

[INSIDE COVER]

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EXECUTIVE SUMMARY

With the critical mid-term elections weeks away from our publication date, this report looks at some of the serious problems that marred the 2004 presidential election and asks: are we any better off today than we were two years ago?

The authors of this report – The Century Foundation, Common Cause, and The Leadership Conference on Civil Rights – are uniquely qualified to answer that question. The three organizations did intensive monitoring of the 2004 elections and held a conference including several of the other major monitoring organizations in December of that year. They reported their findings in “Voting in 2004: A Report to the Nation on America’s Election Process,” published in December 2004.

This follow-up report explores whether a sampling of 10 states with a history of various election problems and potentially close races – Arizona, Florida, Georgia, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Washington, and Wisconsin – have taken steps to address the concerns addressed in our foundational report.

The findings of our report on the whole are troubling. Some states have made it harder to register to vote rather than easier. This is critical because problems with voter registration were among the most common complaints of voters in 2004. Another critical problem from 2004 – long lines for voters – is likely to recur because few states have dealt with the issue. New voter ID laws in certain states are likely to disenfranchise voters, and only one state has acted aggressively to address voter intimidation tactics.

Select Findings

- Even though our groups and others have identified voter registration rules and requirements as one of the biggest barriers to voting, some states have made it *more* rather than less difficult to register to vote.

For example, Arizona's new law requiring voters to prove citizenship in order to register represents a huge new barrier to voter participation. In many states, there is no system for promptly notifying a voter if his registration application is missing information necessary for him to be registered to vote, so that by the time Election Day arrives, it is too late for him to amend or complete his application and he is thus disenfranchised. New restrictions on third party voter registration drives in Florida and Ohio threaten to diminish voter participation. Some states continue to ignore the National Voter Registration Act's requirements that government agencies provide voter registration materials. In May 2006, the National Voting Rights Institute, the Lawyers' Committee for Civil Rights Under Law, Project Vote, and Dechert LLP sent a letter to Ohio Secretary of State Kenneth Blackwell notifying him of their intent to sue the state for its failure to implement the public assistance provisions of the NVRA.

- States should be applauded for making progress in the area of poll worker recruitment. Many of the states studied in our report have been particularly aggressive about recruiting young people to serve as poll workers.
- New voter identification laws in half of the states studied present major new barriers to voting. Arizona, Georgia, and Missouri have all enacted disenfranchising voter identification requirements. Ohio and Florida have made their voter identification requirements more restrictive. Minnesota, Wisconsin, Michigan, and Pennsylvania have all considered stringent voter identification requirements; all of those states could pass such measures in the near future.
- Despite the huge incidence in 2004 of misleading fliers and phone calls, only two states, Missouri and Minnesota, have taken an aggressive step to address the problem. Arizona has taken a smaller step to start to address the problem. Bills restricting deceptive practices are pending in two states – Pennsylvania and Ohio – but have not passed. The other states have ignored the problem of deceptive practices.

- Partisan pre-election and Election Day challenges to voting eligibility was a major source of controversy and possible voter suppression in 2004. A few states should be praised for taking steps to address this, notably Minnesota and Washington. But most of the states studied have not taken sufficient measures to rein in this deplorable practice, and existing laws are vague enough to be abused again. This is a particular risk in Florida and Pennsylvania.
- Despite the huge problems in 2004 with long lines and insufficient and inequitably distributed voting machines, most states continue to employ vague and decentralized standards for voting machine distribution. Unacceptable and disenfranchising long lines threaten to be a problem again in 2006. Neither Florida nor Washington has a formula for determining the number of voting machines for each precinct. Minnesota's requirements are vague. In Ohio, where voters faced the longest polling lines of any state in 2004, the state passed a law requiring counties that use DREs to provide at least one machine for every 175 voters registered in the previous presidential election. The provision, however, does not take effect until 2013. Pennsylvania has no statutory requirements on machine distribution.

Key Recommendations

- Remove barriers to registration, such as proof of citizenship requirements and unduly harsh restrictions on third party voter registration drives, and allow more time and information to complete faulty or incomplete forms. Take measures to boost the number of people registered to vote, such as ensuring compliance with the National Voter Registration Act, automatic re-enfranchisement of felons upon completion of incarceration, and Election Day registration.
- Limit identification requirements to those mandated by HAVA. More stringent requirements, particularly those that involve government-issued photo ID, disenfranchise too many voters.
- State and local governments must enforce existing laws and be more active in prosecuting illegal activities intended to intimidate voters or disrupt voter turnout.
- State and local governments must prosecute deceptive practices criminally and have in place emergency procedures that can be implemented immediately to correct the information spread by deliberate misinformation campaigns.
- States must establish fair standards for challenges. Such standards should include penalties for overtly partisan, racial, ethnic, or otherwise frivolous challenges. States should enact stringent rules restricting the conditions under which a challenge may be made by a challenger at the polls. States should require pre-election challenges to be filed in advance of Election Day.

- Prohibit election administrators from participating in partisan political campaigns; limit elected officials to participation in their own campaigns. The Secretary of State or the county elections director, individuals who are charged with administering and overseeing elections, should not play a role in a partisan campaign for senator or president. Campaign contributions from vendors to election officials, revolving-door arrangements by which election officials become lobbyists for vendors, and other such ethical improprieties erode public confidence in elections and weaken election management.
- Base allocation standards for voting machines on the latest registration numbers and other factors such as demographic data, the length of the ballot, and recent voter turnout. Long lines at the polling place act as a deterrent to voters, effectively disenfranchising those who cannot afford to wait due to childcare, work, or other time commitments.

While some states have made sporadic improvements to their election procedures, none have come close to addressing in full the major problems that plagued the system during the last federal election. Election administrators, elected officials, advocates, and voters have much work to do in the days leading to the 2006 congressional elections and the 2008 presidential election if those elections are to be fair and efficient and earn the trust of the American people.

INTRODUCTION

On December 7, 2004, The Century Foundation, Common Cause, and The Leadership Conference on Civil Rights sponsored a historic daylong forum entitled “Voting in 2004: A Report to the Nation on America’s Election Process.”¹ Although it was generally reported that the election had gone smoothly, those of us most intensely involved in ensuring such an outcome knew that was not the whole story. As a result, our mission on that December day was to gather all of the organizations and experts who were on the ground monitoring the process during the 2004 election to report on the data and information they collected, and in this manner to compile a realistic picture of what transpired in the 2004 presidential election. Subsequently, the three organizations published a report that summarized the comments of the nearly three dozen panelists and the most pressing challenges they faced during the 2004 election cycle.

The conference participants detailed numerous instances of voter disenfranchisement that must be addressed, including the following:²

- Voter registration forms were rejected by administrators for overly technical reasons, with little opportunity for the voter to amend his or her form.
- Registered voters showed up at a polling place to learn that they were not on the voter registration list due to administrative errors.
- Rules and practices for providing and counting provisional ballots were arbitrary and overly restrictive.
- Voters were wrongfully and discriminatorily asked to present identification. This most often took place in Asian American, African American, and Native American jurisdictions.
- Voting machines broke down and recorded votes inaccurately in some instances. For example, machines in a few jurisdictions switched votes from candidate John Kerry to George Bush and vice-versa.
- Poll workers were poorly trained and clearly misinformed, leading to disenfranchisement.
- Overt attempts at vote suppression and intimidation occurred, predominantly in African American and Native American jurisdictions.
- Voters were subjected to unacceptable wait times to vote, particularly in minority and poor areas and college campuses.
- Fliers purposefully disseminating disinformation about election procedures were distributed, most often in minority neighborhoods
- Election administrators and others abused heretofore scarcely used state statutes to challenge the eligibility of some voters before the election as well as the voting

¹ See <http://www.tcf.org/list.asp?type=EV&pubid=132>.

² “Voting in 2004: A Report to the Nation on America’s Election Process,” *The Century Foundation, Common Cause Education Fund, Leadership Conference on Civil Rights*, 7 December 2004, <http://www.commoncause.org/atf/cf/{FB3C17E2-CDD1-4DF6-92BE-BD4429893665}/12-7ConferenceSUMMARY1.pdf>.

rights of some voters at the polling sites. These efforts were aimed in particular at minority and urban communities.

The 2006 midterm elections now upon us beg the question: are we better off today than we were two years ago? This report seeks to answer that question. It explores a sampling of ten states – Pennsylvania, Ohio, Missouri, Michigan, Florida, Wisconsin, Minnesota, Washington, Georgia and Arizona – to determine if and how each have taken steps to address the specific concerns expressed at our 2004 conference. The states chosen have each experienced election problems in recent years; all ten states face close races in 2006, races that are likely to significantly test the system.

Our findings are mixed.

Disappointingly, in the area of voter registration, states not only did not make the process easier, in some places they made it significantly more difficult. For example, Arizona's new law requiring voters to prove citizenship in order to register represents a huge new barrier to participation. States like Florida and Ohio have passed laws making it much more difficult to conduct voter registration drives, thus subverting a major way in which voters are brought into the system. With respect to creating and maintaining accurate voter rolls through the statewide database, the states reviewed are working hard to comply with the requirements of the Help America Vote Act. Achieving the goal of accurate lists has continued to be a challenge in some places; in others, such as Michigan, the statewide registration database represents a potential national model. The major problem found with the databases is that some states have established procedural protocols that threaten to disenfranchise a great many voters. Washington State required that the information provided by the voter in his or her voter registration form match precisely – letter for letter, number for number – the information contained in the motor vehicle and social security databases. At the same time, the state of Minnesota was found to have highly effective protocols both for database matching and for notifying voters when there is a mistake or omission on their registration application. Finally, many of the states continue to flaunt provisions of the National Voter Registration Act that require voter registration at public agencies, though it should be noted that Arizona has acted in an exemplary manner in this regard.

On the issue of provisional ballots – the “hanging chad” of the 2004 election – progress in the 10 states is yet to be determined. Many states will certainly continue the misguided practice of tossing out ballots cast in the wrong polling place or precinct. Moreover, new voter identification requirements in states like Ohio, Missouri and Georgia threaten to increase the number of provisional ballots cast. It is unclear at this time whether states will do a more effective job of counting ballots that should be counted than was the case in 2004. This study finds that Wisconsin and Minnesota employ the best remedy to provisional ballot problems: Election Day registration, which reduces dramatically the need to use provisional ballots at all.

We found good progress in the states in the area of poll worker recruitment and training. Of particular note are the number of states that have begun or are expanding use of high school and college students as poll workers, including Michigan, Minnesota and Pennsylvania. States have not done as well, however, in another area of polling place operations: accessibility. While some of the states are using federal funds to improve polling place accessibility, very little legislation has been enacted to enhance accessibility to the polling site.

The increase in new, strict voter identification requirements is the most troubling development of the last two years. Stringent voter ID requirements have been found in several studies to be unnecessary and have the effect of disenfranchising many voters, especially the poor, minorities, elderly, young, and those with disabilities.³ Nonetheless, Arizona, Georgia, Missouri, Washington State, and Ohio have all passed new voter identification rules. Many of the other states reviewed are actively considering following suit.

Despite the ongoing problem presented by voter intimidation and suppression efforts in many of the states studied, few of the states have taken steps to do more to combat it. For example, only a few of the states have passed bills criminalizing promulgation of false information about voting eligibility and procedures, although legislators in Minnesota and Missouri have passed such a bill. Challenges to voters' eligibility both before and on Election Day were a major problem in 2004. A couple of states have made an effort to clarify and somewhat narrow the rules for challenging a person's right to vote. Unfortunately, most of the states have done nothing to rein in this intimidating and potentially disenfranchising practice.

Finally, as was the case in 2004, voting machines remain highly controversial. Concerns about the security and reliability of machines continue to roil many state legislatures; and several organizations have filed lawsuits to prevent states from using electronic voting machines without a voter verified paper trail. Fights have broken out between vendors and states as well as between states and counties over which machines to employ. At the same time, states have continued to largely ignore the problem of too few machines resulting in lengthy wait times.

In short, while some states have made modest adjustments, the states studied for this report have much more work to do to improve upon their performances in 2000 and 2004 in order to ensure fair and effective elections in 2006 and 2008.

³ See, for example, Spencer Overton, "Stealing Democracy: The New Politics of Voter Suppression, W.W. Norton & Company, 2006; Brennan Center for Justice Policy briefs at http://www.brennancenter.org/programs/dem_vr_havaID.html; "Balancing Access and Integrity," *The Century Foundation*, 2005; John Pawasarat, The Driver License Status of the Voting Age Population in Wisconsin, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005; Tova Andrea Wang, "Voter Fraud and ID: Prove It," *The Century Foundation*, 28 July 2005; Order for Preliminary Injunction, *Common Cause vs. Billups*, Case 4:05-cv-00201-HLM, 18 October 2005.

VOTER REGISTRATION

Problems with the voter registration process have been and continue to be a significant cause of disenfranchisement.⁴ Despite widespread voter registration-related problems in 2004, many states have yet to develop a satisfactorily transparent system for tracking, accepting, and rejecting voter registration applications, verifying the eligibility of voters to participate in elections, and notifying voters if their registration information is incomplete.

Rejection of voter registration forms

Registration forms are often complicated, and instructions for filling them out are unclear. Because of a redundancy in the federal requirements for registration set out in the Help America Vote Act of 2002 (HAVA)⁵ and the National Voter Registration Act of 1993⁶, voters must both check off a box on the application affirming their citizenship *and* sign a statement affirming their eligibility to vote. Enforcement of these requirements in 2004 varied from state to state, and even from county to county. In some but not all counties in **Florida**, for example, boards of elections rejected the applications of voters who neglected to check off the citizenship box but signed the oath.⁷ These checkboxes became the subject of a 2004 lawsuit, *Diaz v. Hood*, in which voting rights advocates sued Florida Secretary of State Glenda Hood and election administrators in Duval, Orange, Palm Beach, Broward, and Miami-Dade counties, claiming that they had wrongly rejected these forms in violation of the Voting Rights Act and the Fifth, Fourteenth, and Fifteenth Amendments of the U.S. Constitution.⁸ The case was dismissed by U.S. District Judge Lawrence King, who ruled that the AFL-CIO and the Advancement Project had no legal standing. The case was revived in fall 2005 when the 11th Circuit Court of Appeals reversed King's ruling. The plaintiff organizations estimate that more than 10,000 voters across the state were unable to vote in 2004 because their registrations had been rejected incorrectly.⁹ The effect of this problem was particularly compelling in minority communities. In Duval County, for example, almost 45 percent of the rejected forms came from African American registrants. As a result of this controversy, the Florida legislature has passed a law which requires beginning this year that the check boxes must be marked for the registration to be considered complete. The law also removes the affirmation of citizenship in the oath on the registration application.¹⁰

⁴ R. Michael Alvarez, "Voter Registration: Past, Present and Future," Caltech/MIT Voting Technology Project, *Working Paper*, June 2005.

⁵ 42 U.S.C. §15483(b)(4)(A)(i)(2002) and 42 U.S.C. §15483(b)(4)(B)(2002).

⁶ 42 U.S.C. §1973gg(2002).

⁷ Florida Election Law, Title IX, Chapter 97.053.

<http://election.dos.state.fl.us/publications/pdf/electionLaws.pdf>.

⁸ *Diaz v. Hood*, 342 F. Supp. 2d 1111 (S.D. Fla. 2004).

⁹ "Ruling revives challenge of voter form rejections," *St. Petersburg Times*, 29 September 2005.

¹⁰ HB 1589, FS 97.053, 97.0575, 97.051.

Voting rights advocates filed an amended complaint in April 2006.¹¹ The court ruled in June 2006 that the state had not violated the Voting Rights Act and the NVRA by refusing to process the registration applications on which affirmations of eligibility were missing, and ordered the plaintiffs to restate their claims against Florida challenging the state's failure to notify registrants of information missing from their forms and to give them the opportunity to amend their registrations. The organizations are considering appealing the decision to reject their claims under the VRA and the NVRA.¹²

Registration has gotten more difficult in **Arizona** where, as a result of the passage in November 2004 of Proposition 200, voters are now required to provide proof of citizenship with their registration applications. Because Arizona driver's licenses were issued to non-citizens prior to October 1996, voters wishing to register to vote now must provide a post-October 1996 driver's license or some other form of proof of citizenship with their registration application in order for their registration form to be accepted. In the months after Proposition 200 was implemented, more than 70% of the registrations initially received in Maricopa County were rejected because they had been submitted without an accepted form of identification or proof of citizenship; in Pima County, where Tucson is located, over 59% of registrations were rejected upon initial receipt.¹³ Arizona officials have made no plans to alter this registration requirement other than to publicize it.¹⁴ This spring, several organizations sued Arizona on the grounds that the State was violating Constitution and the National Voter Registration Act, which requires that the state accept the federal mail-in voter registration form that does not require proof of citizenship. Indeed, the United States Election Assistance Commission, which is responsible for administering the NVRA, issued an opinion stating that the Arizona form contravened the NVRA and advising that Arizona must accept the federal form. The plaintiffs filed to restrain the state from failing to distribute, use, and accept the federal mail registration application prescribed by the Election Administration Commission and to enjoin Proposition 200's registration requirements.

The Judge, however, issued an order denying the application for a restraining order, stating that the plain language clearly allowed the states to require applicants to provide other information, including documents. The case is on appeal.¹⁵

Statewide Registration Databases

The Help America Vote Act set January 1, 2006 as the final deadline by which all states were to be in compliance with its requirements for statewide voter registration databases. Installing a unified statewide registration database, however, is expensive and

¹¹ "Appeals court rules against Judge King," *Miami Times*, 18 October 2005.

¹² "Advancement Project disappointed with court's dismissal of plaintiffs' claims under the Voting Rights Act and the NVRA," *Press Release*, Advancement Project, 23 June 2006.

¹³ Paul Davenport, "AG: Some licenses don't prove citizenship for voter registration," *Associated Press*, 4 February 2005.

¹⁴ "Large number of voter registration forms rejected by county," *Associated Press*, 6 May 2005. *See also* Oscar Abeyta, "Prop. 200 costs 200 their right to vote," *Tucson Citizen*, 8 November 2005.

¹⁵ *Gonzalez v. Arizona*, Case No. 2:06-cv-01268-ROS, <http://moritzlaw.osu.edu/electionlaw/litigation/gonzalez.php>

complicated, and many states have experienced difficulties in getting localities to comply with HAVA regulations.

Missouri is one such state. In November of 2005, the U.S. Justice Department filed a lawsuit against the state of Missouri and Secretary of State Robin Carnahan for failure to maintain updated voter lists and for allowing people who were ineligible to vote to register while improperly purging people who were eligible to vote. The federal suit demanded a statewide study of voter recordkeeping practices.¹⁶ According to the Justice Department, almost a third of Missouri's election precincts had more registered voters than people eligible to vote.¹⁷ In response to this lawsuit, the state took action, pressuring localities to comply with the regulations. At the beginning of April 2006, the state was on the verge of implementing its statewide voter registration database, and 115 of the state's 116 election jurisdictions had taken the necessary steps to comply by November 2005, except for Boone County where County Clerk Wendy Noren insisted that the state pay for the technology updates required to accommodate the new voter registration system. Despite Secretary of State Robin Carnahan's efforts to make state aid available to the county, the county was still not in compliance by the end of March. Carnahan resorted to legal action, requesting the U.S. Department of Justice to intervene.¹⁸ By mid-June, the technical obstacles to Boone County's database implementation had been removed, and the state was brought into compliance with the HAVA requirements.¹⁹

Florida was at the top of a list of states with the most inaccurate registration databases. Following the 2004 election, a comparison of the state registration database to the Social Security Administration's records showed that the state had failed to conduct list maintenance, leaving 64,889 deceased voters on the registration rolls²⁰ In response, Florida has set up a special Bureau of Voter Registration Services to maintain and oversee the accuracy and integrity of its registration rolls by setting up a special Bureau of Voter Registration Services. One of the Bureau's primary responsibilities is to ensure the credibility and reliability of information that will be sent to the Supervisors of Elections regarding possible ineligibility due to mental incapacity and felony convictions. These determinations are handled by the Bureau on a case-by-case basis. Bureau staff conducts research using data from the Department of Corrections, the Department of Highway Safety and Motor Vehicles, the Florida Department of Law Enforcement, and the Clerk of the Courts to make each determination.²¹ Because of this bad publicity regarding the state's overzealous purging standards, Florida has gone to great lengths to replace these standards with new procedures in which new registrations are verified exhaustively. Some officials are worried that the state has gone too far in the other direction, allowing felons who are ineligible to vote to remain on the lists. Since the

¹⁶ Mark Morris and Tim Hoover, "U.S. sues Missouri over voter lists," *Kansas City Star*, 23 November 2005.

¹⁷ Bill Lambrecht and Virginia Young, "U.S. lawsuit says Missouri voter lists are a mess," *St. Louis Post-Dispatch*, 23 November 2005.

¹⁸ Kelly Wiese, "Carnahan wants help getting county to join voter list," *Associated Press*, 29 March 2006.

¹⁹ "Missouri, Boone County agree on voter database," *St. Louis Post-Dispatch*, 17 June 2006.

²⁰ Geoff Dougherty, "Dead voters on rolls, other glitches found in 6 key states," *Chicago Final Edition*, 4 December 2004.

²¹ <<http://www.dos.state.fl.us/press/oss/flDOSmeetFDdeadline.html>>

state's new database went into place, state and local officials have been tussling over who has the final say as to whether an individual is eligible to vote. The previous database relied on local officials to maintain a separate list for their locality that was regularly uploaded to a larger statewide list. To come into compliance with HAVA, the state implemented a statewide database that allows voters to submit registration applications at any county elections office. The new database is maintained on the state level. Under current recordkeeping procedure, new registration information must be input into the database and cannot be removed until the Department of Elections has verified that the person is ineligible to vote, even if the locality receives notification from the criminal justice department that the voter is ineligible. The state has been less vigorous about verifying the eligibility of currently registered voters. Florida officials are nervous about the new registration database, which is facing its first major statewide election this year, as in most states.²²

Michigan is an example of a state that got ahead of the curve early on, even before problems during the 2000 election provoked widespread awareness of the need for databases. In 1994, the state legislature passed a law mandating a centralized voter registration database. The Qualified Voter File (QVF) was operational by the 1998 election cycle, and was populated with every registered elector appearing in the Department of State's driver's license/personal identification card file and the voter registration files held by the state's city and township clerks.²³ In a report released prior to the implementation deadline at the beginning of 2006, Electionline.org noted that Michigan's voter database was "widely considered to be a model list nationally."²⁴

Recently, however, the state has come under attack for failing to update the database properly. A comparison study between voter registration records and databases with information on felony convictions and the department of vital statistics conducted by a private organization for the *Detroit News* showed that administrators had failed to take 20,000 deceased voters off the registration rolls and that there were over 100,000 wrong addresses on the Detroit rolls alone. There is no evidence to suggest voter fraud in Detroit or anywhere else in Michigan, but local clerks are working to clean the records at the orders of Secretary of State Terri Lynn Land.²⁵ Michigan's localities have been using HAVA funds to purge obsolete records from the QVF by sending new voter ID cards to registered voters. If the card is returned "Undeliverable" a confirmation notice is mailed to the registered voter's last known address on file. If there is no response, the voter must cast a ballot in an election during the next two federal election cycles or be removed from the database. At this point, 169,000 records have been tagged although none has been deleted because the requisite two federal elections have not passed.

Wisconsin experienced similar problems with accuracy in its registration database. Milwaukee Mayor Tom Barrett ordered a purge of the city's registration records in

²² Dara Kam, "County election chiefs worry about state control of voter list, *Palm Beach Post*, 5 July 2006.

²³ Department of State: < http://www.michigan.gov/sos/0,1607,7-127-1633_11976_12001-27157--,00.html>

²⁴ Electionline.org, "Election Reform: What's Changed, What Hasn't and Why, 2000-2006," p. 55.

²⁵ Lisa M. Collins, "In Michigan, even dead vote," *Detroit News*, 26 February 2006.

January 2006 in response to pressure from the state for not meeting the HAVA implementation deadline. According to Barrett, Milwaukee's database contained between 75,000 and 100,000 inaccurate records,²⁶ which have since been cleaned. Part of the problem was that the new statewide database takes much longer to respond than the system the state used before it came into compliance with HAVA. According to one election official, it took one minute to enter a new voter into the old registration database, whereas now it takes four minutes to enter a name, and the new system does not process absentee registrations.²⁷

The state announced in August that while the database would be used by "almost all" Wisconsin municipalities in the September 12, 2006 primary and the November 7, 2006 general election, due to technical difficulties it would not be able to compare the voter database to the state Department of Transportation driver's license file or to the records of the Department of Corrections. There were further concerns that the state database would not be fully operative this fall because of the extensive training process required for local election officials. Additional delays resulted from the state's difficulties with Accenture, the software development firm it hired to design the database.²⁸ However, despite these problems, the system is now fully up and running in all jurisdictions. The State Elections Board has provided all county and municipal clerks with felon and death records to enable them to identify ineligible voters before Election Day and to identify ineligible voters who register to vote at the polling place on Election Day.²⁹

The 2004 gubernatorial election in **Washington** was a particularly effective illustration of the need for more precise recordkeeping procedures. The election, one of the closest in U.S. history, revealed that hundreds of former felons in Washington had been able to register and to cast ballots despite laws and procedures intended to prevent them from doing so. In Washington, a convicted felon is not allowed to vote while he or she is on probation, parole, or in prison, and must have completed his or her sentence requirements, paid all court-related fees, and had his or her right to vote restored by the state in order to obtain a "Certificate of Discharge" which is required for a former felon to have his or her civil rights restored.³⁰

²⁶ "State and Regional: Milwaukee," *Associated Press*, 3 January 2006.

²⁷ Judith Davidoff, "Cieslewicz calls voter registration system inefficient," *The Capital Times*, 3 July 2006.

