



U.S. Election Assistance Commission
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EAC Advisory 2005-006: Provisional Voting and Identification Requirements

The U.S. Election Assistance Commission (EAC) has recently received an inquiry regarding whether a state may impose an identification requirement that would limit a potential voter's access to a provisional ballot to which he or she is otherwise entitled under Section 302 of the Help America Vote Act (HAVA) (42 U.S.C. §15482). After consideration of the matter, EAC has concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event their name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot. In explaining this position, this advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements.¹

Plain Language of HAVA Section 302. The right to cast a provisional ballot is created in Section 302 of HAVA. Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote." (Section 302(a)). This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a)(2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.² See also, Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574 (6th Cir. 2004). However, notwithstanding the above, HAVA goes on to recognize that the right to submit a provisional ballot constitutes neither a means to avoid State imposed voter eligibility requirements nor a vote. Instead, HAVA requires election officials at a polling place to

¹ The EAC is the Federal agency charged with the administration of HAVA. While the EAC does not have rulemaking authority in the area of provisional voting, HAVA does require the Commission to draft guidance to assist states in their implementation of HAVA's provisional voting requirements. Although EAC's administrative interpretations do not have the force of law associated with legislative rules, the Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are to be given deferential treatment by Courts when faced with issues of statutory construction. York v. Secretary of Treasury, 774 F. 2d 417, 419 – 420 (10th Cir. 1985) (citing Compensation Commission of Alaska v. Aragon, 329 U.S. 143, 153 – 154 (1963)) See also Christian v. Harris County, 529 U.S. 576 (2000); Edelman v. Lynchburg College, 122 S. Ct. 1145 (2002).

² Moreover, a potential voter determined not to be eligible must be informed of their provisional voting rights per Section 302(a)(1) of HAVA.

transmit a provisional ballot (or information associated with the written affirmation) to appropriate election officials for verification. (Section 302(a)(4) of HAVA). These election officials ultimately determine the voter's eligibility based upon information presented to or gathered by it, in accordance with State law. In this way, the State determines whether any provisional ballot submitted will be counted as a vote. Id.

In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. See Sandusky County Democratic Party, 387 F.3d at 570 and Florida Democratic Party v. Hood, 342 F.Supp 1073, 1079-1080 (N.D. Fla. 2004). A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

Traditional vs. Provisional Ballots. The nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot. Because of this fact, the two processes must be treated differently. While voter identification requirements may serve as a bar to the casting of a traditional ballot, they may not prevent the submission of a provisional ballot.

First, the nature and purpose of traditional and provisional ballots are essentially different. The purpose of a traditional ballot is to allow a confirmed, eligible voter to cast a vote. The purpose of a provisional ballot is to allow individuals whose voter eligibility is challenged to reserve the right to vote by memorializing both their intent to vote and their proposed vote. This is evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right. As the Sixth Circuit Court of Appeals stated:

[T]he primary purpose of HAVA was to prevent on-the-spot denials of provisional ballots to voters deemed ineligible to vote by poll workers. Under HAVA, the only permissible requirement that may be imposed upon a would-be voter before permitting that voter to cast a provisional ballot is the affirmation contained in [42 U.S.C.] §15482(a): that the voter is a registered voter in the jurisdiction in which he or she desires to vote, and that the voter is eligible to vote in an election for federal office. Sandusky County Democratic Party, 387 F.3d at 574.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how

can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Second, consistent with the differences in purpose between traditional and provisional ballots, the other major distinction between the two lies in the application of voter eligibility requirements. This difference is primarily one of procedural timing. States have the right to create voter eligibility requirements and these requirements must be applied to both traditional and provisional ballots. In casting a traditional ballot, one must meet all eligibility requirements prior to receiving the ballot. However, in the provisional process, the potential voter has already failed to meet these preliminary requirements and the application of State law must occur after the ballot has been received. State voter eligibility requirements should be applied after the provisional ballot and/or supporting affirmation has been transmitted pursuant to Section 302(a)(3) of HAVA. Provisional ballots are counted as votes only after election officials have determined that the individual can meet voter eligibility standards consistent with state law. Again, the purpose of the process is to allow election officials more time, so that they may have more perfect information when making a decision about voter eligibility. Provisional ballots are subject to the full effect of State law regarding the eligibility to vote and the opportunity the law provides provisional voters to supply additional information. Provisional ballots do not escape state or federal voter eligibility requirements, those provisional ballots that do not meet State standards will not be counted.

Provisional Voting Under HAVA Section 303(b). Congress provided an example of how provisional voting works by applying the right to a specific circumstance. Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. A review of the section shows that in the one area where HAVA set a Federal voter identification requirement Congress made clear that an individual's failure to meet this eligibility requirement triggered the statute's provisional voting section. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

Stricter Eligibility Standards and Provisional Voting. HAVA specifically provides that States may create stricter voter eligibility standards than provided in HAVA.³ Arizona’s “Proposition 200” identification requirements are a prime example of this authority. However, the HAVA authority to create stricter eligibility standards does not grant the state authority to create standards that bar access to a provisional ballot. To interpret HAVA otherwise (i.e. allowing stricter state identification standards to bar access to provisional ballots) would render HAVA’s provisional voting mandate (Section 302) void and meaningless. HAVA cannot be read to grant both (1) the right to a provisional ballot if an individual’s voting eligibility is challenged by a State and, (2) the right of that State to deny an individual a provisional ballot if they do not meet voter eligibility standards. These concepts are mutually exclusive. HAVA cannot be interpreted to allow a State to create voter eligibility standards that bar the Section 302 right to cast a provisional ballot without nullifying the effect and intent of that provision. Any such interpretation of HAVA would run afoul of both HAVA Section 304 and longstanding principles of statutory construction.

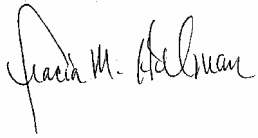
First, HAVA notes in Section 304 that while States may create standards that are stricter than those established under HAVA, this authority is limited to the extent “such State requirements are not inconsistent with the Federal requirements under [HAVA].” Clearly, provisional voting is a requirement under HAVA. Section 302(a) notes that qualified individuals “**shall** be permitted to cast a provisional ballot.” (Emphasis added). In this way, States may not create standards that are inconsistent or interfere with the provisional voting mandate.

Furthermore, long established principles of statutory construction further prohibit an interpretation of HAVA that would render any of its provisions meaningless. It is “‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” TRW Inc. v. Andrews, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001), (quoting Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)).

A Stricter Provisional Voting Standard. As discussed above, States’ have the right to impose stricter requirements than those laid out in HAVA. The EAC has already made it clear, above, that a stricter voter eligibility requirement cannot be read to bar an individual’s right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person’s access to a provisional ballot. As the Sixth Circuit noted, “HAVA is quintessentially about being able to cast a provisional ballot.” Sandusky County Democratic Party, 387 F.3d at 576. “HAVA’s requirements ‘are minimum requirements’ permitting deviation from its provisions provided that such deviation is ‘more strict than the requirements established under’ HAVA (**in terms of encouraging provisional voting**)....” *Id.*, (quoting 42 U.S.C. §15484, emphasis added). Thus, in terms of provisional voting, a stricter standard is one that serves to further encourage provisional voting. When passing laws affecting provisional voting, States must ensure that their provisions are consistent with HAVA or otherwise serve to further an individual’s access to a provisional ballot. EAC concludes that any policy asserting that States may pass laws limiting access to provisional ballots conflicts with HAVA.

³ See 42 U.S.C. §§15485 – 15485, entitled *Minimum Requirements and Methods of Implementation Left to Discretion of State*, respectively.

Conclusion. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.



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Best Practices on Provisional Voting

Background:

Section 302 of the Help America Vote Act (HAVA) creates the right for potential voters to cast provisional ballots in the event their names do not appear on the registration list or the voters' eligibility is challenged by an election official. The issuance of a provisional ballot is best described as a safety net or fail safe for the voter, in that:

- It maintains the person's intent to vote and selections until election officials determine that the person does or does not have the right to cast a ballot in the election.
- It allows the determination of the voter's eligibility to be made at a time when more perfect or complete information is available either from the voter or from the election jurisdiction.

Election officials make the decision on whether to count provisional ballots based on voter eligibility standards established in State and Federal law, including age, citizenship, and residence requirements. While HAVA establishes identification (ID) requirements for first time voters who registered by mail, many States impose stricter standards for the identification of all voters. States determine which provisional ballots meet those ID requirements.

Provisional balloting prevents the possible disenfranchisement of voters. However, the policies and procedures for administering provisional voting vary from State to State. In some States, a person can cast a provisional ballot in any precinct in the State regardless of where the person is registered. In other States, a person must cast a provisional ballot in the precinct in which the person is eligible to vote. A consistent approach within each State is key to ensuring that all voters are treated equally.

The U.S. Election Assistance Commission (EAC) issued Advisory 2005-006 in September 2005, to provide clarification on provisional voting and identification requirements. The EAC offers the following information as a complement to Advisory 2005-006 and as best practices to guide States as they administer the provisional balloting process. By recommending these practices, the EAC offers informed advice while respecting diversity among the States.

Overview of Recommendations for Best Practices

Although wide variation exists in implementing provisional voting among and within States, recommendations for best practices based on the experiences of the 2004 elections can be useful as States seek to implement provisional voting policies and procedures that are fair, transparent, and effective.

Efforts to improve provisional voting may be most effective as part of a broader effort by State and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable States to identify which aspects of the registration and electoral system cause most voters to end up casting provisional ballots. Election officials can then look to their registration system, identification requirements, or poll worker training as ways to reduce the need for voters to cast provisional ballots.

Election officials are encouraged to review these recommendations as they prepare to administer the distribution and processing of provisional ballots for the November 2006 election cycle. In 2007, the EAC will collect statistical data on provisional ballots cast in this election. Additional analysis and study will result in recommendations for continued improvement in this aspect of election administration.

The recommendations provided below are grouped based on each stage of the provisional voting process, as follows:

- Voter Outreach/Communication
- Laws, Policies and Procedures
- Staff and Poll Worker Training
- Managing Election Day
- Evaluating Voter Eligibility and Counting Provisional Ballots
- Post-Election Statistical and Systems Analysis

Voter Outreach/Communication

- Assess the usefulness and clarity of information provided to voters – both in written format and posted on web sites.
- Take advantage of mandated mailings (i.e. sample ballots and/or registration certificates) to further notify voters of the need to update their voter registration record to reflect a change in name, address, or party affiliation. In States where sample ballots are not required, mail voter registration affidavits with polling place location and address to all voters.
- Inform voters of laws regarding provisional voting. Prominently post and widely distribute provisional voting and administrative complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what to do if they believe their right to vote was denied.

- Inform voters of laws regarding voter identification. Train registration staff and volunteers to collect and verify voter identification requirements at the initial point of registration.
- Collect required identification from voters registering by mail by including an informational handout when you mail their voter registration certificate.
- Monitor the number of registered voters that must show identification on Election Day, and take proactive steps to collect this data prior to Election Day.
- In states that require voters to provide identification in every election, educate voters and poll workers on the various types of acceptable identification.
- Provide clear, straightforward information about the process for re-enfranchising felons.
- Use election office web sites to provide helpful information to voters including whether they are registered to vote; how they can update their registration for changes of name, address or party; boundaries of precincts; location of polling places; requirements for identification; and other helpful information that will facilitate voter registration and voting. In addition, provide an 800 number that voters can use to contact their election official.
- Encourage voter outreach efforts to inform voters of the need to validate/update their voter registration records.

Laws, Policies and Procedures

- Review State laws regarding the validity of a provisional ballot when cast in the wrong precinct. It is a good practice for poll workers to direct the voter to the correct precinct in states where provisional ballots are counted only when cast in the voter's own precinct.
- Utilize State laws or regulations to require an evaluation process for provisional ballots while protecting the names of those who voted provisionally.
- Give voters who lack the needed ID a reasonable period of time to provide it to officials prior to counting provisional ballots.

Staff and Poll Worker Training

- Provide standard information resources for the training of poll workers by local jurisdictions. Examples of training materials might include maps or databases with instructions on how to locate polling places for potential voters who show up at the wrong polling place. Usable and useful information in the hands of poll workers

can protect voters from being penalized by administrative errors at the polling place.

- Ensure that state training materials provided to local jurisdictions clearly indicates that the only permissible requirement for obtaining a provisional ballot is an affirmation that the voter is registered in the jurisdiction and is eligible to vote in an election for Federal office.

Managing Election Day

- Provide poll workers with color-coded supplies, informational handouts and checklists to aid in processing provisional voters. *Example: To avoid confusion while counting ballots produce provisional ballots with a design and/or color that is different from a regular ballot.* Handouts should describe the procedures for evaluating the provisional ballot and steps the voters can take to determine if their ballots were counted. Training materials should include instructions on the options available to provisional voters.
- Ensure that each polling place has sufficient supplies for all provisional voters, i.e. ballots, envelopes, handouts, etc. States should provide guidelines for estimating the provisional supplies needed at each polling place. Offer a practical method to guide the supply of provisional ballots at polling places and that takes into account the number of voters in the district and the number of provisional ballots cast in recent elections. *Example: Connecticut and Delaware provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 percent of the voters in the district; Delaware sets the number at 6 percent.*
- Review the layout and staffing level of all polling places, particularly the multi-precinct polling places. To help voters cast their ballot in the right place, provide greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics.
- Provide voters with printed information explaining how to check to see if their ballot was counted.
- For those States that require voters to appear at their assigned precincts, make sure voters know the importance of voting within their own precincts and ramifications of voting in another precinct. Involve the voter in deciding whether to go to the correct precinct or vote provisionally for only the higher offices at the top of the ballot.
- Establish a clear chain of custody for handling provisional ballots from production through distribution, collection, and evaluation, including written procedures for this chain of custody.

- Collect statistical information regarding number of provisional ballots cast by polling place and provide this data to the media and candidates as soon as possible after Election Day.

Evaluating Voter Eligibility and Counting Provisional Ballots

- Use a signature match method to establish that the individual who voted and the individual returning later with identification is, in fact, the same person. Compare the signature match with motor vehicle records and other databases that are available to counties.
- Prepare a written procedure and checklist for officials to identify the reason why provisional ballots are rejected. After completing the checklist disclose them publicly. *Example: Check the applicable box “unregistered voter,” “lack of signature match,” “wrong precinct”, etc..*
- Notify voters regarding whether their provisional ballots are counted. Provide information to enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.
- Verify provisional ballots in a timely manner. The time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Consider how to divide the time constraints imposed in a presidential election by the safe-harbor provisions regarding certification to the Electoral College. Since some part of this 5-week period will be consumed by the eligibility evaluation, take care to provide a sufficient period of time for challenges.

