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How to Fix Long Lines

By Lawrence Norden

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The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We seek to hold the political institutions and laws of our time accountable to the twin American ideals of democracy and equal justice for all. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protection in the fight against terrorism. Combining the elements of a think tank and legal advocacy group and a communications hub, we seek meaningful, measurable change in the systems by which our nation is governed.

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The Brennan Center's Democracy Program works to repair the broken systems of American democracy. We encourage broad citizen participation by promoting voting and campaign reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

ABOUT THE AUTHOR

Lawrence Norden is Deputy Director of the Brennan Center's Democracy Program. He has authored several nationally recognized reports and articles related to voting rights and voting technology, including *Better Design, Better Elections* (July 2012) and *Voting Law Changes in 2012* (October 2011). His work has been featured in media outlets across the country, including *The New York Times*, *The Wall Street Journal*, Fox News, CNN, MSNBC, and National Public Radio. He has testified before Congress and several state legislatures on numerous occasions.

In April 2009, Mr. Norden completed his duties as Chair of the Ohio Secretary of State's bipartisan Election Summit and Conference, authoring a report to the State of Ohio for the purpose of improving that state's election administration practices and laws. The report was endorsed by many of the State's leading election experts, as well as the Ohio Association of Election Officials, the bipartisan organization representing Ohio's 88 county boards of election. *The Columbus Dispatch* called Mr. Norden "a respected authority on voting law," and praised him for "following an independent path" in developing the report and recommendations.

Mr. Norden was the Keynote Speaker at the Sixth Annual Votobit International Conference on Electronic Voting (Buenos Aires, 2008), and the 2009 Electronic Voting Technology Workshop/Workshop on Trustworthy Elections (Montreal, 2009). In June 2009, he received the Usability Professional Association's Usability In Civic Life Award for his "pioneering work to improve elections." Mr. Norden is the lead author of the book *The Machinery of Democracy: Protecting Elections in an Electronic World* (Academy Chicago Press) and a contributor to the *Encyclopedia of American Civil Liberties* (Routledge 2007).

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INTRODUCTION

There were many images typical of Election Day last November 6, including the usual confetti and tears that accompanied the victory and concession speeches at the end of the night. Unfortunately, there was another image that is increasingly common on Election Day, especially during presidential contests: long lines. While it was inspiring to see so many Americans endure hours of standing to exercise their most fundamental right, it was also troubling. We admire the voters in Miami who waited for hours and “refused to leave the line despite fainting.”¹ But should this kind of fortitude be needed to vote?

Exceptionally long lines were not isolated to a single city or state. One newspaper ran photos of “incredibly long lines,” in polling places nationwide, from Maryland and Minnesota to North and South Carolina.² There were similar reports from states as diverse as Indiana, Colorado, Rhode Island, Wisconsin, and Texas.³ In several polling places in Florida and Virginia, voters were still casting ballots at midnight, long after the presidential election had been called.⁴ In Pennsylvania and Ohio, election observers reported that long lines forced people to walk away without voting.⁵ And in New York and New Jersey, still reeling from Superstorm Sandy, there were reports of hundreds of voters, standing in lines that barely moved after many hours.⁶

Long lines have consequences on turnout and election results. A recent analysis by Professor Theodore Allen of Ohio State University estimates that in Florida alone, more than 200,000 voters may have been discouraged from voting because of long lines on Election Day.⁷ Studies of lines in other regions, from other elections, have similarly shown that chronic long lines can lead to the loss of tens of thousands of votes.⁸

Although long lines are a national problem, not all groups are affected equally. For instance, studies of the 2008 and 2012 presidential elections suggest that black and Hispanic voters were more likely to experience long wait times than non-Hispanic whites.⁹

WHAT CAN BE DONE?

Americans of all political persuasions agree that lines of this magnitude are a disgrace. As President Obama said on election night, “We have to fix that.” But what — precisely — should be done? How do we fix that?