²⁸ Patrick Marley, "Election fraud plan to miss fall vote," *Milwaukee Journal Sentinel*, 3 August 2006. See also "Lists of dead people, felons won't be checked this fall," *Associated Press*, 4 August 2006. Note: this press coverage emphasizes that several cases of fraud were discovered in the 2004 election, and that these databases are important in protecting the state from voter fraud. While this is true, the extent to which fraud actually threatens elections is quite limited, based on available evidence. In Wisconsin, where several extensive investigations were conducted by the state, the FBI, and the legislative audit bureau after the 2004 election, most major election officials involved agreed that there was no evidence of systematic widespread fraud, and that the few cases in which individuals either intentionally or unintentionally voted illegally was dwarfed by the number of problems that resulted from administrative error. See Phil Brinkman, "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes," *Wisconsin State Journal*, 11 May 2005. And "An Evaluation: Voter Registration," *Legislative Audit Bureau*, Madison, Wisconsin, September 2005, p. 50-52.

²⁹ Email correspondence with Kevin Kennedy, Executive Director, State Board of Elections, 29 August 2006.

³⁰ Wash. Rev. Code § 29A.08.520 (2004).

In response to the revelation that former felons – most unaware that they were not eligible to vote – had been able to vote in 2004, the legislature made some reforms regarding recordkeeping and the processes whereby the state’s registration database is updated. The Enhancing Voter Registration Recordkeeping Act requires the Secretary of State to coordinate with other recordkeeping agencies, including the Department of Corrections, the Washington State Patrol, and the Office of the Administrator for the Courts.³¹ Additionally, the law requires quarterly screening of the registration database to purge it of ineligible voters, such as felons, non-citizens, persons designated as legally incompetent, underage, or deceased. The law also calls for more explicit notification at the time of conviction that voting rights have been suspended.³²

Most other states automatically restore the civil rights of people who have completed their sentences, cutting down on the substantial paperwork required to restore voting rights, and making maintenance of voter rolls easier. With this in mind, the ACLU recently challenged Washington’s complex re-enfranchisement rules. According to the organization,

Under the state law challenged in the ACLU lawsuit, individuals who have finished their prison terms are not allowed to vote until they completely satisfy a growing number of fines and other financial obligations. The “legal financial obligations” can include docket and filing fees, court costs, restitution, and costs of incarceration. Interest on these court-imposed assessments accrues at the exorbitant rate of 12 percent a year.

According to Washington’s statistics, more than 90 percent of felony defendants are indigent at the time of charging. It is no surprise that many ex-felons find it difficult to pay these financial assessments upon release.

The problem is widespread and hits people of color especially hard. Overall, more than 250,000 people in Washington cannot vote because of a prior felony conviction. Disenfranchisement affects about 3.7 percent of eligible voters in Washington – almost double the national average. And, given the racial disparity in Washington’s incarceration rate, the state disenfranchises almost 25 percent of all voting-age African-American males.

In March, King County Superior Court Judge Michael Spearman struck down the Washington law that denies the right to vote to thousands of ex-felons solely because they owe court-imposed fines. The case is on appeal. The ACLU is also working on legislation that will restore ex-felons’ rights to vote when they have completed their prison terms and community supervision.³³

³¹ S.B. 5743, 59th Leg., Reg. Sess. (Wash. 2005).

³² S.B. 5743, 59th Leg., Reg. Sess. (Wash. 2005).

³³ “Washington Supreme Court Reviews Ban on Ex-felon Voting,” *Press Release*, American Civil Liberties Union of Washington State, 27 June 2006.

Verification

The procedure for verifying a voter's identifying information varies widely from state to state. Some states, such as **Arizona**, have an "exact match" standard, in which the information provided by the voter on his or her registration application must match exactly with records in the state's motor vehicle department or Social Security databases. Verification systems such as these can disenfranchise voters as a result of errors or changes to these databases. Arizona also experienced problems in 2004 when voters tried to register using the state's new online registration system, which rejected all applications of registrants who had changed their names or used their married name to register. The state is working to fix the glitches in the online registration system to prevent this problem from recurring in 2006, but has made no move to change the exact match system used for verifying registrations that are submitted in paper form. Exact match verification systems are also more susceptible to the inevitable human error that occurs in the process of transcribing registration information from the paper applications into the electronic registration database. Despite initial technical problems, online registration is a strong possibility for eliminating this form of human error from the registration process. The Arizona online registration system, the first in the country, was viewed as mostly successful. Between January 1, 2004 and October 4, 2004 (the registration deadline), 226,187 registrations were filed online, 21,100 of which were submitted on October 4, according to Deputy Secretary of State Kevin Tyne.³⁴

In **Washington** a coalition of groups including the Washington Association of Churches, ACORN of Washington, Washington Citizen Action, and many Chinese, Korean, and Filipino community groups sued the state recently, challenging its "exact match" standard, also known as a "no match, no vote", standard, which requires that the information a voter provides on a voter registration application exactly match the information on record in other government databases in order to successfully register to vote. After they are notified that their registration has been rejected, voters have 45 days to verify their identity. Community groups are concerned that the policy has a disparate effect on members of ethnic groups whose names are more frequently reversed, misspelled, and prone to multiple English spellings, as well as on married women who take their husbands' names or hyphenate their names, and people with names containing apostrophes and other kinds of punctuation.³⁵ The "no match, no vote" standard has the potential, officials conservatively estimate, of impacting at least 88,000 voter registration forms in the months between now and the 2006 midterm elections.³⁶ In August, a federal judge issued a ruling preventing the state from enforcing the law, which took effect on January 1, 2006.³⁷

³⁴ "Some online voter registrations are faulty," *Associated Press*, 30 October 2004.

³⁵ Richard Roesler, "Coalition sues to stop law requiring voter-record matching," *Spokesman Review*, 25 May 2006.

³⁶ "Lawsuit predicts widespread voter disenfranchisement in Washington unless new election law is fixed," *Press Release*, Brennan Center for Justice, SEIU 775, ACORN, 24 May 2006. Web: http://www.brennancenter.org/presscenter/releases_2006/pressrelease_2006_0524.html.

³⁷ Gene Johnson, "Judge bars state from enforcing new voter registration law," *The Olympian*, 2 August 2006. See also: "Federal judge protects eligible voters in Washington," *Press Release*, Brennan Center for

Until recently, **Pennsylvania** also had an exact match standard, but has revised its matching protocols to prevent unwarranted disenfranchisement. Until August, the policy had been to reject a voter registration application that did not match the information in the Social Security Administration or motor vehicles' database. After realizing how often administrative or other errors could result in a voter's rejection from the list, the Department of State issued an alert stating:

Rejecting voter registration applications solely on these bases is not required by HAVA and is not authorized by Pennsylvania law. Because its policies and procedures appear to be resulting in the rejection of applications for reasons unrelated to the qualification of applicants to be registered voters, the Department has concluded that its procedures actually are frustrating the principal purpose and intent of HAVA to ensure that eligible persons are not disenfranchised... Under HAVA and Pennsylvania law, the failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration is not a reason to reject the application... [R]ejection of an application for voter registration now can be accomplished only to the affirmative action of the voter registration commission or its authorized staff...³⁸

Other states provided for more open matching rules in the first instance. In **Minnesota**, for example, even if the information provided on the registration application does not match the databases exactly, the registration can be verified if the county auditor can still "reasonably conclude" that the information in the databases of the Department of Public Safety or the Social Security Administration and the information on the registration application "relate to the same person".³⁹ In this case, the county auditor is required to note in the database why he or she has come to this conclusion. The Secretary of State's office must then verify the new information in the statewide voter registration database (collected from new voter registration applications) against the existing voter registration information in the databases of the Department of Public Safety and the Social Security Administration. The Secretary of State's office is required to produce reports on attempted verifications that list the applications that match the DPS and SSA databases, applications that cannot be verified with certainty against these databases, and registrations whose identifying numbers do not match the DPS and SSA databases. The reports created by the Secretary of State must include a list of possible matches for incomplete registration applications.⁴⁰

Justice, 1 August 2006.

http://www.brennancenter.org/presscenter/releases_2006/pressrelease_2006_0801.html.

³⁸ Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, "Alert Re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)," 9 August 2006.

³⁹ Minnesota Rules. 8200.9310 Treatment of Voter Registration Applications; Subpart 2: Verification; defined; notification. Accessed < <http://www.revisor.leg.state.mn.us/arule/8200/9310.html>>.

⁴⁰ Minnesota Statutes 2005: 201.061 Registration on or before election day. Accessed: <http://www.revisor.leg.state.mn.us/stats/201/061.html>

Florida also faced criticism during the 2004 election when problems surfaced with the state's process of determining the legitimacy of signatures on registration forms. Hundreds of absentee ballots were rejected because their signatures did not match the digital signatures the Department of Motor Vehicles had on file. Over three-quarters of these ballots belonged to voters between the ages of 18 and 24, many of whom had changed their signature since they had first registered to vote or obtained their driver's license.⁴¹ Since then, the Florida legislature has eliminated the signature line from the voter registration form, but not because of faulty matching processes. As a safeguard against identity theft, the legislature passed a bill preventing signatures and Social Security numbers from being included in the state registration database. In order to register to vote in Florida, applicants must now provide an identification number from one of 10 state-approved forms of identification.⁴²

Notification

Many states have no system for promptly notifying a voter if his or her registration application is missing information necessary for him or her to be registered to vote, so by the time Election Day arrives, it is too late for the voter to amend or complete an application and he or she is thus disenfranchised. This problem occurred extensively in 2004, and has occurred continually since then. Some states still have minimal notification and amendment systems. **Michigan** sends the voter a voter ID card within three weeks of registration and encourages the voter to contact the locality election board if he or she does not receive one. In **Arizona, Ohio, Missouri, and Florida**, the county election authority is required to send a card in the mail notifying the applicant of missing information.

Minnesota requires county election officials to notify voters about missing information via mail, email, or telephone and to provide them with information about the various methods by which they can complete their application. If the registration form is missing the registrant's Minnesota driver's license, Minnesota state identification card number, or Social Security number, or confirmation that the applicant has not been issued any of these, the auditor is required to attempt to obtain this information by checking the available information against the DPS and SSA databases.⁴³ Because election day registration is permitted in Minnesota, there is no publicized time frame by which these notifications must be made.

Third-party registration drives

The 2004 Report to the Nation noted the importance of nonpartisan Get-Out-The-Vote efforts in boosting voter registration and turnout in the 2004 election. Such efforts not only assisted voters in navigating the states' complex registration requirements but provided an important outside check on the states' systems for processing registration

⁴¹ Jane Musgrave, "Young voters victims of evolving style," *Palm Beach Post*, 30 January 2005.

⁴² Jeff Schweers, "New voter cards part of election reforms," *Florida Today*, 17 February 2006.

⁴³ Minnesota Rules: 8200.2900 Deficient Registrations; Notice of Deficient Registrations.

forms by employing “defensive voter registration practices” in which the groups kept track of the names and information of the voters they registered in order to make sure their names appeared on the voter rolls.⁴⁴

In **Florida** in 2004, there were allegations of abuse of the process by third party organizations. As a result of these largely unproven charges, the state legislature enacted a law that imposes fines of \$250 on third-party groups for each registration form submitted more than ten days after it is received by the group, \$500 for each form submitted past the registration deadline, and \$5,000 for each form that is not submitted. The law was part of a larger election reform package that was approved by Governor Jeb Bush in June 2005.⁴⁵ In May 2006, several nonpartisan groups, including the League of Women Voters of Florida, People Acting for Community Together, the Florida AFL-CIO, the American Federation of State, County and Municipal Employees Council 79, and SEIU Florida Healthcare Union filed a lawsuit in federal court against the Florida Secretary of State and the head of the elections division, arguing that the law places unconstitutional restrictions on the groups’ voter registration efforts. Many of the groups who engage in third-party registration would be unable to withstand the financial burden of the fines that could result from a few small mistakes; they argue that the law has the potential to suppress their registration efforts that, in 2004, were responsible for half of all new registrations.⁴⁶ In August 2006, a federal judge agreed, and issued a preliminary injunction enjoining implementation of the law.⁴⁷

A storm of controversy erupted over the interpretation of **Ohio**’s recently-passed House Bill 3, which, like Florida’s new law, has the potential to suppress the activities of voter registration groups by imposing harsh penalties for improperly following state procedure for submitting registration forms. The law requires persons being compensated by third-party voter registration groups to collect registration applications to sign their name and to note the name of the organization with whom they are affiliated on each form they submit.⁴⁸ They must then submit the forms personally to the appropriate election authority.⁴⁹ Failure to do so is a felony under the new law.

Representatives of third-party registration groups criticized the harshness of the new measures, using the ambiguity of the new rules to point out that “compensation” could include reimbursement for travel and parking expenses, food, or t-shirts. The law was also unclear about the way forms should be submitted, making it seem that they are to be delivered personally to the appropriate election authority. Secretary of State Kenneth Blackwell responded to the criticism of his rules by clarifying that the forms could be submitted via mail, although he did not change his interpretation fundamentally. In

⁴⁴ “Voting in 2004: A Report to the Nation on America’s Election Process,” *The Century Foundation, Common Cause, and Leadership Conference on Civil Rights*, 7 December 2004, p.12.

⁴⁵ “Gov. Bush signs three bills changing election laws,” *Associated Press*, 20 June 2005.

⁴⁶ Jay Weaver, “Voter drive law prompts suit,” *The Miami Herald*, 19 May 2006.

⁴⁷ *League of Women Voters v. Cobb*, United States District Court, Southern District of Florida, Case No. 06-21265-CIV-SEITZ/MCALILEY, 28 August 2006.

⁴⁸ Ohio RSC § 3503.14. Content of forms; persons unable to sign. Accessed: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

⁴⁹ Jim Provance, “Blackwell revises requirements for paid voter registrars,” *Toledo Blade*, 16 June 2006.

response to calls for clarification, Secretary of State Blackwell specified that the forms could be submitted via mail.⁵⁰ The legislature's Joint Committee on Agency Rule Review reviewed Blackwell's interpretation of the rules; despite the objections of the Democratic members of the committee, the Secretary of State's interpretations were affirmed 6-4 in a party line vote.⁵¹ Voting rights groups sued the state challenging the rules. In early September, a federal judge ruled that they were unconstitutional and blocked their enforcement.⁵²

NVRA Implementation

The National Voter Registration Act of 1993 required states to make voter registration materials more accessible to the public. The law is commonly known as "Motor-Voter" because of its best known provision which requires states to allow voters to register to vote when they apply for their driver's license. The NVRA also contains a number of provisions requiring states to make voter registration materials available at public assistance agencies, but these have been less widely implemented than the motor-voter program.⁵³ These public assistance programs were intended to offset the motor-voter provision's tendency to serve demographic groups who are more likely to have automobiles and interact with the motor vehicle agency. According to a 2004 report released jointly by Demos, Project Vote, and ACORN as part of their NVRA Implementation Project, many states are registering less than one percent of the people who apply for public assistance.⁵⁴ In response to the report, Members of Congress called on the Department of Justice to prosecute states that were not enforcing the public assistance provisions of the law.⁵⁵

Among the offending states is **Ohio**, that perennial site of election administration troubles. Though the state indicated in a survey⁵⁶ conducted by the Election Assistance Commission that it was in compliance with the public assistance provisions of the NVRA, according to a February 2006 study of the state's six largest counties by an Ohio State University law student, only one public assistance office made voter registration forms available. A Secretary of State study showed that out of a total of 8 million voters

⁵⁰ M.R. Kropko, "Blackwell revises voter registration rules," *Associated Press*, 15 June 2006.

⁵¹ Mark Niquette, "Blackwell's changes to voter registration upheld," *The Columbus Dispatch*, 27 June 2006.

⁵² *Project Vote v. Blackwell*, Case No. 1:06-cv-01628-KMO, *Memorandum and Order*, 8 September 2006; "Ohio Voter Registration Rules Thrown Out," *Associated Press*, 1 September 2006

⁵³ 42 U.S.C. § 1973gg-5 (6)(C).

⁵⁴ "Maximizing Voter Registration Opportunities in Human Services Agencies: An Important Responsibility for Agencies and Clients." *Project Vote, Demos, Association of Community Organizations for Reform Now*. June 2004. Access: <http://www.demos-usa.org/pubs/NVRA%20Guide%202004%206.04.pdf>.

⁵⁵ "Members of Congress urge Justice Department to enforce decade-old voter registration law," *Ascribe Newswire*, 20 September 2005. See also Christopher Leonard, "Clay seeks investigation of voter registration law implementation," *Associated Press*, 12 October 2005 and "Pelosi urges Attorney General to secure voting rights for all," *U.S. Newswire*, 9 November 2005.

⁵⁶ "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004," A Report to the 109th Congress, United States Election Assistance Commission, 30 June 2005.

registered in Ohio, only 38,821 registered to vote via public assistance agencies. In May 2006, the National Voting Rights Institute, the Lawyers' Committee for Civil Rights Under Law, Project Vote, and Dechert LLP sent a letter to Ohio Secretary of State Kenneth Blackwell notifying him of their intent to sue the state for its failure to implement the public assistance provisions of the NVRA.⁵⁷ Blackwell has come under attack for using his position as head election official to make decisions that could benefit his gubernatorial campaign. His spokesman, Carlo LoParo, and the state director of elections, Judy Grady, have responded to the letter by saying that the Secretary of State does not have sole responsibility to enforce the law. Other agencies in the state are making moves to improve their implementation of the NVRA, but the NVRA Implementation Project intends to move forward with their suit.⁵⁸

Missouri has also neglected its obligations under the NVRA. In October 2005, US Representative William Lacy Clay (D-MO) requested an inquiry into whether Missouri state agencies have been implementing the National Voter Registration Act (better known as "Motor-Voter").⁵⁹ According to a national study, although voter registration in Missouri rose 31.9% between 1995 and 2004, registrations under the Motor Voter law dropped 87.7%.⁶⁰

Arizona was cited as an exemplary state in a Demos report on the enforcement of the NVRA. Beginning in the summer of 2004, the Arizona Department of Economic Security (DES) implemented new voter registration procedures which included an emphasis by DES staff on voter registration when interacting with clients, providing voter registration materials in prominent locations in agency offices, creating a voter registration coordinator position in each agency office, submitting registration forms to county recorders daily, and tracking voter registration information about clients.⁶¹ In addition to the lesser-enforced public assistance provisions, Arizona, like most states, is in compliance with the NVRA's "motor-voter" provisions.

Although **Pennsylvania** initially failed to enact state legislation to implement the NVRA when it first passed in 1993, the state was eventually brought into compliance by the Civil Rights Division of the U.S. Department of Justice.⁶² The NVRA Implementation Project recently featured the state's efforts to improve NVRA implementation as exemplary, highlighting in particular the state's focus on providing specific training to

⁵⁷ "Ohio Ignores Requirements of Thirteen Year-Old Federal Voter Registration Law," *Press Release*, Demos/NVRI, ACORN, Lawyers' Committee for Civil Rights Under Law, 18 May 2006. Access: <http://projectvote.org/newsroom/ohio-ignores-requirements-of-13-year-old-federal-voter-registration-law-voting-rights.html>.

⁵⁸ Ted Wendling, "Blackwell's dual roles draw fire; Candidate is also top elections official," *Cleveland Plain Dealer*, 8 June 2006.

⁵⁹ Christopher Leonard, "Clay seeks investigation of voter registration law implementation," *Associated Press*, 12 October 2005.

⁶⁰ Jo Mannies, "Clay makes an issue of Motor Voter law," *St. Louis Post-Dispatch*, 14 October 2005.

⁶¹ "Ten Years Later: A Promise Unfulfilled. The National Voter Registration Act in Public Assistance Agencies, 1995-2005." *Demos Report*. July 2005. <http://www.demos.org/pubs/NVRA91305.pdf>

⁶² <<http://www.ncsl.org/programs/legman/elect/DOJHTM.HTM>>

caseworkers in public assistance agencies in Allegheny, Delaware, and Philadelphia Counties.⁶³

VOTER IDENTIFICATION

Among the most significant changes since 2004 are the new rules governing what kind of identification voters must bring with them when they appear at the polls to vote. This issue was controversial in 2004 because of its impact on then new provisional ballots; it also touches on the contentious topic of immigration, particularly in states like Arizona and Georgia, which have large immigrant populations. Many states have passed new, more stringent voter identification requirements, purportedly as a way of preventing voter fraud, by ensuring that only citizens who are eligible to vote are able to participate. However, not only is there little proof that voter fraud is a significant problem – particularly voter impersonation at the polls, the only kind of fraud an identification requirement would address – but these identification requirements have the effect of disenfranchising many voters who, for a variety of reasons, are unable to produce the proper identification, even though they are eligible to vote. Even among voters who have the necessary identification, such requirements increase the likelihood of racial and ethnic discrimination.

In 2004, **Arizona** voters approved Proposition 200, which was aimed at restricting illegal immigrants' access to public benefits. Under Proposition 200, voters must now present proof of citizenship when they register to vote, and they must show some form of government-issued photo identification or two approved non-photo identifications when they appear at the polls to vote. Additionally, per Proposition 200, voters must provide a driver's license that was issued after October 1, 1996 or some other proof of citizenship along with their voter registration application. If a voter submits a driver's license issued before October 1, 1996, their voter registration form will be rejected. Since this regulation was enacted, large numbers of voter registration forms (in some counties, up to 72 percent) have been rejected. (*See voter registration section above for additional discussion.*)⁶⁴ A number of organizations have sued the state, claiming the voting provisions of Proposition 200 are unconstitutional and violate the Voting Rights Act and the National Voter Registration Act.⁶⁵

⁶³ Brian Cavanaugh, Steve Carbo, Lucy Mayo and Mike Slater, "A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005," Demos, Project Vote and ACORN, 14 September 2005, p. 11.

⁶⁴ Electionline.org Election Reform Hot Topics. "Voter ID Requirements." Accessed: <http://electionline.org/Default.aspx?tabid=364>

⁶⁵ *Gonzalez v. Arizona and Navajo Nation v. Brewer*, U.S. District Court, District of Arizona, Case No. 2:06-cv-01268-ROS and CV 3:06-1575-PHX-ROS
<http://www.lawyerscommittee.org/2005website/publications/press/pdf/prop%20200.pdf>

Georgia was among the first states to pass more stringent voter identification requirements. The topic sparked heated debate in the state's legislature, as well as among election reformers. In March 2005, the state legislature, after contentious debate, passed legislation (HB 244) requiring voters to present photo ID – driver's license, state ID, passport, military ID or tribal ID – in order to vote a traditional ballot. If the voter does not have photo ID, the law allows him or her to vote a provisional ballot and then provide documentation in the form of photo ID to the elections office within 48 hours. However, under the Voting Rights Act of 1965 (VRA), changes to voting laws must be approved by the U.S. Department of Justice. The Justice Department staff initially recommended objecting to the legislation, but this decision was overruled by political appointees and the new identification rules were approved. The new law was challenged in court and a preliminary injunction was granted. In response, the Georgia legislature, working closely with Governor Sonny Perdue, passed a similar law (SB 84) in January 2006 that includes provisions to simplify access to photo ID for elderly, poor, and minority voters. In June 2006, a preliminary injunction was again granted against the newer version of the law by a federal court. In September 2006, a state court declared the law unconstitutional and permanently enjoined its enforcement.⁶⁶ While the state announced its intent to appeal the ruling, the law will not be in effect for the November 2006 election.⁶⁷

Meanwhile, the state's implementation of policies intended to simplify access to photo ID has come under attack, since these efforts have been somewhat meager – a single “mobile ID issuing unit” in the form of a school bus that travels throughout the state, according to Jennifer Owens, Executive Director of Georgia's League of Women Voters. The bus is not accessible to individuals with disabilities, which negates its usefulness for a significant number of voters lacking ID. According to a study conducted by the Secretary of State in which the statewide voter registration database was compared to records of the Department of Driver Services, almost 305,000 voters have not been issued any form of driver's license or identification card that would satisfy the new ID requirement.⁶⁸ The study states that a disproportionate number of these 305,000 are minority or elderly voters.⁶⁹ The Elections Board also indicated that the state would rely heavily on nonprofit organizations such as the League of Women Voters to conduct education and registration campaigns, a strategy that is undermined considerably by Georgia's and other states' new laws imposing harsh penalties on third-party groups such as the LWV for improper submission of registration forms.⁷⁰

Georgia Secretary of State Cathy Cox has testified that there have been no cases of polling place voter fraud in Georgia in her seven years in office. She stated in her

⁶⁶ *Lake v. Perdue* (Case 2006-CV-119207), Order on Plaintiff's Complaint for Declaratory and Injunctive Relief, 19 September 2006.

⁶⁷ Doug Gross, “Election board vote means no photo ID required in November,” *Associated Press*, 23 September 2006, at <http://www.macon.com/mld/macon/news/politics/15588473.htm>.

⁶⁸ “Analysis of State Databases Reveals Nearly 700,000 Registered Voters Lack Valid Driver's License or State-Issued Georgia ID,” Georgia Secretary of State *Press Release*, 19 June 2006. Web Access: <http://www.sos.state.ga.us/pressrel/061906.htm>.

⁶⁹ Steve Crawford, “Some in area lack common voter ID; Blacks, those over 64 are the most affected,” *The Augusta Chronicle*, 24 June 2006.