Post-Election Statistical and Systems Analysis

- Collect data systematically on the provisional voting process to permit consistent evaluation of State procedures and assess changes from one election to the next. *Example: (1) number of provisional ballots cast by county; (2) reasons why provisional ballots were cast and number counted and not counted, by category; (3) measures of variance among jurisdictions; and (4) time required to process and research provisional ballots by jurisdiction.*
- Analyze your State’s provisional voting system, by asking the following questions:
 - 1) Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
 - 2) Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

- 3) Is the provisional voting system sufficiently structured to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
- 4) Do the procedural requirements of the system permit a cost-efficient, accurate and timely operation? Are the administrative requirements of the system reasonable given the availability of staff and other resource requirements?
- 5) How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the State? Is the variation great enough to cause concern that the system may not be administered uniformly across the State?

CONCLUSION

The EAC recommends that States take the following actions:

- Recognize that the first step to improving quality is to see the provisional voting process as a system and to take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
- Allow the provisional ballot to be a procedure for change of address for the voter or for registering the voter for the next election and future elections.
- Establish a clear chain of custody for handling provisional ballots from production through distribution, collection, and evaluation, including written procedures for this chain of custody.
- Collect data systematically on the provisional voting process to enable an ongoing evaluation of how well States' voting procedures are working. Assess changes from one election to the next. The effort should start in the 2006 election and should include collecting the following data:
 - Provisional votes cast and counted by jurisdiction, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot) and the number of ballots actually counted in each category.
 - Reasons why provisional ballots were not counted.
 - Measures of variance among jurisdictions.
 - Number of poll workers trained in the administration of provisional voting by polling place.
 - Number of jurisdictions posting information on provisional voting in the polling place.
 - Time required to process and research ballots by jurisdiction.

U.S. ELECTION ASSISTANCE COMMISSION

QUICK START MANAGEMENT GUIDE ON PROVISIONAL BALLOTS

The Quick Start Management Guide on Provisional Ballots is part of a series of brochures designed to highlight and summarize the information contained in the chapters of the U.S. Election Assistance Commission's (EAC) [Election Management Guidelines \(EMG\)](#). The goal of the EMG is to provide a collection of election management guidelines, consolidated into one document, to assist State and local election officials effectively manage and administer elections. These guidelines are solely designed to serve as a source of information for election officials and not as requirements by which they must abide.

The content of the EMG and the Quick Start Management Guides has been developed in collaboration with State and local election officials and other election professionals who have first-hand experience managing elections. The EAC is grateful for their participation and ensuring the guidelines are practical and applicable for jurisdictions regardless of their size and resources. The EMG and the Quick Starts are available online at www.eac.gov.

Introduction

Section 302 of the Help America Vote Act (HAVA) of 2002 establishes the right for a voter to cast a provisional ballot if their name is not listed on the registration list or the voter's eligibility is challenged by an election official. The ability to cast a provisional ballot is often referred to as "fail safe voting" in that it provides an opportunity for the voter to cast a provisional ballot without being turned away from voting, and allows election officials an opportunity to review each provisional voter's information and determine eligibility following extensive research at the central election office. Furthermore, Sections 302(a)(5)(A) and 302(a)(5) (B) of HAVA require that the appropriate State or local election official establish a free access system for voters to use to learn whether their vote was counted, and, if it was not counted, the reason why it was not counted; it also requires that voters be provided written information regarding this free access system at the time they cast their provisional ballot.

Laws for administering provisional ballots vary from State to State, and election officials have to make decisions on whether to count provisional ballots based on voter eligibility standards established in State and Federal law, including age, citizenship, and residence requirements.¹ For example, in some states a voter may cast a provisional ballot in any precinct in the State regardless of where the person is registered and have

¹ On September 13, 2005, the EAC issued "EAC Advisory 2005-2006: Provisional Voting and Identification Requirements." This advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements. A copy of this advisory is available on the EAC's Web site at <http://www.eac.gov/election/advisories%20and%20guidance>.

the provisional ballot counted. In other States, a voter must cast a provisional ballot in the precinct they are eligible to vote in order to have the ballot counted, and other States count the portion of the ballot that the voter would have been eligible to vote if they had voted in the correct precinct.

Following are recommendations to consider regarding the general management of provisional ballots.² The recommendations contained in this publication should be vetted with Federal, State, and local laws, regulations, and relevant case law to ensure they are properly and lawfully implemented. Election officials should contact their State officials when there is a question as to whether a practice is permitted or prohibited under State law.

Educating the Public

Education efforts regarding provisional ballots should be conducted on an on-going basis; provisional balloting should be considered not only during the weeks or days prior to an election but also throughout the election cycle. The number of provisional ballots issued may be reduced by planning in advance and keeping voters informed of requirements that impact their eligibility to register and vote. Consider these recommendations:

- Define what a provisional ballot is and how it is used in your State, and provide answers to the most frequently asked questions that may lead a voter to be issued a provisional ballot, for example:
 - Am I registered to vote? Where?
 - What is the deadline to register to vote?
 - What is my party affiliation?
 - Where is my polling place?
 - Is identification required at the polls? If yes, what are acceptable forms of identification?

Make this information readily available on your Web site, informational/education publications, media announcements, etc. Partner with other counties and your State's election offices to develop uniform and consistent messages regarding provisional ballots. Talk with your State's election office to learn what voter education activities they are or will be conducting in your State and how your office can participate.

- Develop educational materials on provisional voting that are clear, simple, and easy to use. Use these materials to inform the media, candidates, and the voters regarding the purpose, process, and procedures for managing provisional ballots. Develop these materials in formats that are accessible to all voters, including voters with disabilities, Native American and Alaska Native, and voters with limited proficiency in the English language; work with representatives from these

² In 2006, the EAC published *Best Practices on Provisional Voting*. This document provides additional recommendations regarding provisional voting beyond those mentioned in this brochure, and it is available on the EAC's Web site at <http://www.eac.gov/election/practices>. Please note that several of its key recommendations have been reiterated in this brochure as they are still applicable.

groups to ensure the information is clear, accurate, and accessible. Make sure to post this information on your agency's Web site and encourage community groups to link to this information.

Tip: Be sure to reinforce that all provisional ballots eligible to be counted will be included in the final official vote totals.

- Prominently post and widely distribute provisional voting and administrative complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what to do if they believe their right to vote was denied.
- Take advantage of mandated mailings (e.g. sample ballots and/or registration certificates) to educate voters about provisional ballots and notify them of the need to update their voter registration record to reflect a change in name, address, or party affiliation. In states where voter guides and sample ballot publications are required, include additional information about the use of provisional ballots and how they are processed.
- Inform voters about Federal and State laws regarding voter identification. In states that require voters to provide identification in every election, educate the voters and train poll workers on the various types of acceptable identification.
- Publicize changes in polling locations to voters, candidates, and the media. Consider mailing notices to voters informing them of their polling place location prior to every election cycle. Post this information on your local jurisdiction's Web site and utilize an interactive voice response (IVR) phone system to provide this information to voters.

Tip: Develop a public access portal on your jurisdiction's Web site, allowing a voter to determine if they are registered to vote, view their polling place location, and to view and print their sample ballot. For ideas on how to develop a voter portal, contact your State's election office to explore what resources exist at the State level that can be of assistance to your county or how you can partner with them in this effort. Several State and local jurisdictions have already developed public access portals and these can serve as models for your own; do not be afraid to contact these election officials and ask them about their lessons learned and best practices.

- Develop specific media and voter outreach efforts for primary elections to educate voters about your State's law on party affiliations (e.g. open, closed, and modified primaries), which may impact a voter's eligibility to vote. Keep in mind that these rules vary from State to State and voters are often caught off guard if they have recently moved to your State.
- Notify the media and candidates that if the vote totals are close in any race or question on Election night, the provisional ballots may impact the final outcome of the race/question. Remind the media and candidates that Election Night results are unofficial; inform them that the provisional ballots are processed after

Election night and prior to the canvass where the vote totals are declared “Official Final Results.”

Training Poll Workers and Staff

- Provide hands on training to poll workers on how to issue and process provisional ballots. Utilize real Election Day scenarios so the poll workers may have an opportunity to think through the procedures and policies and actually complete the necessary paperwork prior to an actual election.

Tip: Consider training and assigning specific poll workers to manage provisional ballots on Election Day.

- In States where provisional ballots are counted ONLY when cast in the voter’s own precinct, train poll workers to direct voters to the correct precinct, explaining the consequences of not doing so. However, if it is not possible for the voter to go to the correct polling place or he still wishes to cast his vote at the incorrect site, ensure that the poll workers issue the voter a provisional ballot and inform the voter of how to find out if their ballot was counted.
- Remind poll workers that voters have a right to request assistance when voting, including when casting provisional ballots.³
- Review and evaluate the forms and tools provided to polling places for processing provisional ballots. Make every effort to develop forms that are easy to use and understand – for both the poll workers and the voters.

Tip: Produce provisional ballots and envelopes with a design and/or color that is different from a regular ballot.

- Recognize that countywide street indexes can be confusing and difficult for poll workers to use; consider providing laptop computers or palm pilots at polling places for use in looking up addresses to quickly direct voters to the correct polling place.

Managing Election Day

- Staff a call center with trained temporary employees who have access to the voter registration software to lookup the voter information to answer the routine questions: Am I registered to vote? Where do I vote?
- Ensure that each polling place has sufficient supplies for conducting provisional voting (e.g. ballots, envelopes, handouts, etc). Have a strategy in place for deploying additional materials to polling places in cases of emergencies or shortage of ballots.

³ Under Section 208 of the Voting Rights Act, any voter that requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.

- Review the layout and staffing level of all polling places, particularly polling places where multiple precincts are assigned. Place greeters at the polling place entrance and provide them maps so they may help voters determine if they are in their correct polling location and/or provide them directions.
- Prominently post easy-to-read voter information about provisional ballots, voter ID requirements, and other related topics at the polling place. For jurisdictions that provide information in multiple languages and/or formats, ensure the translated materials and/or formats are also prominently displayed next to the English or original materials.
- Have a plan in place in each polling location that permits regular voters to continue to be processed while managing provisional voters at a separate table or location within the polling place. *Tip: Consider setting up a separate area for processing provisional voters. Immediately direct those voters to that table. Provide a separate provisional ballot sign in sheet, booklet, or roster and separate voting area (booth and/or voting machine) and/or ballot box for provisional ballots only.*
- Important: The secrecy of a provisional voter's cast ballot must be safeguarded at all times.
- Provide a place for the voter to complete their provisional ballot in privacy.
- Be sure that provisional ballots are not co-mingled with regular voted ballots.
- Provide an informational handout to the voter describing provisional ballots and notifying the voter how to find out if their ballot was counted.

Researching and Processing Provisional Ballots

- Begin by auditing the provisional ballots for each polling place. Suggested steps would include, but not be limited to:
 - Count the number of sealed provisional ballots from each polling place and balance that number to the provisional signature sheet, booklet, or roster signed by the provisional voters.
 - Confirm that the correct polling place and precinct number are written on each provisional envelope.
 - Note and resolve any discrepancies before moving the provisional ballots to a central staging area.
- Count the number of provisional ballots cast and publicize the number by district, if possible.
- Establish a work flow for processing the provisional ballots. The following is an example work flow:

- Verify eligibility – “Is the voter registered in your jurisdiction?”
- Determine if the voter cast their ballot in the correct polling place and/or precinct? “Did the voter vote the correct ballot style?” If not, does State law provide for counting a portion of the ballot that the voter would have been eligible to vote had they voted the correct ballot style?
- Did the voter move within your jurisdiction? If so, review State statutes regarding whether the ballot is eligible to be counted. Does State law require the voter to vote in the new precinct? Can the ballot be counted if the voter voted in his/her old precinct? Can a portion of the ballot be counted if the voter was given the wrong ballot style? If the voter voted at his/her new polling location, have you checked the roster of the old polling location to validate that the voter did not vote twice on Election Day?

Tip: Develop a checklist and train staff to process each provisional ballot by using the checklist. Staple the checklist to the front of each provisional ballot envelope to provide a history of the research process. Provide a space for staff initials to validate processing of each provisional ballot.

- Be sure to double check all of the provisional ballots deemed not eligible to be counted. These ballots should be reviewed and initialed by two staff members.
- Standardize procedures within each State. Consider developing a matrix to document the rules for counting and not counting provisional ballots. Cite each controlling State statute by reference within the matrix. Post the matrix on your local jurisdiction’s Web site and make it available at the canvass.

Reporting the Outcomes

- Provide a method for voters to determine the status of their provisional ballot. Remember that Section 302(a)(5)(A) of HAVA requires the establishment of a free access system for voters to use to learn whether their vote was counted, and, if it was not counted, the reason why it was not counted.
- Provide feedback to poll workers regarding how many provisional ballots were cast at their polling location and how many were able to be counted. This provides an opportunity for poll workers to understand that their actions on Election Day can impact whether a voter’s provisional ballot is eligible to be counted.

Collecting and Using Statistics

- Report statistics by type of provisional ballot voted, by precinct, and by polling place. Within these categories, report the number of ballots that were counted and not counted, including the reasons for rejection.

- Use this information during post-election debriefing sessions to review and make recommendations for changes or modifications in forms, supplies, poll worker training, processing procedures, and voter outreach.
- Provide a written summary of the provisional ballot statistics to your State election office. Collect and archive these statistics for every election. Use these statistics for forecasting future budgetary needs and for requesting changes in State and Federal election laws.

Tip: The systematic collection of Election Day statistics, including provisional ballots, allows you to consistently evaluate the effectiveness of your election procedures and helps you assess changes from one election to the next. It will also help you to easily produce and provide data that is frequently requested by the media, State and Federal agencies, and community groups.

- Track the total number of provisional ballots issued by category and quantity. Problem-solve the reasons and brainstorm solutions in an effort to reduce the number of provisional ballots.

For information regarding this publication or to request additional copies at no cost, please contact:

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The EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration.