There are three reforms that would dramatically reduce the excessive lines that plague voting, and have the added benefit of creating a more efficient and secure electoral system:

- 1. Modernizing voter registration**
- 2. Providing early voting during a fixed national time period**
- 3. Setting minimum standards for polling place access**

As the world’s leading democracy, the American voting system must be free, fair, and accessible. This nation was founded on the principle that all are “created equal.” Every citizen has a responsibility to vote on Election Day. But it is the government’s responsibility to make sure the system works efficiently for those who exercise this responsibility. Those who take the time to participate in democracy are owed at least that much.

Much of our current election system was developed more than 100 years ago. It is long past time to offer Americans the convenience, flexibility, and security that they demand in the 21st century.

Here is a blueprint to make it happen.

1. MODERNIZING VOTER REGISTRATION

The Problem: The most significant obstacle to free, fair, and accessible elections is our ramshackle voter registration system. It was designed for a 19th century, paper-based society. Now, in the digital age, tens of millions of voters routinely fall off the rolls or are never registered in the first place. Records are rife with errors, creating confusion and long lines on Election Day. The voter registration system is not suitable for the 21st century. Every year, millions of Americans register to vote for the first time, and millions more update their information. Most do so on paper. Too often, these paper forms swamp local election officials, who must input and update hand-written information, and then send it to state offices. This labor-intensive system burdens taxpayers, and introduces the potential for human error — in reading handwriting, transcribing it, and properly forwarding the data detailed in every form — which increases both the chances for fraud, and the chance a voter will be told, incorrectly, that she is not properly registered. As a result of this outdated system, the nation’s voting rolls are notoriously inaccurate.¹⁰ A 2008 Harvard/MIT study estimated that 2 to 3 million citizens tried to vote that November, but were unable to cast a ballot because of registration problems.¹¹

The obsolete system contributes to long lines in two ways. First, inaccuracies in the recording of names, addresses, and other information lead to disruption and delay. As voters wait, poll workers fruitlessly search for names and addresses improperly recorded. A Pew Center study found that one in eight registration records is invalid or has serious errors in it.¹² “Jane O’Dwyer at 210 Main Street” is not found because she is listed as “Jane Dwyer at 201 Main Street” in another poll book. When both the poll worker and the misplaced voter finally give up the search, the voter must fill out a provisional ballot, which takes even more time and resources away from processing other voters who can cast their ballots quickly. It takes only a few incidents like these to significantly increase wait times for everyone else.

Second, inaccurate rolls make it more difficult for election officials to estimate how many voters might show up at a particular polling place. Turnout from one election to another varies greatly. In an off-year election, few voters in a precinct may cast ballots; in a hotly-contested presidential election, nearly all of them may come to the polling place. But if an election official is uncertain about how many registered voters there are in a particular precinct (How many on the lists have died, or moved away? How many have moved into the precinct and are entitled to vote by provisional ballot?), she cannot determine with any precision how many machines, ballots, and poll workers the precinct requires.

The Solution: The U.S. should adopt a new paradigm for voter registration. More responsibility for voter registration should be shared by the government. Under a modern voter registration system, citizens must take responsibility to participate, but the government must ensure that eligible Americans are not prevented from voting due to government errors, improper purges, or misunderstood registration rules.

A. Elements of Voter Registration Modernization

The Brennan Center has produced a detailed proposal for Voter Registration Modernization.¹³ Here's what's needed:

- Voluntary, automated registration of all consenting citizens when they interact with a wide range of government agencies.
- “Portable voter registration” systems that would keep voters on the rolls, even when they move.
- Fail-safe procedures to ensure that eligible voters whose information is not on the rolls or not up to date can correct the information online or at the polls.
- Federal funding for states to make necessary technological upgrades.

First, state election officials would automatically register consenting eligible citizens by electronically transmitting reliable information from other government lists. Digital technology makes this easy. Existing computerized records, such as databases maintained by motor vehicle departments and social service agencies, would be drawn from to build the voter lists. Second, when voters move, their registration would move with them. Voters could also register and correct their registrations online, ensuring the most accurate rolls possible. Finally, if a voter's name is not on the rolls on Election Day, because of a governmental mistake or improper purges, she won't be told she cannot cast a ballot or that her vote won't count. Instead, she'll be given the opportunity to correct the registration books and cast a vote that will count.