⁷⁰ Conversation with Jennifer Owens, Executive Director of Georgia's League of Women Voters, 30 May 2006.

testimony that the new laws create confusion among poll workers and voters about what ID is necessary to vote, making the state more rather than less vulnerable to fraud.⁷¹

In spring 2005, **Missouri**'s state legislature also passed a law requiring photo identification at the polls.⁷² The bill was signed into law and strongly endorsed by Governor (and former Secretary of State) Matt Blunt, a Republican. The state has come under attack from the Brennan Center, which published a brief on this bill titled "Analysis of Eligible Voters Potentially Barred from the Polls by Restrictive New Identification Requirements in Missouri Senate Bills Nos. 1014 & 730" in which the new ID requirements are described as unconstitutional and exclusionary to "hundreds of thousands of eligible Missouri voters".⁷³ An estimated 170,000 Missourians lack driver's licenses. The state has announced plans to issue free non-driver identification cards to help this group comply with the new identification requirements. In order to receive a non-driver identification card, a voter must show lawful presence in the United States - in other words a birth certificate or passport, documents which cost money to obtain. Critics of the new ID requirements also argue that getting a non-driver ID is not as simple as state officials make it out to be. The wait time for getting a birth certificate if the name on the record is misspelled or needs to be corrected for some other reason can be as long as six months. The new law also calls on the Secretary of State to publicize the ID requirement changes via public service announcements and civic education. The state has not earmarked any funds for either the public education campaign or for the non-driver ID program.⁷⁴ However, Secretary of State Carnahan has announced plans for a public education program to alert voters of the new ID requirements and is working with the Department of Revenues which is responsible for distributing IDs, to target voters who are less likely to have identification that meets the requirements.⁷⁵ Both the state Democratic Party and a group of voters have sued the state in separate lawsuits regarding the new ID law, claiming that it violates the state constitution. It was declared unconstitutional in September 2006.⁷⁶ Another lawsuit has been filed in federal court.⁷⁷

Minnesota requires only the identification mandated by HAVA for most voters. However, voters who want to register after the official registration deadline or on Election Day may do so, providing they present some identification. The list of acceptable forms of identification is fairly expansive:

⁷¹ Walter C. Jones, "Cox: Law will lead to more fraud at ballot box," *Florida Times-Union*, 13 October 2005. <http://www.sos.state.ga.us/misc/cathybio.htm>.

⁷² "Voter ID Legislation 2006," electionline.org, *Election Administration Hot Topics*. <http://electionline.org/ResourceLibrary/VoterIDLeg2006/tabid/1096/Default.aspx>, 23 March 2006.

⁷³ "Analysis of Eligible Voters Potentially Barred from the Polls by Restrictive New Identification Requirements in Missouri Senate Bills Nos. 1014 & 730," Brennan Center for Justice, NYU School of Law. <http://www.brennancenter.org/programs/downloads/HAVA/MO%20SB1014%20analysis%20best%20version.pdf>, 8 March 2006.

⁷⁴ Virginia Young, "State starts issuing voter IDs," *St. Louis Post-Dispatch*, 15 June 2006.

⁷⁵ Justin Ludwig, "No voter (with photo ID) left behind," *The Lake Sun Leader*, 26 July 2006.

⁷⁶ *Jackson County v. State of Missouri*, Cole County District Court Case No. 06AC-CC00587, *Judgment*, 14 September 2006.

⁷⁷ *NAACP et al. v. Robin Carnahan et al.*, U.S. District Court for the Western District of Missouri, Case No. 06-4200.

- A Minnesota driver's license, learner's permit, identification card, or receipt for one bearing the voter's current address;
- If any of the above bears a former address, a recent utility bill must be presented along with the license;
- "Notice of late registration" postcard;
- U.S. passport with utility bill;
- U.S. military photo ID card with utility bill (utility bill must have name, current address, and be due within 30 days of the election; it may be for electric, gas, water, solid waste, sewer, telephone, or cable TV);
- Prior registration listed on roster at former address in precinct;
- Oath of registered voter in precinct;
- Current students attending postsecondary institutions in Minnesota can present student ID, registration or fee statement with current address; student photo ID with utility bill; student ID if you are on a student housing list on file at the polling place; a voter registered in the precinct to vouch for the registrant's place of residence.⁷⁸

Following a 2004 lawsuit in which the ACLU filed suit against the state for discrimination, a federal judge ordered the Secretary of State to allow Native Americans to use their tribal identifications to identify themselves at the polls.⁷⁹

Even Minnesota, with its broad identification requirements, is considering legislation to make the ID rules stricter, in a political struggle that parallels partisan fighting in many other state legislatures. In 2005, members of the Republican-controlled Minnesota House and the Democratic-Farmer-Labor controlled Senate submitted dueling voter identification bills. The Republican legislation, supported by Representatives Tom Emmer (Delano) and Joe Hoppe (Chaska), would require voters to present photo identification when they appear at the polls to vote.⁸⁰ This bill passed through the House Civil Law Committee on a party line vote of 6 Republicans in favor and 5 DFLers opposed, and through the House on a party line vote of 71-62.⁸¹ There is currently no companion bill in the DFL-dominated Senate.⁸² Meanwhile, the State Senate passed a bill that would increase the number of options voters have for identifying themselves at the

⁷⁸ Office of the Minnesota Secretary of State:

http://www.sos.state.mn.us/home/index.asp?page=12&select_faq_by_faq_cat=2#29

⁷⁹ Patrick Condon, "Judge orders loosened voting restrictions," *Associated Press*, 29 October 2004.

⁸⁰ Brian Bakst, "Minnesota lawmakers seek photo ID requirement for voting," *Associated Press*, 26 January 2006. Minnesota House of Representatives:

http://www.house.leg.state.mn.us/bills/billnum.asp?Billnumber=HF+1443&ls_year=84&session_year=2005&session_number=0&Go.x=32&Go.y=7&Go=Search.

⁸¹ Tom Scheck, "Voting bill stirs strong emotions at Capitol," *Minnesota Public Radio*, 15 March 2006. and Dane Smith, "Panel OKs bill requiring citizenship proof to vote," *Minneapolis Star Tribune*, 16 March 2006.

⁸² "Voter ID bill advances, but could face dead end," *Associated Press*, 10 May 2006.

polls; if it passes the House, the law would allow students to present a college or high school ID and a cell phone or other utility bill as proof of residence.⁸³

Ohio, home of many of the most publicized election problems in 2004, passed House Bill 3 in early 2006, requiring all Ohio voters to show identification before casting a ballot effective June 1, 2006. The bill narrowly passed the legislative conference committee on a strict party line vote, with the four Republicans voting in favor, and two Democrats opposed.⁸⁴ Democrats and activists say the bill's identification requirement was not needed, especially since voter fraud has never been a major problem in Ohio. Prior to the bill's passage, Ohio voters simply needed to sign their names and the signatures would be compared to the signature on file from the voter registration form.⁸⁵

Now all voters must present one of the approved forms of ID – a current and valid photo ID, a military ID that shows the voter's name and current address, or a copy of a utility bill, bank statement, government check, paycheck, or other government document other than a voting reminder or voter registration notification – that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of their Social Security number and by casting a provisional ballot. Voters who arrive at the polls without one of the above forms of identification will be required to cast a provisional ballot, provided they sign an affirmation of their identity and bring an approved form of identification to the local election board within 10 days of the election.⁸⁶ The provisional ballot is only counted if elections officials determine that the voter is eligible to vote in the precinct in which the provisional ballot was cast.⁸⁷

Under House Bill 3, voters requesting absentee ballots must provide “a copy of the elector's current and valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.”⁸⁸ HB 3 also requires the counties to publicize the ID change. Geauga County estimated that it would spend more than \$16,000 to send notifications to each voter informing them of the new requirements.⁸⁹

⁸³ “Bill expands list of acceptable voter ID,” *Associated Press*, 5 April 2006.

⁸⁴ Gilbert Prince, “Democrats threaten suit over House Bill 3,” *Call and Post*, 8 February 2006.

⁸⁵ “New law requires Ohio voters to show identification at the polls,” *The Toledo Blade*, 1 February 2006. See also, “People won't ID to vote until November, lawmakers say,” *The Columbus Dispatch*, 27 January 2006.

⁸⁶ Electionline.org. <<http://www.electionline.org/Default.aspx?tabid=364>>

⁸⁷ <<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Ohio.pdf>>

⁸⁸ *O.R.C. § 3509.03(E)(3)*. Similar language appears in *O.R.C. §§ 3509.031(A)(5)(c) and (B)(5)(c)* and *§§ 3511.02(A)(5)(c) and (C)(6)(c)*. See Bethany Sanders, “A Time of Great Change: The Effect of HB3 on *League of Women Voters of Ohio v. Blackwell*,” Moritz School of Law, Ohio State University, 11 May 2006.

⁸⁹ Diane Ryder, “Photo ID required to vote in Ohio,” *The News-Herald*, 31 July 2006.

Until this year, a voter who appeared at the polls in **Florida** without identification could sign an affidavit to prove identity. As of January 1, 2006, a voter who appears at the polls to vote in Florida must present one of the approved forms of identification, otherwise he or she must cast a provisional ballot, which may or may not be counted.⁹⁰ However, unlike some states, the voter is not required to return with identification within a prescribed time period for the provisional ballot to potentially be counted. Under HB 1589/SB 2176, approved by Governor Jeb Bush in June 2005, approved forms of picture identification include a Florida driver's license, Florida identification card issued by the Department of Highway Safety and Motor Vehicles, United States passport, employee badge or identification, buyer's club identification, debit or credit card, military identification, student identification, retirement center identification, neighborhood association identification, entertainment identification, and public assistance identification. If the picture identification does not bear a signature, the voter will be asked to provide an additional piece of identification with his or her signature.⁹¹

According to electionline.org, **Michigan** is one of 25 states currently enforcing minimum HAVA ID requirements.⁹² In recent years, the Michigan state legislature has made several attempts to enforce a more stringent voter identification requirement law passed in the mid-1990s. In 1996, the state passed Public Act 583, which required all voters to provide photo identification before being allowed to vote.⁹³ Though both houses and the governor approved the law in 1996, it was found to be unconstitutional by the state Attorney General for violating the Equal Protection clause of the Fourteenth Amendment and was not implemented.⁹⁴ In the mid-1990s, the issue of voter identification was far less controversial than it is today; the debate over implementation of the bill was resurrected in 2005 when Senate Bill 513 passed into law as PA 71, calling for the enforcement of 1996 PA 583 in the interests of “enhanc[ing] the integrity of elections”, and again in 2006 when state representative Chris Ward submitted House Resolution 199 which called for the state Supreme Court to issue an opinion on the question of whether 1996 PA 583 and 2005 PA 71 violate the state and federal constitutions.

Supporters argue that an ID requirement is the best check against voter fraud. Opponents equate the law to a poll tax, claiming that it will suppress voter turnout in minority and poor communities. Republican House Majority Floor Leader Ward also introduced legislation that would eliminate the \$10 fee for state identification cards. It is unclear whether the bill will pass.⁹⁵ In April 2006, the Michigan Supreme Court agreed to provide an advisory opinion on the constitutionality of the law. Attorney General Mike

⁹⁰ Electionline.org, “Election Reform: What’s Changed, What Hasn’t and Why 2000-2006,” p. 45. < <http://www.electionline.org/Portals/1/Publications/2006.annual.report.Final.pdf>>

⁹¹ Email response from Sarah Jane Bradshaw, Assistant Director, Florida Division of Elections, 17 May 2006. Florida House of Representatives:

<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=17314&>

⁹² “Voter ID Laws,” electionline.org, <http://www.electionline.org/Default.aspx?tabid=364>

⁹³ If the voter does not have photo identification, he or she can sign an affidavit.

⁹⁴ Opinion No. 6930. Michigan Attorney General Frank J. Kelley. 29 January 1997. Web: <http://www.ag.state.mi.us/opinion/datafiles/1990s/op10001.htm>

⁹⁵ Dawson Bell, “Court Jumps Into Dispute Over ID Checks,” *Detroit Free Press*, 27 April 2006.

Cox was required to submit his arguments against the bill by mid-July.⁹⁶ Two coalitions of organizations filed *amici curiae* briefs in support of the position that the law violates the state and national constitutions. Co-signers of one of the briefs, which was submitted in April 2006, include the National Association for the Advancement of Colored People – Detroit Branch, the Michigan State Conference National Association for the Advancement of Colored People, the National Bar Association, the American Civil Liberties Union of Michigan, the League of Women Voters Detroit, the American-Arab Anti-Discrimination Committee, Project Vote, the Association of Communities for Reform Now, Latin Americans for Social and Economic Development, Inc., the City of Detroit, the Detroit Urban League, and the National Conference for Community and Justice-Michigan.⁹⁷ The other brief was submitted by the AARP and the Lawyers’ Committee for Civil Rights.

In summer 2005, the **Pennsylvania** House of Representatives passed HB 1318, which was intended to expand the amount of time between when military personnel and voters in the foreign service receive their absentee ballots and the absentee ballot deadline. A group of conservative legislators succeeded in attaching two amendments to the bill, one requiring voters to present government-issued photo identification in order to cast a ballot, and the other disenfranchising former felons who are on probation and parole. These controversial amendments provoked a backlash among the activist community, and 56 public interest and community groups joined together as the Protect Our Vote Coalition to fight the bill in what became a lengthy partisan struggle in the state house. The Senate passed a modified version of the bill, stripped of these two amendments. The House reinserted an amendment requiring identification, though not necessarily photo identification, at the polls, before sending the bill to Governor Edward Rendell. Before the bill had even reached his desk, Rendell announced his intent to veto it, saying that the bill would place an “additional burden” on voters. Since the bill was vetoed, in February 2006, there appear to be no plans to introduce another photo identification bill.⁹⁸

Clarifications of **Washington**’s voter identification requirements were passed in 2005 in SB 5499. The law requires anyone voting in person to provide identification. Approved forms of identification include valid photo identification, such as a driver’s license or a state identification card, a student identification card, a tribal identification card, a voter identification card issued by a county elections officer, or a copy of a current utility bill, bank statement, paycheck, or government check or other government document.⁹⁹ If a voter appears at the polls without the proper identification, he or she must cast a provisional ballot.¹⁰⁰ The law authorizes the secretary of state to adopt rules to implement this identification requirement. Of Washington’s 39 counties, 34 conduct their elections entirely by mail; in the remaining 5 counties, over 61% of voters cast mail-in

⁹⁶ Charlie Cain, “Court to decide ID question for voters,” *The Detroit News*, 27 April 2006.

⁹⁷ Brief of *Amici Curiae*. “In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71.”

⁹⁸ Personal interview, Ruth Martin, Deputy Field Director, People for the American Way. August 10, 2006

⁹⁹ National Conference of State Legislatures. <<http://www.ncsl.org/programs/legman/elect/elections.cfm>>

¹⁰⁰ <http://www.secstate.wa.gov/elections/polling.aspx>

ballots. The counties that conduct all mail-in elections automatically send an absentee ballot to every eligible registered voter, and no additional identification is required.¹⁰¹

Immediately after the general election of 2004, **Wisconsin** Republicans focused their efforts on enacting a voter identification law. Republicans charged that problems in the 2004 election, particularly in Milwaukee, underscored the need for more stringent requirements to combat voter fraud.¹⁰² The bill was introduced in the aftermath of a report published by the *Milwaukee Journal Sentinel* that indicated that fraudulent voting had been prevalent during the 2004 election. A thorough investigation by the FBI and the U.S. Attorney showed that the discrepancies in the *Journal Sentinel's* report were the result of faulty voter recordkeeping rather than fraud. Reports by the Legislative Audit Bureau and the Joint Task Force on Election Reform convened in Milwaukee to do in-depth studies of the 2004 Wisconsin election returns similarly found that there was no evidence of systematic widespread fraud.¹⁰³ There are very few cases in which an individual intentionally voted illegally, and the vast majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. The number of fraudulent votes, intentional or unintentional, is dwarfed by the high incidence of administrative error.

In August 2005, Democrats countered their Republican colleagues by introducing a voter identification bill of their own. The bill requires voters that do not have photo ID to bring a bill bearing their address and to sign an affidavit. Republicans criticized the bill as too lenient; some Democrats complained that it was still too likely to disenfranchise voters and did not address the more likely forms of fraud.¹⁰⁴ Since then, the state legislature has twice passed legislation mandating photo ID, and Governor Jim Doyle has twice vetoed such legislation. The legislature could not muster the two-thirds necessary to override the governor's veto for bills passed in 2003 (AB 111) and 2005 (AB 63 and SB 42) requiring photo ID for all voters. In 2006, the state legislature passed a proposed constitutional amendment to require photo identification for registration on Election Day. However, as noted by the National Conference of State Legislatures, "a proposed constitutional amendment requires adoption by successive legislatures, and ratification by the people, before it can become effective."¹⁰⁵ The legislation remains in deadlock.

PROVISIONAL BALLOTS

The 2004 Report to the Nation emphasized the tension in dealing with provisional ballots between the necessity of making voting more accessible and easier for voters and the

¹⁰¹ Washington Secretary of State, "Frequently Asked Questions on Voting by Mail."

https://www.secstate.wa.gov/elections/faq_vote_by_mail.aspx.

¹⁰² Steve Schultze, "GOP wants to tighten voting laws," *Milwaukee Journal Sentinel*, 4 November 2004.

¹⁰³ Phil Brinkman, "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes," *Wisconsin State Journal*, 11 May 2005.

¹⁰⁴ Larry Sandler, "Voter ID returns—debate too," *Milwaukee Journal Sentinel*, 31 August 2005.

¹⁰⁵ National Conference of State Legislatures.

<http://www.ncsl.org/programs/legman/elect/elections.cfm>.

considerable administrative inconvenience and expense of provisional ballots for election officials. This tension is still being resolved in many states.

The problems associated with provisional ballots also typify the generally fragmented state of election law in this country, in which interpretation is left up to localities, resulting in a confusing patchwork of various election procedures. These different rules are bound to confuse voters who are easily dissuaded from voting by the inconvenience of dealing with a convoluted election bureaucracy. And it is also a potential unconstitutional violation of equal protection for a voter's ballot to be counted or not counted based on the stringency or leniency of the ballot counting procedures and identification requirements in the county in which the voter lives.

This problem as it pertains specifically to provisional ballots is the result of HAVA's vagueness in describing how the ballots are to be administered. The Act set up a requirement that all states provide provisional ballots, but left the states considerable leeway in determining the rules for counting the ballots. As evidence of the challenges inherent in such an approach, in 2004 this produced a wide range of rules that varied from county to county within the same state, in some instances in violation of the law. A major source of confusion, for example, was whether a voter could cast a provisional ballot if he or she appeared at the incorrect voting precinct. In **Arizona**, state rules required that only provisional ballots cast in the proper voting precinct be counted; even so, several counties counted provisional ballots cast in an incorrect precinct.¹⁰⁶

Ohio was also the site of major variation in the enforcement of provisional ballot requirements from county to county. Secretary of State Kenneth Blackwell came under fire from local election officials for failing to clarify the state's position on the guidelines regarding provisional ballots as set forth in HAVA. These criticisms came to light during hearings hosted by the U.S. Election Assistance Commission in 2005 on provisional ballots in Ohio.¹⁰⁷ According to federal rules, states are required to have federally approved and implemented policies governing the issuing and counting of provisional ballots in place by the first federal elections in 2006.¹⁰⁸ In response, in 2005 the state legislature amended the state election laws to standardize conditions under which provisional ballots would be issued and offered across the state.¹⁰⁹ Under the new law, provisional ballots must be cast in the proper precinct; otherwise they will not be counted. This measure, the law's sponsors said, was aimed at eliminating the long lines at polling places that prevent many people from voting.¹¹⁰ Opponents of this provision, however, argue that it will disenfranchise voters who inadvertently show up at the wrong polling place, especially if there is not enough time to travel to the proper location and

¹⁰⁶ David Pace, "Two-thirds of provisional ballots counted, but wide variations between states," *Associated Press*, 18 March 2005.

¹⁰⁷ James Drew Blade, "Federal panel analyzes Ohio's handling of vote," *Toledo Blade*, 24 February 2005.

¹⁰⁸ John McCarthy, "States, counties quarrel over election rules; deadline approaches," *Associated Press*, 15 March 2005.

¹⁰⁹ Mark Niquette and Jon Craig, "Election reform labeled a priority; Republican lawmakers propose standardizing rules across Ohio for provisional ballots, voter ID," *Columbus Dispatch*, 25 January 2005.

¹¹⁰ Jim Provance, "Bill aims to cut absentee voting woes; Ohio Democrats say measure not enough," *Toledo Blade*, 18 May 2005.

vote before polling places close. Moreover, voters often vote at the wrong precinct because of misinformation from poll workers, and because in practical terms several precincts can actually be comprised of several desks within the same room. As a result, voting in the wrong precinct might just be a matter of voting at the wrong table in the right school or church.

In **Pennsylvania**, as in many other states in 2004, many problems arose from the logistics of administering provisional ballots. There were reports from all over the state about poll workers who were poorly trained in distributing provisional ballots, as well as reports of insufficient ballots for distribution in the first place.¹¹¹ In response to these problems, Governor Rendell convened a bipartisan panel to discuss problems in the November 2004 election and to make recommendations for improving election administration.¹¹² Many Pennsylvania counties that were most significantly affected by these problems in 2004 announced efforts to remediate them in subsequent primary and statewide elections. Allegheny County, where 104 of the county's 1309 polling places ran out of provisional ballots, announced in spring 2005 that they would provide at least 50 provisional ballots to each polling station, and more to sites which experienced large increases in voter registration.¹¹³

In **Ohio**, similar logistical problems prevented many people from casting provisional ballots in 2004. Such problems arose from a general lack of awareness on the part of voters that provisional ballots were available, and under what conditions they were available. Some voters ended up not casting provisional ballots simply because they were standing in the wrong line at the right polling place.¹¹⁴

Problems with verification

The 2004 Report to the Nation noted that the most prevalent problems related to provisional ballots resulted from human error, a trend that continues. In **Florida**, there have been numerous instances since 2004 in which improper counting of provisional ballots cast doubt over the outcome of an election.¹¹⁵

Washington State's problems in 2004 exemplify human error problems. Analysis of the election results found that not only had verification of provisional ballots been

¹¹¹ Brandon Keat, "Poor training cited in election problems," *Pittsburgh Tribune-Review*, 16 December 2004.

¹¹² Nate Guidry, "Elections panel urges changes; Committee reviewed voting problems from last November," *Pittsburgh Post-Gazette*, 19 April 2005.

¹¹³ Timothy McNulty, "More extra ballots at polls; May 17 primary details to be listed on county web site," *Pittsburgh Post-Gazette*, 28 April 2005.

¹¹⁴ Fritz Wenzel, "Purging of rolls, confusion anger voters; 41% of Nov. 2 provisional ballots axed in Lucas County," *Toledo Blade*, 9 January 2005.

¹¹⁵ George Bennett, "Mistake switches winner, loser in Mangonia runoff," *Palm Beach Post*, 30 March 2006 and Erika Bolstad, "18 provisional ballots found," *Miami Herald*, 25 March 2006.

questionable, but that in one instance provisional ballots were fed into vote counting machines without proper verification of voter registration.¹¹⁶

In Washington, provisional and absentee ballots are verified in part by comparison of the signature on each ballot to a signature on file for each voter. A report showed wide variation between counties in the number of ballots rejected because of a failure to match a signature. In some counties where more than half of the provisional ballots were rejected because of their signatures, comparisons are made according to a rigorous rubric of identifying traits, while in other counties, in which fewer than one percent of the provisional ballots were rejected because of signatures, officials make rough visual comparisons.¹¹⁷ In a state in which some 70% of voters cast absentee ballots rather than showing up at the polls, differences in signature verification policies between counties can have a big impact.¹¹⁸ In 2005, almost all of Washington's counties voted to move to an all-mail system in which there are no polling places, eliminating the need for provisional ballots.¹¹⁹

To address these and other problems, the state legislature passed a comprehensive bill in June 2005 calling for a number of election reforms. The law clarifies the process by which signatures are verified on provisional ballots, requiring the county auditor to notify the voter by the day before certification of the election results if he or she has failed to sign the provisional ballot envelope or if the signature on the envelope does not match the one on the voter registration. The law specifies that the auditor must contact the voter by telephone and then by mail, giving the voter the opportunity to remedy the missing or mismatched signature either in person or by mail. The law requires provisional ballots to be visually distinguishable from other ballots and either printed on colored paper or imprinted with a bar code. This is designed to prevent provisional ballots from being read by vote counting machines at the polling site, thus precluding tabulation before the provisional votes have been verified. The law specifies what information must be recorded on the provisional ballot envelope, requires the county auditor to provide a free access system so provisional voters can learn whether their ballots were counted, and requires that voters without identification be given a provisional ballot. The bill was signed into law by Governor Christine Gregoire on May 3, 2005 and took effect on January 1, 2006.¹²⁰

Another solution to these provisional ballot problems is Election Day registration, a policy adopted by both **Wisconsin** and **Minnesota**. Election Day registration virtually eliminates the need for provisional ballots. In Wisconsin, only 374 provisional ballots

¹¹⁶ Gregory Roberts, "GOP analysis gives Rossi 100-vote win but Democrats say state law doesn't allow counting like that," *Seattle Post-Intelligencer*, 20 April 2005.

¹¹⁷ "Process for validating signatures varies widely in Washington," *Associated Press*, 20 December 2004.

¹¹⁸ Rachel La Corte, "Counties Flock to Mail-In-Only Ballots," *Associated Press*, 6 June 2005

¹¹⁹ Neil Modie, "Sims Seeks All-Mail Vote System Could Be In Place Next Year," *Seattle Post-Intelligencer*, 21 December 2005

¹²⁰ *SB 5743 Enhancing Voter Registration Recordkeeping*.

<<http://www.leg.wa.gov/wsladm/billinfo1/dspBillSummary.cfm?billnumber=5743&year=2005>>

were cast in 2004.¹²¹ The only time provisional ballots are used in Wisconsin is when the voter does not have HAVA-required identification.¹²² Minnesota does not use provisional ballots.¹²³

ID problems

One of the most common reasons for issuing provisional ballots is for use by voters who have failed to bring proper identification with them to the polling place. Many states have altered their voter identification requirements since 2004 and expect to see a rise in the number of provisional ballots requested in upcoming elections. Many have passed laws calling for temporary or permanent adjustments to the circumstances under which they issue provisional ballots, to accommodate these new ID rules.