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

**Report to the
U. S. Election Assistance Commission
Best Practices to Improve Provisional Voting**

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The Research Team

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Egleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.

EXECUTIVE SUMMARY

Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.¹ The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.²

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name 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, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." ³ HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

¹The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See www.electioncenter.org.

² The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

³ The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004 .)

Our research began in late May 2005. It focused on six key questions raised by the EAC.

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, we:

1. Surveyed 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.⁴
3. Analyzed statistically provisional voting data from the 2004 election to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

KEY FINDINGS

Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.⁵

⁴ Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

⁵ HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

- Six states accounted for two-thirds of all the provisional ballots cast.⁶
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.⁷
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

An important source of variation among states was a state's previous experience with provisional voting and with the fail-safe voting provision of the National Voting Rights Act. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.⁸ Part of that difference was due to how states had implemented the National Voting Rights Act, particularly in regard to voters who changed address within weeks of the election. Voters in California, for example, who moved within their county must cast a provisional ballot, the information from which is used to update the voter's address. Other states, Tennessee for example, found that some fail-safe voters were reluctant to vote by provisional ballot. As a result, Tennessee abandoned provisional voting for those who moved within counties and allows failsafe voters cast a regular ballot. Relatively fewer provisional ballots would tend to be cast in such states.

Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This variation suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

⁶ California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

⁷ As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

⁸ See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

The lessons of litigation

Successful legal challenges highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. Most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right – the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

States move to improve their processes

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.

- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

Assess each stage of the provisional voting process

Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for best practices to avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Best practice for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots

are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.

- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.⁹ Six states accounted for two-thirds of all the provisional ballots cast.¹⁰ State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.¹¹

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.¹²
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.¹³ That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

⁹ HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

¹⁰ California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

¹¹ See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

¹² To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

¹³ Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from “new” states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the “new” states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. “New” states may have a political culture different from “old” states. That is, underlying features of the “new” states political system may be the reason they had not adopted some form of provisional voting before HAVA. The “new” states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the “new” states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.¹⁴
2. “Old” states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

¹⁴ Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, “no state gave the voter the right to find out the status of their ballot after the election. “ Now all offer that opportunity. See Bali and Silver, “The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000,” manuscript, Department of Political Science, Michigan State University. Resisting HAVA’s mandates through foot-dragging lacks any legitimate foundation in law or policy.

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter’s signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.¹⁵
 - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
 - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
 - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
 - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.¹⁶ In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA’s requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted only ballots cast in the proper precinct counted an average of 42% of provisional ballots.¹⁷
 - In experienced states, the disparity was even more pronounced: just over half of provisional ballots cast were counted in states requiring in-district ballots, while more than two-thirds were counted in those allowing out-of-precinct ballots.
 - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.¹⁸

¹⁵ See Table 2 in Appendix 2 for information on the verification method used in each state.

¹⁶ The Election Day Survey found that states using 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.

¹⁷ The Election Day Survey concluded that : “Jurisdictions with jurisdiction-wide 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 jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent.”

- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.¹⁹
 - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks²⁰.
 - Those states that permitted less than one week counted an average of 35.4% of their ballots.
 - States that permitted between one and two weeks counted 47.1%.
 - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast²¹.
 - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that “states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state.”²²

Electionline reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state’s policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the

¹⁸ This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

¹⁹ See Appendix, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

²⁰ Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

²¹ 43 states are included in this analysis, including Washington D.C. The 7 election-day registration states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

²² Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” September 2005, p.16. The report also observed that, “. . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated.”

provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important in such districts. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know how many registered voters who might have voted but could not, we cannot estimate with any precision how effective provisional voting was in 2004. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the

2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

| <i>Estimates of Votes Lost In 2000 Presidential Election</i> | |
|---|--|
| <i>Votes Lost (Millions)</i> | <i>Cause</i> |
| 1.5 – 2 | Faulty equipment and confusing ballots |
| 1.5 – 3 | Registration mix-ups |
| <1 | Polling place operations |
| ? | Absentee ballot administration |

Table 1 Cal Tech – MIT Voting Technology Project Estimates
 4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)²³. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states²⁴ came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

- Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.²⁵

²³ Another interpretation of the data should be considered. The Census Bureau’s Current Population Survey (CPS) developed the category of “registration mix-ups” to assess the states’ registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, ‘registration problems’ would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

²⁴ Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

²⁵ The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots “very challenging and unrealistic. To overcome this challenge, the *entire department’s employees were mobilized to process provisional ballots.*” The report also found that in Los Angeles County, “staff had to prepare duplicate ballots to remove ineligible or invalid contests when

- Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second --and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right --the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted by absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots.” In a close, contested election, “duplicate” ballots would doubtless receive long and careful scrutiny.” See Appendix 7, GAO, “Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,” September 2005. (GAO Report-05-997)

RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have to vote provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and particularly within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting –4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."²⁶

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.²⁷ Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.²⁸
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.²⁹ Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

²⁶ The Century Foundation, *Balancing Access and Integrity*, Report of the Working Group on State Implementation of Election Reforms, July 2005.

²⁷ See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

²⁸ See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

²⁹ *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

workers may need appropriate training to understand their duty to give such voters a provisional ballot.³⁰

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, “You must bring your driver’s license. If you don’t have a driver’s license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency.”³¹
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.³²
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.³³ Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an “election school.”³⁴ A state

³⁰ *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the “fail-safe” notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State’s office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

³¹ Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

³² The Century Foundation, op. cit.

³³ 8 Colo. Code Regs. § 1505-1, Rule 7.1.

³⁴ 2005 N.M. Laws 270 page no. 4-5.

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: “Reasons Why Your Provisional Ballot Might Not Be Counted” on one side and “What to Do if My Provisional Ballot Is Not Counted” on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk “in the event additional provisional ballots are required . . . to photocopy official provisional ballots.”³⁵ At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.³⁶ States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, “Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation.”³⁷ Nonetheless, the *Panio v. Sutherland*³⁸ decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is “clerical error” judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

³⁵ Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

³⁶ Connecticut: “Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes “very low.” Del.Code Ann. Tit 15 § 4948(e).

³⁷ The Century Foundation, op. cit.

³⁸ 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.³⁹
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.⁴⁰ While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.⁴¹ Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

³⁹ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104.

Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (I); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

⁴⁰ See Andersen, *op. cit.*, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, “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.”

⁴¹ Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box “unregistered voter”; “lack of signature match” “wrong precinct,” etc.) Those forms should be disclosed publicly when completed. Colorado’s election rules offer particularly clear guidance to the official evaluating a provisional ballot.⁴²

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

| | |
|-----|---|
| RFS | (Rejection federal or state) No federal or state candidates or issues to duplicate. |
| RNS | (Rejection not signed) Provisional Ballot Affidavit not signed. |
| RIN | (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter’s eligibility. |
| RNR | (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S. |
| REE | (Rejection envelope empty) Provisional ballot envelope is empty. |
| RAB | (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot. |
| REV | (Rejection based on ballot cast in early voting) Voter voted early. |
| RIP | (Rejection based on incorrect party) Incorrect Party in Primary Election. |
| RFE | (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole. |
| RWC | (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted. |
| RID | (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting. |
| RRD | (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter’s eligibility cannot be established. |

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

⁴² 8 CCR 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma⁴³ or the Baldrige Quality

⁴³ Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

process⁴⁴ to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
 - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
 - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
 - Measures of variance among jurisdictions.
 - Number of poll workers trained in administration of provisional voting by polling place.
 - Number of jurisdictions posting information on provisional voting in the polling place.
 - Time required to evaluate ballots by jurisdiction.

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

⁴⁴ The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

ATTACHMENT 1 – Data Sources for Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state’s use of provisional ballots were:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and included it in our analysis.

New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting,⁴⁵ but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We included in the list of “Old States” all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

⁴⁵ This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

| Table 1 CATEGORIZATION OF STATES -- Old and New | | |
|--|-------------------|--------------------------|
| Old States | New States | HAVA Exempt or NA |
| Alaska | Connecticut | Idaho |
| Alabama | Delaware | Maine |
| Arkansas | Georgia | Minnesota |
| California | Hawaii | New Hampshire |
| Colorado | Illinois | North Dakota |
| DC | Indiana | Wisconsin |
| Florida | Louisiana | Wyoming |
| Iowa | Massachusetts | |
| Kansas | Missouri | |
| Kentucky | Montana | |
| Maryland | Nevada | |
| Michigan | Oklahoma | |
| Mississippi | Pennsylvania | |
| Nebraska | Rhode Island | |
| New Jersey | South Dakota | |
| New Mexico | Tennessee | |
| New York | Utah | |
| North Carolina | Vermont | |
| Ohio | | |
| Oregon | | |
| South Carolina | | |
| Texas | | |
| Virginia | | |
| Washington | | |
| West Virginia | | |
| 26 | 18 | 7 |

Statewide List of Registered Voters

The Electionline preview of the 2004 Election⁴⁶ was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline’s criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election². States that evaluated ballots cast in a precinct where the voter was not registered were categorized as “out-of-precinct.” States that invalidated such ballots were categorized as “In-precinct only.”

| Out-of-Precinct | In-Precinct Only | HAVA EXEMPT OR NA |
|------------------------|-------------------------|--------------------------|
| Alaska | Alabama | Idaho |
| Arkansas | Arizona | Maine |
| California | Colorado | Mississippi |
| Georgia | Connecticut | New Hampshire |
| Illinois ⁴⁷ | Delaware | North Dakota |
| Kansas | District of Columbia | Wisconsin |
| Louisiana | Florida | Wyoming |
| Maryland | Hawaii | |
| New Mexico | Indiana | |
| North Carolina | Iowa | |
| Oregon | Kentucky | |
| Pennsylvania | Massachusetts | |
| Rhode Island | Michigan | |
| Utah | Missouri | |
| Vermont | Montana | |
| Washington | Nebraska | |
| | Nevada | |
| | New Jersey | |
| | New York | |
| | Ohio | |
| | Oklahoma | |
| | South Carolina | |
| | South Dakota | |
| | Tennessee | |
| | Texas | |
| | Virginia | |
| | West Virginia | |
| 16 | 27 | 7 |

⁴⁶ “Election Preview 2004: What’s changed, What Hasn’t and Why”. This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

⁴⁷ In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

| Table 3 CATEGORIZATION OF STATES -- Ballot Evaluation Methods | | | | |
|--|-------------------|------------------|-----------------------|---------------|
| Signature Match | Data Match | Affidavit | Return with ID | NA |
| Alaska | Alabama | Connecticut | Indiana | Idaho |
| California | Arizona | Delaware | Iowa | Maine |
| Florida | Arkansas | Georgia | Kansas | Mississippi |
| Oregon | Colorado | Hawaii | Maryland | Minnesota |
| | DC | Illinois | Michigan | New Hampshire |
| | Louisiana | Kentucky | Montana | N. Carolina* |
| | Missouri | Massachusetts | New Jersey | N. Dakota |
| | Ohio | Nebraska | New Mexico | Wisconsin |
| | Oklahoma | Nevada | Texas | Wyoming |
| | Pennsylvania | New York | Utah | |
| | Rhode Island | South Dakota | | |
| | S. Carolina | Tennessee | | |
| | Washington | Vermont | | |
| | West Virginia | Virginia | | |
| | | | | |
| | | | | |
| 4 | 14 | 14 | 10 | 9 |

* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state’s election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

| Table 4 | |
|-------------------------------------|-------------------------------------|
| Updated information by State | |
| Received Updated Data | Did Not Receive Updated Data |
| California | Alabama |
| District of Columbia | Alaska ⁴⁸ |
| Florida | Arizona |
| Hawaii | Arkansas |
| Indiana | Colorado |
| Iowa | Connecticut |
| Kansas | Delaware |
| Louisiana | Georgia |
| Maryland ⁴⁹ | Idaho |
| Missouri | Illinois |
| Montana | Kentucky |
| Nebraska ⁵⁰ | Maine |
| Nevada | Massachusetts |
| New Jersey | Michigan |
| New Mexico | Minnesota |
| Ohio | Mississippi |
| Oklahoma | New Hampshire |
| Oregon | New York |
| Pennsylvania | North Carolina |
| Rhode Island | North Dakota |
| South Dakota | South Carolina |
| Tennessee | Utah |
| Texas | Vermont |
| Virginia | Wisconsin |
| Washington | Wyoming |
| West Virginia | |
| | |
| 26 States | 25 States |

⁴⁸ Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

⁴⁹ Maryland reported provisional ballots that were counted per county, but not number cast.

⁵⁰ Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

Data Differences

The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

| State | EDS Numbers Cast/Counted | Our Numbers Cast/Counted | Differences | Updated Info from State?⁵¹ |
|---------------------|-------------------------------------|-------------------------------------|--------------------|--|
| Alabama | 6,478/1,865 | 6560/1836 | 82/29 | No |
| Alaska | 23,285/22,498 | 23,275/22,498 | 10/0 | No |
| Colorado | 51,529/39,086 | 51,477/39,163 | 52/77 | No |
| Georgia | 12,893/4,489 | 12,893/3,839 | 0/650 | No |
| Hawaii | 346/25 | 348/25 | 2/0 | Yes |
| Iowa | 15,406/8,038 | 15,454/8,048 | 48/10 | Yes |
| Kansas | 45,535/32,079 | 45,563/31,805 | 28/274 | Yes |
| Montana | 688/378 | 653/357 | 35/21 | Yes |
| Nebraska | 17,421/13,788 | 17,003/13,298 | 418/490 | Yes |
| Nevada | 6,153/2,446 | 6,154/2,447 | 1/1 | Yes |
| New Mexico | 6,410/2,914 | 15,360/8,767 | 8,950/5,853 | Yes |
| N. Carolina | 77,469/50,370 | 77,469/42,348 | 0/8,022 | No |
| Ohio | 157,714/123,902 | 158,642/123,548 | 928/354 | Yes |
| Pennsylvania | No data | 53,698/26,092 | 53,698/26,092 | Yes |
| Texas | 35,282/7,156 | 36,193/7,770 | 911/614 | Yes |
| Vermont | 121/30 | 101/37 | 20/7 | No |
| Virginia | 4,608/728 | 4,609/728 | 1/0 | Yes |
| Washington | 92,402/73,806 | 86,239/69,273 | 6,163/4,533 | Yes |
| Wisconsin | 374/119 | 373/120 | 1/1 | No |

⁵¹ Data not provided by the state itself is taken from Electionline figures.