B. The Benefits of Modernization

If fully adopted, Voter Registration Modernization would vastly improve democracy. Among the benefits:

- As many as 50 million eligible citizens would be added to the rolls permanently.
- States would save millions of dollars. Every state that has adopted online or automated registration has reported saving hundreds of thousands of dollars each election cycle.¹⁴
- It would improve election integrity, by creating more accurate rolls and curbing the potential for fraud.

Fortunately, this plan does not require the development of new technology or a labor-intensive effort to computerize current voter records. The basic infrastructure already exists. Thanks to the Help America Vote Act (“HAVA”), every state now has (or soon will have) a computerized statewide voter registration database capable of sharing information in some form with other government databases. Components of a fully modernized registration system are already successfully in use, from Maine to Washington, Ohio to Florida.¹⁵ Every single element of this reform is in place and working well in multiple states. And they have been put in place by Republicans and Democrats alike. For voters, the transition from Dickensian record keeping to 21st century record keeping should be seamless.

Modernizing voter registration would solve one of the most significant causes of long lines and voter frustration. Fewer errors in the registration rolls will mean less time spent looking for misspelled names or addresses while other voters wait. Similarly, less time will be spent directing voters to fill out lengthy provisional ballot envelopes, which also consumes time and requires their own, separate set of administrative procedures. Finally, officials will have the ability to more precisely allocate resources to polling places, because they will have an exact and accurate number of registered voters.

2. PROVIDING A MINIMUM EARLY VOTING PERIOD

The Problem: Until last year, the growth of early in person voting (“EIPV”) appeared unstoppable. In the last decade, the percentage of voters casting ballots at early voting sites increased nearly five-fold,¹⁶ and the effort generally had bipartisan support.¹⁷ That changed in 2011, when the number of early voting days was cut in several states. The most dramatic narrowing of the early voting window was in Florida, where EIPV days were reduced nearly in half, from 14 to 8, without increasing the number of polling places, machines, or poll workers available to early voters.¹⁸ The result was what many critics expected: exceptionally long lines, during both the (shortened) early voting period, and on Election Day.¹⁹ In fact, there were reports that several polling places throughout the state had wait times of up to eight hours both before and on Election Day.²⁰

Black and Hispanic voters were disproportionately affected by the cutbacks to early voting. In Florida, as in other locales with EIPV, studies show that people of color are more likely to vote during the early voting period than non-Hispanic whites.²¹ Florida’s early voting restrictions seemed tailored to especially affect times that historically have had the highest minority turnout — the law eliminated voting on the last Sunday before Election Day, when many minorities voted after church.²² Thus, it is hardly surprising that reports of long lines frequently concerned polling places with high concentrations of minorities.²³ Similarly, cutbacks in early voting in Ohio appear to have disproportionately impacted large counties with significant minority populations: One study showed that during the last three days of early voting, wait times in those large counties were between one and four hours, in contrast to smaller counties with proportionately fewer minority voters, where wait times were under an hour.²⁴

Problems in other states also support the argument that a lack of EIPV opportunities can lead to long lines. In New York and New Jersey, Superstorm Sandy made it impossible for many voters to cast ballots at their local polling place on Election Day. Voters forced out of their homes could not travel to their polling place, and some polling places were moved because they could not operate in their usual locations. Unfortunately, neither state made provisions for allowing any voter to cast a ballot at a polling place open before Election Day (neither state requires or allows EIPV by law). If they had, many voters would have had the opportunity to cast ballots at sites unaffected by the storm before November 6, easing what turned out to be an extraordinary burden on both voters and election officials on Election Day.²⁵