The issue of provisional ballots became especially heated in Arizona last year when the Department of Justice advised that in implementing Proposition 200 the state could deny provisional ballots to voters without identification. After much criticism, the Department issued a “clarification” letter stating that, in fact, voters without ID are entitled to a provisional ballot.¹²⁴ It was silent, however, about the circumstances under which such ballots would be counted. State procedures now say that the voter must return with identification within five days in order for the ballot to be counted.¹²⁵

Georgia has received a lot of criticism for its new voter ID law which allows voters to cast provisional ballots if they forget to bring their ID when they come to vote. The law requires voters to produce their photo ID at the county elections office within 48 hours of casting their provisional ballot in order for their vote to be counted.¹²⁶

Missouri also altered its provisional ballot requirements to accommodate the state’s new, more stringent photo ID law. The law, passed in spring 2006, allows anyone who does not have an appropriate photo identification to cast a provisional ballot in the November 2006 election. They can present an out-of-state driver’s license, a college ID, or a utility bill, as long as their signature matches the signature election authorities have on file. By November 2008, voters will no longer have the option of presenting alternatives to photo

¹²¹ Election Day Registration Facts, New York Public Interest Research Group, at <http://www.nypirg.org/edr/facts101205.html>

¹²² Current policy in Wisconsin provides that, if the voter has a driver’s license but does not know the number and did not bring it to the polling place, poll workers should allow the voter to vote by provisional ballot. The voter cannot use the last 4 digits of their Social Security Number if they have been issued a WI driver’s license. The provisional ballot will not be counted unless the voter transmits via fax, email, telephone call, or personal visit their driver’s license number to the municipal clerk before 4:00 pm on the day after the election. Wisconsin State Elections Board, http://elections.state.wi.us/faq_detail.asp?faqid=119&fid=27. Voters who appear at the wrong precinct are not offered a provisional ballot. Wisconsin State Elections Board. <<http://165.189.88.185/docview.asp?docid=2028&locid=47>>

¹²³ “Solution or Problem? Provisional Ballots in 2004,” electionline.org, Briefing, April 2005.

¹²⁴ Daniel Tokaji, “DOJ ‘clarifies’ Position on ID and Provisionals,” *Equal Vote*, 1 September 2005.

¹²⁵ Secretary of State of Arizona, “Procedure for Proof of Identification at the Polls,” Press Release, 8 September 2005.

¹²⁶ Shannon McCaffrey, “Georgia to Require Photo ID’s to Vote,” *Associated Press*, 30 June 2006.

identification; if they arrive at a polling place to vote without one, they will be given a provisional ballot which will not be counted unless they return the same day with the proper identification.¹²⁷

In **Ohio**, officials are preparing for greater demand for provisional ballots than experienced in 2004 as a result of the state's new, more stringent ID requirements. An Ohio voter who shows up at the correct voting precinct without the proper photo ID will be allowed to cast a provisional ballot if he or she can provide a verifiable SSN-4 or signs a sworn statement affirming his or her identity.¹²⁸ A voter who is unable to provide the necessary identification or who has a Social Security number but cannot provide the last four digits of that number must return with proper identification within 10 days of the election in order for the provisional ballot to be counted.

Challenges to voter registration, another hot topic in 2004, drew legislative responses in some states. In Florida, where registration challenges were prevalent in 2004, a bill passed by the state legislature amended the laws pertaining to provisional ballots, allowing voters whose registrations are challenged to cast a provisional ballot.¹²⁹

SUPPRESSION AND INTIMIDATION

Hilary Shelton, Washington Bureau Director of the NAACP, remarked in 2004, that “no one knows the real number of Americans who could not vote because” of frustrations in dealing with the process that led them to just give up and leave the polling place, perhaps never to return.¹³⁰ As Shelton pointed out, the processes of registering to vote and then of casting a ballot are complicated enough to dissuade Americans from voting. Reports from 2004 uncovered significant efforts to prevent people from voting using illegal intimidation and misinformation. Some of the most disturbing incidents involved distribution in minority areas of fliers containing misleading information about voting procedures. In one notorious incident, a flier attributed to the “Milwaukee Black Voters League” was distributed in African American neighborhoods. It read, in part:

SOME WARNINGS FOR ELECTION TIME

IF YOU'VE ALREADY VOTED IN ANY ELECTION THIS YEAR YOU CAN'T
VOTE IN THE PRESIDENTIAL ELECTION.

IF YOU [OR ANYBODY IN YOUR FAMILY] HAVE EVER BEEN FOUND GUILTY
OF ANYTHING, EVEN A TRAFFIC VIOLATION, YOU CAN'T VOTE IN THE

¹²⁷ Kelly Wiese, “Republicans offer changes in voter ID bill,” *Associated Press*, 19 April 2006. Missouri Secretary of State: <http://www.sos.mo.gov/elections/photoid/faqs.asp>.

¹²⁸ Jim Siegel, “Coming this fall: Voters must show ID at polls,” *The Columbus Dispatch*, 1 February 2006.

¹²⁹ Steve Bousquet, “Bill lets long voting lines stand,” *St. Petersburg Times*, 7 April 2005.

¹³⁰ “Voting in 2004: A Report to the Nation on America’s Election Process.” *The Century Foundation, Common Cause, Leadership Conference on Civil Rights*, 7 December 2004, p. 23.

PRESIDENTIAL ELECTION.

... IF YOU VIOLATE ANY OF THESE LAWS YOU CAN GET TEN YEARS IN PRISON AND YOUR CHILDREN WILL BE TAKEN AWAY FROM YOU.

U.S. Senator Barack Obama has introduced the Deceptive Elections Practices and Voter Intimidation Prevention Act of 2005 that makes such acts a crime and gives law enforcement authority to look into allegations of deceptive practices, establishing harsh penalties for those who have engaged in such fraudulent practices, along with a process for getting accurate information to voters who have been the targets of such misinformation campaigns. The law has not been passed, and unfortunately, with few exceptions, states have done little since the 2004 election to prevent future acts of deception, suppression, and intimidation.

Arizona has taken a small step to address the problem. Under Arizona law, “in an attempt to influence the outcome of an election, an individual or committee shall not . . . deliver or mail any document that falsely purports to be a mailing authorized, approved, required, sent or reviewed by or that falsely simulates a document from the government of this state, a county, city or town or any other political subdivision.”¹³¹ By Arizona statute, it is also illegal to intimidate employees into voting¹³², or “directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law.”¹³³

Minnesota passed a law in 2006 making it a gross misdemeanor to knowingly deceive another person regarding the time, place, or manner of conducting an election or the qualifications for or restrictions on voter eligibility for an election, with the intent to prevent the individual from voting in the election. The law makes provisions for election officials to notify the public that false information has been circulated and to distribute accurate information in its place.¹³⁴

Missouri passed the “Missouri Voter Protection Act” (SB 1014) which makes it a felony to “[engage] in any act of violence, destruction of property having a value of five hundred dollars or more, or threatened act of violence with the intent of denying a person’s lawful right to participate in the election process, and [to] knowingly [provide] false information about election procedures for the purpose of preventing someone from going to the

¹³¹ ARS 16-925 Deceptive mailings; civil penalty. Accessed:

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/00925.htm&Title=16&DocType=ARS>

¹³² ARS 16-1012 Intimidation of elector by employer; classification. Accessed:

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/01012.htm&Title=16&DocType=ARS>

¹³³ ARS 16-1013 Coercion or intimidation of elector; classification. Accessed:

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/01013.htm&Title=16&DocType=ARS>

¹³⁴ Minnesota Statutes § 204C.035.

polls.”¹³⁵ This bill, which also included provisions requiring voters to provide photo identification to vote at the polls, passed through both houses of the state legislature after acrimonious debate, and was signed into law by Governor Matt Blunt in July 2006.¹³⁶

In November 2005, the **Pennsylvania** House of Representatives passed House Bill 544, which deals with voter harassment issues, among them deceptive practices.¹³⁷ Some of the most egregious charges of voter suppression in the 2004 election occurred in Pennsylvania where Pennsylvania voters in predominantly African American or Democratic districts were sent fliers on “official” county letterhead saying that Republicans were to vote on Tuesday, November 2 and Democrats were to vote on Wednesday, November 3.¹³⁸ The bill provides that anyone who circulates deliberately misleading information regarding the date or location of a polling place in a mailing shall pay a fine of up to \$15,000 or be imprisoned for up to 7 years. The bill is currently stuck in the state senate.

In **Ohio**, State Senator Ray Miller introduced a deceptive practices bill that would criminalize any acts intending to mislead disenfranchised, poor, or minority voters about voting information, including election days and polling place hours. There has been a sponsor hearing on the bill and a Republican lawmaker is expected to introduce a companion bill in the Ohio House in the near future.¹³⁹

Challenges

Aside from illegal vote suppression tactics such as those described above, the most significant intimidation efforts have surprisingly fallen within the law. In 2004, Republican groups and others made use – and some might argue abused – the legal provisions for challenging a voter’s eligibility. For example, in 2004, three men asked the Board of Registrars in Atkinson County, **Georgia** for a list of Hispanics registered to vote and then filed challenges against 95 of the 121 registered voters. The local registrar denied the challenges because of concerns that they constituted a violation of the 1964 federal Voting Rights Act.¹⁴⁰ Instances such as these got a good deal of publicity in states with hotly contested elections such as Ohio and Florida. In Ohio, in the months before the November election, the Ohio Republican party challenged the eligibility of more than 35,000 registered voters throughout the state. Over 10,000 of these challenges were rejected or withdrawn because of glitches in Republican databases or filing errors. The state Democratic Party filed suit against the Secretary of State in an attempt to block the

135 SCS/SB 1014 “Modifies law relating to election reform.”

http://www.senate.mo.gov/06info/BTS_Web/Bill.aspx?SessionType=R&BillID=83706 Accessed April 5, 2006.

¹³⁶ Tim Hoover, “Missouri approves voter id,” *The Kansas City Star*, 13 May 2006. See also Tim Hoover, “165 new laws added to Missouri’s books,” *The Kansas City Star*, 15 July 2006.

¹³⁷ Interview with Pennsylvania Common Cause Executive Director Barry Kauffman.

¹³⁸ Tova Andrea Wang, “Election 2004: A Report Card,” *The American Prospect*, 4 January 2005. Web: <http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=8961>.

¹³⁹ “The Fight for Ohio: Fighting Ohio’s Regressive Election Laws and Regulations,” People for the American Way at <http://www.pfaw.org/pfaw/general/default.aspx?oid=22161>.

¹⁴⁰ Julia Malone, “Civil Rights Groups, GOP trade charges of dirty tricks,” *Cox News Service*, 1 November 2004.

challenges, which, they said, “violate due process and threaten the right to vote of people across the state.”¹⁴¹ Beyond these registration challenges, there were some reports of voters appearing at the polls on Election Day in Ohio to find their eligibility challenged after the Supreme Court made a last-minute ruling allowing partisan poll watchers to enter polling places on Election Day to make eligibility challenges.¹⁴²

Voter registration and polling place eligibility challenges were unquestionably one of the biggest problems during the 2004 election. Since 2004, there has been little action on the part of the states to clarify their laws governing the behavior of challengers or to try to constrain abusive practices in this area. And there have been no reports on this problem in elections since 2004, most likely because it is a more useful tactic in high-turnout elections, and will likely arise again next in the 2008 elections.

There are a few notable exceptions, however. In **Minnesota**, the state legislature passed a bill in 2005 restricting challengers at polling places on Election Day. The bill requires challengers to sign an oath that they have personal knowledge of the challenged individual’s ineligibility to vote, that the challengers participate in training paid for by their political party, and that they wear badges identifying them as challengers. The law also prevents challengers from out of state from challenging Minnesota voters,¹⁴³ and limits challengers to one per political party per polling place.¹⁴⁴

The **Ohio** legislature also addressed this issue, incorporating provisions into House Bill 3 that change the parameters for voter challenges. Effective on June 1, 2006 any challenge to a registered elector’s right to vote must be made at least 20 days prior to an election. The challenge “shall be filed with the board on a form proscribed by the secretary of state and shall be signed under penalty of election falsification.” If the board of elections is unable to determine the outcome of a challenge, a hearing must be held within 10 days of the challenge, and a notice must be sent to the registered voter and the challenger via first-class mail at least 3 days before a scheduled hearing. If the challenge is filed within 30 days of an election, the board has the option of postponing a hearing until after the election. Under this circumstance, the voter’s registration can still be challenged at the polls and they may be forced to vote a provisional ballot.¹⁴⁵

At the same time, HB 3 includes a provision that would allow poll workers to inquire if a voter is a naturalized citizen and to require those voters who answer in the affirmative to provide their naturalization papers in order to vote. If they cannot provide proof at the polling place, the voter must cast a provisional ballot that will only be counted if he or

¹⁴¹ “Voter registrations of thousands of U.S. soldiers, homeless challenged in crucial state of Ohio” *Associated Press*, 28 October 2004.

¹⁴² Mark Crispin Miller, “None Dare Call it Stolen: Ohio, the Election, and America’s Servile Press,” *Harper’s Magazine*, 1 August 2005.

¹⁴³ Dane Smith, “Laws: a package of revisions; Bill would rein in partisan challengers,” *Star Tribune*, 22 March 2005.

¹⁴⁴ Minnesota Statutes 2005. 204C.07 Challengers. <http://www.revisor.leg.state.mn.us/stats/204C/07.html>.

¹⁴⁵ Ohio HB 3 Sec. 3503.24.

<http://www.legislature.state.oh.us/BillText126/126_HB_3_PS_Y.html>.

she goes to the Board of Elections with documentation within 10 days of the election. Voting rights groups have challenged the rules in federal court.¹⁴⁶

Washington has recently enacted a law addressing election challengers. Election bill SSB 6362 places restrictions on the conditions under which a challenge can be made. For example, a challenge can be made if the challenger has personal knowledge that the voter has been convicted of a felony without having had his or her rights restored, knows the voter has been judicially declared ineligible to vote due to mental incompetence, is not a citizen of the United States, will not be old enough to vote by Election Day, or does not live at the residential address provided on the registration form. A challenge based on residency requires the challenger to either provide proof of the voter's actual residence or to submit evidence that he or she completed a number of specified steps to verify that the voter does not reside at the address given. The actual residence or proof of due diligence must be provided when the challenge is filed.¹⁴⁷ SSB 6362 also establishes a deadline for challenges and the process for determining whether a challenged ballot can be counted.

Meanwhile, some states have no laws governing election challenges. In **Pennsylvania**, there is no deadline for issuing challenges and no penalty for issuing a false challenge.¹⁴⁸ Voters may submit complaints via the Department of State website or by filing a complaint through an administrative complaint procedure required under Title III of HAVA.¹⁴⁹

As of 2006, **Florida** law permits any elector or poll watcher to challenge the right of any voter to vote 30 days or less before an election by filing a completed copy of the oath, and provides for a penalty for a voter or poll watcher who files a frivolous challenge. However, an elector or poll watcher is not subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such elector or poll watcher by law. Each instance where any elector or poll watcher files a frivolous challenge of any person's right to vote constitutes a separate offense. (HB 1567) (FS 101.048 and 101.111).¹⁵⁰ A challenged voter must vote by a provisional ballot which will only be counted if the voter comes back by 5:00 PM on the third day following the election with written proof that he or she was entitled to vote.¹⁵¹

Most states have laws on their books governing the behavior of challengers, delineating what constitutes a challenge and who can challenge. In **Arizona**, for example, each political party represented on the ballot is allowed one challenger per election precinct. Challengers can challenge a voter orally if he or she has reason to believe that person is

¹⁴⁶ "Groups Challenge Provision in Ohio," Lawyers' Committee for Civil Rights, National Campaign for Fair Elections, *Press Release*, 29 August 2006.

¹⁴⁷ <http://www.secstate.wa.gov/elections/pdf/2006_Election_Legislation_Summary.pdf>

¹⁴⁸ Email response from Pennsylvania Department of State.

¹⁴⁹ Interview with Barry Kauffman, Executive Director of Pennsylvania Common Cause.

¹⁵⁰ See summary of Florida election law changes at <http://brevardelections.org/05lawch.htm>.

¹⁵¹ Art Levine, "Salon's Shameful Six," *Salon.com*, 15 August 2006.

not qualified to vote or has voted previously in the same election.¹⁵² However, these laws are often vague and are enforced differently from one election jurisdiction to another.

POLL WORKERS AND POLLING PLACES

Recruitment

Electionline.org chief Doug Chapin used the term “system overload” to describe the problems on Election Day 2004.¹⁵³ These problems have not occurred during subsequent elections because odd year elections normally see much lower turnout. But these issues bear great relevance for the 2006 and 2008 elections.

One of the biggest headline-grabbing problems of the 2004 election was the long wait in line at many polling places. In Ohio, many people waited late into the night to cast their ballot because their polling place was overwhelmed by voter turnout. One of the most important ways to strengthen our elections is to increase the number of poll workers available at polling places to help voters cast their ballots, and to improve poll worker training so they are less likely to make mistakes that could jeopardize the outcomes of elections. Even in low-volume primary elections, however, many problems related to poll worker staffing and training continue to occur. In a 2006 Ohio county council primary, votes for several write-in candidates were overlooked in ballot counting because of poll worker error. Turnout was so low in this election that these errors cost some candidates their city council seats.¹⁵⁴

Another problem is that Americans are poorly informed about their rights as voters and about the voting process, and are thus fearful at the polls and susceptible to disenfranchisement because they are not comfortable questioning the directions of misinformed poll workers. The 2004 Report to the Nation pointed to a low level of civic education with respect to voting, and recommended that voting problems could be eliminated by educating the public about the process.

After the “system overload” of 2004, many states initiated programs to recruit more poll workers and train them in time for the next high turnout elections. **Florida** has mounted a “Be A Poll Worker” campaign that includes public service announcements and handouts. Some counties are using voter education funds to recruit high school and college students as poll workers. However, the Florida state legislature did not appropriate any federal HAVA funds to conduct a statewide campaign worker recruitment campaign.¹⁵⁵ In 2005, **Michigan** passed a law to allow teenage election inspectors if they are at least 16 years

¹⁵² ARS 16-591 Grounds for challenging an elector. Accessed: <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/00591.htm&Title=16&DocType=ARS>.

¹⁵³ “Voting in 2004: A Report to the Nation on America’s Election Process,” *The Century Foundation, Common Cause, Leadership Conference on Civil Rights*,. December 2004, p. 25.

¹⁵⁴ Lisa A. Abraham, “Candidates find missing votes,” *Akron Beacon Journal*, 1 August 2006.

¹⁵⁵ State of Florida HAVA Plan, p. 51.

< <http://election.dos.state.fl.us/hava/pdf/revisedHAVApplan.pdf>>

old and supervised by no fewer than 3 adults at their polling location.¹⁵⁶ Detroit has implemented a training program to enable high schoolers to participate in the 2006 primary election. The students were required to be at least 16 years old and to participate in a two-hour training session.¹⁵⁷ **Minnesota** has begun recruiting young people to participate in a program to become “trainee election judges” if they are at least 16 years of age. Students can be appointed by their school or school district. No more than one-third of the election judges at a given polling place can be trainee election judges. The Secretary of State’s office has also begun recruiting college students to serve as election judges.¹⁵⁸ As part of its new election reform bill, State Act 150, **Pennsylvania** allows high-school students, with the approval of their Principals, and college students to serve as poll workers. In 2006, Allegheny County is holding 40 training sessions for 5,500 poll workers. The county executive described the 2.5-hour sessions as “intense.” Poll workers will earn an extra \$20 for participating in the training sessions.¹⁵⁹

Georgia has established training modules for election officials that are designed to help them with poll worker recruitment, training, and retention. In response to a recent state law that allows 16-year olds to work at polling places, several counties have engaged in student recruitment efforts.¹⁶⁰ The state relies heavily on nonprofit organizations (such as the League of Women Voters) to manage civic education programs that encourage people to volunteer.¹⁶¹

Ohio has made no effort on the state level to recruit more poll workers. According to the Secretary of State, it is the responsibility of the county board of elections to recruit and train poll workers, so there are no statewide standards with respect to poll worker training. Despite Ohio’s highly publicized problem with poll workers in 2004, with long lines and insufficient poll workers preventing some voters from casting their ballots, the state has made no move to change its practices.¹⁶²

In **Washington**’s highly publicized gubernatorial election trial, untrained poll workers were behind the most significant problems. During the trial, evidence showed pervasive poll worker error, with volunteers inserting provisional ballots into the counting machine before they had been verified, losing whole boxes of ballots, and allowing felons without reinstated voting rights to vote, among other problems. The election reform passed by the state legislature in the aftermath of the debacle called for major improvements to the state’s poll worker training programs. Separately, the Secretary of State’s office issued a

¹⁵⁶ Edward Cardenas, “Teens Get Look Inside Vote Process,” *The Detroit News*, 2 May 2006.

¹⁵⁷ Shabina Khatri, “Macomb Students to Help in School Elections; 2-Hour Session Trains Them to Meet Challenge,” *Detroit Free Press*, 25 April 2006.

¹⁵⁸ “College Student Election Judges.” Minnesota State Secretary of State Website:

<http://www.sos.state.mn.us/home/index.asp?page=463>

¹⁵⁹ Jerome Sherman, “Whew! A Voter Beats the Machine,” *Pittsburgh Post-Gazette*, 20 April 2006.

¹⁶⁰ Email from Kathy Rogers, Director of Election Administration, Georgia Office of Secretary of State, 11 September 2006.

¹⁶¹ Conversation with Jennifer Owens, Executive Director of Georgia’s League of Women Voters, 30 May 2006.

¹⁶² National Conference of State Legislatures.

<<http://www.ncsl.org/programs/legman/elect/elections.cfm>>

notice to election officials clarifying that, under the federal Voting Rights Act, a voter with limited English proficiency may obtain assistance in casting a ballot from a person of his or her choosing.¹⁶³ However, because most of Washington's counties have moved to an all-mail voting system, the demand for poll workers in the state has decreased significantly since 2004. Only four counties in Washington continue to maintain poll sites. For the four counties with poll workers, the average training is approximately two hours and covers provisional ballots, ID requirements, poll site information, voting machine information, and other relevant training.¹⁶⁴

King County, the state's largest county and the site of the most highly-publicized election problems in 2004, has targeted local community colleges and universities in an effort to expand its pool of poll workers. In order to attract more students, the Poll Worker Coordinator is publicizing that students will be paid for their service. In addition, the state recently sponsored College Civics Week to highlight the need for civic involvement. The Elections Office used this opportunity to attract attention to its poll worker recruitment effort. At this point, however, there has not been much effort to recruit high school students because the need for poll workers is diminishing, given the increase in mail voting across the state.¹⁶⁵

Wisconsin has made it easier to become a poll worker in order to address the problem of overloaded polling places. The issue of insufficient poll workers is particularly acute in Wisconsin, which has Election Day registration and thus a heavier Election Day workload than other states. Wisconsin election officials recruit high school and college students to help operate polling places.

Accessibility

Even though HAVA requires that voters with disabilities be given a chance to vote privately and independently – a requirement not just limited to voting machines – the perennial problem of polling place accessibility was a major barrier to voting in 2004.¹⁶⁶

¹⁶³ Washington Secretary of State, Clearinghouse Elections Notice: "Voters Taking Others Into Poll Booths," Addendum to Issue 0511, 8 September 2006.

¹⁶⁴ Conversation with Washington Secretary of State's office, Elections Division, 21 April 2006.

¹⁶⁵ *Ibid.*

¹⁶⁶ In a March 4, 2005 letter to the State of Mississippi, DOJ interpreted HAVA's accessible voting system provision to also provide for accessible polling places: "Section 301(a)(3) means what it says - all polling places in the United States which are used for elections for federal office must have at least one voting system which is accessible to persons with disabilities for use in elections for federal office on and after January 1, 2006. As we have expressed, logically, persons with disabilities must be able to gain access to the polling place in order to be able to use the accessible voting system. Having an accessible voting system does little good if voters cannot enter the polling place to use it. Hence, not only must the voting system be accessible to persons with disabilities but also the polling place where the voting system is located." Letter from Hans A. von Spakovsky to John W. Eads, at <http://www.usdoj.gov/crt/voting/hava/msdisability.htm>. The Americans with Disabilities Act of 1990 (Pub. L. 101-336) also imposes accessibility requirements on polling places.

An October 2004 poll conducted by the National Organization on Disability reported that, “Twenty-one percent of U.S. adults with disabilities—representing more than eight million potential voters—say they have been unable to vote in presidential or congressional elections due to barriers faced either at, or in getting to, the polls.” Yet such experiences were repeated in the November 2004 election, barriers made even worse by the long lines encountered in many polling places. The Election Protection coalition which engaged thousands of volunteers to take calls and monitor polling sites for irregularities, reported on Election Day 2004 that, “Disabled voters have continued to have difficulty gaining access to the polls, and many report having been denied curbside voting alternatives. The hotline recently received such complaints from Wisconsin and North Carolina. Several callers in Philadelphia, Pennsylvania, Potomac, Maryland, and Cuyahoga County, Ohio, complained that accommodations were being denied to sight-impaired voters. A caller from Cleveland reported that when she attempted to assist her sight-impaired neighbor, a poll worker called the police.”¹⁶⁷

The ten states examined have taken little meaningful legislative action to further ensure poll site accessibility since 2004. In many states, legislation has been introduced, sometimes repeatedly, but has not attained final passage.¹⁶⁸

In **Florida**, 2004 legislation (H 1701/S2946) that would put forth a bill of rights that required notice of availability of accommodations for person with disabilities and training for poll workers on accommodating voters with disabilities failed. The **Ohio** legislature failed to pass a bill (HB 129) that requires the Americans with Disabilities Act coordinator and the Secretary of State to inspect all polling places to ensure that they comply with the Act. That state also failed to pass laws requiring accessible parking at polling places (HB 224, HB 312). All three bills were reintroduced and again failed to pass in the 2006 legislative session.

Last year, **Minnesota** introduced but did not pass legislation that would have clarified the right to vote of a person under guardianship, and added to the Voters Bill of Rights a statement that said “If you are unable to enter the polling place, you have the right to request assistance and to vote at the polling place without leaving your vehicle.” The legislation clarified that a person under guardianship does not lose the right to vote unless a court order says so.

Pennsylvania has made modest improvements in reducing the number of inaccessible polling places. Out of approximately 9,000 polling places statewide, the number of inaccessible locations stands at 1810, or 431 fewer than were counted in a March 2005 assessment.¹⁶⁹

¹⁶⁷ Election Protection Archives, November 2, 2004 at

http://www.electionprotection2004.org/archives/cat_pennsylvania.html.

¹⁶⁸ See the National Conference of State Legislatures, NCSLnet Search, at

<http://www.ncsl.org/programs/legman/elect/elections.cfm>.

¹⁶⁹ Email from Harry VanSickle, Commissioner, Bureau of Commissions, Elections and Legislation, Pennsylvania Secretary of State, 12 September 2006.