CHAPTER 8

PROVISIONAL VOTING AND FREE ACCESS

This chapter is designed to aid county elections officials in determining when a voter should cast a provisional ballot, and what to do with that ballot once it has been voted.

Background

Provisional voting is intended to prevent disenfranchisement of voters due to voter registration errors or other unusual circumstances. If a voter appears at a polling place to vote in an election, and for some reason his/her name does not appear on the official roster of voters for that polling place, the voter may cast a provisional ballot if he/she claims to be both eligible to vote in the election and registered to vote in that jurisdiction. (HAVA Section 302(a).) Whether an individual is eligible to vote, and whether the provisional ballot will be counted, are matters to be determined by state and local elections officials "in accordance with State law." (HAVA Section 302(a)(4).) State law (Elec. Code, §§ 14310-14312) further specifies the procedures and criteria to be used in issuing and counting provisional ballots.

Notice to Voters

Both federal and state law provide that if an individual claims to be both eligible to vote and registered to vote in the jurisdiction in which he/she wants to vote, the elections official at the polling place is to notify the individual that he/she may cast a provisional ballot in that election. (HAVA Section 302(a)(1); Elec. Code, § 14310(a)(1).) In addition, HAVA Section 302(b) requires that elections officials post certain information at each polling place, including instructions on how to vote and how to cast a provisional ballot.

Who is Eligible to Cast a Provisional Ballot?

There are many reasons why it may be appropriate for a voter to cast a provisional ballot rather than a regular ballot, including the following:

- ◆ The voter's name does not appear on the list of registered voters and the eligibility to vote cannot be verified at the polling place; or
- ◆ The voter is designated on the list of registered voters as a first-time voter who registered by mail and is voting in a Federal election, but is unable, or refuses, to provide the required proof of identity; or
- ◆ The voter requested an absentee ballot, but has not returned the ballot by mail or brought it to the polling place; or
- ◆ The voter is voting during polling place hours that have been extended by a state or federal court; or

- ◆ The voter is registered to vote, but is attempting to vote in a precinct different from the one in which the voter is registered or assigned; or
- ◆ The voter has moved within the county, but did not update his/her voter registration information to reflect the move.

Note that for those voters who are casting provisional ballots because their name does not appear on the list of registered voters, the provisional ballot envelope offers another opportunity for elections officials to capture the necessary information to process the voter's registration affidavit. For instance, if the voter's identification has not been validated through Calvalidator, capturing the voter's driver's license number or the last four digits of his or her social security number as part of the provisional voting process will better enable elections officials to process the provisional ballot and clear any potential registration hurdles prior to the end of the canvass period. (See *also* Chapter 1).

Procedure for Casting a Provisional Ballot

HAVA includes very general requirements for provisional voting, and defers to state law for implementation. Section 302(a) of HAVA provides that an individual who claims to be both eligible to vote in an election and registered to vote in the jurisdiction (county) in which he/she desires to vote, but whose name is not included on the official roster of voters for that polling place, may cast a provisional ballot. The individual must sign a written affirmation of eligibility and registration prior to being permitted to vote provisionally. (HAVA Section 302(a)(2).) Once the individual's eligibility to vote under state law is confirmed, the provisional ballot will be counted in accordance with state law. (HAVA Section 302(a)(3)-(4).)

California state law provides more detailed criteria and information concerning the procedures for provisional voting. If it is determined that it would be appropriate for an individual to cast a provisional ballot, the elections official must advise the voter of his/her right to do so and provide the voter with written instructions. (Elec. Code, §§ 14310(a)(1)-(2).) Like HAVA, state law requires the voter to execute, in the presence of the elections official, a written affirmation stating that he/she is eligible to vote and is registered in the county where he/she desires to vote. (Elec. Code, § 14310(a)(3).) The voter is given a provisional ballot, which he/she votes and then places into the provisional ballot envelope. The voter then signs the envelope and deposits it into the ballot box. (Elec. Code, § 14310(b).)

In addition, every voter who is issued a provisional ballot must have access to instructions on how to correctly cast a provisional ballot in any language required by the Voting Rights Act. Voters must also be given similar instructions in writing on how to find out if their ballot has been counted through the "Free Access" system, discussed below. (See *also* Chapter 4.)

Procedure for Processing a Provisional Ballot

The provisional ballots are taken, along with the regular ballots, to the canvassing area. During the official canvass, the elections official compares the signature on each provisional ballot envelope with the signature on that voter's affidavit of registration. Once the voter's registration is confirmed, and the signature on the envelope has been verified, the ballot is separated from the envelope and counted as a regular ballot. If the voter's registration cannot be confirmed, the ballot is not counted, and the reason for not counting the ballot is recorded. (Elec. Code, § 14310(c)(1).) Only the votes for contests in which the voter is eligible to vote will be counted. (Elec. Code, § 14310(c)(3).)

Free Access System

HAVA requires that at the time a voter casts a provisional ballot, the elections official must provide the voter with written information concerning how the voter can find out whether his/her provisional ballot was counted, and if not, why not. (HAVA Section 302(a)(5)(A).) HAVA further requires each state or local elections official to establish a "Free Access System," such as a toll-free telephone number for voters to call or an Internet website that voters can access free of charge to obtain this information. (HAVA Section 302(a)(5)(B).) California state law also requires the establishment of this Free Access System. (Elec. Code, § 14310(d).)

Each county may determine how to establish its Free Access System, so long as the system meets the requirements of the law. In addition, the Secretary of State has determined that the following minimum standards apply to all county Free Access Systems:

- The system may not impose a fee for access;
- The system must be available during regular business hours, at a minimum, but should be available at all hours if possible;
- The system must treat all voters equally;
- The system may rely on a password, but the password may not include, in whole or in part, the voter's driver's license number, California ID number, or social security number;
- The system must reasonably ensure that access to information concerning an individual provisional ballot is restricted to the individual who cast the ballot;
- The system must not reveal how the voter marked his or her ballot;
- The system must reveal to the voter whether his or her provisional ballot was counted and, if the ballot was not counted, the reason why not;

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HAVA Compliance Manual

- The system must inform the voter how to register to vote and provide every non-registered provisional voter with a form to register to vote;
- The system must be accessible to persons with disabilities and persons who do not speak fluent English;
- The system must establish a deadline following the election after which the "free access" information will be available;
- The system may, but is not required to, proactively and regardless of whether the voter requests the information, notify EVERY provisional voter whether his or her ballot was counted and, if it was not counted, the reason why not; and
- The system may, but is not required to, provide every provisional voter at a polling place a postage-paid return postcard for requesting "free access" information.

In accordance with federal and state law and guidelines, each County Elections Official's office has established a Free Access System for voters to determine if their Provisional Ballot was counted. Information about how to access each county's free access system can be found on the Secretary of State's website at http://www.ss.ca.gov/elections/type_of_free_access_system_1105.pdf.



SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

July 22, 2004

TO: All County Clerks/Registrars of Voters (04226)

FROM: _____
JOHN MOTT-SMITH
Chief, Elections Division

SUBJECT: COMPLIANCE WITH HAVA

Our office has received a letter, dated June 30, 2004, from the United States Department of Justice, Civil Rights Division, concerning compliance with the requirements of Title III of the Help America Vote Act (HAVA). The USDOJ has been monitoring implementation of the HAVA in the states, including California.

The letter indicates, in part, that: "Unfortunately, in many of the counties we monitored, there were numerous instances of non-compliance with HAVA's terms." This "non-compliance" is not seen as willful, but rather the result of inadequate training.

Although lack of compliance was observed in specific counties, the USDOJ indicates "concern about the level of HAVA compliance in other counties of the state as well" and asks our office what steps we will take to make sure all counties are in compliance for the November election.

Attached is a copy of the letter from the USDOJ, as well as a copy of our responses. Among other actions, we have indicated to the USDOJ that we will: (a) provide each county with a copy of the letter from the USDOJ, and; (b) that we will convene a meeting to discuss these requirements.

Please note that the following information is required to be provided to voters at each polling place, and pollworker training should include these subjects.

1. **POSTING OF INFORMATION:** Attached is a copy of Section 302(b) of the HAVA that requires posting of "voting information" in the polling place. This requirement is defined to include:
 - A. A sample version of the ballot;
 - B. Information on the date of the election and the hours during which polling places will be open;

- C. Instructions on how to vote, including how to vote provisionally;
 - D. Instructions regarding ID requirements for those voters who registered to vote in the county for the first time by mail and who have not previously voted in the county;
 - E. General information on voting rights under state and federal law, including the right of an individual to cast a provisional ballot and instructions on how to contact election officials, and;
 - F. General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.
2. **“FREE ACCESS” SYSTEM:** Section 302(a)(5)(A) requires that: “At the time that an individual casts a provisional ballot, the appropriate State of local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain ... whether the vote was counted, and, if the vote was not counted, the reason why the vote was not counted.”

Our office will be speaking with representatives from the CACEO to determine an appropriate time to meet to discuss the HAVA requirements.

If you have any questions, please feel free to contact me directly at 916/653-3228.

Hava/usdojccrov2-074



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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October 30, 2008

County Clerk/Registrar of Voters (CC/ROV) Memorandum #08311

TO: All County Clerks/Registrars of Voters

FROM: *Cathy Mitchell*
Cathy Mitchell
Chief, Elections Division

RE: November General: Provisional Voting

This is intended to dispel some of the myths and mis-information regarding the use of provisional ballots that I've come across recently.

Basics of Provisional Voting

While provisional balloting may be relatively new in some areas of the country (it was mandated by the Help America Vote Act [HAVA] of 2002), California's provisional balloting statutes have been in effect since 1984.

Provisional balloting exists in California for two fundamental reasons:

First, provisional balloting ensures that no properly registered voter is denied their right to cast a ballot if that voter's name is not on the polling place roster due to a clerical, processing, computer, or other error.

Second, provisional balloting allows elections officials to ensure that no voter votes twice, either intentionally or inadvertently, in a given election.

The most common circumstances when an elections official will ask a voter to cast a provisional ballot are:

1. First-time voters. Here, the voter's name is on the polling place roster, but they are voting for the first time in a federal election and are unable to provide the proof of identification required by federal law (HAVA 303(b).) The elections official will verify the voter's eligibility by comparing their signature on the provisional ballot envelope with the signature on their voter registration form and if the signatures match, then the ballot will be counted. (Elections Code sections 14310(c), 15350, and 3019.)

2. Vote-by-mail voters who appear in person. The voter's name is on the polling place roster and the roster notes the voter requested a vote-by-mail ballot. However, the voter states they didn't receive the ballot, lost the ballot, or spoiled the ballot and doesn't have it with them. After the voter casts a provisional ballot, the elections official will check the records to ensure that the voter did not cast their vote-by-mail ballot. If this is the case and the voter's signature on the provisional ballot envelope matches the signature on the voter's registration card, then the voter's provisional ballot will be counted. (Elections Code sections 3016, 14310(f), 15350, 15100 et seq.) If the voter did vote and return their vote-by-mail ballot before the close of polls on Election Day, then the vote-by-mail ballot will be counted and the provisional ballot will not be counted. If the voter did vote and return their vote-by-mail ballot but failed to sign the vote-by-mail ballot envelope, then the voter's provisional ballot will be counted, provided they complied with the instructions associated with the provisional ballot.
3. Voters who have moved within their county without re-registering to vote. The voter's name is not on the polling place roster because they moved within the county but did not re-register to vote. This also happens when a voter updates their driver's license with the Department of Motor Vehicles (DMV) but the DMV's computer system doesn't update the voter's registration information, as it is required to do by law. In either instance, the voter is entitled to vote a provisional ballot at the polling place based on their current address. The elections official is required to count the ballot if the voter's signature on the provisional ballot envelope matches the signature on the voter's prior registration form. The elections official is then required to re-register the voter at their new address for all future elections. (Elections Code sections 14310, 14311, 15350, 15100 et seq.)
4. Voters who are not on the polling place roster for an unknown reason. In this instance, the elections official will check the county's official registration records after Election Day. If the voter was properly registered to vote in the county and in the precinct in which they voted, their provisional ballot will be counted. If the voter was registered to vote at another address in the county, their votes will be counted in the races they voted on as if they were voting in their home precinct (i.e., their votes for U.S. President, statewide, and countywide measures will be counted, but their votes in a city council race may not be counted if the precinct they're registered in is in a different city council district than the one in which they cast a ballot). If the voter is not registered to vote or is registered to vote in another county or state, their ballot will not be counted in part or in whole. (Elections Code section 14310(c)(3).)
5. Political party registration issues. This won't occur in the November election, but it was certainly an issue in the February 2008 election. In this situation, the voter's name is on the polling place roster, but the voter believes they are

registered with a different political party than is shown on the roster or they demand the right to vote in a particular political party primary. In many instances, poll workers simply provide these voters with provisional ballots and elections officials then count the votes in the races these voters are entitled to vote in. (Elections Code section 14310(c)(3).)

Court Remedy To Compel Counting of Provisional Ballots

Elections Code section 2142 gives voters the right to go to court in order to compel county elections officials to register them to vote and to count their ballot. Elections Code section 2142(b) was created to permit voters who claim they registered to vote through the DMV or any other public agency designated as a voter registration agency under the 1993 National Voter Registration Act (NVRA) to go to court to compel their registration and permit their vote to be counted.

Right to Know if Provisional Ballot is Counted

Both federal and state law permit any voter who cast a provisional ballot to find out if their ballot was counted.

Section 302(a)(5)(A) of the federal Help America Vote Act (HAVA) states:

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish 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.

Elections Code section 14310(d) states:

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

To determine the free access system that a particular county may be using, please go to the Secretary of State's website at http://www.sos.ca.gov/elections/june08_freeaccesssystem.pdf.

Right to Know if Vote-By-Mail Ballot is Received

California law does require local elections officials to provide vote-by-mail voters with a means of finding out whether their vote-by-mail ballot has arrived back in the elections official's office. (Elections Code section 3017.) AB 2964 (Levine), which sought to allow vote-by-mail voters to find out if their ballot was counted, was vetoed in 2008 by the Governor. Some counties do provide this information to voters voluntarily, so registrars of voters may get questions about the issue from voters.