Both states valiantly tried to provide displaced voters with Election Day alternatives, including allowing them to use provisional ballots in any location in the state, and in the case of New Jersey, allowing Internet and fax voting.²⁶ Ultimately, these efforts created problems of their own and the election systems of both states were overwhelmed. The e-mail and fax experiment in New Jersey was deemed a “catastrophe” by one New Jersey election official, with many voters complaining they never received ballots, and county e-mail servers crashing before others could file their ballots.²⁷ In both states, polling places that attracted many displaced voters ran

out of ballots, creating an additional frustration for citizens who had not only lost their homes, but some of whom had waited in line for hours to exercise their civic right, only to be eventually turned away.²⁸

The Solution: Partisans from both sides of the political aisle recognize that EIPV, when implemented effectively, can play a major role in reducing long lines on Election Day.²⁹ The reasons are simple: First, if a greater number of voters are voting early, fewer will vote on Election Day, meaning the crush of voters at particular times on Election Day will be smaller. Second, early voting provides an important safety valve against the kind of Election Day overload that can result from unexpected problems. Whether those problems are minor (like a failed voting machine at a polling site) or major (like the fallout from Superstorm Sandy), EIPV ensures that fewer voters are forced to choose between waiting in line for seven hours on Election Day and not voting at all.

EIPV should be available to all voters. This would not require a leap into uncharted waters. At least 32 states and the District of Columbia already offer some form of EIPV, and it has been hugely successful when implemented effectively.³⁰ The Brennan Center has found that the best EIPV operations include at least these four elements:

- 10 weekdays of early voting and at least two weekends, including the weekend before Election Day.
- At least some weekday EIPV hours beyond regular business hours (e.g., before 9 a.m. and after 5 p.m.).
- Establishment of a standard by which each county (or relevant voting jurisdiction) sets a minimum number of EIPV locations based on its voting population, and polling locations that are reasonably and equally accessible to all voters.
- Establishment of “Early Voting Centers,” at which any voter from a particular county can vote, regardless of how close it is to the voter’s home.

These criteria ensure that the greatest number of voters have reasonable access to EIPV. Evidence shows that early voting increases as Election Day nears — the weekend before Election Day has particularly high turnout.³¹ Mandating the availability of weekend voting, as well as both standard business and non-business hours during the week, frees citizens from making a choice between work and voting. Setting a uniform standard for each county to have a minimum number of EIPV outlets to serve its voting population will aid in dampening controversies over site selection, which too often in the past has led to accusations that some voters were provided less access to early voting than others.³² Finally, creating Early Voting Centers gives voters much greater flexibility during the early voting period to vote at locations that may be convenient, but not particularly close to their homes. For instance, a voter could cast a ballot at an Early Voting Center close to work during her lunch hour, or near a shopping mall on the weekend.³³

3. SETTING A MINIMUM STANDARD FOR VOTER ACCESS

The Problem: One of the most striking things about Election Day 2012, and every presidential contest in recent memory, is how different the experience of voting can be from one community to the next. Even within the same city or state, the differences can be stark. This is often directly related to where polling places are located, and the resources provided to each one. For instance, *The Miami Herald* reported that a single Miami precinct, which had waits of up to five hours, served 8,303 registered voters. And a “total of 159 precincts — about 19 percent — [had] more than 2,500 registered voters.” By contrast, some precincts had “as few as a couple of hundred registered voters,” with fewer than 100 voting on Election Day.³⁴ Although all voters across Florida were faced with long ballots that included 11 state constitutional amendments,³⁵ long wait times were exacerbated in counties such as Miami-Dade due to the lack of minimum standards for voter access, including inadequate resources for the number of voters expected.

There is a widespread consensus that inadequate allocation of resources — whether number of voting machines, poll workers, or ballots — can lead to long lines and ultimately prevent thousands from voting.³⁶ To take just one high-profile example, between 20,000 and 30,000 people were deterred from voting in a single county in Ohio in 2004 because of long lines caused in part by an inadequate number of voting machines.³⁷

The Solution: The federal government should set minimum standards for voting — an idea Americans overwhelmingly support.³⁸ These standards could be set with the goal of ensuring that no American must wait more than one hour to vote on Election Day. Numerous factors need consideration in setting these standards. Studies show that, to be effective, the standards should be based upon, among other things, the number and location of registered voters, turnout in previous elections, the type of voting system used, the needs and numbers of voters with disabilities and limited English proficiency, and the length and complexity of ballots.³⁹ To ensure these standards are applied uniformly within each state, and enhanced when necessary, the appropriate agency and/or individuals must have the right to seek penalties and demand planning improvements when long lines persist in a particular state.