In 2004, Washington did pass a bill (S6419) that created an early voting process for disabled voters in which specific dates, locations, and hours for disabled voting must be designated by the county auditor.

Michigan is using \$400,000 in HAVA grant money to improve polling place accessibility. The Department of State selected areas of the state to receive portions of the grant after conducting a survey of all Michigan polling places in 2004. The grants will go toward improving the accessibility of parking, passenger drop-off areas, paths of travel, building entrances and voting areas.¹⁷⁰ Similarly, **Arizona** has used federal grant money to improve access to voting areas and polling places.¹⁷¹

VOTING MACHINES

In the wake of the 2000 presidential election and Florida's infamous problems with hanging chads, the Help America Vote Act offered funds for the purchase of new voting machines that use technology promising greater accessibility and accuracy. Unfortunately, in the rush to acquire the new machines, not enough support was given to local and state jurisdictions on specifications and guidelines, and purchasers had to rely to a large extent on the advice of vendors to help them decipher the highly technical issues attending the transition to electronic voting machines. Consequently, each election since 2000 has been rife with reports of machine failures.

One of the most significant changes under the Help America Vote Act is its requirement that one machine per polling place be accessible to citizens with disabilities.¹⁷² This highlights the importance of ensuring, to the greatest extent possible, that people with disabilities can cast their votes in privacy. While HAVA does not specify the exact technology that must be used to meet this accessibility requirement, and while a number of systems may meet the standard, most jurisdictions have attempted to comply through

¹⁷⁰ Lanetta J. Williams, "Grant Will Ease Voting for the Handicapped," *The Detroit News*, 28 September 2005, p. 13M.

¹⁷¹ Arizona Secretary of State, *Press Release*, 2 August 2005.

¹⁷² SEC 301 (a) 3: ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—

The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; (B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place;

the purchase of Direct Recording Electronic (DRE) machines. DREs – along with other such voting systems – have been controversial, however, as concerns have been raised by computer experts as to whether they are secure. In part, this is because the nontransparent tabulation method of voting machine software is protected by secret proprietary software, and also because the methods of testing their accuracy are currently inadequate.¹⁷³

The security and accuracy issues surrounding electronic voting machines have attracted widespread attention. Concerns about DREs and other voting systems must be addressed in a way that ensures that citizens with disabilities can cast their ballots in private as required by HAVA.

Often there are too few machines at polling places to accommodate the number of voters who show up. In 2004, as in other high turnout elections, voters who waited into the night in long lines to cast their ballots made the news. However, in the years since 2004, little has been done to ensure that there will be sufficient numbers of machines at the ready to accommodate large numbers of voters when the time comes.

Voting Machine Distribution Formulas

Only some states have language in their election laws setting up formulas for ensuring that sufficient election equipment will be provided at each polling place to accommodate the number of voters who are likely to show up there to cast their ballot. In Arizona, for example, election law assigns responsibility to the state's counties for designating a "convenient" number of smaller election precincts within their boundaries. Each precinct has one polling place.¹⁷⁴ As for equipment at these polling places, the state has established a formula that specifies the number of voting machines that are to be provided based on the number of people the polling site is intended to serve.¹⁷⁵

¹⁷³ Lawrence Norden et al, "The Machinery of Democracy: Protecting Elections in an Electronic World," Brennan Center for Justice Task Force on Voting System Security, 27 June 2006, <http://www.brennancenter.org/programs/downloads/Full%20Report.pdf>.

¹⁷⁴ ARS 16-411 Designation of election precincts and polling places; electioneering. Accessed: <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/00411.htm&Title=16&DocType=ARS>.

¹⁷⁵ The voting machines are distributed according to the following formula: "Where voting machines are used, precincts shall be equipped by the board of supervisors to provide a minimum of two voting machines for any number up to five hundred registered electors, with one additional voting machine provided for each additional two hundred fifty registered voters, or major fraction thereof, up to one thousand registered voters, one additional voting machine for each additional five hundred registered voters, or major fraction thereof, up to two thousand registered voters, and one additional voting machine for each additional one thousand registered voters, or major fraction thereof, for all over two thousand registered voters." Each polling place must be provided with a "number of early ballots and printed ballots exceeding by at least one percent the number of registered voters whose names appear on the precinct register of the precinct, city, town, or district for which the ballots are printed." See ARS 16-430 Number of voting machines in a precinct. And ARS 16-508 Number of ballots furnished each polling place. Web: <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/00508.htm&Title=16&DocType=ARS>

Florida does not have a formula for determining the number of voting machines for each precinct. Each county supervisor of elections determines the number of machines to put in each precinct.¹⁷⁶

A law was passed in 2001 by the **Georgia** legislature requiring the standardization of all of Georgia's election equipment. Also in 2001, Georgia passed Act 164 (HB 110) mandating that "ballots be supplied in a number equal to active registered voters."¹⁷⁷ Currently, elections officials recommend one voting machine per 150-190 active voters. However, some counties report as many as 240 active voters per machine during the 2004 election. The state allotted voting machines to their respective counties in July; however, voter registration increased by 10 to 20 percent in some precincts between July and the general election. The state also kept 50 machines to be distributed to the precincts with greatest demand on Election Day and another 27 machines to replace units that malfunction.¹⁷⁸ Georgia was one of the many states in 2004 where voters had to wait in long lines in order to cast their ballots,¹⁷⁹ although state officials pinpoint the problems to two counties in particular and believe delays were related to voter check-in.¹⁸⁰ Since 2004, the state has made no move to change its guidelines or laws governing polling places in order to be fully equipped for large numbers of voters. In recent primary elections, the state has successfully implemented electronic poll books, which allow voters to check in at the polls more efficiently and with less confusion. The poll books were particularly helpful in directing voters who showed up at the wrong precinct to the proper precinct, minimizing the number of provisional ballots the localities needed to process.¹⁸¹

In **Minnesota**, it is difficult to predict the number of people who will turn out to vote since registration continues on Election Day, so Minnesota's formula for distributing voting machines and ballots is somewhat vague. There must be at least one voting machine for use by disabled voters, according to state law. Beyond this, each county

¹⁷⁶ Email response from Sarah Jane Bradshaw, Assistant Director, Florida Division of Elections

¹⁷⁷ National Conference of State Legislatures.

<<http://www.ncsl.org/programs/legman/elect/elections.cfm>>

¹⁷⁸ Brian Feagans, "Voting machines in short supply," *Atlanta Journal-Constitution*, 30 October 2004.

¹⁷⁹ "Long lines for some Georgia early voters," *CNN*, 27 October 2004. Web:

<http://www.cnn.com/2004/ALLPOLITICS/10/27/ga.advance.voting/index.html>. See also "Long lines and broken machines frustrate voters," "Georgia: Voters reportedly turned away early from line," "Georgia: Long lines, voting machine malfunctions," *Election Protection; People for the American Way*. 2 November 2004. Web: http://www.electionprotection2004.org/archives/cat_georgia.html. See also S. A. Reid, "Solutions sought for voting lines; Overcrowded polls starts talk of splitting precincts," *Atlanta Journal-Constitution*, 11 November 2004. and Carlos Campos, "Election 2004: Despite advance voting, bet on long lines Tuesday," *Atlanta Journal-Constitution*, 28 October 2004. and Henry Farber, "Election 2004: Early voting slogs to a restless end," *Atlanta Journal-Constitution*, 30 October 2004 and Gayle White, "Election 2004: Energized voters drive big increase in turnout," *Atlanta Journal-Constitution*. 3 November 2004.

¹⁸⁰ Email from Kathy Rogers, Director of Election Administration, Georgia Office of Secretary of State, 11 September 2006.

¹⁸¹ Daniel Yee, "New electronic voting rosters get good reviews," *Associated Press*, 19 July 2006.

(voting jurisdiction) is required to submit a plan outlining its voting machine allocation and budget for purchasing that equipment.¹⁸²

In **Ohio** in 2004 there were fewer voting machines available in more heavily minority, Democratic, and urban areas as compared to more heavily Republican, suburban, and exurban areas, leading to charges of partisan manipulation of the machine allocations. At Kenyon College, there were only 2 machines for 1,300 would-be voters, even though a surge in registrations promised a large voting population. At nearby Mt. Vernon Nazarene University, there were many machines and no lines. In Franklin County, election officials decided to make do with 2,886 machines and left at least 125 machines in storage, even though records indicated they would need at least 5,000 machines. In Lucas County, machines kept malfunctioning, eventually leading the county's election director to admit that prior tests of the machines had failed.¹⁸³ As part of House Bill 3, the state's controversial election reform act, the state must ensure that counties using DREs provide at least one machine for every 175 voters registered in the previous Presidential election. However, the provision does not take effect until 2013.¹⁸⁴

Meanwhile, the Sixth Circuit Court of Appeals recently remanded the case of *Stewart et al v. Blackwell* to district court for further fact finding. The case charges that the state's lack of uniformity in providing up-to-date, functioning voting technology to its various counties constitutes a violation of Equal Protection and the Voting Rights Act.¹⁸⁵

Wisconsin mandates at least one voting booth per 200 voters. However, the actual purchase and distribution of voting machines is the responsibility of each municipality. The state simply certifies specific technologies and then reimburses each municipality for its purchases.¹⁸⁶

Neither **Pennsylvania** nor **Washington** appears to have any formula regarding equipment distribution.

Implementation Conflicts

State and local election officials are conflicted in their efforts to satisfy the dual mandates to provide voting equipment that allows voters to verify their choices and that is accessible to all voters. Most voting machine-related problems occur between state election officials, local administrators, and voting machine vendors over one or a combination of the following issues:

¹⁸² "Help America Vote Act: Questions and Answers," Minnesota Secretary of State, 14 November 2005. Accessed: <http://www.sos.state.mn.us/home/index.asp?page=138>.

¹⁸³ Mark Crispin Miller, "None Dare Call it Stolen: Ohio, the Election, and America's Servile Press," *Harper's Magazine*, 1 August 2005.

¹⁸⁴ 3506.22 (p. 103) "A Guide to House Bill 3 AS PASSED 1-31-06." Web: <http://www.lwvohio.org/pdf/Guide%20to%20HB3.pdf>.

¹⁸⁵ "Briefing Paper: Current Election Administration Litigation." *ProjectVote*. July 2006.

¹⁸⁶ Governor Jim Doyle's website.

< http://www.wisgov.state.wi.us/journal_media_detail.asp?prid=1022&locid=19>.

- the equipment is non-compliant with HAVA accessibility provisions;
- the equipment is non-compliant with voter verification rules on state level;
- the equipment is not secure;
- the equipment is incompatible with current equipment used by state; *or*
- there are insufficient funds for locality to replace equipment.

The prototypical example of this battle is **Florida**, having experienced all of the above issues. Florida is the Ground Zero of voting machine troubles. So-called maverick elections supervisor Ion Sancho¹⁸⁷ of Leon County, Florida, began the fracas in 2005 when he refused to use Diebold machines to come into compliance with HAVA's requirement that accessible voting machines be in place by January 2006, citing security concerns. (Sancho hosted a test of Diebold's equipment, in which security experts hacked into the system and manipulated votes.¹⁸⁸) Outraged by Sancho's attack on its credibility, the company withdrew its bid to provide the county with its updated, accessible machines. The other two vendors authorized to provide election equipment to Florida voting jurisdictions also refused Sancho a contract¹⁸⁹, causing Leon County to miss the HAVA deadline for implementing accessible equipment¹⁹⁰ and to lose federal grant money for implementation costs.¹⁹¹

In February 2006, Florida Attorney General Charlie Crist investigated civil rights and anti-trust violations among the three voting machine vendors authorized to provide voting equipment to the state's voting jurisdictions. Secretary of State Sue Cobb was asked by Leon County Commissioner Bill Proctor to reopen talks with Diebold to bring the county into compliance with HAVA requirements.¹⁹² The discussions were successful in persuading Diebold to agree to provide Leon County with accessible equipment in time for the September 2006 primary.¹⁹³ However, the issue of security is far from resolved. In April 2006, the state proposed rules that would restrict voting machine security tests by local officials, much to the fury of Sancho and his fellow security skeptics.¹⁹⁴ "People in Leon County would rather vote on paper than on vapor," Sancho said.¹⁹⁵

¹⁸⁷ Peter Whoriskey, "Election whistle-blower stymied by vendors," *The Washington Post*, 26 March 2006.

¹⁸⁸ Tony Bridges, "Test shows voter fraud is possible; Machines are vulnerable to manipulation," *The Tallahassee Democrat*, 4 June 2005. See also Bill Cotterell, "Equipment test under fire; Manufacturer says its voting system may now be vulnerable," *The Tallahassee Democrat*, 10 June 2005. See also Marc Caputo and Gary Fineout, "New tests fuel doubts about vote machines," *The Miami Herald*, 15 December 2005.

¹⁸⁹ Jeff Burlew, "Voting-machine company says no thanks, Leon," *The Tallahassee Democrat*, 9 March 2006. See also Peter Whoriskey, "Election whistle-blower stymied by vendors; After official's criticism about three firms reject bid for voting machines," *The Washington Post*, 26 March 2006.

¹⁹⁰ Bill Cotterell, "Missed deadline costs county," *The Tallahassee Democrat*, 4 February 2006.

¹⁹¹ Jeff Burlew, "Sancho blasted for lost grant," *The Tallahassee Democrat*, 15 February 2006.

¹⁹² "Vote-machine feud probed," *The Orlando Sentinel*, 30 March 2006. See also Bill Cotterell, "Diebold to discuss selling needed voting equipment," *The Tallahassee Democrat*, 30 March 2006. See also Marc Caputo and Gary Fineout, "Crist goes after voting firms," *The Miami Herald*, 30 March 2006.

¹⁹³ Jeff Burlew, "Diebold says it will sell to Leon County," *The Tallahassee Democrat*, 14 April 2006.

¹⁹⁴ Gary Fineout, "Machine testing targeted," *The Miami Herald*, 9 June 2006. See also Jim Ash, "Sancho blasts new testing rules," *The Tallahassee Democrat*, 13 June 2006.

¹⁹⁵ Bill Cotterell, "Voting machine advice irks county; Officials: Touting a particular maker is wrong," *The Tallahassee Democrat*, 30 March 2005.

In response to a 2002 mandate by the **Michigan** state legislature that the state standardize its voting equipment by 2006, Secretary of State Land ordered all counties to adopt an optical scan system.¹⁹⁶ By current state law, there must be a single optical scan tabulator in each precinct to scan the ballots cast there. The larger of Michigan's counties also maintain backup optical scan machines in the event of equipment breakdowns.¹⁹⁷ There has been no word of problems with insufficient ballots in the state.¹⁹⁸

Michigan has experienced its own scuffle over implementation in the past few months. In 2003, after HAVA was passed, the state came up with a scheme for distributing federal funds for replacing voting machines (not in time for the 2004 election). Counties began upgrading their systems in 2005. As is the case in many other states, major population centers objected to the expense and inconvenience of adopting new, unfamiliar equipment. In Wayne County, every community except Detroit has embraced new equipment produced by Election Systems & Software. These machines have battery packs in case of outages (a problem in 2004¹⁹⁹)²⁰⁰ But Jackie Currie, Detroit City Clerk, refused to install the equipment chosen for the county by Wayne County Clerk Cathy Garrett, favoring a similar optical scan system produced by Sequoia Voting Systems that is more familiar to voters and more compatible with the equipment currently in use in the city. (Diebold Election Systems, Election Systems & Software, and Sequoia Voting Systems, the Big Three of voting machine vendors, are the only vendors approved to provide voting machines to Michigan counties.)²⁰¹ The city ultimately acquiesced to the county's request that it use the same equipment used elsewhere in the county.²⁰²

In **Minnesota**, there was an ongoing dispute in 2005 between the Secretary of State and three counties – Ramsey, Washington, and Anoka (all three in the Twin Cities area) – over what voting equipment to purchase to best meet the needs of voters with disabilities, specifically over what kind of voter interface the voting equipment offered. The counties ultimately complied with the state's request that they purchase Automark, produced by Election Systems and Software, rather than their preferred Diebold alternative. The Automark is the only voter assist terminal that produces a paper record of each vote cast. Another contentious issue was the higher cost of the Automark equipment. Funding for the improvements is being covered in part by federal grants. In the interests of preparing

¹⁹⁶ *State News Service*, "More Than Half of Michigan's Cities and Townships Will Soon Have New Optical Scan Voting Equipment," 19 April 2005.

¹⁹⁷ Email response from Bradley Wittman, Director, Election Liaison Division, 12 June 2006.

¹⁹⁸ Email response from Bradley Wittman, Director, Election Liaison Division, 12 June 2006.

¹⁹⁹ Joel Kurth, "Glitches delay voting in Detroit," *The Detroit News*, 4 August 2004. *See also* David Eggert, "Michigan poll workers report problems with election watchers, voting machines," *Associated Press*, 2 November 2004.

²⁰⁰ Darren A. Nichols, "County updates election system," *The Detroit News*, 24 June 2005. *See also* Mary Owen, "Warren: No more pulling the lever in the voting booth," *The Detroit Free Press*, 11 November 2004.

²⁰¹ Patricia Montemurri, "New voting system sought," *The Detroit Free Press*, 28 July 2005.

²⁰² "A vexing vote: Mayoral recount can offer lessons, nix gossip." *The Detroit Free Press*. November 26, 2005. *See also* Sarah Karush, "New Detroit city clerk faces first test in August primary," *Associated Press*, 24 July 2006.

for the 2006 elections and coming into compliance with HAVA, the three counties dropped their complaints to the Secretary of State in March 2006.²⁰³

Since **Missouri** Secretary of State Blunt announced in early 2004 that all new voting machines would need to produce paper records, there have been a number of cases in which counties or local voting jurisdictions have objected to the added expense of updating their equipment and have requested financial support from the state or have resisted implementation.²⁰⁴

Paper Records Rules

In 2002, HAVA provided unprecedented federal funding for the replacement of outdated, broken down voting equipment. In addition to requiring at least one accessible machine in each polling place, the new law required that all machines replaced using federal money had to produce a permanent paper record that could be used in recounts. HAVA did not, however, require that this record be verifiable by the voter. Many states opted to replace their old lever machines with Direct Response Electronic devices (DREs). More than half of the states have gone further, passing legislation requiring voting machines to produce voter verified paper audit trails (VVPAT).²⁰⁵ The EAC has issued guidelines for the use of VVPATs, including accessibility standards,²⁰⁶ and there have been additional statements by national voter advocacy organizations either urging other states to move in a similar direction or dropping their previous opposition²⁰⁷

Such legislation has been passed in **Washington**, where a VVPAT must be installed on all electronic voting devices. State law requires counties to have plans to purchase and

²⁰³ Emily Gurnon, "Voting machine appeals dropped; 3 counties had fought state over equipment for disabled," *Saint Paul Pioneer Press*, 22 March 2006.

²⁰⁴ Finn Bullers, "Casting vote on voting systems," *The Kansas City Star*, 25 December 2005.

²⁰⁵ We note that some machine experts question whether the VVPAT is the most effective means of ensuring the security and accuracy of the voting system, and some further postulate that ultimately any voting system is vulnerable to some form of malfeasance. See, e.g., Ted Selker and Sharon Cohen, "An Active Approach to Voting Verification," Caltech/MIT Voting Technology Project, May 2005; The Brennan Center for Justice, *supra* at note 163.

²⁰⁶ "If the normal procedure includes VVPAT, the [accessible voting system] should provide features that enable voters who are visually impaired and voters with an unwritten language to perform this verification. If state statute designates the paper record produced by the VVPAT to be the official ballot or the determinative record on a recount, then the [accessible voting system] shall provide features that enable visually impaired voters and voters with an unwritten language to review the paper record." Election Assistance Commission, *Voluntary Voting System Guidelines* § 7.9.7 (2005).

²⁰⁷ See, e.g. The Brennan Center for Justice, *supra* at note 163, at 87 (if VVPAT is combined with regular audit); American Council of the Blind, Resolution 2005-16 (acknowledging that a VVPAT would increase voter confidence but must be implemented in a way that preserves accessibility as mandated by HAVA); National Education Association at <http://www.nea.org/lac/votingrights/0706ltr.html>. <http://www.acb.org/resolutions/res2005.html#res2005-16>. Other organizations supporting VVPAT include Common Cause, People for the American Way, National Coalition on Black Civic Participation, Electronic Privacy Information Center, and the Electronic Frontier Foundation.

install VVPAT on all electronic voting devices used in Washington in 2006. (Because 34 of the state's 39 counties run all-mail elections, the expense and inconvenience will not be too great; thus, there has been little conflict over this issue in Washington, as there has been in other states with VVPAT.) **Ohio** was one of the first states to adopt VVPAT. Unfortunately, Ohio's HB 3, passed in 2006, dropped the requirement for random routine audits of those records. The bill specifies how the paper printout is to be treated in the event of a recount.²⁰⁸

Paper record battles are being initiated by outside groups like Voter Action, which raised concerns about faulty electronic voting equipment and successfully compelled New Mexico to adopt an all-paper optical scan ballot system. The group filed a lawsuit against the **Arizona** Secretary of State, arguing that the touch-screen voting technology the state has adopted for its 2,000-plus voting precincts is unreliable and susceptible to tampering.²⁰⁹ As a result, officials from several counties have postponed the purchase of their voting machines, raising the ire of advocates for voters with disabilities whom the new voting machines were intended to benefit.²¹⁰ Lawyers representing the Secretary of State, as well as several major counties, argued that the Voter Action suit was filed too late to repeal the decision about the voting machines that was made in December 2005. Most of the touch-screen voting devices had already been purchased, and it was too late to replace them in time for the September 2006 primary election.²¹¹ However, just as the legislative session was ending, the Arizona legislature passed a law (S.B. 1557) requiring VVPAT and audits, which was signed into law by the governor in June 2006.

In July 2006, a group of activists, including anti-DRE machine advocates and computer experts, filed a lawsuit against **Georgia** Secretary of State Cathy Cox, Governor Sonny Perdue, and the state Election Board, claiming that the state's touch-screen voting machines violate the requirement in the state constitution that elections be conducted by secret ballot, and protested the state's lack of a VVPAT requirement. The group aims to get the court to order the state to stop using the touch-screen equipment in the November 2006 election in favor of equipment that produces a paper trail. The state has announced plans to experiment with paper trail equipment in November 2006.²¹²

Several states are contemplating adopting VVPAT legislation. In 2006, the **Wisconsin** legislature passed paper trail legislation in the form of Act 92 (AB 627), which "requires that an electronic voting machine generate a complete, permanent paper record showing all votes cast by each elector that is verifiable by the elector, by either visual or nonvisual means (as appropriate), before the elector leaves the voting area." Act 92 further

²⁰⁸ "Direct Recording Electronic (DREs)." 3506.05(H)(3)(a)(vi)&(vii)(p.101). "A Guide to House Bill 3 AS PASSED 1-31-06." Web: <http://www.lwvohio.org/pdf/Guide%20to%20HB3.pdf>.

²⁰⁹ "Arizona may join fight over touch-screen voting machines," *Associated Press*, 21 March 2006.

²¹⁰ "Supervisors postpone purchase of electronic voting machines," *Associated Press*, 3 May 2006. See also Blake Morlock, "County mulls voting machines for disabled; Supervisor Elias says he has concerns about the touch-screen devices," *Tucson Citizen*, 13 May 2006.

²¹¹ Paul Davenport, "Lawsuit challenging voting machines called too late," *Associated Press*, 18 May 2006.

²¹² Carlos Campos, "Lawsuit targets accuracy of electronic voting machines," *The Atlanta Journal-Constitution*, 14 July 2006. See also Doug Gross, "Groups file lawsuit challenging Georgia electronic voting," *Associated Press*, 13 July 2006.

stipulates “if electronic voting machines are used at an election, any recount of votes cast on such machines must be performed using the permanent paper record of the votes cast generated by the machines.”²¹³ **Pennsylvania** does not require a paper trail. However, the state does require an audit trail that must be in a technology other than the original technology of the voting machine. Additionally, the state is currently considering HB 2000/SB 977, bills requiring that voting machines purchased with HAVA funds produce or incorporate a voter-verifiable paper ballot. These bills appear to be stuck in committee at present, and several citizen groups are advocating for their adoption. At the same time, Voter Action has sued the state to stop it from using electronic voting machines without a paper trail.²¹⁴

As a backup, Allegheny County will also print optical scan ballots during the upcoming May primary. Voters at sites with long lines will have the option of using the ballots, which resemble fill-in-the-blank standardized tests. When the polls close, workers will bring the ballots to a central location for counting.²¹⁵

RECOMMENDATIONS

Registration

After the 2000 election, researchers and elections officials cited problems with voter registration as the number one challenge to voting. In 2004, voter registration problems were exacerbated by the use of technicalities to reject registration applications, insufficient protocols for notification and correction of applications, and the continued wide gap between the registration deadline and Election Day. In most cases, these problems continue and in some cases have been made worse by new restrictions and barriers to voter registration.

Recommended reforms

- **Clarify what must be on the registration form in order for it to be accepted.** In order to avoid situations such as occurred in 2004 in places like Florida where registrations were rejected for failure to check off a redundant citizenship box, states should make it uniform and clear what must be included for a registration to be accepted as complete.
- **Improve procedures for notifying voters of incomplete registration forms.** When voters make mistakes or omit vital information on voter registration forms,

²¹³ National Conference of State Legislatures.

<http://www.ncsl.org/programs/legman/elect/elections.cfm>

²¹⁴ “Voter’s Rights Advocates Sue Over Paperless Voting Systems in Pennsylvania,” *Associated Press*, 16 August 2006

²¹⁵ Jerome Sherman, “Whew! A Voter Beats the Machine,” *Pittsburgh Post-Gazette*, 20 April 2006.

states must have procedures in place that allow for officials to promptly and effectively advise them of the problems and allow them to make any corrections or amendments necessary. Voters should have the opportunity to correct and/or amend registration forms, even after the voter registration deadline has passed.