Questions Arising From Media Reports on Provisional Ballots

I've noticed that questions and concerns have been raised about the provisional voting process in at least three different areas recently. I wanted to make sure you were aware of these reports because voters may incorrectly assume that they are an accurate representation of the provisional balloting process in California, which they are not.

On October 17, 2008, an article titled "Block the Vote" was published in Rolling Stone magazine at http://www.rollingstone.com/politics/story/23638322/block_the_vote.

The section on provisional balloting is on Page 5 of the article and reads in part:

"Challenging "Provisional" Ballots

"In 2004, an estimated 3 million voters who showed up at the polls were refused regular ballots because their registration was challenged on a technicality. Instead, these voters were handed 'provisional' ballots, a fail-safe measure mandated by HAVA to enable officials to review disputed votes. But for many officials, resolving disputes means tossing ballots in the trash. In 2004, a third of all provisional ballots — as many as 1 million votes — were simply thrown away at the discretion of election officials."

On October 24, 2008, actor Tim Robbins appeared on the television program "Real Time With Bill Maher" and according to the program's website at http://www.hbo.com/billmaher/episode/2008_10_24_ep138.html, told viewers:

"Refuse provisional ballots. They're throwing those out. They can throw those out. If that's your last resort, take it, but fight in the polling place to vote. It's your right as an American. You have every right to vote if you're registered."

Every registered voter does indeed have a right to vote, but as mentioned earlier in this document, there are many reasons why a voter may be asked and should be required to cast a provisional ballot.

No provisional ballot is counted or precluded from being counted until the elections official goes through the detailed process set forth in Elections Code sections 14310-14311, 15350, and 15100-15112 to determine whether a voter's provisional ballot should be counted.

Equally important, no provisional ballot – whether it is counted or rejected – is ever “thrown out” because California law requires all ballots and related materials to be kept for a minimum of 22 months for any election in which a candidate for federal office is on the ballot (Elections Code sections 17300-17506.)

On October 27, 2008, a study called “Provisional Ballots: Where to Watch in 2008” was released by Dēmos. The study can be found at <http://demos.org/pubs/provisionalballot%5fbrief.pdf> and it lists eight states – Arizona, California, Colorado, Florida, Indiana, Michigan, Ohio, and Wisconsin – where the group believes provisional balloting problems could emerge on Election Day.

The report examined provisional ballots cast in the 2006 election (it doesn't state if it included ballots from the 2006 primary election, the 2006 general election, or both) and notes about California:

1. The state led the nation in the number of provisional ballots cast (288,213) and over 1 in 20 Californians cast provisional ballots.
2. More provisional ballots were rejected in California than elsewhere (38,984).
3. Of all ballots rejected nationwide because the voter was determined to be “not registered,” over 30% percent were cast in California (22,816).

Even if the raw data is accurate, I would note:

1. California has significantly more registered voters than any other state in the nation. Combining that fact with the reality that our provisional ballot and vote-by-mail laws are more liberal in terms of allowing people who believe they are registered voters to cast a provisional ballot, it's no surprise the state has the largest number of cast and rejected provisional ballots.

Since this data is self-reported by the states and states have very different laws and practices regarding not just provisional ballots but other elections issues, it's difficult to compare states against one another.

For example, as noted earlier in this document, a voter who is on the registration index but has received a vote-by-mail ballot will be asked to vote a provisional ballot if they show up at the polls stating they never received their vote-by-mail ballot. This is not an issue in states that have more restrictive vote-by-mail statutes.

Similarly, during primary elections, many California county elections officials instruct poll workers to provide voters with provisional ballots if they demand the ability to vote in one political party primary even if they are registered with a different political party. This may not be the practice in other states.

2. If more voters are permitted to cast provisional ballots in California and the state is home to more registered voters than any other state in the country, it stands to reason that more provisional ballots will be rejected here than elsewhere. However, according to the report, the number of rejected ballots was 13.5% of those that were cast – the 9th lowest figure in the country.
3. Similar to (1) above, there is no way to determine from the report whether comparing California to other states is actually an “apples to apples” comparison given the different state laws on provisional voting.

The report also notes what it describes as “emerging issues,” which are paraphrased below in italics and followed by my comments:

□ ***No match, no vote***

HAVA requires people registering to vote to provide their driver’s license number or their social security number, and then requires elections officials to match that number against the appropriate database. Because all databases undoubtedly contain errors, problems arise in states that have adopted exact, character-for-character data matching requirements.

Unlike many states, California does not have an “exact match” standard when it comes to matching voters in the Social Security Administration or the DMV database. For anyone wishing to review the regulations, they can be found on the Secretary of State’s website at

http://www.sos.ca.gov/elections/regulations/hava_statewide_voter_regs_020108.pdf.

□ ***Polling place challenges and foreclosed voters***

The recent mortgage crisis and accompanying wave of home foreclosures and evictions may lead to increased rates of provisional balloting. People in these circumstances may not have updated their voter registrations and while some voters may be able to vote at the precinct of their previous addresses, others may be required to vote provisionally on Election Day. The press has also reported partisan plans in several states to use foreclosure lists as a basis to challenge voters’ qualifications to vote at their polling places. Political operatives may target areas with high foreclosure rates in order to depress likely votes for opposing candidates. Challenged voters may only be able to cast provisional ballots.

CCROV #08301, issued on October 14, 2008, makes it clear that based on Elections Code section 349 and the California Supreme Court's 1988 ruling in the case of *Walters v. Weed*, a person can continue to vote based on the address of their former permanent domicile until such time as they have acquired a new permanent domicile. A copy of CCROV #08301 can be found at <http://www.sos.ca.gov/elections/ccrov/pdf/2008/october/08301cm.pdf>.

Unlike some other states, there is no third party challenge of a voter's qualification to vote in California. The only people who may challenge a person's qualifications to vote are members of the precinct board. (Elections Code sections 14240-14253.)

I would certainly encourage all county elections officials to continue to:

- Resolve as many questions about a voter's eligibility to cast a ballot at the polls as possible.
- Provide voters who do have to cast a provisional ballot with information about the process you will go through to determine whether their ballot will be counted.
- Check with the DMV in cases where a voter claims to have registered to vote or changed their voting address through the DMV.
- Encourage and facilitate the court-ordered voting process provided for in Elections Code section 2142 if the voter has no other recourse.

Taking these steps will certainly go a long way to reassure voters that elections officials are taking the steps necessary to determine whether a voter's provisional ballot is indeed entitled to be counted and will be guided by the overarching requirement presented in Elections Code section 14312, which reads:

This article shall be liberally construed in favor of the provisional voter.

If you have any questions or would like to discuss this further, please call me at (916) 657-2166.



SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

November 9, 2004

TO: All County Clerks/Registrars of Voters (04375)

FROM:

JOHN MOTT-SMITH
Chief, Elections Division

SUBJECT: QUESTION RE: COUNTING OF UNSIGNED
ABSENTEE/PROVISIONAL BALLOT ENVELOPES OR SIGNED
ABSENTEE/PROVISIONAL BALLOT ENVELOPES WITH
UNSIGNED REGISTRATION CARD

We have received the following questions relating to unsigned absentee and provisional ballot envelopes:

1. Should/can an election official call a voter who did not sign an absentee ballot envelope, or a provisional envelope, and offer/permit the voter to perfect the ballot?

No. Neither Elections Code section 3019 (comparing signatures of absentee ballots) or Elections Code section 14310 (voting and handling provisional ballots) provide or allow for such a procedure. To the contrary, these laws contemplate the comparison of a signature with either a voter's affidavit of registration, or, under certain circumstances, with the voter's application for absentee ballot. This is reinforced by the fact that Section 3019 specifically contemplates rejection of ballots if the signature thereon does not compare with the signature on the voter registration card. We do not believe the Legislature intended, on the one hand, to allow for invalidation of improperly signed ballot envelopes, while on the other hand permitting acceptance and counting of ballot envelopes with no signature at all. To assume otherwise could also lead to the reasoning that other types of imperfections with the ballot or ballot envelopes (e.g., undervotes) could be similarly perfected post-election.

In addition, Elections Code sections 3017 and 3020 require all absentee ballots to be received by the close of the polls on election day. Elections Code section 3018 provides for voting at the elections office, but that statute also requires the voter to vote on or before the close of the polls on election day. We also note that to allow such post-election perfection—at the voter's discretion—could increase the opportunity for fraudulent conduct, particularly in very close elections.

In summary, the law requires ballots to be submitted on or before the close of the polls on election day. There is no provision for allowing or providing for post-election perfection of unsigned absentee and provisional ballot envelopes. If voters failed to sign either the absentee or provisional envelope, these ballots should not be counted.

Of course, the HAVA "Free Access" system requires that you advise voters who inquire if their voted provisional ballot has not been counted, and the reason why it was not counted.

2. Should/can an election official call a voter who did sign an absentee ballot envelope, or a provisional envelope, but had not signed his/her Voter Registration Card and offer/permit the voter to perfect the ballot?

Again the answer is no. All signed registrations must have been received by E-15 (October 18, 2004), or, in the case of new residents/citizens by E-7 (October 26, 2004) at the latest. If there is no signature on the voter registration card to compare the absentee and provisional ballots with, as is the case with unsigned ballot envelopes, the law makes no provision for allowing a voter to perfect invalid registration post-election.

Vote/nosig2-114



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ELECTIONS | 1500 11th Street, 5th floor, Sacramento, CA 95814 | tel 916.657.2166 | fax 916.653.3214 | www.ss.ca.gov

November 2, 2005

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (05317)

FROM: _____
JUDITH A. CARLSON
Staff Counsel

SUBJECT: TREATMENT OF ABSENTEE BALLOTS

Issue #1: If an absentee voter returns a voted absentee ballot to the county, and the residence address on the absentee ballot is different from the residence address on the voter registration card, should the vote be counted?

Response #1: In California, the identification envelope for an absentee ballot shall include, among other items, "the residence address of the voter as shown on the affidavit of registration." (Elec. Code, § 3011(c).) However, there is no specific requirement for the elections official to compare or otherwise verify the absentee voter's address upon receipt of the voted ballot. Section 3019 requires that "Upon receipt of the absentee ballot the elections official shall compare the signature on the envelope with that appearing on the affidavit of registration and, if they compare, deposit the ballot, still in the identification envelope, in a ballot container in his or her office." Section 3019 was formerly Section 1015, which was renumbered as part of a technical, nonsubstantive amendment to the Elections Code in 1994. Section 1015 included the same language as section 3019, stated above.

The California Supreme Court has interpreted the statute to require only comparison of the signatures, specifically stating that no comparison of the addresses was required. In *Wilks v. Mouton*, the appellants sought to invalidate a municipal election on the basis of alleged irregularities in handling absentee ballots. The challenges included allegations that 16 ballots were returned in envelopes bearing a residence address that was not the same as the residence address included on the voter's affidavit of registration. The Supreme Court held that former section 1015 required "only that the elections official compare the signature on the identification envelope with the signature on the affidavit of registration; a comparison of addresses is not required." (*Wilks v. Mouton* (1986) 42 Cal. 3d 400, 412-413; superseded by statute on other grounds as stated in *Escalante v. City of Hermosa Beach* (1987) 195 Cal.App.3d 1009, 1019-1020.)

Accordingly, and because the laws concerning absentee voting are to be liberally construed in favor of the absent voter (Elec. Code, § 3000), it is our opinion that **if the signatures match, and the ballot and envelope otherwise comply with the requirements of the law, the ballot should be counted.**

Issue #2: Should the county's records concerning that voter be updated to reflect the new residence address?

Response #2: No person may be registered except by an affidavit of registration, "properly executed." (Section 2102.) The affidavit shall contain the voter's signature, or mark if the voter is unable to write. (Section 2150(b).) An executed affidavit is generally required for a change of address (Section 2116). However, there are specific exceptions. Section 2119 permits a voter who moves to a new residence within the same county to notify the elections official of the change using a "notice or letter of the change of address signed by a voter as he or she is registered." Additionally, Section 2204 allows a voter who moves to a new residence within the same precinct to notify the elections official of the change. The law also permits an elections official to change the address on a voter registration record where address information is received from the U.S. Postal Service and/or steps have been taken to confirm the address as correct. (See, e.g., Sections 2221(a)(2), 2225(a), and 2226.)

It is therefore our view that although the **ballots in this case should be counted**, the absentee voters' **registration information should not be changed by the elections officials based on the information provided on the envelope.** Instead, we recommend that the official count the ballot and forthwith send a new registration affidavit to the voter, asking that the voter complete and submit it to change the address of record to reflect their current residence address, unless the change is a temporary one.

Provisional Voting

“Studies of the nation’s election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.”¹

For the first time in 2004, states were required by the “Help America Vote Act” to offer provisional voting in order to protect the rights of voters whose names do not appear on the roster of eligible voters in a precinct or polling place and whose eligibility cannot be immediately determined. For many states, this represented a new and radical change from the past. For California, provisional voting is not new however, new federal requirements and recent changes in state law have required a review and revision of county practices to meet the new mandates.

The purpose of this chapter is to: 1) outline the federal and state legal requirements, 2) provide a comprehensive workflow that meets all requirements, and 3) propose procedures and strategies to effectively and efficiently administer provisional voting.



Legal Requirements

The federal requirements for provisional voting are very general and defer to state law and state practices for implementation. Section 302 of the Help America Vote Act (HAVA) requires that:

- beginning January 1, 2004, persons who claim to be registered to vote in a federal election in a jurisdiction but are not on the official list of registered voters or are otherwise alleged to be ineligible be offered and permitted to cast a provisional ballot,
- election officials publicly post information to voters on election day,
- the ballot be promptly verified and counted if determined to be valid under state law, and

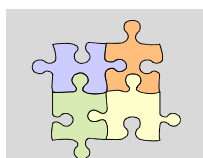
¹ US Congress, House, House of Representatives Report 107-239, Help America Vote Act of 2001 (H.R. 3295), 107th Congress, 1st sess., (December 10, 2001), p. 38.

- the voter (and no one else) be able to ascertain whether the ballot was counted (and if not, why not) through a free-access system and be informed of that option in writing when the ballot is cast.

The full text of Section 302 can be found at the end of this chapter.

