the ballot for that office.**



The vote is counted as a vote for the candidate.

→ **Paper Ballot**

Tally as a vote for selected candidate.

→ **Optical Scan**

Enhance or duplicate so the vote is counted as a vote for the selected candidate printed on the ballot.

**The printed candidate is selected AND the same name is written-in.**



The vote is counted as one vote for the selected candidate. It is **NOT** an overvote.

→ **Paper Ballot**

Tally as a vote for selected candidate.

→ **Optical Scan**

Enhance or duplicate if the oval or arrow is completed so the vote is counted as a vote for the selected candidate.

**Comments written-in, including “none of the above” and no candidate is selected.**

- Fred Neal**
- John Lindback**
- None of the above* write-in

If the comment does not include a name, the vote is not valid as cast. This vote is counted as an undervote, whether the corresponding mark is completed or not.

→ **Paper Ballot**

Ignore marks and tally as an undervote.

→ **Optical Scan**

Enhance or duplicate so vote is counted as undervote.

**or**

Allow the ballot to be counted as write-in, but tally as undervote if write-ins are tallied.

**When a candidate is chosen and a comment is written-in, marking or not marking the corresponding box.**

<input checked="" type="radio"/> <b>Fred Neal</b>		<input checked="" type="radio"/> <b>Fred Neal</b>
<input type="radio"/> <b>John Lindback</b>	<b>or</b>	<input type="radio"/> <b>John Lindback</b>
<input checked="" type="radio"/> <i>I don't like any</i> write-in		<input type="radio"/> <i>Fred is great!</i> write-in

The vote must be reviewed by the Board to determine the voter’s intent. Make adjustments necessary to count the vote as the Board determines.

→ **Paper Ballot**

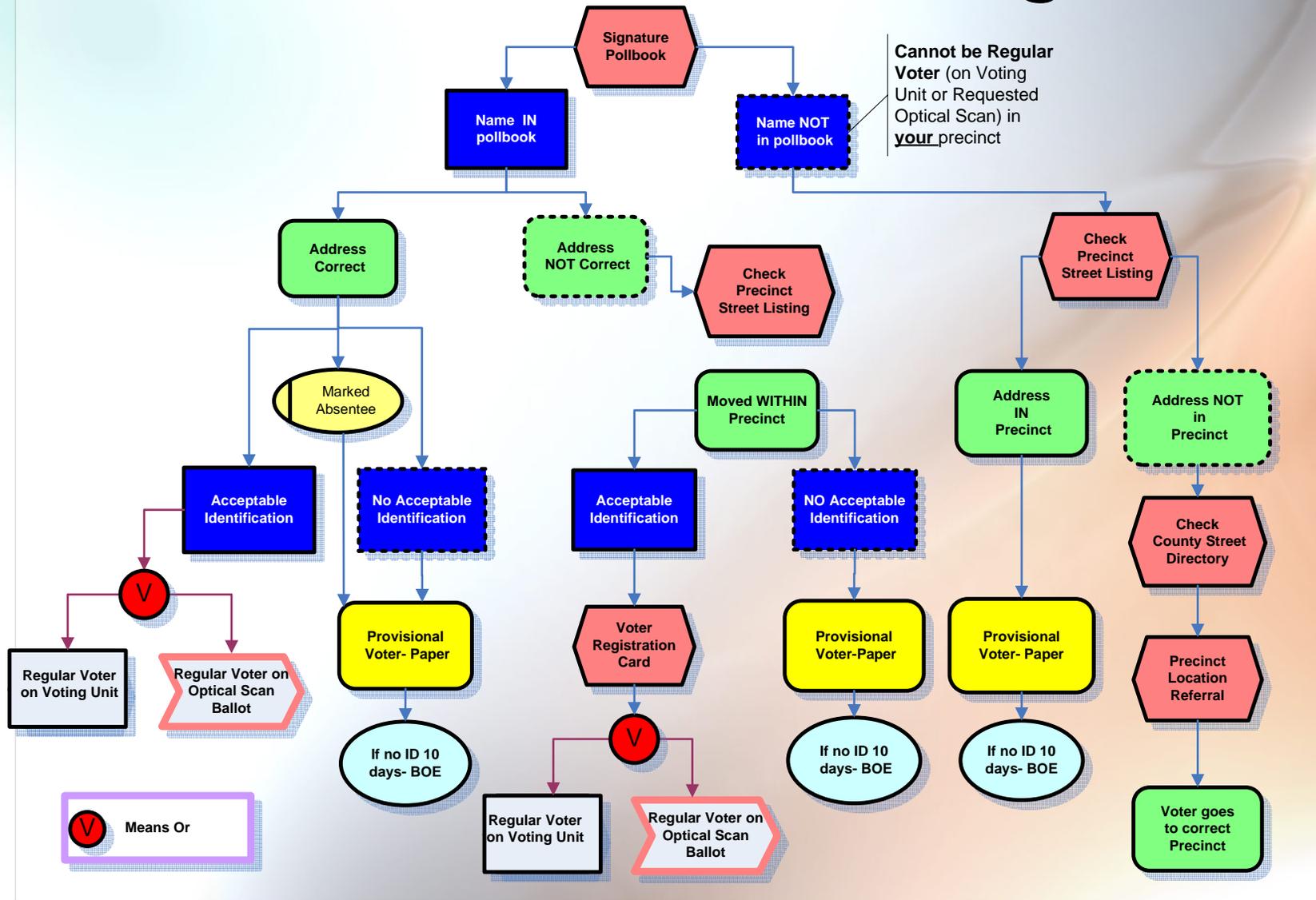
Ignore marks, hand tally as vote for selected candidate.

→ **Optical Scan**

Enhance or duplicate so vote is as a vote for the selected candidate.

Appendix 32: *Voter Classification Diagram*  
and *Pollworker Errors by*  
*Election*, provided by Betty  
McGary, Director, Butler  
County Board of Elections

# Voter Classification Diagram



# Total Pollworker Errors by Election