- **Remove barriers to registration, such as proof of citizenship requirements.** Arizona now requires all voters to prove their citizenship in order to register to vote. This has already resulted in the rejection of registrations of eligible voters. It is doubtful that many of these voters will be able or willing to go through additional hoops to try to register once they have been rejected. This requirement and others like it under consideration are unnecessary and will reduce and deter voter participation.
- **Remove barriers to registration such as unduly harsh restrictions on third party voter registration drives.** Because the government does very little to actively ensure that Americans are registered to vote, third parties are an essential component in the effort to get voters involved in the political process, particularly voters from marginalized communities. Additionally, these third party groups play an important role in monitoring the processing of registration applications through internal verification checks of the forms and tracking of the registration process at elections offices. Laws that place restrictions that are so harsh on these groups that they effectively put them out of commission must not stand.
- **Implement Election Day Registration.** Many of the problems associated with the voter registration process could be avoided if voters had the option to register to vote on the day of the election, as is currently the case in 6 states. As an added bonus, those states with EDR consistently show substantially higher participation rates than the rest of the country, further demonstrating the extent to which early registration deadlines reduce voter participation.
- **Ensure full implementation of NVRA, especially public agency requirements.** NVRA was passed, in part, to make registration easier and more accessible to a wider range of Americans. One way this was to be achieved was for public agencies serving various communities to offer voter registration on-site. States must live up to their obligations to ensure that these agencies are complying with the law and providing voter registration opportunities for those who may not otherwise be familiar with the voter registration process.
- **Remove barriers to voting for citizens with felony convictions.** Nearly 5 million Americans cannot vote due to a felony conviction. In 13 states, people with felony convictions can lose the right to vote permanently. In most other states, persons on probation and on parole are denied the vote, keeping substantial numbers of people from the polls, while many other citizens remain effectively

disfranchised either by misinformation about their voting rights or by unwarranted bureaucratic hurdles.

Voter Databases

When the Help America Vote Act was passed, the statewide voter registration database was considered an important tool in ensuring that all eligible voters but *only* eligible voters are registered and able to vote. These databases still hold enormous promise, but not if they are used ineffectively or as a means to take voters off the rolls injudiciously. With respect to use of databases, some states have nonexistent or poor procedures and others have rules that are likely to lead to disenfranchisement.

Recommended Reforms

- **Fair and effective matching protocols.** No matter how well a state's database is constructed, it will only work as well as the humans who are operating it and the rules that govern its administration. As a result, standards for matching voter registration information with information in current databases must be both fair and effective and not so technical that they serve to disenfranchise voters rather than to ensure clean lists. Specifically, states should not impose exact match standards, but rather employ *substantial* match standards.
- **No removal without verification and notification of the voter, including persons convicted of felonies.** Since databases rely on the people who are operating them, mistakes will be made. As a result, no voter should be removed from the list without being given timely and effective notification of the pending removal and an opportunity to contest that removal.
- **Automatic re-enfranchisement of ex-felons.** While automatic re-enfranchisement of ex-felons is important as a matter of maintaining democratic values, it also will serve to simplify and streamline election administration. If ex-felons are automatically re-enfranchised after completing their sentences, administrators will be freed of the burdens of tracking an ex-felon's multiple possible eligibility statuses in an attempt to determine whether he or she should be on the list.
- **Voters should be able to confirm their presence on the voter rolls by phone or on the Internet.** Many voter registration problems could be alleviated if voters were able to check easily to ensure that they are registered properly. That way, the voter has the opportunity to proactively address problems that may have occurred with his or her registration in a timely manner and make sure he or she is able to vote.

- **The technology must be open and must be rigorously tested, with vendors subject to restrictions on partisanship or conflicts of interest.**

Identification Requirements Should be Limited to Those Mandated by HAVA

Many state legislatures, including some identified in this study, have passed or are currently considering passing restrictive voter identification bills that go well beyond what HAVA requires. These bills would require all voters to present at least one form of acceptable identification at the polls on Election Day, in many cases mandating that all voters present state-issued photographic identification, before they would be permitted to cast their votes. Such requirements pose significant barriers for millions of Americans and should be rescinded where they have been enacted and prevented from being implemented elsewhere for the following reasons:

- **They disproportionately impact people of color, rural voters, young people, the homeless, low-income people, the elderly, individuals with disabilities, frequent movers, and persons in large households.** A number of studies have documented that certain segments of the population are far less likely to have state-issued identification than others Americans. Long lines at the polling place and long waiting times created by voter ID requirements will prevent many working citizens from having the chance to vote.
- **Requiring voter identification is equivalent to a poll tax.** By requiring voters to provide identification, states are in essence mandating that these voters pay for documents to verify their identities. IDs such as drivers' licenses, passports, and birth certificates cost money. The documents required to get those IDs also cost money. Not all eligible voters in this country can afford to purchase such pieces of identification. Moreover, not all Americans can take time during working hours to obtain such identification documents.
- **Voter identification is not an effective means of preventing or catching voter fraud.** Claims that fraud is rampant on Election Day are unjustified and unfounded. Individual voter fraud at the polls is rare. Based on recent studies and investigations completed in several states such as Wisconsin and Ohio, evidence suggests that voter fraud is minimal and unlikely to impact election results. In addition, voter ID does not prevent more pernicious election fraud such as voter intimidation, voter suppression, misinformation, vote buying, and other threats to the integrity of elections.

Enforce Laws Prohibiting Voter Suppression/Intimidation

Efforts to illegally suppress the vote and to intimidate voters continue across the United States. Some efforts push the lines of legality, such as targeted and mass challenges to

voters' registrations and voters' rights to vote at the polls. Others are less subtle, such as distributing fliers with false information about election procedures in minority neighborhoods. Yet states are doing little to address these ongoing problems. More must be done to prevent, punish, and rectify the damage of these activities.

Recommended reforms

- **State and local government must enforce existing laws and prosecute illegal activities intended to intimidate voters or disrupt turnout.** Many suppression and intimidation activities continue to take place because those who engage in them believe there will be no repercussions for doing so. Too often, they are right. Sometimes no action is taken, while on occasion these malfeasants are simply told by an administrator to stop engaging in the offensive activity. This is insufficient and unacceptable.
- **State and local governments must prosecute deceptive practices criminally and have in place emergency procedures to immediately correct the information spread by deliberate misinformation campaigns.** The use of deceptive practices during an election should be criminalized and prosecuted aggressively. While it is sometimes impossible to catch the individuals or groups responsible for disseminating fraudulent information immediately, officials can take aggressive steps to quickly and effectively alert the public to the fraud and educate them about accurate election procedures. It is crucial that administrators use all educational and public relations resources at their disposal when such situations arise.
- **Local and state election officials should allow international and nonpartisan election observers to observe polling places without prior notice or permission, provided they do not disrupt Election Day.** In 2004, international observers were told a number of times that they could not conduct their observation activities at a polling site. While concerns about crowding are real, international and nonpartisan observers serve not only to document possible disenfranchising or other illegal activity, but often deter it. They should, within reason, be a welcome part of the process.
- **States must establish fair standards for challenges.** All states should have uniform challenge procedures characterized by transparency and fairness; such procedures must be designed in such a way that they prevent disenfranchisement or voter deterrence. Such standards should include penalties for overtly partisan, racial, ethnic, or otherwise frivolous challenges. States should enact stringent requirements for when a challenge may be made by a challenger at the polls. States should also require pre-election challenges to be filed well ahead of Election Day.

Reduce Partisanship and Conflict of Interest in Election Administration

To avoid even the appearance of impropriety, government officials in charge of running elections should not be engaged in partisan political campaigns. This occurred in 2000 and 2004, raising the level of voter mistrust in the system.

Recommended reforms

- **Prohibit election administrators from participating in partisan political campaigns.** Elected officials should be limited to participation in their own campaigns. For example, the Secretary of State or the county elections director, individuals who are charged with administering and overseeing elections, should not play a role in a partisan campaign for senator or president.
- **Include nonpartisan and unaffiliated voters in decision-making, poll watching, and other aspects of election administration.** By definition, partisan overseers are watching out for their own political party's interest. The current practice of allowing only partisan participation results in a lack of impartial oversight of the election system.
- **Establish strict conflict-of-interest laws for all elections officials.** Campaign contributions from vendors to election officials, revolving-door arrangements by which election officials become lobbyists for vendors, and other such ethical improprieties erode public confidence in elections and contribute to weak election management.
- **Establish strong sunshine laws around all decision-making by election officials.** Decisions that are subject to public scrutiny better serve the public interest.

Fix, Replace, Test, and Maintain Voting Machines

The nation still has not fixed the machinery of voting. In 2006, approximately 40 percent of voters will use electronic voting machines that have been subject to questions about their security and reliability. Due to controversies that have erupted over these systems, many jurisdictions have yet to meet HAVA's requirement of one accessible machine per polling place. Elections officials need to take a step back and take another look to determine the best technology for voting that meets the goals of accessibility, accuracy, and security.

Recommended Reforms

- **Enable voters with disabilities to vote privately and independently and accommodate citizens for whom English is not their primary language.** Voting systems should undergo rigorous testing by those with special needs, and a better public rating system should be devised.
- **Institute better testing, maintenance, and independent certification processes.** While remaining mindful of accessibility and language requirements, voting systems must either incorporate or create an accessible voter-verified paper record that is used in recounts and audits,²¹⁶ and mandatory random audits must be scheduled. Studies by government, academic, and private-sector experts concur that a significant risk of malfunction or security breach is present in all current voting systems. The only way to safeguard voters' choices is to conduct extensive testing and auditing prior to and immediately after an election, and to enact stringent security measures regarding the handling of voting machines and software.
- **Open the process for testing and certification and allow computer security experts access to the voting machine software.** Election officials and citizens should have access to published independent evaluations of their voting systems. To ensure voter confidence, testing and certification procedures must be open to public scrutiny.
- **Ensure that the U.S. Election Assistance Commission (EAC) and the National Institute for Standards and Technology have sufficient funding for setting standards for voting systems and for updating those standards whenever necessary.** Voter confidence is the bedrock of our election system and should not be held hostage to insufficient funding.
- **Base allocation standards for voting machines on the latest registration numbers and other factors such as demographic data, the length of the ballot, and recent voter turnout.** Long lines at the polling place act as a deterrent to voters, effectively disenfranchising those who cannot afford to wait due to childcare, work, or other time commitments. All possible efforts must be made to accommodate all voters.

The Polling Place: Poll Worker Training and Recruitment, Accessibility, and Voter Education

²¹⁶ Some organizations in the Leadership Conference on Civil Rights have not endorsed the use of voter-verified paper records on electronic voting systems.

The operation of the polling place is perhaps the most critical element in our voting system. Poll workers are the bedrock of our voting system. Too often in 2004, problems arose and voters were disenfranchised because poll workers were improperly trained or were misinformed. Voters were likewise not fully informed on their rights or on voting procedures, further adding to the confusion. And while HAVA requires every polling place to have accessible voting machines, many voters with disabilities still face barriers due to inaccessible polling places and uninformed poll workers. While some states have made improvements in these areas, more must be done.

Recommended Reforms

- **Poll worker training should be rigorous, ensuring that poll workers meet minimum standards for knowledge of election procedures.** Such training should cover laws and regulations governing voting and polling places; how to assist non-English speaking voters; how to assist and provide accommodations for voters with disabilities; how to assist voters with various problems (e.g., the voter is not registered, the voter came to the wrong polling place, etc.); and how to operate voting machinery in use at the polling place.
- **Ensure that there are enough poll workers on Election Day.** To ensure an adequate number of poll workers, minimum standards governing the number of poll workers and voting systems per polling place should be set for each jurisdiction. Innovative approaches for recruitment should be explored, including using students and a random system of recruiting citizens (as, for instance, in recruiting for jury duty).
- **Voters should be provided with information about the process.** Voters should receive written information about their voting rights when they register and when they vote. During the three months preceding an election, there should be open training days during which voters can learn how to operate voting equipment. Such training days should be held in accessible public places, such as public schools, shopping malls, and community centers.
- **Polling places should be physically accessible to voters with disabilities.** In addition to dealing with obvious barriers like stairways, election officials must also ensure that areas such as entrances and parking areas are fully accessible to persons using wheelchairs, walkers, or other mobility devices, that voting machine controls can be reached by voters in wheelchairs, and that polling place instructions can be easily understood and are available in multiple formats such as Braille, large print, audio, and so on. Provisional ballots should not be used as portable ballots for voters with disabilities, in place of regular ballots.
- **Poll worker training should cover the rights of people with disabilities as well**

as ways to provide accommodations in a respectful, dignified way. This training should include matters such as the use of assistants and what constitutes an acceptable signature upon check-in. Poll workers and election officials should consult with people with a variety of disabilities and with disability advocacy organizations before Election Day.

Develop Uniform Statewide Provisional Ballots Standards

When HAVA was passed, the hope was that provisional ballots would be the safeguard against a voter arriving at a polling place, being told she is not on the voting list, and then being turned away. HAVA's vagueness in describing how these ballots are to be administered created a number of problems in 2004. This produced a wide range of overly technical and, at times, disenfranchising rules for distributing and counting provisional ballots. Provisional ballots must be fully implemented as a meaningful safety net for voters when there are problems with registration or ID requirements.

Recommended reforms

- **Voters should be allowed to cast a provisional ballot for federal or statewide offices even if, for whatever reason, they are not in their own precinct.** In no case should a provisional ballot cast at the wrong precinct but at the right polling site be disqualified. This simply means in many cases that a voter went to the wrong desk in the right school or gym. It is clear that voters not knowing where to vote is a major problem. One of the many national voter hotlines set up during the weeks before Election Day 2004, 1-866-myvote1, received 100,000 phone calls from people trying to find out where they were supposed to vote. Voters should not be disenfranchised due to failures in administration.
- **Provisional ballots should be utilized fairly when a voter does not have required identification.** If a voter arrives at the polls without identification, but was required under HAVA to bring ID, election administrators should allow that voter to vote by provisional ballot and make every effort to verify that voter's eligibility through available databases after the election. If such verification is made, the provisional ballot should be counted.

APPENDIX 1

23 states require voting machines to produce a VVPAT (AK, AZ, AR, CA, CO, CT, HI, ID, IL, ME, MO, MT, NV, NJ, NM*, NY*, NC, OH, OR, UT, WA, WV, WI)

4 states require paper-based ballot systems (MI, MN, NH, VT)

Of the 23 states that require voting machines to produce a VVPAT, 17 use electronic voting machines in at least one jurisdiction (AK, AZ, AR, CA, CO, HI, IL, MO, NV, NJ, NM, NC, OH, UT, WA, WV, WI) while 6 do not use any electronic voting machines (CT, ID, ME, MT, NY, OR).

15 states and the District of Columbia use electronic voting machines in at least one jurisdiction and do not require VVPATs (DE, DC, FL, GA, IN, IA, KS, KY, LA, MD, PA, SC, TN, TX, VA, WY)

7 states do not use any electronic voting machines and do not have any regulations requiring VVPATs (AL, MA*, NE, ND, OK, RI, SD)

Notes: Mississippi, does not require VVPATs, but in the 77 counties that received electronic voting machines in 2005, the machines produce a VVPAT.

Massachusetts is in the process of selecting an accessible voting system.

New Mexico passed a law requiring paper ballot; however, news reports indicate that it is not clear that all 33 counties will have paper-based systems in place by the November 2006 election.

New York counties are still in the process of selecting an accessible voting system. Lever voting machines will still be in place for the November 2006 election.

From Electionline.org

APPENDIX II STATE PROFILES

ARIZONA

Issue	Pre 2004	Post 2004	Assessment
Voter Registration <i>Rejection</i>	Affirmation of citizenship required for registration to be accepted.	Voters must submit proof of citizenship to register to vote.	<u>Unsatisfactory</u>
<i>Verification</i>	Exact match for ID numbers and DOB; at least 5 letters in common for last names, 3 in common for first names. ²¹⁷ Automated.	[No change.]	<u>Acceptable</u>
<i>Notification</i>	County recorder must notify voter by mail within 10 days of receipt of registration that needed information is missing. ²¹⁸	[No Change.]	<u>Acceptable</u>
<i>Database</i>	Statewide database implemented in 2004. ²¹⁹	In response to an RFP issued by the EAC for a “more robust” database, the state is working to make its database more centralized. ²²⁰	<u>Inconclusive</u>
<i>3^d Party Registration NVRA Implementation</i>	No specific rules. State is proactive about implementing §7 provisions	[No Change.] [No Change.]	<u>Acceptable</u> <u>Acceptable</u>
Voter Identification	A voter is admitted into the polling place if the poll worker can find the voter’s name on the precinct list. ²²¹	To vote at the polls, voters are required to present one government-issued photo ID or two approved non-photo IDs. ²²²	<u>Unsatisfactory</u>

²¹⁷ ²¹⁷ Justin Levitt, Wendy R. Weiser, and Ana Munoz. “Arizona” in “Making the List: Database Matching and Verification Processes for Voter Registration,” The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006.

²¹⁸ Arizona Revised Statutes 16-134 (B).

“IBM to Develop Arizona Voter Registration Management System; Election Systems and Software to Provide Secure Centralized Database,” IBM Corporation, *Press Release*, 13 January 2006.

²²⁰ Electionline.org, “Assorted Rolls: Statewide Voter Registration Databases under HAVA.” June 2005. <http://electionline.org/Portals/1/Assorted%20Rolls.pdf>: pg 15.

²²¹ Arizona Revised Statutes 16-579 (A).

²²² Arizona Revised Statutes 16-579 (A) Amended by 2004 Proposition 200.

<i>Provisional Ballots Distribution</i>	Voter issued provisional ballots if: appears at the polls without proper ID; fails to notify county registrar of change of address within precinct. ²²³	[No Change.]	<u>Unsatisfactory</u>
<i>Verification</i>	Ballot counted if the county recorder is able to establish within five days of the election that the voter was properly registered to vote. ²²⁴	[No Change.]	<u>Acceptable</u>
<i>Wrong Precinct</i>	Ballot is not counted if it is cast in the wrong precinct. ²²⁵	[No Change.]	<u>Unsatisfactory</u>
<i>Suppression/Challenges</i>	State law prohibits influencing election outcomes via mail fraud and explicit intimidation of an individual for the purposes of influencing his or her vote. ²²⁶	[No Change.]	<u>Inconclusive</u>
<i>Deceptive Practices Law</i>	Each political party is allowed one challenger per precinct; challengers can challenge a voter orally if there is reason to believe he/she is voting illegally. ²²⁷	[No Change.]	<u>Unsatisfactory</u>
<i>Challengers</i>			
<i>Polling Place/Poll Workers Training</i>	Poll workers required to attend training course no more than 45 days prior to election. ²²⁸	[No Change.]	<u>Inconclusive</u>
<i>Recruitment</i>	No new recruitment programs.	[No Change.]	<u>Inconclusive</u>
<i>Voting Machines Distribution</i>	State law lays out a formula for determining the number of voting		<u>Acceptable</u>

²²³ ²²³ Justin Levitt, Wendy R. Weiser, and Ana Munoz. "Arizona" in "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006. Also see Arizona Revised Statutes 16-584 (C)

²²⁴ Arizona Revised Statutes 16-584 (E).

²²⁵ Electionline.org, "Provisional Ballot Verification." <http://electionline.org/Default.aspx?tabid=1113>.

²²⁶ Arizona Revised Statutes 16-925, 16-1012, 16-1013, 16-1019.

²²⁷ Arizona Revised Statutes 16-552, 16-590, 16-591, 16-592, 16-593, 16-594.

²²⁸ Arizona Revised Statutes 16-532.

<i>Verification</i>	machines with which each polling place must be equipped based on the size of the population it serves. No voter verified paper trail law.	2006 law requires voter verified paper record and audits	<u>Acceptable</u>
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FLORIDA

Issue	Pre 2004	Post 2004	Assessment
Voter Registration <i>Rejection</i>	Application is not accepted unless it includes all of the following: name, residence address, date of birth, affirmation of citizenship, Florida driver's license number, Florida identification card number, or last four digits of social security number, affirmation that registrant is not ineligible to vote because of a felony conviction, affirmation that registrant is not mentally incapacitated, signature. ²²⁹	[No changes.] ²³⁶	<u>Unsatisfactory</u>
<i>Verification</i>	Registration information verified against existing records at the Department of Highway Safety and Motor Vehicles, the U.S. Postal Service, and other agencies. ²³⁰	For verification, the following information is used: identifying number, first name, last name, date of birth, and gender, using a "substantial match" standard for the driver's	<u>Acceptable</u>

²²⁹ Florida Statutes: Title IX, Chapter 97.053 "Acceptance of voter registration applications." [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC053.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20053#0097.053.

²³⁰ Florida Statutes: Title IX, Chapter 98.075 "Other registration list maintenance activities." [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0098/SEC075.HTM&Title=-%3E2004-%3ECh0098-%3ESection%20075#0098.075.

²³¹ ²³¹ Justin Levitt, Wendy R. Weiser, and Ana Munoz. "Florida" in "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006. Web:

<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Florida.pdf>. See also Florida Statutes: Title IX, Chapter 98.075 "Registration records maintenance activities; ineligibility determinations."

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0098/SEC075.HTM&Title=-%3E2006-%3ECh0098-%3ESection%20075#0098.075.

²³² Florida Statutes: Title IX, Chapter 98.0977 "Statewide voter registration database; operation and maintenance." [2004]

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0098/SEC0977.HTM&Title=-%3E2004-%3ECh0098-%3ESection%200977#0098.0977.

²³³ Florida Statutes: Title IX, Chapter 97.057 "Voter registration by the Department of Highway Safety and Motor Vehicles." [2004]

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC057.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20057#0097.057

<p><i>Notification</i></p>	<p>The state notifies registrants of incomplete, illegible, or unverified information by mail to the registrant's last known address. To rectify the problem, the voter must</p>	<p>license; on registration forms with social security numbers, verification requires an exact match of the SSN-4, first name, last name, month of birth, and year of birth.²³⁷ Registration is only accepted as valid if the identification numbers can be verified; if they cannot, the voter must either submit a new registration or cast a provisional ballot and present a verifiable identification number within 3 days of the election.²³⁸</p>	<p><u>Acceptable</u></p>
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²³⁴ Florida Statutes: Title IX, Chapter 97.058 “Voter registration agencies.” [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC058.HTM&Title=-%3E2004-%3ECh0097-%3ESection%20058#0097.058.

²³⁵ “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004,” *United States Election Assistance Commission*, 30 June 2005.

²³⁶ Florida Statutes: Title IX, Chapter 97.053 “Acceptance of voter registration applications.” [2006]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC053.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20053#0097.053

²³⁷ ²³⁷ Justin Levitt, Wendy R. Weiser, and Ana Munoz. “Florida” in “Making the List: Database Matching and Verification Processes for Voter Registration,” *The Brennan Center for Justice: Voting Rights and Elections Series*, 24 March 2006. Web:

<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Florida.pdf>.

²³⁸ Florida Statutes: Title IX, Chapter 97.053 “Acceptance of voter registration applications.” [2006]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC053.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20053#0097.053

²³⁹ Electionline.org, “Statewide Voter Registration Database Status.”
<http://electionline.org/Default.aspx?tabid=288>.

²⁴⁰ Florida Statutes: Title IX, Chapter 97.0575 “Third-party registrations.”
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC0575.HTM&Title=-%3E2005-%3ECh0097-%3ESection%200575#0097.0575.

²⁴¹ Florida Statutes: Title IX, Chapter 97.057 “Voter registration by the Department of Highway Safety and Motor Vehicles.” [2006]

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC057.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20057#0097.057. and Florida Statutes: Title IX, Chapter 97.058 “Voter registration agencies.” [2006]

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC058.HTM&Title=-%3E2006-%3ECh0097-%3ESection%20058#0097.058.

<p><i>Database</i></p> <p><i>3^d Party Registration</i></p> <p><i>NVRA Implementation</i></p>	<p>submit a new registration form within 30 days of having received the notice.²³¹ The state used a voter registration list that was populated using the lists produced by localities.²³²</p> <p>No laws governing third-party registrations.</p> <p>State law provides for the implementation of the "Motor-Voter" ²³³ section of the NVRA , as well as the §7 public assistance agency provisions.²³⁴ State reports that it is fully enforcing these provisions.²³⁵</p>	<p>State uses a top-down database that is currently in compliance with HAVA requirements concerning registration databases.²³⁹ The state requires individuals registering voters on behalf of a third party group to register their name and the name of their group with the state, and to return each registration form they collect to the supervisor of elections or elections division within 10 days of the applicant having signed it. Failure to follow this procedure results in fines of up to \$5,000 per application.²⁴⁰ The constitutionality of this law is currently being litigated. [No Change.]²⁴¹</p>	<p><u>Acceptable</u></p> <p><u>Unsatisfactory</u></p> <p><u>Acceptable</u></p>
<p>Voter Identification</p>	<p>First-time voters who registered by mail must present a valid photo ID at the polls; if he/she does not present ID at the polls, his/her identity can be established by comparing his/her signature on the ballot to that on the registration form. The election inspector or clerk must fill out an</p>	<p>Voters must present an approved form of photo ID in order to vote at the polling place; voters who appear without proper ID may cast a provisional ballot.²⁴³</p>	<p><u>Unsatisfactory</u></p>

	affidavit acknowledging the voter's identity. ²⁴²		
<i>Provisional Ballots Distribution</i>	A provisional ballot is issued to a voter who claims to be eligible to vote but whose name does not appear on the voter registration list and voters whose eligibility are challenged. ²⁴⁴	Voters without proper ID, as well as voters whose eligibility has been challenged, or whose names do not appear on the list, may vote a provisional ballot. ²⁴⁶	<u>Acceptable</u>
<i>Verification</i>	The county canvassing board shall determine eligibility. If it is determined that the voter is eligible to vote in that precinct, then the provisional ballot is verified by a comparison of the voter's signature on the provisional ballot to the signature on the voter's registration form on file.	A voter who casts a provisional ballot because his/her eligibility is in question has until 5:00 PM on the third day following the election to submit proof of eligibility to vote in the precinct where the provisional ballot was cast. ²⁴⁷	<u>Acceptable</u>
<i>Wrong Precinct</i>	Provisional ballots cast in the wrong precinct will not be counted. ²⁴⁵	[No Change.]	<u>Unsatisfactory</u>

²⁴² Florida Statute: Title IX, Chapter 101.49 "Procedure of election officers where signatures differ." [2004] http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/Sec49.HTM See also Florida Statutes: Title IX, Chapter 97.0535 "Special requirements for certain applicants." [2004]

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/Sec0535.HTM. And Florida Statutes: Title IX, Chapter 101.043 "Identification required at polls." [2004] http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/SEC043.HTM&Title=-%3E2004-%3ECh0101-%3ESection%20043#0101.043.