The California Elections Code conforms to the federal requirements and contains much more detailed criteria and procedures and fills in the blanks left by the general nature of the HAVA requirements. Sections 14310 through 14312 of the California Elections Code (which can be found at the end of this chapter) contain the following provisions:

- voters must be advised of their right to cast a provisional ballot and instructed in how to cast the ballot,
- after the voter affirms his or her eligibility to vote, the voter will be provided a ballot and an envelope in which the voted ballot will be sealed prior to being deposited in the ballot box,
- the eligibility of the voter will be determined by the election official during the canvassing period,
- the ballot will be accepted if the voter is registered in the county, has not previously voted and the signature on the envelope matches the signature on file,
- a ballot will not be rejected if it was cast in a precinct (within the same county) different from the voter's assigned precinct,
- only contests that the voter is eligible to vote on will be counted,
- voters will be provided a free access system to discover if their ballot was counted,
- if a voter has moved, his or her address will be updated for the next election, and
- situations will be "liberally" interpreted in favor of the voter.



Provisional Ballot Process and Logical Flow

This section describes and depicts a step-by-step logical and process flow that incorporates the provisional ballot requirements

just discussed. The process is independent of voting systems and applies to large and small counties. The work flows depicted describe what should be done and organizes the tasks into a chronological sequence. Absent from this section are prescriptive “how to’s.” Discussions and considerations of “how” the process might be administered will be proposed later in this chapter.

Issuing and Casting Provisional Ballots

When a voter goes to the polls there are usually only four circumstances under which he or she will be required to cast a provisional ballot:

- the voter’s name is not on the roster,
- the voter has already been issued an absentee ballot,
- the voter is unable to provide HAVA required ID, or
- the voter votes during a court ordered extension of polling hours.

When the courts order the extension of polling hours, any voter who appears at the polling place to vote after the normal polling hours (usually 8 p.m.), will be issued a provisional ballot even if their name appears on the roster of voters. The reason for issuing the provisional should be noted on the provisional form or envelope. This type of provisional ballot must be identifiable and kept separate from other provisional ballots in anticipation of the court’s determination of how the ballots will be processed.

The following flow chart outlines the required steps of the process of issuing a provisional ballot for the first three scenarios.

There are many reasons why a voter’s name does not appear on the roster of voters of a specific polling location, many of which are of no fault of the voter. These reasons may include:

- the voter is not registered,
- the voter does not know his or her assigned polling place,
- the voter moved without updating his or her address,
- the voter registered too late for his or her name to appear on the roster,
- the voter registered at the Department of Motor Vehicles (DMV) and the registration was not received or processed by the election official,
- the voter’s name has changed or has been misspelled,

- the voter deliberately chose to appear at a polling location to which he or she was not assigned,
- the voter's name is omitted due to a clerical error.

In the event that the correct precinct for the voter can be immediately determined, the voter may be directed to the correct polling location. However, the voter may choose to cast a provisional ballot instead of traveling to the correct location.

Provisional ballots may be issued to address any situation that cannot be easily or immediately resolved at the polling place on election day. They may be used to defuse angry voters and resolve any emergency. Provisional ballots can be a "fix-all" on election day as the decisions of counting or not counting the ballots are made during the canvassing period when adequate research can be done for each voter.

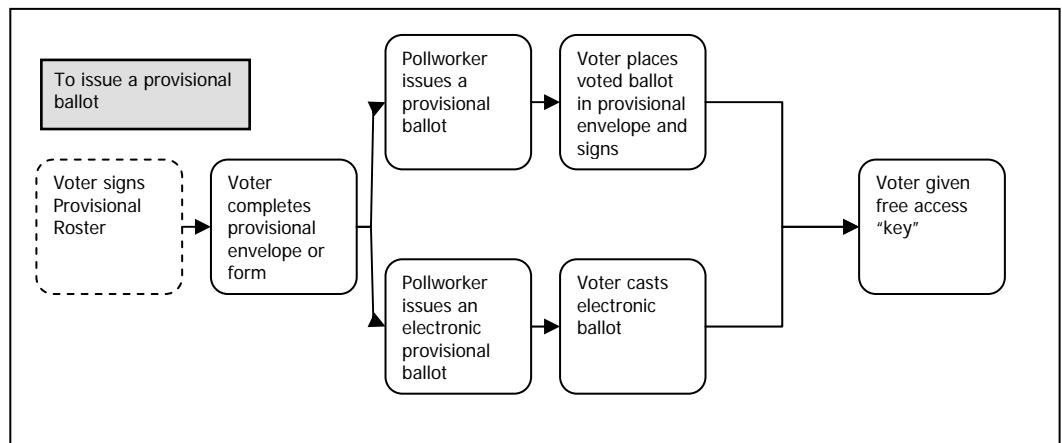
A voter who has been issued an absentee ballot may vote a regular ballot at his or her assigned polling place provided that the voter surrenders the absentee ballot. If the voter is unable to surrender the absentee ballot for whatever reason, the voter shall be issued and vote a provisional ballot.

A voter who does not provide the required identification under the provisions of HAVA shall be issued and vote a provisional ballot.

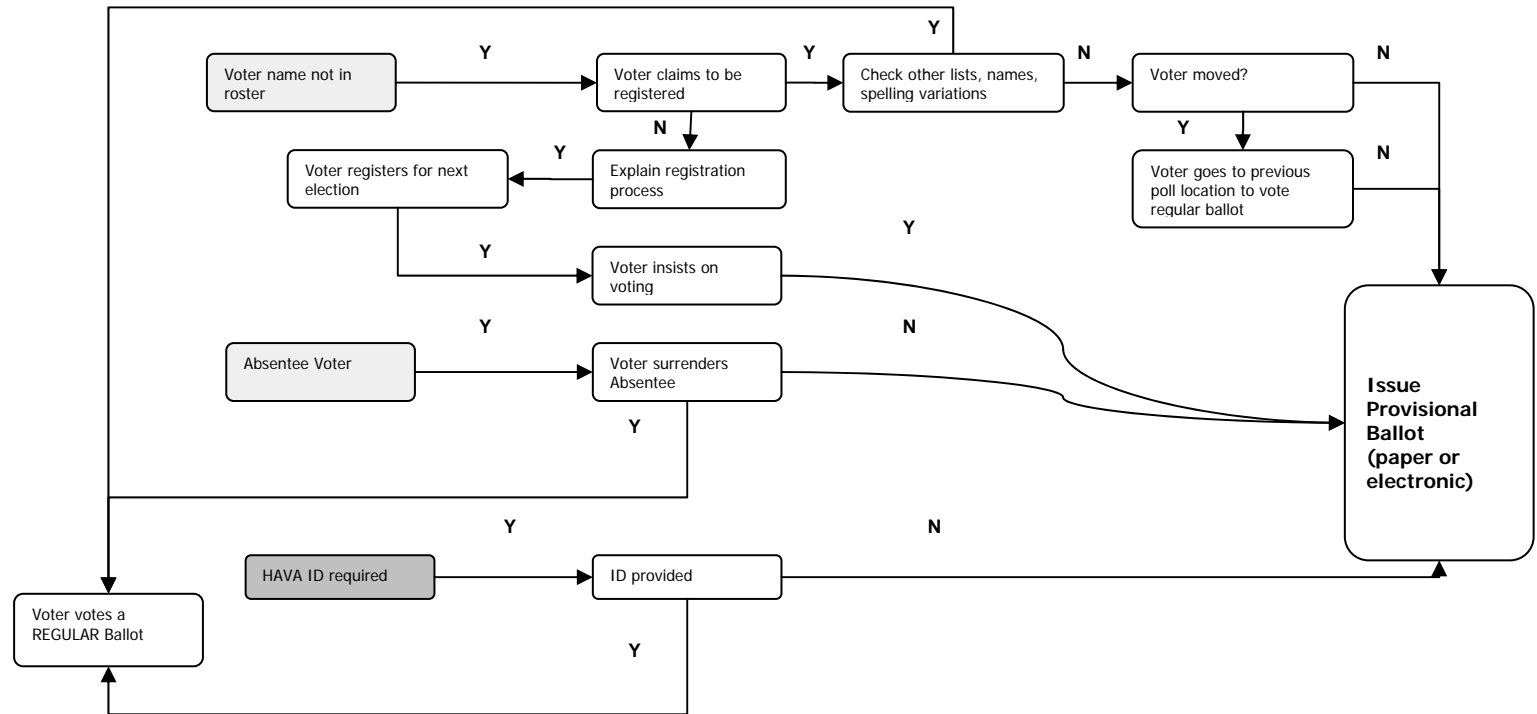
Every voter who is issued a provisional ballot must receive instructions on how to correctly cast a provisional ballot in any language required by the Voting Rights Act. Voters must also be given similar instructions in writing on how to find out if their ballot has been counted through the "Free Access" system.

It is important that the process of issuing provisional ballots be conducted in a manner that will ensure every eligible voter's ballot counts and prevents the counting of ballots cast by ineligible voters. Specifically, procedures should ensure:

- the voter completes or provides all the information on the provisional envelope or form (if an electronic provisional is used) in a legible manner,
- the voter signs the envelope or form, and
- when voting a paper ballot, the ballot is sealed in the envelope prior to being placed in the ballot box.



Provisional Ballot Issuing Flow Chart



Determining Eligibility of Provisional Ballots

Processing provisional ballots requires verifying a voter's eligibility as well as determining whether or not the voter has already voted in the election. The flow chart on the following page illustrates the steps of verifying the voter's information and status in order to determine whether or not the provisional ballot should be counted.

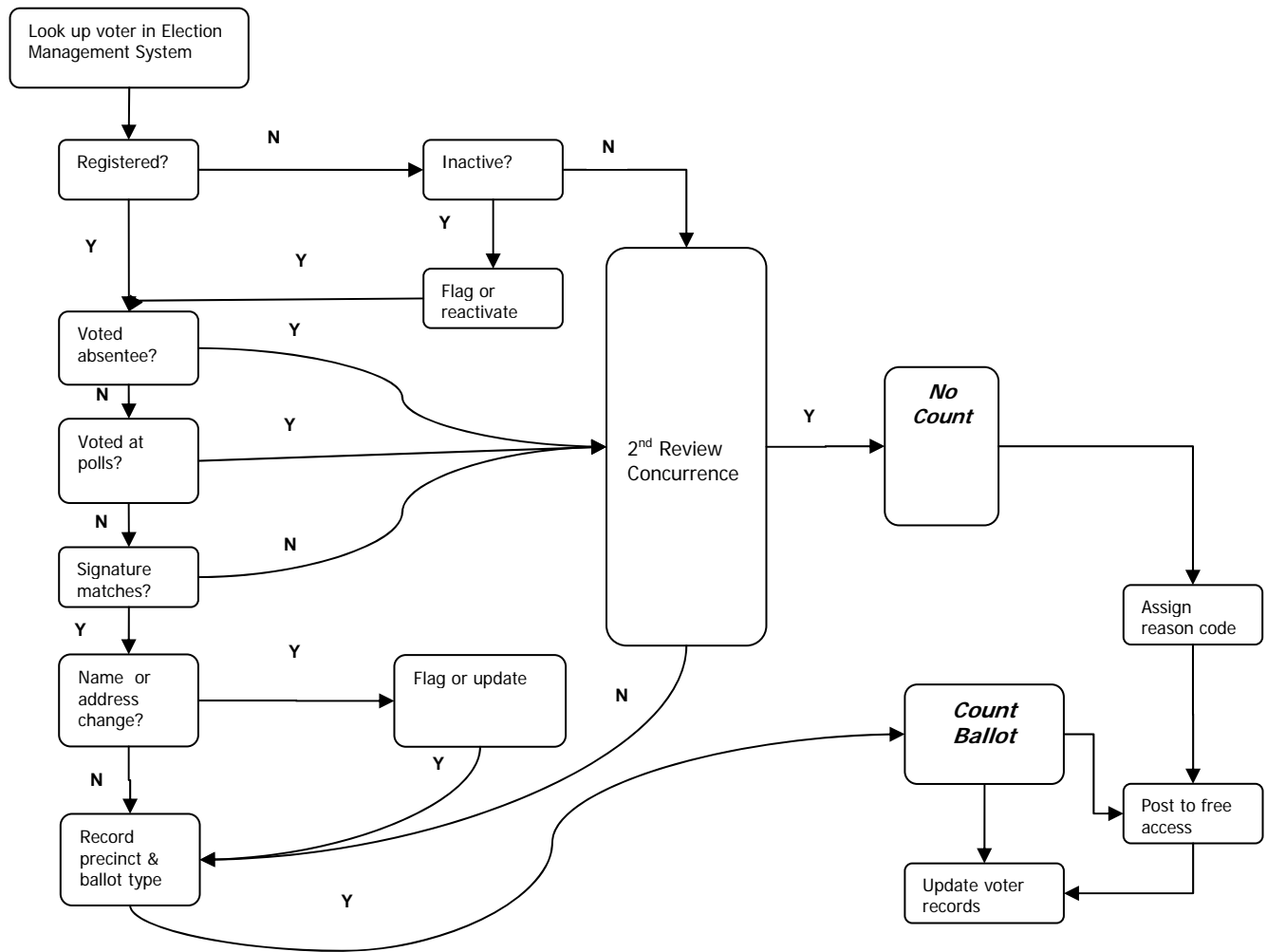
If a "No Count" determination is made, a second review should take place to verify that the ballot should not be counted.

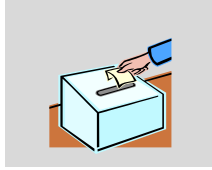
If a "Count" determination is made and the voter voted in a precinct other than his or her own, a decision must be made as to which precinct the ballot should be counted in.

A sample of "Count/No Count" procedures is at the end of this chapter.

Whether or not a provisional ballot is counted, any appropriate updates that can be made to the voter's records based upon information provided on the provisional ballot envelope or form, to include registering the voter, should be made.

Provisional Ballot Processing Flow Chart





Considerations for Implementation

The 58 counties of California use a range of paper and electronic voting systems as well as various voter registration and election management systems. They also have different resources and staff available and have different personalities and past practices. As a result, there is no single manner in which HAVA compliant provisional voting must be administered. The purpose of this section is to identify key issues and decision points for counties to consider as each evaluates or revises its respective provisional voting procedures.

Provisional Envelopes and Forms

In most cases, the voter will cast a provisional ballot on some type of paper ballot for which an envelope must be provided. However, if a voter casts a provisional ballot electronically there is no need for an envelope but there is still a need for a form to capture the same information for the election official. The first consideration is to use an envelope or a form to gather the required information.