Because these factors differ greatly from state to state, and even county to county, a “one size fits all” approach to resource allocation is not possible. For example, New York election law requires that counties allocate voting machines such that there are no more than 800 registered voters per machine.⁴⁰ This standard might make sense in New York, where in the 2012 general election, there were no ballot measures and the ballot was only one page. By contrast, some counties in Florida had ballots nearly 12 pages in length.⁴¹ Yet, Florida does not have a statewide standard for the ratio of voters to voting machines. In Lee County, there was one scanner per 3,500 registered voters, while in some precincts in Orange County, there was one scanner per 5,150 registered voters.⁴²

A Federal Role

But these differences do not mean there is no need for a federal role in setting minimum standards. The overarching goal should be that no voter should wait more than one hour to cast her ballot. States should be required to develop plans that must be approved by a responsible federal agency, such as the United States Election Assistance Commission (“EAC”), which was established with the express purpose of guiding localities in providing efficient voting and best practices, or the U.S. Department of Justice, which currently

has enforcement authority over a variety of federal laws related to voting. Additionally, contingency plans should be set so localities can respond quickly and effectively if wait times begin to exceed one hour.⁴³

Of course, merely requiring states to publish a plan to reduce lines is no guarantee that long lines will disappear. In fact, several states already have minimum requirements meant to ensure equal access to the polls, often with little apparent benefit to voters, because they are either extremely weak or are not uniformly implemented.⁴⁴ It is therefore critical to ensure that affected voters have the ability to enforce or challenge state plans to prevent long lines.

4. ADDITIONAL IDEAS FOR ELECTION IMPROVEMENT

Long waits are merely the most visible manifestation of the problems with the voting system. Deceptive practices that mislead and intimidate, machines that lose or misread votes, and a tangle of confusing laws that make it difficult for citizens to restore their voting rights are all problems that have plagued recent elections. All of these hurdles can affect election outcomes, undermining the confidence of citizens in the fairness of results. Absent confidence by the governed that elections are free and fair, democracy ends. Here are solutions to these issues.

A. Deceptive Practices and Voter Intimidation

The Problem: Every election cycle, voters are inundated with a flurry of information aimed at educating them about issues, candidates, and the electoral process. Unfortunately, not all of this information is designed to help voters make informed political choices. Instead, in nearly every election, many voters, disproportionately those in minority communities, are furnished with deceptive information designed to prevent them from casting a meaningful ballot. In 2004, for example, flyers in African-American neighborhoods in Milwaukee, Wisconsin falsely warned voters that if they had not paid their parking tickets, if they had ever been convicted of a felony, or if they had ever voted in an election that year, they would be punished for going to the polls.⁴⁵ In 2006, flyers distributed to voters with Latino surnames in Orange County, California incorrectly intimated that it is illegal for naturalized citizens to vote.⁴⁶ In 2008, fake flyers alleging to be from the Virginia State Board of Elections were distributed that falsely stated that Republicans and Democrats were supposed to vote on different days.⁴⁷ On Election Day in 2010, robocalls targeted minority households in Maryland telling voters that the election outcome had already been determined and there was no need to vote.⁴⁸

The Solution: Congress should pass legislation that prohibits intimidation and deceptive practices, and provides voters with adequate recourse for conduct aimed at preventing them from voting, such as the Deceptive Practices and Voter Intimidation Prevention Act of 2012.⁴⁹ Any legislation should preserve the fundamental First Amendment right of free speech, particularly in the political arena. In addition, the legislation should include a remedial structure that can provide affected communities with immediate, correct information from a reliable and trusted source.