²⁴³ Electionline.org: "Voter ID Laws." <http://electionline.org/Default.aspx?tabid=364>.

²⁴⁴ Florida Statute: Title IX, Chapter 101.111 (3)(b) 2004

²⁴⁵ Florida Statute: Title IX, Chapter 101.048 "Provisional ballots." [2004] http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/SEC048.HTM&Title=-%3E2006-%3ECh0101-%3ESection%20048#0101.048.

²⁴⁶ Florida Statute: Title IX, Chapter 101.048 "Provisional ballots." [2006.] http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/SEC048.HTM&Title=-%3E2006-%3ECh0101-%3ESection%20048#0101.048. See also National Conference of State Legislatures. NCSLnet Search: Election Reform Legislation. http://www.ncsl.org/programs/legman/elect/elections_search.cfm.

²⁴⁷ Ibid

Suppression/Challenges <i>Deceptive Practices Law</i>	No explicit prohibitions of suppression or deceptive practices. ²⁴⁸	[No Change.]	<u>Unsatisfactory</u>
<i>Challengers</i>	Any registered voter or poll watcher may challenge the right of another voter to cast a ballot if they fill out an oath; there is a penalty for frivolous challenges.	[No Change.]	<u>Acceptable</u>
Polling Place/Poll Workers <i>Training</i>	Clerks working at the polls must participate in at least 3 hours of training conducted by the supervisor of elections, and inspectors must participate for at least 2 hours.	[No Change.] ²⁵⁰	<u>Acceptable</u>
<i>Recruitment</i>	State law calls for the establishment of public-private programs with the business and local communities for recruiting poll workers. ²⁴⁹		<u>Exemplary</u>
Voting Machines <i>Distribution</i>	No statewide standards for machine distribution. ²⁵¹	[No Change.] ²⁵³	<u>Unsatisfactory</u>
<i>Verification</i>	Florida counties may choose to use optical scan machines or DREs. The state does	[No Change.]	<u>Unsatisfactory</u>

²⁴⁸ Florida Statutes: Title IX, Chapter 104.0515 “Voting rights; deprivation of, or interference with, prohibited; penalty.” [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0104/SEC0515.HTM&Title=-%3E2004-%3ECh0104-%3ESection%200515#0104.0515.

²⁴⁹ Florida Statutes: Title IX, Chapter 102.014 “Poll worker recruitment and training.” [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0102/SEC014.HTM&Title=-%3E2004-%3ECh0102-%3ESection%20014#0102.014.

²⁵⁰ Florida Statutes: Title IX, Chapter 102.014 “Poll worker recruitment and training.” [2006]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0102/SEC014.HTM&Title=-%3E2006-%3ECh0102-%3ESection%20014#0102.014.

	not have a VVPAT law. ²⁵²		
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²⁵¹ Florida Statutes: Title IX, Chapter 101.001 “Precincts and polling places; boundaries.” [2004]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/SEC001.HTM&Title=-%3E2004-%3ECh0101-%3ESection%20001#0101.001.

²⁵² Electionline.org, “Voter-Verified Paper Audit Trail Laws & Regulations.”
<http://electionline.org/Default.aspx?tabid=290>.

²⁵³ Florida Statutes: Title IX, Chapter 101.001 “Precincts and polling places; boundaries.” [2006]
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0101/SEC001.HTM&Title=-%3E2006-%3ECh0101-%3ESection%20001#0101.001.

GEORGIA

Issue	Pre 2004	Post 2004	Assessment
Voter Registration <i>Rejection</i>	Registration is rejected if it is missing any of the following: full legal name; address; full social security number; oaths affirming citizenship and proper voting age; copy of valid identification if a first-time voter. ²⁵⁴	Social Security number requirement has been successfully challenged in federal court and final outcome of the requirement is pending. ²⁵⁸	<u>Unsatisfactory</u>
<i>Verification</i>	State does not match the information provided on the registration form to any statewide databases.	[No Change.]	<u>Inconclusive</u>
<i>Notification</i>	The board of registrars will notify the voter in writing if information is missing on their registration form. The voter must supply the board with corrected information within 30 days of receiving notice, through Election Day. ²⁵⁵	[No Change.]	<u>Acceptable</u>
<i>Database</i>	Has used a top-down statewide database for over ten years. ²⁵⁶	[No Change. In compliance with HAVA deadlines.]	<u>Acceptable</u>
<i>3rd Party Registration</i>	No specific rules.	New state Election Board rules require all groups conducting registration drives to collect only sealed registration forms, and prohibits them from	<u>Unsatisfactory</u>

²⁵⁴ Office of the Georgia Secretary of State:

http://www.sos.state.ga.us/elections/voter_registration/vra_2003_update.pdf

²⁵⁵ Georgia Code 21-2-220 http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=21-2-220

²⁵⁶ Electionline.org, "Assorted Rolls: Statewide Voter Registration Databases Under HAVA," June 2005. <http://electionline.org/Portals/1/EB11.FINAL1.pdf>

²⁵⁷ Georgia Code 21-2-222. <<http://www.legis.ga.gov/legis/GaCode/data/21-2-222.htm>>

²⁵⁸ Carlos Campos, "Legislature 2005: Voters Win Suit Over Registration," *Atlanta Journal Constitution*, 2 February 2005, and *Schwier v. Cox*: <http://caselaw.lp.findlaw.com/data2/circs/11th/0511428p.pdf>.

<i>NVRA Implementation</i>	State is implementing "Motor-Voter" provisions; Georgia Code 21-2-222 requires implementation of §7 public aid agency provisions; unclear whether the law is being enforced. ²⁵⁷	making photocopies of the applications. ²⁵⁹ [No Change.]	<u>Inconclusive</u>
Voter Identification	Voters must present one of several possible forms of identification at the polls in order to vote; first-time voters must submit a copy of a valid identification with their registration.	State recently enacted a law requiring voters to present government-issued photo identification at the polls; voting rights advocates challenged the law in court. The court has enjoined implementation of the requirement, but the case is on appeal.	<u>Unsatisfactory</u>
<i>Provisional Ballots Distribution</i>	Voters are given provisional ballots if they appear to vote without proper identification. ²⁶⁰	[No Change.]	<u>Acceptable</u>
<i>Verification</i>	Voters must return to the county election office with proper ID within 48 hours of voting in order for their ballot to count. ²⁶¹	[No Change.]	<u>Unsatisfactory</u>
<i>Wrong Precinct</i>	Provisional ballots cast in the wrong county will not be counted; ballots cast at the wrong polling place but in the correct county will be counted for all applicable races. ²⁶²	[No Change.]	<u>Acceptable</u>
<i>Suppression/Challenges Deceptive</i>	No laws pertaining	[No Change.]	<u>Unsatisfactory</u>

²⁵⁹ "Election board faces lawsuit over voter registration rules," *Atlanta Journal-Constitution* 17 August 2006. [NAACP, Project Vote, ACORN, and the Coalition for the People's Agenda have filed a lawsuit against the Secretary of State and the State Election Board.]

²⁶⁰ Georgia Secretary of State website. <http://www.sos.state.ga.us/elections/elections/voter_information/>

²⁶¹ *Atlanta Journal-Constitution*, "Feds Should Kill Voter ID Law," 31 July 2005.

²⁶² electionline.org, "Election Reform: What's Changed, What Hasn't and Why, 2000-2006," p. 46.

<p><i>Practices Law</i></p> <p><i>Challengers</i></p>	<p>directly to deceptive practices. Registrations can be challenged if there is reason to believe that the voter is not eligible or if he/she does not live at the address listed on the registration.</p>	<p>[No Change.]</p>	<p><u>Unsatisfactory</u></p>
<p>Polling Place/Poll Workers <i>Training</i></p> <p><i>Recruitment</i></p>	<p>According to Georgia Code, poll workers must be “adequately trained” and the state provides extensive instruction on the operation of voting machines and identification requirements.²⁶³ High schoolers are allowed and encouraged to participate as poll workers.²⁶⁴ No other recruitment efforts, as state relies on nonprofit groups to encourage volunteers.</p>	<p>[No Change.]</p> <p>[No Change.]</p>	<p><u>Acceptable</u></p> <p><u>Exemplary</u></p>
<p>Voting Machines <i>Distribution</i></p> <p><i>Certification</i> <i>Verification</i></p>	<p>No laws. Guidelines recommend one machine per 150-190 active voters, but in some counties there are as many as 240 active voters per machine.²⁶⁵</p> <p>No VVPAT required. In compliance with HAVA.</p>	<p>[No Change.]</p> <p>Legislation passed for a pilot VVPAT program in 3 precincts in 2006.</p>	<p><u>Unsatisfactory</u></p> <p><u>Unsatisfactory</u></p>

²⁶³ Georgia Code 21-2-99. http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=21-2-99.

²⁶⁴ Georgia Code 21-2-92. http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=21-2-92.

²⁶⁵ Carlos Campos, “One-third of provisional votes counted,” *Atlanta Journal-Constitution*, 13 November 2004

MICHIGAN

Issue	Pre 2004	Post 2004	Assessment
Voter Registration Rejection	In order to be accepted, a registration form must have the following: name, residence address, birthplace, and birthdate, ID number (including driver's license, state personal ID card number, Social Security number), affirmation that the voter is eligible to vote. ²⁶⁶	[No Change.]	<u>Acceptable</u>
Verification	For driver's license and state ID numbers, exact match is required along with last name, first initial of first name and "substantial match" of first name. Exact match is used for SSN match: last four digits, date/month of birth, and first/last name. ²⁶⁷	[No Change.]	<u>Acceptable</u>
Notification	Voter is sent a voter ID card upon verification of his/her registration; voter should contact election authority if he/she does not receive the ID card within three weeks of submitting the registration. Voters can correct or amend their registration at any time, including after the registration deadline. ²⁶⁸	State updated database to comply with HAVA requirements. State is currently working to "clean" voter file of duplicate registrations and people who are deceased or otherwise not eligible to vote. ²⁷¹ [No Change.]	<u>Acceptable</u>
Database	State began using a centralized "Qualified Voter File" in 1998, which made use of the records of the Department of State's	[No Change.]	<u>Exemplary</u>

²⁶⁶ Michigan Election Law §168.495 "Registration affidavit; contents."
[http://www.legislature.mi.gov/\(lvygipek5vxgku55ic0umua1\)/mileg.aspx?page=GetMCLDocument&objectname=mcl-168-495](http://www.legislature.mi.gov/(lvygipek5vxgku55ic0umua1)/mileg.aspx?page=GetMCLDocument&objectname=mcl-168-495).

²⁶⁷ The Brennan Center for Justice,
<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Michigan.pdf>

²⁶⁸ Ibid.

<p>3rd Party Registration</p> <p>NVRA Implementation</p>	<p>driver's license/personal identification card file, and the localities' voter registration files.²⁶⁹</p> <p>There are no rules governing the conduct of third party registration drives. Motor-Voter provisions implemented; extent of implementation of §7 public aid agency provisions unclear.²⁷⁰</p>		<p><u>Unsatisfactory</u></p> <p><u>Inconclusive</u></p>
<p>Voter Identification</p>	<p>The only enforced ID provision is the federal law requiring first-time voters who have registered by mail and did not provide ID with their registration to produce identification at the polls.²⁷²</p>	<p>[No Change.] The state legislature passed a voter ID law requiring every voter to produce identification at the polls; the law is not being enforced because its constitutionality is in question. The state Supreme Court is currently considering this issue.²⁷³</p>	<p><u>Inconclusive</u></p>
<p>Provisional Ballots Distribution</p>	<p>A voter whose name is not on the registration list and who cannot provide a validated voter registration receipt may receive a provisional ballot if he/she completes an Application to Vote form, an affidavit stating he/she is registered to</p>	<p>[No Change.]</p>	<p><u>Acceptable</u></p>

²⁶⁹ Department of State: < http://www.michigan.gov/sos/0,1607,7-127-1633_11976_12001-27157--,00.html>.

²⁷⁰ Michigan Office of the Secretary of State, http://www.michigan.gov/sos/0,1607,7-127-1633_8716-27693--,00.html.

²⁷¹ "Programs to Ensure Accuracy of Voter Lists Making Strides," PR Newswire, 23 March 2006. *See also* GAO Report Number: GAO-05-478, "Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists," Congressional Quarterly Inc., 10 June 2005.

²⁷² Electionline.org, "Voter ID Law," Web: <http://electionline.org/Default.aspx?tabid=364>.

²⁷³ Charlie Cain, "Court to decide ID question for voters," *The Detroit News*, 27 April 2006. *See also* Brief of *Amici Curiae*, "In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71."

²⁷⁴ Voter Information On Display During Polling Hours: 2 May 2006.

< http://www.michigan.gov/documents/ED-126_05-2006_Instrc_for_Voting_153187_7.pdf>.

²⁷⁵ Memo from Terri Lynn Land to City Clerks, "Procedure for handling 'envelope' ballots returned to clerk's office," 7 October 2004:

http://www.michigan.gov/documents/Procedure_Handling_Env2_95243_7.pdf.

Verification	vote, and affirms that he/she is eligible to register. The ballot is counted if the voter is able to produce an acceptable form of ID and document confirming his/her residence within 6 days of the election. The voter can transmit this information to the election authority via fax or mail, or can bring it in person. ²⁷⁴	[No Change.]	<u>Exemplary</u>
Wrong Precinct	Ballots cast in the wrong precinct will not be counted, but before they are thrown out, it must be determined that the voter was not assigned to the wrong precinct. ²⁷⁵	[No Change.]	<u>Unsatisfactory</u>
Suppression/Challenges Deceptive Practices Law	State law prohibits the dissemination of false information intended to influence voting. ²⁷⁶	[No Change.]	<u>Acceptable</u>
Challengers	Any voter in a municipality can challenge the registration of another voter by filing an affidavit with the clerk, who will send the voter a notice by mail. The voter must respond within 30 days of having received the notice; if he/she fails to appear or cannot prove his/her eligibility to vote, then the registration is cancelled. There is no stated deadline by which challenges must be filed. It is a misdemeanor to make challenges "indiscriminately and	[No Change.]	<u>Unsatisfactory</u>

²⁷⁶ MCL Act 116 §168.931 "Prohibited conduct; violation as misdemeanor; 'valuable consideration' defined." Web: [http://www.legislature.mi.gov/\(nr410145iimfmr55n210lqzn\)/mileg.aspx?page=getObject&objectName=mc1-168-931](http://www.legislature.mi.gov/(nr410145iimfmr55n210lqzn)/mileg.aspx?page=getObject&objectName=mc1-168-931).

	without good cause or for the purposes of harassment". ²⁷⁷		
Polling Place/Poll Workers Training	Poll workers are required to attend a training session in which they are instructed on how to use the optical scan machines used in all Michigan counties. ²⁷⁸	[No Change.]	<u>Acceptable</u>
Recruitment	No efforts of note.	State passed legislation making the minimum age for election inspectors 16 years. State officials hope this measure will encourage young people to participate. ²⁷⁹	<u>Exemplary</u>
Voting Machines Distribution	State law requires that voting precincts with 1,000 or fewer voters provide one voting machine for every 500 active registered voters; precincts with between 1,000 and 3,000 voters must provide 1 voting machine for every 600 voters in that precinct. If the precinct exceeds 2,999 voters, the law requires it to be divided or rearranged. ²⁸⁰	[No Change.]	<u>Unsatisfactory</u>
Verification	The state uses a variety of voting devices, some of which are DREs. ²⁸¹	Per state law, all DREs used in the state were phased out in favor of optical scan machines by 2006. ²⁸²	<u>Acceptable</u>

²⁷⁷ MCL Act 116 § 168.512 “Challenge of elector; affidavit, contents; answering affidavit; cancellation of registration; indiscriminate challenge, penalty.” Web: [http://www.legislature.mi.gov/\(nr410145iimfmr55n210lqzn\)/mileg.aspx?page=getObject&objectName=mcl-168-512](http://www.legislature.mi.gov/(nr410145iimfmr55n210lqzn)/mileg.aspx?page=getObject&objectName=mcl-168-512).

²⁷⁸ Maureen Feighan, “County preps for May 2 election; precinct workers get hands-on training on use of optical scanners to speed school results,” *The Detroit News*, 20 April 2006.

²⁷⁹ Edward Cardenas, “Teens Get Look Inside Vote Process,” *The Detroit News*, 2 May 2006.

²⁸⁰ Michigan Election Law §168.661(1) and (2): “Precincts using voting machines; number of machines; division or rearrangement of precincts.” [http://www.legislature.mi.gov/\(lvygipek5vxgku55ic0umua1\)/mileg.aspx?page=GetMCLDocument&objectname=mcl-168-661](http://www.legislature.mi.gov/(lvygipek5vxgku55ic0umua1)/mileg.aspx?page=GetMCLDocument&objectname=mcl-168-661).

²⁸¹ Electionline.org, “Voting Systems 2006.” Web: <http://electionline.org/Default.aspx?tabid=1099>.

²⁸² Electionline.org “Voter-Verified Paper Audit Trail Laws and Regulations.” Web: <http://electionline.org/Default.aspx?tabid=290>.

MINNESOTA

Issue	Pre 2004	Post 2004	Assessment
Voter Registration Rejection	<p>Registration is considered incomplete if it is missing an identifying number, voter's name, date of birth, or address. There is no deadline; Minnesota allows election day registration.</p> <p>Name, date of birth, and driver's license or Social Security number are verified against Department of Public Safety and Social Security Administration records. Matching standard: if the auditor can "reasonably conclude" that the information on the registration and the information on record "relate to the same person", his/her registration is verified.²⁸³</p> <p>County auditors are required to notify registrants of missing information; auditors are also required to attempt to obtain this information from DPS and SSA databases.²⁸⁴</p> <p>Pre-HAVA top-down centralized database; under state law (as well as federal), interacts fully with Department of Public Safety and Social Security Administration.²⁸⁵</p>	[No Change.]	<u>Exemplary</u>
Verification		[No Change.]	<u>Exemplary</u>
Notification		[No Change.]	<u>Exemplary</u>
Database		Database updated; met HAVA compliance deadline. ²⁸⁹	<u>Acceptable</u>
3 rd Party Registration		[No Change.]	<u>Acceptable</u>

²⁸³ Minnesota Rules. 8200.9310 Treatment of Voter Registration Applications; Subpart 2: Verification; defined; notification. Accessed < <http://www.revisor.leg.state.mn.us/arule/8200/9310.html>>.

²⁸⁴ Minnesota Rules: 8200.2900 Deficient Registrations; Notice of Deficient Registrations.

²⁸⁵ "Election Reform: What's Changed, What Hasn't, and Why, 2000-2006," Electionline.org *Report*, 7 February 2006.

<p>NVRA Implementation</p>	<p>Any person or organization that accepts voter registration cards must submit them to the state or to the county auditor within 10 days of their completion by the voter.²⁸⁶</p> <p>Minnesota is exempt from the NVRA because it has election day registration;²⁸⁷ all state agencies, community-based public agencies, and nonprofit corporations that contract with the state agency to carry out its obligations must provide voter registration services for employees and clients.²⁸⁸</p>	<p>[No Change.]</p>	<p><u>Acceptable</u></p>
<p>Voter Identification</p>	<p>To register to vote, voters must present one of the following: Minnesota driver's license or state identification card, tribal ID, recent utility bill, "notice of late registration" postcard, US passport with utility bill, military ID, student ID, oath of registered voter in precinct.²⁹⁰</p>	<p>[No Change.]</p>	<p><u>Acceptable</u></p>
<p>Provisional Ballots Distribution</p>	<p>[Because Minnesota has election day registration, the state is exempted from HAVA's</p>	<p>[No Change.]</p>	<p><u>Exemplary</u></p>

²⁸⁶ Electionline.org *Briefing*: "Holding Form: Voter Registration 2006," July 2006.
<http://electionline.org/Portals/1/Publications/ERIPBrief13.final.pdf>. See also: Minnesota Statutes §201.061(1): "Registration on or before election day."
<http://www.revisor.leg.state.mn.us/data/revisor/statutes/2005/201/061.html>.

²⁸⁷ "Ten Years Later: A Promise Unfulfilled. The National Voter Registration Act in Public Assistance Agencies, 1995-2005," *Demos Report*, July 2005.

²⁸⁸ Minnesota Statutes 2005: 201.162 Duties of state agencies.

²⁸⁹ Electionline.org: "Statewide Voter Registration Database Status."
<http://electionline.org/Default.aspx?tabid=288>.

²⁹⁰ Minnesota Office of the Secretary of State
http://www.sos.state.mn.us/home/index.asp?page=12&select_faq_by_faq_cat=2#38.

Verification Wrong Precinct	provisional ballot requirements.]		
Suppression/Challenges Deceptive Practices Law	It is a gross misdemeanor to attempt to interfere with a voter or attempt to prevent him/her from voting. No laws pertain directly to deliberate misinformation.	A Deceptive Practices Law went into effect in 2006, making deceptive activity “with the intent to prevent the individual from voting in (an) election” a “gross Misdemeanor.” ²⁹¹	<u>Exemplary</u>
Challengers	Each political party is allowed to post challengers at polling places to question voters’ eligibility.	Only one challenger per political party is allowed at each polling place; Challengers may not compile lists of voters to challenge on the basis of mail sent by a political party that was returned as “Undeliverable”. ²⁹²	<u>Exemplary</u>
Polling Place/Poll Workers Training	Election judges must participate in a training course every 24 months. Training includes instruction on the operation of voting machines, ID requirements, and election day registration. ²⁹³	[No Change.]	<u>Acceptable</u>
Recruitment	State is making efforts to recruit young people to participate, by	[No Change.]	<u>Exemplary</u>

²⁹¹ Minnesota State Statute 204C.035 < <http://www.sos.state.mn.us/home/index.asp?page=224>>

²⁹² Minnesota Election Laws 2006. 204C.07 Challengers.

<http://www.revisor.leg.state.mn.us/stats/204C/07.html>.

²⁹³ Minnesota Election Laws 2006 204B.25 Training For Election Judges, <<http://www.revisor.leg.state.mn.us/stats/204C/07.html>> and Office of the Minnesota Secretary of State:

<http://www.sos.state.mn.us/home/index.asp?page=511>.

²⁹⁴ Minnesota Statutes 204B.19(6). “Election judges; qualifications.”

<http://www.revisor.leg.state.mn.us/stats/204B/19.html>.

²⁹⁵ “College Student Election Judges” Minnesota Secretary of State Website:

<http://www.sos.state.mn.us/home/index.asp?page=463>.

	making the minimum age for election judges 16 years. ²⁹⁴ State is also attempting to recruit college students to participate. ²⁹⁵		
Voting Machines Distribution	Each county must submit a plan to the secretary of state outlining their voting machine allocation and their budget for purchasing the equipment. ²⁹⁶	[No Change.]	<u>Acceptable</u>
Verification	State requires VVPAT. ²⁹⁷	[No Change.]	<u>Acceptable</u>

²⁹⁶ “Help America Vote Act: Questions and Answers.” Minnesota Secretary of State, 14 November 2005. Accessed: <http://www.sos.state.mn.us/home/index.asp?page=138>.

²⁹⁷ Electionline.org, “Election Preview 2004: What’s Changed, What Hasn’t and Why,” <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>.

MISSOURI

Issue	Pre 2004	Post 2004	Assessment
Voter Registration <i>Rejection</i>	The voter will not be registered unless he/she includes a valid ID number (either driver's license or a Social Security number). ²⁹⁸	[No Change.]	<u>Unsatisfactory</u>
<i>Verification</i>	The voter's driver's license number, last name, and date of birth are verified against the records of the Department of Motor Vehicles. If the voter provides an SSN instead of a driver's license number, it is compared to the records of the Social Security Administration.	[No Change.]	<u>Inconclusive</u>
<i>Notification</i>	If a voter's ID number is missing, incomplete, or illegible, he/she is sent a notice by mail; he/she has until the registration deadline to provide the missing information. If the number cannot be verified, then he/she must provide identification at the polls.	[No Change.]	<u>Acceptable</u>
<i>Database</i>	Localities keep databases, which are regularly added to a statewide voter database. ²⁹⁹	State is implementing a top-down, centralized database; localities enter new registration information into statewide database. Database implementation being held up by state-local funding issues. ³⁰¹	<u>Inconclusive</u> <u>Acceptable</u>

²⁹⁸ Justin Levitt, Wendy R. Weiser, and Ana Munoz. "Missouri" in "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006.

²⁹⁹ Ibid

³⁰⁰ Demos, "Ten Years Later, A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005," July 2005

³⁰¹ "Missouri, Boone County Agree on Voter Database," *St. Louis Post-Dispatch*, 17 June 2006.

<p><i>Verification</i></p> <p><i>Wrong Precinct</i></p>	<p>polls. Provisional ballot counted if voter's eligibility is verified later.</p> <p>Provisional ballots are not counted if they are cast in the wrong precinct, except for statewide and federal races.³⁰⁵</p>	<p>[No Change.]</p> <p>Provisional ballot still not counted if cast in wrong precinct; if a voter refuses to go to the proper precinct, he/she may still cast a ballot, but it will not be counted.³⁰⁶</p>	<p><u>Inconclusive</u></p> <p><u>Unsatisfactory</u></p>
<p>Suppression/Challenges</p> <p><i>Deceptive Practices Law</i></p> <p><i>Challengers</i></p>	<p>No laws pertaining in particular to deceptive practices. To threaten or compel a person to vote or refrain from voting is a "class three election offense"³⁰⁷</p> <p>Each political party may appoint a challenger to be present at each precinct; challenges may be made when the challenger believes the state's election laws have been violated. Challengers must be registered to vote in the same jurisdiction as the voter they are challenging.³⁰⁸ May be made at any time until the polls close on Election Day.³⁰⁹</p>	<p>"Missouri Voter Protection Act" (SB 1014) makes it a felony to interfere with a person's "lawful right to vote or participate in the election process" or to knowingly provide voters with false information.³¹⁰</p> <p>[No Change.]</p>	<p><u>Exemplary</u></p> <p><u>Unsatisfactory</u></p>

³⁰⁷ Missouri Revised Statutes Section 115.635, 28 August 2005 <<http://www.moga.mo.gov/statutes/C100-199/1150000427.HTM>>

³⁰⁸ M.R.S. 115.105: "Challengers, how selected, qualifications – challenges, when made – challengers may collect certain information at presidential primary elections." Web: <http://www.moga.mo.gov/statutes/C100-199/1150000105.HTM>.