The next consideration is the size, color and format of the envelope. The Elections Code requires that the envelope be substantially similar to the absentee ballot envelope for the county, but of a different color.

Other format requirements for both forms and envelopes:

- The envelope or form must contain identifying information of the voter in order to make a determination of eligibility.
- The envelope or form must contain a place for the provisional voter to make a written affirmation stating that he or she is registered to vote, is eligible to vote in that election and hasn't already voted. Usually, this will comprise the text of an affirmation or affidavit and a place for the voter to sign the envelope or provisional form.
- The envelope or form must contain a place for the voter to write his or her complete residence address.

There are a number of elements that are not required on provisional envelopes and forms but could facilitate the processing of the provisional ballots and should be considered:

- The envelope or form may be designed to contain all the required elements of a registration form so that any necessary corrections to the voter's record may be made without further correspondence with the voter.

- The envelope or form should contain a space to record the reason the voter is being issued a provisional ballot.
- The envelope or form should contain a space to record the precinct/poll ID and the ballot style of the ballot the voter voted.
- The data elements on the envelope or form may be laid out in the same sequence as the screens of the election management system used to process the provisional ballots.
- Bar code technology may be used as part of the Free Access system.
- Check boxes may be used for commonly required information.

Samples of envelopes and forms from other states and California counties may be found at the end of this chapter.

Free Access System

Under both state and federal law, provisional voters have a right, at no cost, to learn whether or not their ballots were counted and the reason if not counted. The federal requirement in HAVA provides that the privacy of the voter is to be protected, however in state law there are no explicit provisions for voter privacy. Compliance with “Free Access” provisions cannot compromise the privacy of the voter.

Toll-free telephone numbers or an Internet website are specifically listed in HAVA as acceptable means for meeting the “Free Access” voter notification requirement although other means may also be acceptable. Election officials have no obligation to notify voters, only to provide voters with the means to find out if their ballot was counted; so mailing notifications to voters is not appropriate. Both state and federal law require the voter to seek the information themselves.

At the time of voting, the provisional voter must receive written notification informing the voter of how and when he or she can access the “Free Access” system. Only the voter who cast the provisional ballot may have access to this information to find out whether or not his or her ballot was counted.

The count/no count status of a provisional voter’s ballot is protected information. Reasonable procedures to protect the security, confidentiality, and integrity of the voter’s personal information must be an integral part of the “Free Access” system. The creation of lists of voters by name that reveal the count status of ballots should not be a part of the “Free Access” system as such lists risk violating the privacy provisions of HAVA as they are discloseable under the Public Records Act.

Provisional Voting Requirements of the Help America Vote Act

42 U.S.C. 15301 to 15545

SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.

(a) PROVISIONAL VOTING REQUIREMENTS. —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:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is—

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual

written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish 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. States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg –2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. 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.

(b) VOTING INFORMATION REQUIREMENTS.—

(1) PUBLIC POSTING ON ELECTION DAY.—The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) VOTING INFORMATION DEFINED. —In this section, the term “voting information” means—

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under

Section 303(b);

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE. —Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) EFFECTIVE DATE FOR PROVISIONAL VOTING AND VOTING INFORMATION. —Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

Provisional Voting Requirements of the California Elections Code

Elections Code 14310 et seq.

Section 14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

(1) An election official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official

in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon:

(A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or

(B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal

shall have priority over all other civil matters.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.


(g) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

14311. (a) A voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may, at his or her option, vote on the day of the election at the polling place at which he or she is entitled to vote based on his or her current residence address, or at the office of the county elections official or other central location designated by that elections official. The voter shall be reregistered at the place of voting for future elections.

(b) Voters casting ballots under this section shall be required to vote by provisional ballot, as provided in Section 14310.

14312. This article shall be liberally construed in favor of the provisional voter.

Sample Provisional Ballot Envelopes

| | | | |
|---|--|--|--|
| THIS BOX FOR RR/CC OFFICIAL USE ONLY | | <input type="checkbox"/> COUNT <input type="checkbox"/> NO COUNT | |
| SERIAL # _____ REASON: _____ OFFICIAL CANVASS CLERK 1 _____ CLERK 2 _____ RR OPERATOR _____ | DATA ENTRY SECTION VOTER I.D. #: _____ <input type="checkbox"/> AV F <input type="checkbox"/> AV NF PARTY (PRIMARY ONLY) _____ BALLOT GROUP _____ VOTO / REGISTERED _____ PRECINCT # (DIP ONLY) _____ UPDATED BY _____ DATE: _____ | | |
| FOR THE POLLWORKER COMPLETE THIS SECTION Precinct # _____ <i>Check a Box:</i> <input type="checkbox"/> Name not in Roster Serial # _____ <input type="checkbox"/> Absentee voter -- no ballot to surrender _____ <input type="checkbox"/> New Voter - no proof of identification Roster Page 2 Line # _____ Party Ballot Issued _____ (Primary only) Comments: _____ _____ _____ Pollworker's Name: _____ | | FOR THE VOTER COMPLETE AND SIGN First Name _____ M.I. _____ Last Name _____ Current Residence Address _____ City _____ State _____ Zip _____ Mailing Address (if different from above) City _____ State _____ Zip _____ <i>If Moved Since Last Registration:</i> Previous Residence Address _____ City _____ State _____ Zip _____ U.S. State or Foreign Country of Birth: _____ Birth Date: ____/____/____ I am a citizen of the United States: <input type="checkbox"/> Yes <input type="checkbox"/> No I am 18 or older: <input type="checkbox"/> Yes <input type="checkbox"/> No Calif. Driver's License or I.D. # or last 4 digits of SS #: _____ Registered Political Party: _____ Daytime Phone # _____ (Optional) | |
| LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK PROVISIONAL BALLOT ENVELOPE (VOTING TWICE IS A FELONY) | | Voter Declaration: I declare under penalty of perjury that I reside at the address listed above; I have not previously voted in this election either by Absentee Ballot or at any other polling place. I declare I am a U.S. citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election.  Voter Signs Here _____ Date _____ | |

PROVISIONAL ENVELOPE

| | | | | | | |
|--|--|--------|--------------|----------|---|----------|
| REASON FOR PROVISIONAL _____ | POLLING PLACE _____ | | | | | |
| VOTED BALLOT ENCLOSED (Your ballot may not be counted unless the following information is provided) | | | | | | |
| VOTER DECLARATION WARNING: VOTING MORE THAN ONCE IN ANY ELECTION IS A FELONY | | | | | | |
| I _____ am a citizen of the United States, <input type="checkbox"/> Yes <input type="checkbox"/> No (Print name) and I reside at _____, within this county. My mailing address, if different from residence address, is _____ | | | | | | |
| Political Party: <input type="checkbox"/> American Independent Party <input type="checkbox"/> Democratic Party <input type="checkbox"/> Green Party <input type="checkbox"/> Libertarian Party <input type="checkbox"/> Natural Law Party <input type="checkbox"/> Peace and Freedom Party <input type="checkbox"/> Republican Party <input type="checkbox"/> I Decline to State a Political Party <input type="checkbox"/> Other _____ | | | | | | |
| I declare under penalty of perjury that I am a U.S. citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election. I am a registered voter, and the person whose name appears on this envelope. I understand that voting twice constitutes a crime, and I have not voted previously in this election either by absentee ballot or at any other polling place. | | | | | | |
| SIGNATURE (sign as you did when you registered to vote) _____ | DATE _____ DATE OF BIRTH _____ DRIVERS LICENSE # _____ | | | | | |
| COUNT | CHANGE | REASON | BALLOT STYLE | PRECINCT | <input type="checkbox"/> AV <input type="checkbox"/> WRONG PRECINCT | INITIALS |
| | | | | | <input type="checkbox"/> NOT REG <input type="checkbox"/> OTHER _____ | |
| Provisional tear off stub: If you would like to know whether or not your Provisional Ballot was counted, please call (800) 881-8683 or visit our website at www.sberov.com at least 28 days after the election and provide the reference # on this stub. | | | | | | |

Sample “Count/No Count” Procedures

PROVISIONAL BALLOT PROCESSING PROCEDURES

Count/No Count Determination

- Using the “Find Voter” screen, check to see if the provisional voter is registered to vote. If the person is not registered then the ballot will not count and mark “NC” in the “Count” box. Also check off the “Not Reg” box as the reason.
- If the person is registered and the SIGNATURE MATCHES then check the following:
 - ✓ If the address listed on the provisional envelope is different from the address on file, mark the “Change” box with “AC.”
 - ✓ If the driver’s license number listed on the provisional envelope is different from the driver’s license number on file, or if there is no driver’s license number on file, mark the “Change” box with “DL.”
- Check voter history by clicking on “Flags/Misc.” and then clicking on “Voting History” to make sure that the provisional voter has not already cast a ballot for this election.
- If the provisional voter has already cast a ballot in this election the ballot will not count and mark “NC” in the “Count” box. Also check off on the provisional envelope either the “AV” box if the provisional voter cast an absentee ballot, or “Other” box if the provisional voter cast a ballot at the polls.
- If the provisional voter has not cast a ballot for this election the ballot will count and mark “C” in the “Count” box.
- If the ballot will count you will then post voting history. To post the voting history, you will go to the “Voting History” screen for the current election. If the current election does not appear, click “All Elections” at the bottom. Double click on the correct election and then check the following boxes along the right side:

➤ Voted; Provisional Ballot Requested; Provisional Ballot Returned

Once you have completed posting the voter history click on “OK” to save.

- Click on the “Absentee Envelope” and click on the voter’s name. If the “It is too late to apply for an AV” prompt appears, click “NO.” If it tells

you an absentee ballot has already been issued click "OK" and then when you are asked whether to issue a rejection notice, click "NO." Look in the top right of the screen and record the ballot type the voter is entitled to vote in the "Ballot Style" box and write the precinct name (not polling place name) listed in the system in the "Precinct" box.

Sample Procedures for “Out-of Precinct” Provisional Ballots

PROVISIONAL BALLOT OPENING AND DUPLICATING PROCEDURES

- Verify that the provisional envelope is marked “C” for count and then open the envelope and remove the ballot. Do not remove more than one ballot at a time.
- Where the ballot type of the voted ballot **matches** the ballot type listed on the bottom of the provisional envelope then:
 1. Write the voter’s precinct number in red in the top left section of the ballot, and
 2. Place the ballot in the “To Be Counted” tray.
- Where the ballot type of the voted ballot **does not match** the ballot type listed on the bottom of the provisional envelope then:
 1. Retrieve a ballot with the ballot type listed on the bottom of the provisional envelope.
 2. Mark the duplicate ballot and enter the information on your duplication log.
 3. Duplicate all contests voted on the provisional ballot that appear on the duplication ballot onto the duplication ballot.
 4. If there is any writing or a note on the ballot that may indicate voter intent set it aside and give it to a supervisor.
 5. Write the voter’s precinct number in red in the top left section of the ballot, and
 6. Place the ballot in the “To Be Counted” tray.

The Election Center – 2005 Professional Practices Papers

“Shaping Provisional Voting”

David Orr, County Clerk, Cook County, Chicago, Illinois

Election Center
Professional Practices Program 2005
Shaping Provisional Voting
Submitted by Cook County Clerk David Orr

Although the Help America Vote Act (HAVA) mandated provisional ballots as a way to protect voters' rights, provisional voting threatened to become the new "hanging chad" of 2004.

Election authorities were challenged to make provisional voting the safety net it was intended to be, despite the fact that legislation for implementation was long on ambiguity and short on guidance.

Still, the Cook County Clerk's office cut through the confusion by developing an integrated plan for design, training and public education that fostered familiarity with the provisional process. As a result, most voters in suburban Cook County remained focused on *whom* they had voted for, rather than *how* they had voted.

Methodology

Our strategy focused on empowering our poll workers and the public by providing an abundance of clear information before and during the election. Armed with knowledge, the voters would accept the new procedures, rather than be suspicious of them.

New materials

We knew that adding more forms and envelopes to the polling place had great potential to confuse election poll workers and voters. We aimed, therefore, to simplify the provisional materials and make them easily recognizable with a four-pronged approach:

- 1) *Identifiable color.* To ensure poll workers didn't use them for the wrong purpose, we distinguished all provisional materials with a purple color.
- 2) *Special numeric codes.* All materials were assigned alphanumeric codes with a "P" identifier for "provisional" – 100P, 101P, etc. – to identify them and help poll workers recall the order in which they should be used.
- 3) *Consolidation.* We printed the voter affidavit on the provisional envelope to prevent the two forms from becoming separated. Attaching the affidavit also made it less likely that poll workers would forget to fill out the form or fail to include it with the ballot.
- 4) *Targeted languages.* All materials were printed in English, Spanish and Chinese to ensure the majority of voters could use them while voting independently.

The materials included:

- Bilingual polling place posters in English-Spanish and English-Chinese
- Instruction cards for voters in three languages
- Affidavit envelopes in three languages
- Statement of ballots for poll workers
- Purple carrier pouch with locking mechanism
- Brochure explaining new procedures

Training of poll workers

The key to making sure provisional ballots were cast, processed and counted properly was to develop training for the people who would become the gatekeepers of provisional voting.

- *New technical judges.* A new category of poll workers was created to ensure that at least one poll worker in each precinct received extra training to develop a thorough understanding and expertise in provisional voting.

- *Newsletters.* In addition to their training manual, all poll workers were mailed a newsletter shortly before the election that included a step-by-step guide for provisional voting that they could use as a quick reference.
- *New regional locator.* We created a document that detailed the streets surrounding each precinct, and we instructed poll workers to use it to direct voters to the correct precinct if they were in the wrong one.
- *Voter verification.* Extra staff was trained to work a phone hotline that poll workers called to verify a voter's registration before issuing a provisional ballot.
- *Precinct advisors.* We assigned troubleshooters to groups of polling places to evaluate poll workers and their grasp of procedures.
- *Post-election survey.* A written survey of all poll workers after the primary and general elections helped identify problems and generate ideas for improving the election process.

Voter education

After the controversies of 2000, we knew it was essential to inform the public and the media that provisional voting would begin with the 2004 primary:

- We distributed the new provisional voting brochure through elected officials, community events and voting rights groups.
- New website pages contained detailed explanations of provisional voting.
- An "Election Protection" flier campaign stressed the importance of voting in the correct precinct, a requirement if voters wanted all their provisional votes to count.
- Cards responding to frequently asked questions were given to voters in the polling place.
- Multiple press releases and individual media briefings made it clear to the press and the public that provisional voting is not a means of same-day registration or convenience voting.
- To minimize confusion over election results in close races, we added an extra step in our record keeping that allowed us to track the number of provisional ballots cast in each precinct by political party. We could then tell reporters and candidates if a race was too close to call until all provisional ballots were reviewed and counted.