B. Vacancies at the Election Assistance Commission

The Problem: The EAC is a bipartisan agency created by HAVA for the purpose of establishing national guidelines for voting systems, and offering guidance to localities on how to ensure best election administration practices.⁵⁰ Unfortunately, Congress has opted to treat the EAC as a ghost entity. The EAC has been without commissioners or an executive director for nearly a year. Draft guidelines intended to allow jurisdictions to purchase the next generation of voting systems were delivered to the EAC in August 2007.⁵¹ Without commissioners, these guidelines cannot be approved, meaning that jurisdictions that require federal certification, or testing to federal guidelines, cannot purchase the next generation of machines.⁵²

The Solution: Congress needs to fill the vacancies and strengthen the EAC so that every voter, everywhere, can go to the polls with a reasonable expectation of adequate service, instead of wildly varying experiences now prevalent. This will allow localities around the country to purchase the next generation of voting equipment.

C. Voting Machine Failures

The Problem: Failed voting machines, lost votes, and frustrated voters: these have been a constant in news reports after every recent major election. That should not be surprising. The voting systems in use today are complicated machines. Each runs on tens of thousands of lines of software code. As with automobiles and airplanes, automatic garage door openers and lawnmowers, occasional malfunctions are inevitable — even after rigorous product testing.

When it comes to failures, however, voting machines are different from automobiles, airplanes, and other products in at least one important respect: For the vast majority of voting machines in use today, (1) manufacturers are not required to report malfunctions to any government agency, and (2) there is no agency that either investigates alleged failures or alerts election officials and the general public to possible problems (let alone requires manufacturers to fix problems).

The consequence of this lack of oversight is predictable. Voting machines fail in a particular county in one election, and then again later, under similar circumstances, in a different county. These repeated failures disenfranchise voters and damage public confidence.

The Solution: The EAC or other federal agency should be given statutory authority and resources to create a national database of voting machine failures. Information would be compiled that tracks the performance of various brands and types of voting machines, establishing a track record for each make and model. The database would strengthen the electoral system. It would be easier for election officials and others to ensure their equipment is as user-friendly and accurate as possible. And voting machine vendors would be more accountable to public officials and taxpayers, providing manufacturers incentives to enhance internal controls. Given the billions of dollars spent by federal and local governments to purchase and maintain new voting equipment over the last several years, such transparency would be a significant improvement.

In addition, the only way to ensure that software defects do not affect election results is to require voter-verified records for all electronic voting systems, and to conduct an audit comparing a small percentage of those records to the electronic tallies after each federal election. The voter-verified audit records must be

independent of the voting machine software, such as paper records. They must also be accessible to people with disabilities and language minority voters. Congress should require an audit of the voter-verified records after every federal election. It should also ensure that the auditing procedures are transparent and effective. In total, 40 states have already moved toward requiring voter-verified paper records for every voting machine. Of those, 23 require post-election audits.

D. Restoring Voting Rights for Those with Past Criminal Convictions

The Problem: Voting is both a fundamental right and a civic duty. Yet, alone among modern democracies, the U.S. has laws that lock people out of the voting booth for life if they have been convicted of crimes. These laws are often a remnant of Jim Crow. The numbers involved are not small and disproportionately affect minorities. An estimated 5.85 million Americans are barred from voting because of a past felony conviction.⁵³ Approximately 4 million of the disenfranchised are out of prison, or on probation or parole, and more than half of those — 2.6 million — have completed their sentences and are working, paying taxes, and raising families just like ordinary citizens, but are relegated to permanent second-class citizenship.⁵⁴ About 2.2 million African-American adults are barred from voting under these laws.⁵⁵ Their 7.7 percent disenfranchisement rate is 4.5 times higher than the rate of the non-African-American population, and in three states, more than one in five African-American men are permanently disenfranchised.⁵⁶

The Solution: Congress should pass the Democracy Restoration Act of 2011,⁵⁷ which seeks to restore voting rights in federal elections to the millions of disenfranchised Americans who have completed their prison terms but are still denied the right to vote. Restoring voting rights to those who have completed their sentences strengthens democracy by increasing voter participation. Political participation also helps the formerly incarcerated reintegrate into the community.

ENDNOTES

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