Conclusion

The true testament to our success was that the number of provisional ballots disqualified because of procedural issues during the November presidential election was very low. Only 6.3 percent of ballots were rejected because voters or poll workers failed to supply ID information, sign the provisional affidavit, or otherwise correctly follow provisional voting procedures.

About 93 percent didn't have their votes counted because the would-be voters simply were not registered to vote in suburban Cook County or changed their name but did not re-register, both reasons beyond the control of the poll workers and the Clerk's office.

Our integrated approach to outreach, training and design helped voters and poll workers develop a positive grasp of how provisional voting works.

As a result, more than 5,400 voters who would otherwise have been disenfranchised were able to vote in the national election.

provisional voting 臨時投票

circumstances where provisional ballots are used 使用臨時選票的場合

- Your name does not appear on the list of registered voters for the precinct.
- Your voting status has been challenged by an election judge, pollster or another voter and a majority of the election judges agree.
- A court order is issued instructing your polling place to remain open after 7 pm (Election Day) after 7 pm most east provisional ballots if this occurs.
- You are required to show identification because you registered by mail, but you did not bring ID to the polling place on Election Day.

polling place procedures 投票站工作規程

- Fill out and sign the legal affidavit envelope. You will receive a copy of the affidavit.
- An election judge will make an affidavit the moment you were issued a provisional ballot.
- After voting your ballot, place the provisional ballot card inside the affidavit envelope, seal it and return it to the election judge.
- If you make a mistake, ask an election judge for a new ballot.

after the polls close

- The Clerk's office receives all provisional ballots information for each provisional voter within 72 hours.
- If the Clerk's office determines that you are eligible, the envelope is opened and your ballot is counted.
- If you are not registered, the envelope will not be opened and your ballot will not count. However, the info envelope will serve as a registration application.

additional information

- If you have any information, identification or do from the Secretary of State's office, copy of a photo that shows that you are a registered voter or eligible to vote, bring it to the election judge on Election Day.
- Bring it to the Clerk's office 48 hr. (Election Day) before the election.
- Bring it to the Clerk's office at 312 603 9796.

find out if your vote counts

Visit www.voteinfocenter.com, starting two weeks before the election. If you are not registered, you may also have the option to register online.

Specially designed forms and envelopes

A readily identifiable purple color and alphanumeric code — "P" stands for "provisional" — helped poll workers distinguish the new materials for provisional voting.

Pictured here:
Poster 100P– Provisional Polling Place Poster
 Shown in English and Chinese, provides detailed explanation of provisional procedures.

Use this envelope during election at Judge Station 2

State of Illinois }
 County of Cook } 55

102P Provisional Ballot Envelope with Affidavit

date of election _____
 township _____
 precinct _____
 ward (Berwyn and Evanston townships only) _____

102P Provisional Ballot Envelope with Affidavit

- Voter must fill out and sign the affidavit on the reverse side
- An election judge must fill out and sign the bottom portion of the affidavit
- Give one copy of the completed affidavit to the voter. The other two copies must remain attached to the envelope.
- Voter must insert voter provisional ballot and seal the envelope.
- Election judge must place this completed envelope in the carrier pouch.

Place any documentation or materials provided by the voter that supports his/her registration in the attached plastic pocket.

To be completed by Cook County Clerk's Office:
 Validated by _____ Valid Invalid

Use this envelope during election at Judge Station 2

102P Provisional Ballot Envelope with Affidavit

date of election _____

Provisional Voter Affidavit data of election _____

This section must be filled out and signed by the voter.

name _____
 street address _____
 village/city _____ zip code _____
 telephone number _____ sex M F
 date of birth (month/year) _____
 township _____ precinct # _____
 ward # (Berwyn and Evanston townships only) _____

To help us verify your registration status, please list your driver's license # (if you have one) and the last four digits of your Social Security #. If you have a state ID, you may list that number as well.

driver's license # _____
 SS # last 4 digits _____
 state ID # _____

I affirm that I am a citizen of the United States; at least 18 years old; a duly registered voter in every respect; and eligible to vote in this election. I have resided in this state and in this precinct for 30 days before the election and have not voted in this election.

voter signature _____

This section is for election judge use only.
 Reason for provisional ballot (check all that apply)

Name not listed on official list of eligible voters (active or inactive)
 Voting status challenged
 Voting during court-ordered extended polling place hours
 Required to show ID but does not have it
 Party ballot given to voter (primary only)

Democratic Republican
 Non-partisan (if applicable) Libertarian (if applicable) Other (if applicable)

election judge name _____
 election judge signed _____
 comments _____

Form 102P– Provisional Ballot Envelope with Provisional Voter Affidavit

By attaching the affidavit to the ballot envelope, ensures the ballot and affidavit remain together during the verification process.

Form 103P– Provisional Statement of ballots with Provisional Ballot Carrier Pouch

Transparent pocket built into the canvas carrier holds statement detailing how many provisional ballots are being transported to central processing site in the secure pouch.

Use this envelope during and after election at Judge Station 2

township _____
 precinct _____
 ward (Berwyn and Evanston townships only) _____

103P Provisional Ballot Carrier Pouch

Completed Envelopes 102P Provisional Ballot Envelopes with Affidavit
 Statement of Provisional Ballots
 Complete the following information:

1. Provisional ballot cards received from County Clerk's office in VSC
 Number of provisional ballot cards _____
 Total provisional ballot cards received _____

2. Ballot cards to be returned to the County Clerk's office
 Number of valid provisional ballot cards _____ return in Carrier Pouch
 Number of spoiled provisional ballot cards _____
 Number of unused provisional ballot cards _____ return in VSC
 Total provisional ballot cards to be returned _____

3. Provisional ballot cards envelopes 102P received from County Clerk's office local officials if applicable _____

Place any ID information in envelope and all envelopes 102P are enclosed.

After the polls close, write down the total number of Envelopes 102P enclosed: _____

Election judge must sign on these lines: 1 _____
 2 _____
 3 _____
 4 _____
 5 _____

Forward mail _____

Insert the statement in plastic pocket in front of pouch.

Seal pouch and return to mailing station.

General Election November 3, 2009
 Cook County Clerk, David Orr

Not pictured: Envelope 101P– Provisional VSC Envelope. Holds all provisional ballots and forms for transport to polling place.

provisional voting instructions

circumstances where provisional ballots are used

- Your name does not appear on the lists of registered voters for the precinct.
- Your voting status has been challenged by an election judge, pollwatcher or another voter and a majority of the election judges agree.
- A court order is issued instructing your polling place to remain open after 7 pm. (Everyone voting after 7 pm must cast provisional ballots if this occurs).
- You are required to show identification because you registered by mail, but you did not bring ID to the polling place on Election Day.

In this instance, you must supply the Clerk's office with acceptable identification by 7 pm the Thursday following Election Day in order for your ballot to be counted. Acceptable forms of identification include: a current and valid photo ID; copy of a utility bill, bank statement, government check, paycheck; or other government document that shows your name and address. Bring it to the Clerk's office (69 W. Washington St., Suite 500, Chicago); or fax it to the Clerk's office at 312 603 9786.

polling place procedures

- Fill out and sign the legal affidavit envelope stating that you believe you are registered to vote and eligible to vote in the election. You will receive a copy of the affidavit.
- An election judge will note on the affidavit the reason(s) you were issued a provisional ballot.
- An election judge will issue you a provisional ballot.
- After voting your ballot, place the provisional ballot card inside the envelope, seal it and return it to the election judge.

! If you make a mistake, ask an election judge for a new ballot.

additional provisional voting information on

front

Provisional voting instructions

Cards handed to each provisional voter at the polling place explain to voters: why they must vote provisionally; what happens to provisional ballots after polls close; and how to find out if their provisional ballot was counted.

provisional voting instructions

after the polls close

- The election judges will collect all the provisional ballot envelopes voted in the precinct and place them in a secure container. (Unlike regular ballots, provisional ballots are not counted on Election Day).
- The Clerk's office receives all provisional ballots and verifies the registration information for each provisional voter within two weeks after the election.
- If the Clerk's office determines that you are registered and eligible to vote, the envelope is opened and your ballot is counted. The final vote total for each of the candidates is adjusted to include provisional votes before official results are issued.

If you are not registered, the envelope will not be opened and the votes you cast will not be counted. However, the information you supplied on the envelope will serve as a registration application.

If you are qualified to register, you will receive a voter identification card in the mail, which will enable you to vote in the next election unless you move or change your name before then.

additional information

- If you have any information, identification or documents (e.g. receipt from the Secretary of State's office, copy of a deputy registrar form) to show that you are a registered voter or eligible to vote, please: provide it to the election judges on Election Day; bring it to the Clerk's office (69 W. Washington St., Suite 500, Chicago); or fax it to the Clerk's office at 312 603 9786.
- The Clerk's office must receive all supporting information within 48 hours after Election Day. Call 312 603 0906 if you have any questions.

find out if your vote counts

- Visit www.voterinfonet.com, starting two weeks after the election. If your ballot was not counted, you may also learn the reason why it was not.

additional provisional voting information on reverse →

back

Election Judge Newsletter highlights new provisional procedures

Newsletters mailed shortly before Election Day to all 12,500 poll workers in suburban Cook County (known as election judges) reinforce provisional procedures after initial poll worker training. Nine-step guide serves as quick reference for many on Election Day.

Provisional Voting: Make sure voters are in the right precinct!

Some provisional ballots are not counted because voters cast them in the wrong precinct. Illinois law requires that provisional voters vote in their correct precinct or their ballots cannot count.

- ▶ Before issuing a provisional ballot, judges must check the Ballot Style Locator by street range (at right) to make sure the person lives in the precinct.
- ▶ If they don't live in the precinct, check the Regional Street Locator, a new document that lists the street addresses for surrounding precincts, so you can direct them to the proper polling place. If you still cannot find their precinct, call (312) 603-0919.
- ! Only issue provisional ballots to voters who live in the precinct but whose registration is in question and who are not eligible to vote a regular ballot.

The screenshot shows a web-based interface for the Cook County Clerk's Ballot Style Locator. It is for Township: EVANSTON, Ward: 02, and Precinct: 000. The document ID is 00453. Below this is a table with columns: GROUP, TO, GEAR, REG, STREETNAME, DATE, CITY/STATE, ZIP, and TITLE. The table lists various groups and their corresponding addresses and titles within the precinct.

You can determine if a voter lives in your precinct by referring to the Ballot Style Locator, which lists all the streets and addresses in your precinct. Make sure you do this before you issue a provisional ballot.

In addition to the Ballot Style Locator for your precinct, you will also receive a Regional Street Locator. This will help you direct voters to the correct precinct and polling place.

WHAT YOU NEED TO KNOW ABOUT ... PROVISIONAL VOTING

- 1 Remember to only issue provisional ballots to voters who are required to use them. Inactive voters should be given regular ballots (not provisional).
- 2 Instruct each provisional voter to fill out the Provisional Voter Affidavit. You should then fill out the election judge and polling place information.
- 3 Give the voter a copy of the affidavit, the Provisional Ballot Envelope (102P), instructions and the correct provisional ballot card.
- 4 Direct the voter to the correct voting booth.
- 5 After the voter has voted and sealed the provisional ballot inside the Provisional Ballot Envelope (102P), place the envelope into the purple Provisional Ballot Carrier Pouch.
- 6 Throughout Election Day, place each voted Provisional Ballot Envelope (102P) into the purple pouch.
- 7 After the polls close, record the seal number and the number of voted provisional ballot envelopes on the Statement of Provisional Ballots (103P).
- 8 Have all judges sign the Statement of Provisional Ballots (103P) and insert it into the purple pouch.
- 9 Lock the purple pouch and return it to the Receiving Station.

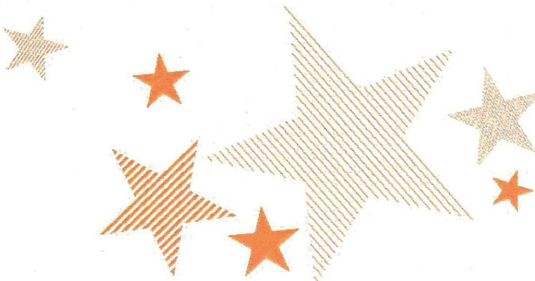
▶▶▶ **Under HAVA**, voters are only required to show ID at the polls under specific circumstances. Those required to do so will have a pre-printed application for ballot with "ID REQUIRED" written on the voter signature line. The election judge at Station 1 will ask to see a form of ID and then mark "ID Supplied" on the application. If the voter does not have valid ID, he or she can vote a provisional ballot. In addition, remember that voters listed in the Application Book as "Inactive" must still show two pieces of ID and fill out a Universal Voter's Affidavit before voting.

Election Protection campaign gets voters to the correct precinct

Cards were designed to remind voters that provisional voting doesn't mean "convenience voting." The message of the campaign, shown here on the front of the card, stressed that voters still had to cast ballots in their precinct for votes to count. Almost 50,000 Election Protection cards were distributed to community groups, civic organizations and campaigns and were also printed for local meetings from digitized versions made available online.

election protection

Protect your vote before Election Day: → verify your voter registration
→ confirm your polling place location
→ know how to make your vote count



register & **vote!**

David Orr
Cook County Clerk

- 1 **Verify that you are registered to vote**
- 2 **Locate your polling place**

Here's how:

visit www.voterinfonet.com

- **click on**
VERIFY REGISTRATION/POLLING PLACE
- **type in**
your name and address, or
your name, birthdate and last four digits of your Social Security number

or, call 312 603 0906

- **press**
#1 for English
- **press**
#2 for registration verification and polling place finder
- **enter**
your date of birth
- **enter**
the last four digits of your Social Security number

! Your ballot will not be counted if you don't vote in the correct precinct.

i The Cook County Clerk's office administers elections in suburban Cook County. The website and hotline information pertains only to suburban Cook County voters. If you live in Chicago, you should contact the Chicago Board of Elections at 312 269 7900, or www.chicagoelections.com.