³⁰⁹ M.R.S. 115.105: "Challengers, how selected, qualifications – challenges, when made – challengers may collect certain information at presidential primary elections." Web: <http://www.moga.mo.gov/statutes/C100-199/1150000105.HTM>.

³¹⁰ SCS/SB 1014 "Modifies law relating to election reform." http://www.senate.mo.gov/06info/BTS_Web/Bill.aspx?SessionType=R&BillID=83706 Accessed 5 April 2006.

<p>Polling Place/Poll Workers <i>Training</i></p> <p><i>Recruitment</i></p>	<p>Election judges are provided basic instruction in operation of voting machines and their duties at the polling places. They are compensated between \$64 and \$100 per day, depending on the jurisdiction.³¹¹</p> <p>Students between the ages of 15 and 18 may be “Youth Election Participants” at a polling place where they may assist in administering election functions under supervision.³¹²</p>	<p>[No Change.]</p> <p>[No Change.]</p>	<p><u>Inconclusive</u></p> <p><u>Exemplary</u></p>
<p>Voting Machines <i>Distribution</i></p> <p><i>Verification</i></p>	<p>State has no laws in particular governing distribution.</p> <p>DRE with VVPAT required.³¹³</p>	<p>[No Change.]</p> <p>[No Change.]</p>	<p><u>Unsatisfactory</u></p> <p><u>Acceptable</u></p>

³¹¹ Missouri Office of the Secretary of State <http://www.sos.mo.gov/pollworker/faqs.asp>.

³¹² Missouri Revised Statutes Section 115.104, 28 August 2005 <<http://www.moga.mo.gov/statutes/C100-199/1150000427.HTM>>

³¹³ Electionline.org: “Voting Systems 2006”. <http://electionline.org/Default.aspx?tabid=1099>. *See also* “Voter-Verified Paper Audit Trail Laws and Regulations.” <http://electionline.org/Default.aspx?tabid=290>.

OHIO

Issue	Pre 2004	Post 2004	Assessment
Voter Registration <i>Rejection</i>	Registration form must include name, date of birth, address, identification number, signature, affirmation of citizenship, and proper voting age. ³¹⁴		<u>Acceptable</u>
<i>Verification</i>	Name, driver's license number, birth date, Social Security number, and current address are used for verifying registrant's eligibility through a statewide database. ³¹⁵		<u>Acceptable:</u>
<i>Notification</i>	If the registration is accepted, the voter is sent a card notifying him/her that he/she has successfully registered and noting the precinct in which he/she must vote. If the card is returned as undelivered, the board of elections will investigate the address; if the board is unable to verify the correct address, the voter's name will be marked in the poll book, and he/she will have to vote a provisional ballot. ³¹⁶ If	Under House Bill 3, boards of elections are no longer required to notify registrants that their registration applications have been rejected. ³²¹	<u>Unsatisfactory</u>

³¹⁴ ORC § 3503.14 “Contents of forms; prohibitions; persons unable to sign.” Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³¹⁵ ORC § 3503.15 “Statewide voter registration database.” C(4). Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³¹⁶ ORC § 3503.19 “Methods of registering or changing registration; mailing of confirmation notice.” Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³¹⁷ Nathan Cemenska, “50 Questions for 5 Key States: Ohio,” *Election Law @ Moritz*: http://moritzlaw.osu.edu/electionlaw/election06/50-5_ohio.php#1.

³¹⁸ Electionline.org. “Election Preview 2004: What’s Changed, What Hasn’t And Why.” October 2004. p. 23 < <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>>

³¹⁹ Ohio State Legislature Amended Substitute House Bill Number 3. <http://www.legislature.state.oh.us/BillText126/126_HB_3_EN_N.html>

<p><i>Database</i></p>	<p>a voter's registration is rejected, the voter is responsible for filing an application for correction within 20 days of the election; the board resolves the issue either by examining its records or by holding a hearing; upon completion of the hearing, the board is to issue a decision; if the voter still believes his registration has been improperly rejected, he may cast a provisional ballot.³¹⁷</p> <p>No statewide database.³¹⁸</p>	<p>Bottom-up voter registration system; localities maintain their own registration lists,</p>	<p><u>Inconclusive</u></p>
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³²⁰ ORC § 3503.10 “Voter registration programs for designated state agencies, schools, libraries and county treasurers.” Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³²¹ Nathan Cemenska, “50 Questions for 5 Key States: Ohio,” *Election Law @ Mortiz*: http://moritzlaw.osu.edu/electionlaw/election06/50-5_ohio.php#1.

³²² ³²² Justin Levitt, Wendy R. Weiser, and Ana Munoz. “Ohio” in “Making the List: Database Matching and Verification Processes for Voter Registration,” The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006. Web:

<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Ohio.pdf>. See also ORC §3503.15 “Statewide voter registration database.” Web:

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³²³ Nathan Cemenska, “50 Questions for 5 Key States: Ohio,” *Election Law @ Mortiz*:

http://moritzlaw.osu.edu/electionlaw/election06/50-5_ohio.php#1. See also Levitt, Weiser, and Munoz, “Making the List: Database Matching and Verification Processes for Voter Registration: Ohio,” 24 March 2006. Web: <http://www.brennancenter.org/programs/downloads/HAVA/svrd/Ohio.pdf>.

³²⁴ ORC § 3503.29 “Training program for persons receiving or expecting to receive compensation for registering voters; registration; affirmation to accompany voter registration form.” Web:

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>. And ORC

§ 3503.10 “Voter registration programs for designated state agencies, schools, libraries and county treasurers.” Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>. And ORC § 3503.29 “Training program for persons receiving or expecting to receive compensation for registering voters; registration; affirmation to accompany voter registration form.” Web: <http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³²⁵ ORC § 3599.18 “Misconduct in connection with registration of electors.” Web:

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC>.

³²⁶ “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004.” A Report to the 109th Congress, United States Election Assistance Commission, 30 June 2005.

³²⁷ “Ohio Ignores Requirements of Thirteen Year-Old Federal Voter Registration Law,” *Press Release, Demos/NVRI, ACORN, Lawyers’ Committee for Civil Rights Under Law*, 18. May 2006. Access: <http://projectvote.org/newsroom/ohio-ignores-requirements-of-13-year-old-federal-voter-registration-law-voting-rights.html>.

<p><i>3rd Party Registration</i></p>	<p>Registration forms provide space for the person registering the voter to provide the name and employer of the person registering.³¹⁹</p>	<p>which are regularly uploaded to a centralized, state-run list. All of Ohio's counties are currently participating in the system.³²² The state has not issued any statements regarding the matching system it is using, or how it is coordinating its registration database with other statewide databases as is required by HAVA.³²³</p> <p>Anyone being paid to register voters must sign each registration form he/she collects, and note his/her name, address, and employer (only has to sign one form for a group of registrants submitted at one time); he/she must attend a training session and register with the Secretary of State's office. He/she must return the voter registration forms he/she collects directly to any Board of Elections or to the Secretary of State.³²⁴ Failure to follow proper procedures is a misdemeanor.³²⁵ The constitutionality of this law is currently being contested in court.</p>	<p><u>Unsatisfactory</u></p>
<p><i>NVRA Implementation</i></p>	<p>According to state law, public aid agencies are required to assist their clients with voter registration.³²⁰</p>	<p>State reports that it is in compliance with §7 provisions of NVRA;³²⁶ independent research indicates that these provisions are not being fully enforced.³²⁷</p>	<p><u>Unsatisfactory</u></p>

Voter Identification		Voters must present a valid form of photo or non-photo ID in order to vote at the polls; voters who fail to bring proper ID may provide the last four digits of their Social Security number and cast a provisional ballot, or may sign an affirmation of their identity and cast a provisional ballot. ³²⁸	<u>Inconclusive</u>
Provisional Ballots Distribution	Issued if the voter moves to a new address within the state of Ohio 28 days before the election cycle. ³²⁹	A voter can be issued a provisional ballot for any of the following reasons: name is not on official poll list, or an official challenges voter's eligibility; voter is unable to provide required identification; name is noted on list of voters who received absentee ballots; mark in poll book noting that mail had been returned "undeliverable" from voter's registration address; voter's eligibility challenged; election official believes voter's signature on ballot does not match registration signature. Voter who cast a provisional ballot because he or she did not bring required identification to the polls on election day must appear at the county election office with proper ID within 10 days of the election. ³³⁰	<u>Unsatisfactory</u>
Verification		Provisional ballots are	<u>Unsatisfactory</u>

³²⁸ ORC § 3505.18 "Voting procedure."

³²⁹ Electionline.org "Solution or Problem? Provisional Ballots in 2004. April 2005. <
<http://electionline.org/Portals/1/Publications/ERIP10Apr05.pdf>>

³³⁰ Ohio R.C. 3505.181. "Voting by Provisional Ballot." See also: Ohio Secretary of State website: "Provisional Voting": <http://www.sos.state.oh.us/sos/PublicAffairs/VoterInfoGuide.aspx?Section=19>.

³³¹ ORC § 3505.181. Eligibility to cast provisional ballot.

³³² ORC § 3505.181 (C)(1).

<p><i>Wrong Precinct</i></p>	<p>Provisional ballots cast at the wrong precinct will not be counted.</p>	<p>counted if: a local election authority determines that the voter who cast the ballot is eligible to vote in that precinct; the voter did not bring proper ID to the polls but presents ID to the board of elections within 10 days of the election.³³¹</p> <p>[No Change].³³²</p>	<p><u>Unsatisfactory</u></p>
<p>Suppression/Challenges <i>Deceptive Practices Law</i></p> <p><i>Challengers</i></p>	<p>It is against state law to influence or attempt to influence voters through the use of various intimidation tactics, or by disseminating false information.³³³</p> <p>On election day at the polling place, any registered voter may challenge the qualifications of any potential voter such as citizenship, 30-day state residency, precinct residency, legal voting age. The decision by the presiding judge regarding the qualification of the voter is final. Other challenges must be filed no later than 19 days before the election, in writing, and state the challenger's name, address, and precinct, as well as the grounds on which the</p>	<p>[No Change.]</p> <p>On election day, only election judges may challenge a potential voter at a polling place. If the challenged voter fails to provide the judge with adequate information regarding his/her qualifications, he/she may submit a provisional ballot. Any voter may still challenge if they file no later than 19 days before the election.</p>	<p><u>Acceptable</u></p> <p><u>Satisfactory</u></p>

³³³ See, for example, ORC § 3599.43 “Communications purporting to be from boards of elections,” and ORC § 3599.08 “Influencing candidates and voters by publications.”

	challenge is being made. ³³⁴		
Polling Place/Poll Workers <i>Training</i>	Each board of elections is responsible for putting its poll workers through a training course that has been approved by the secretary of state. Election judges must be qualified voters, and must participate in the training course at least once every three years. ³³⁵		<u>Acceptable</u>
<i>Recruitment</i>	Localities are responsible for recruiting poll workers; there have been no state-level efforts to expand the pool of poll workers. ³³⁶		<u>Unsatisfactory</u> .
Voting Machines <i>Distribution</i>	Each local election board is responsible for dividing their jurisdiction into precincts that contain a “reasonable number” of electors, not to exceed 1,400, taking into account various factors including the type and amount of voting equipment the jurisdiction has, prior turnout, and the size, location, and accessibility of each polling place. ³³⁷	[No Change.]	<u>Unsatisfactory</u>
<i>Verification</i>	State uses a variety of voting systems.	Per a 2004 law, all DREs used in Ohio after January 1, 2006 must have a voter-	<u>Acceptable</u>

³³⁴ Ohio State Legislature Amended Substitute House Bill Number 3.

<http://www.legislature.state.oh.us/BillText126/126_HB_3_EN_N.html>

³³⁵ ORC § 3501.27. “Qualifications of precinct election officials and precinct registrars.”

³³⁶ National Conference of State Legislatures.

<http://www.ncsl.org/programs/legman/elect/elections.cfm>

³³⁷ ORC § 3501.18. “Division of subdivision into precincts; polling places.”

³³⁸ Electionline.org: “Voting Systems 2006.” <http://electionline.org/Default.aspx?tabid=1099>. *See also* ORC § 3506.10 *and* Electionline.org: “Voter-Verified Paper Audit Trail Laws & Regulations.”

<http://electionline.org/Default.aspx?tabid=290>.

		verified paper audit trail. Some jurisdictions use optical scan and ballot-marking devices. ³³⁸	
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PENNSYLVANIA

Issue	Pre 2004	Post 2004	Assessment
<i>Voter Registration Rejection</i>	Application must include all of the following information in order to be accepted: name, address, date of birth, oaths of citizenship and proper voting age, and identification number (driver's license number, state identification card number, or Social Security number). ³³⁹	Voter registrations are not accepted unless they include a driver's license number, last four digits of Social Security number, or a statement noting that the applicant does not have either of these identifying numbers. ³⁴⁴	<u>Acceptable</u>
<i>Verification</i>	A "hybrid match" standard is used for matching information on registrations with driver's license numbers, in which the number and first two characters of last name must match exactly; beyond that, match is at the discretion of local election official. Registrations with Social Security Numbers are verified using an "exact match" standard for the SSN, name, year, and month of birth. ³⁴⁰	A registration can no longer be automatically rejected by an ID number verification system – i.e., failure to match the registrant's ID number or other information to that in the DMV or SSA database cannot be cause for rejection of an application. Registrations can only be rejected by affirmative action of the voter registration commission. ³⁴⁵	<u>Exemplary</u>
<i>Notification</i>	County election official must notify registrants of any missing, incomplete, illegible, or unverified information on their applications; they must correct the information within 40 days, or before the poll books are printed, whichever is sooner. If a registrant corrects after the poll book is printed, he/she votes a provisional ballot. Registration errors cannot	State has eliminated "exact match" standard. See above. [No Change.]	<u>Acceptable</u>

³³⁹ ³³⁹ Justin Levitt, Wendy R. Weiser, and Ana Munoz. "Pennsylvania" in "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006.

³⁴⁰ Ibid. <http://www.brennancenter.org/programs/downloads/HAVA/svrd/Pennsylvania.pdf>

<i>Database</i>	be resolved at the polls. ³⁴¹	SURE's verification procedure updated to comply with HAVA. ³⁴⁶	<u>Acceptable</u>
<i>3rd Party Registration</i>	Statewide Uniform Registry of Electors (SURE), a centralized list of registered voters that can be accessed by local election administrators. ³⁴²	[No Change.]	<u>Acceptable</u>
<i>NVRA Implementation</i>	State law prohibits individuals from collecting voter registration forms in exchange for money. ³⁴³	[No Change.]	<u>Acceptable</u>
	State is actively implementing §7 provisions of NVRA.		
Voter Identification	First-time voters must present valid identification (which is not necessarily photo identification) ³⁴⁷ .	[No Change.]	<u>Inconclusive</u>
<i>Provisional Ballots Distribution</i>	Voter is given a provisional ballot if: name is not on election register; individual is a first-time voter without proper ID; voter's eligibility is challenged by an election official. ³⁴⁸	[No Change.]	<u>Acceptable</u>
<i>Verification</i>	Provisional ballots verified within seven days of election, by comparing	[No Change.]	<u>Acceptable</u>

³⁴¹ ³⁴¹ Justin Levitt, Wendy R. Weiser, and Ana Munoz. "Pennsylvania" in "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Justice: Voting Rights and Elections Series, 24 March 2006..

<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Pennsylvania.pdf>

³⁴² Ibid

³⁴³ Electionline.org. "Holding Form: Voter Registration 2006." July 2006.

<http://electionline.org/Portals/1/Publications/ERIPBrief13.final.pdf>

³⁴⁴ Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, "Alert Re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)," 9 August 2006.

³⁴⁵ Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, "Alert Re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)," 9 August 2006. *See also* The Brennan Center for Justice, "Pennsylvania Election Officials Reject "No-Match, No Vote" Policy," *Press Release*, 10 August 2006.

http://www.brennancenter.org/presscenter/releases_2006/pressrelease_2006_0810.html.

³⁴⁶ http://www.dos.state.pa.us/sure/lib/sure/sure_news_issue_10_final.pdf

³⁴⁷ Pennsylvania Department of State <http://www.hava.state.pa.us/hava/cwp/view.asp?a=1189&q=442312>

³⁴⁸ Pennsylvania Department of State <http://www.hava.state.pa.us/hava/cwp/view.asp?a=1187&q=442284&havaNav=>

	the voter's signature on the ballot to that on record		
<i>Wrong Precinct</i>	Ballots cast in the wrong precinct are still counted for races in which the voter was eligible to vote.	[No Change.]	<u>Exemplary</u>
Suppression/Challenges <i>Deceptive Practices Law</i>	No deceptive practices laws.	[No Change.]	<u>Unsatisfactory</u>
<i>Challengers</i>	No laws constraining challenges, no deadline by which they must be issued and no penalty for false challenges. ³⁴⁹	[No Change.]	<u>Unsatisfactory</u>
Polling Place/Poll Workers <i>Training</i>	State launched extensive training program to educate poll workers and the public about changes in federal and state law; gave all counties opportunity for assistance with training program. Publicized need for poll workers. ³⁵⁰	State has continued to expand its training program since 2004. ³⁵¹	<u>Acceptable</u>
<i>Recruitment</i>		State Act 150 allows high school students and college students to serve as poll workers. State has made efforts to recruit young people to participate.	<u>Exemplary</u>
Voting Machines <i>Distribution</i>	No formula for equitable distribution of machines.	[No Change.]	<u>Unsatisfactory</u>
<i>Verification</i>	No paper trail or audit requirement		<u>Unsatisfactory</u>

³⁴⁹ PA Statutes Title 25: 961.529 <http://members.aol.com/StatutesP6/25.Cp.5.5.html>.

³⁵⁰ Pennsylvania Department of State http://www.hava.state.pa.us/hava/lib/hava/stateplan/state_plan.pdf.

³⁵¹ Jerome Sherman, "Whew! A Voter Beats the Machine!," *Pittsburgh Post-Gazette*, 20 April 2006.

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WASHINGTON

Issue	Pre 2004	Post 2004	Assessment
<i>Voter Registration Rejection</i>	<p>To be considered complete, registration application must include: name; address; date of birth; signature affirming truth of information supplied; affirmation of U.S. citizenship, and driver's license or state identification card number, last 4 digits of SSN or copy of ID³⁵²</p> <p>Voter's last name and identification number verified against state department of licensing or Social Security Administration records.³⁵³</p> <p>Applicant is notified of missing or unverifiable information via mail and has 45 days to correct the missing information. If he/she does not respond within 45 days, the registration is automatically rejected.³⁵⁴</p> <p>Database not implemented;</p>	[No Change.]	<u>Acceptable</u>
<i>Verification</i>		<p>The state's verification process uses an "exact match" standard for the voter's ID number, last name, and date of birth³⁵⁶, but an injunction has been issued against this law, barring the state from implementing it.³⁵⁷</p>	<u>Unsatisfactory</u>
<i>Notification</i>		[No Change.]	<u>Acceptable</u>
<i>Database</i>		<p>State in compliance with HAVA's January 1, 2006 database deadline; bottom-up system in which</p>	<u>Acceptable</u>

³⁵² RCW 29A.08.210.

³⁵³ RCW 29A.08.107. <http://apps.leg.wa.gov/RCW/default.aspx?cite=29A.08.107>.

³⁵⁴ 29A.08.110

³⁵⁵ 29A.08.115 Registration by other than auditor or secretary of state.

³⁵⁶ Levitt, Weiser, and Munoz, "Making the List: Database Matching and Verification Processes for Voter Registration," The Brennan Center for Social Justice, 24 March 2006.

<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Washington.pdf>.

³⁵⁷ Gene Johnson, "Judge bars state from enforcing new voter registration law," *The Olympian*, 2 August 2006. See also: "Federal judge protects eligible voters in Washington," *Press Release*, The Brennan Center for Justice, 1 August 2006.

http://www.brennancenter.org/presscenter/releases_2006/pressrelease_2006_0801.html.

<i>Wrong Precinct</i>	to his/her signature on record. ³⁶¹ If voter casts provisional ballot in the wrong precinct, the ballot is counted for all the races in which the voter is eligible to vote; if the voter knows he/she is in the wrong precinct, then he/she may receive help from an election judge in writing in his/her choices for races in their own jurisdiction that differ from those in the precinct in which he/she is voting.	[No Change.]	<u>Exemplary</u>
Suppression/Challenges <i>Deceptive Practices Law</i> <i>Challengers</i>	No laws pertaining to deceptive practices. Challenges can be filed if the challenger has personal knowledge that the voter is not eligible to vote or does not live at the residential address supplied on the registration form. The challenger must submit evidence along with the challenge. ³⁶²	[No Change.] [No Change.]	<u>Unsatisfactory</u> <u>Acceptable</u>
Polling Place/Poll Workers <i>Training</i>	Most counties require at least three hours of training for poll workers on the use of voting machines, identification requirements, and	Only four out of the state's 39 counties continue to provide polling places.	<u>Acceptable</u>

³⁶¹ Levitt, Weiser, and Munoz, "Making the List: Database Matching and Verification Processes for Voting Registration, The Brennan Center for Justice, 24 March 2006, p. WA-3.

³⁶² <http://www.secstate.wa.gov/elections/pdf/2006_Election_Legislation_Summary.pdf>

<i>Recruitment</i>	provisional ballots. College students were targeted for poll worker recruitment. ³⁶³	[See above.]	<u>Acceptable</u>
<i>Voting Machines Distribution</i>	No law on distribution.	[No Change. Drastic reduction in the number of polling sites needed since all but four counties have eliminated in-person voting.]	<u>Unsatisfactory</u>
<i>Verification</i>	In compliance with HAVA.	State requires voting devices to have a voter verified paper audit trail.	<u>Acceptable</u>

³⁶³ Conversation with King County Elections office, 25 May 2006.

WISCONSIN

Issue	Pre 2004	Post 2004	Assessment
Voter Registration Rejection	Information Required: driver's license, state ID, or Social Security number, name, address, date of birth, and affirmation of citizenship and proper voting age. ³⁶⁴ No person may be disqualified to vote unless there is evidence "beyond a reasonable doubt" that the person is not qualified to vote. ³⁶⁵	[No Change.]	<u>Acceptable</u>
Verification	If the form is sufficient to accomplish registration and the clerk has no reliable information to indicate that the proposed elector is not qualified, the clerk shall enter the elector's name on the registration list. Registration information matched against records of the Departments of Transportation, Vital Statistics, and Criminal Justice. If 85% or more of the information provided matches, then the voter is registered; if less than 85% matches, verification of the match is at the discretion of the local clerk.	[No Change.]	<u>Acceptable</u>
Notification	Each voter whose registration is verified will be sent a	SB 612 requires that confirmation postcard must be sent within 10 days of receipt. ³⁶⁸	<u>Inconclusive</u>

³⁶⁴ Wisconsin State Statute Chapter 6.33 <http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=31662679&infobase=stats.nfo&jump=top>

³⁶⁵ Wisconsin State Statute Chapter 6.325 <http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=31662679&infobase=stats.nfo&jump=top>

Database	<p>registration notice; the registration will be rejected if the registration is returned "Undeliverable".³⁶⁶</p> <p>If registration form has insufficient information for registration, the clerk will notify the voter within 5 days.</p> <p>No statewide database; municipalities required to verify voter registration information. 15,550 municipalities had no registration requirements prior to January 1, 2006. The state was not responsible for verification.³⁶⁷</p>	<p>After many problems and delays, a statewide voter system was up and running for the December 2005 primaries. All functions of the system will not be fully implemented until spring of 2007.³⁶⁹</p>	<u>Inconclusive</u>
3 rd Party Registration	<p>No specific rules.</p>	<p>It is prohibited to compensate a person collecting voter registration forms based on the amount of forms collected.</p>	<u>Acceptable</u>
NVRA Implementation	<p>Because Wisconsin has Election Day registration, it is exempt from the provisions of the NVRA. The Department of Motor Vehicles does not hand out or accept registration forms.</p>	[No Change.]	<u>Exemplary</u>
Voter Identification	<p>Voters must present one of the following forms of ID in order to register to vote: current photo ID, utility bill, bank statement, pay check, government</p>	[No Change.]	<u>Acceptable</u>

³⁶⁶ The Brennan Center for Justice:

<<http://www.brennancenter.org/programs/downloads/HAVA/svrd/Wisconsin.pdf>>

³⁶⁷ Email from Kevin Kennedy, Executive Director, Wisconsin State Election Board, 22 September 2006.

³⁶⁸ 2005 Senate Bill 612, Section 37

<http://www.legis.state.wi.us/lc/2_PUBLICATIONS/Other%20Publications/Reports%20By%20Subject/Elections/IM06_04_rw.pdf>

³⁶⁹ Patrick Marley, "Election Fraud Plan to Miss Fall Vote," *Milwaukee Journal Sentinel*, 3 August 2006.

	check, or other government document.		
Provisional Ballots Distribution	Provisional ballots are issued to voters who appear at the polls without proper ID and are unable to provide their driver's license number.	[No Change.]	<u>Acceptable</u>
Verification	A provisional ballot is counted if the voter provides the election authority with his/her driver's license number, either in person or via telephone, fax, or email before 4:00pm on the day after the election. The voter can only provide his/her driver's license number; SSN or SSN-4 will not be accepted.	[No Change.]	<u>Acceptable</u>
Wrong Precinct	Provisional ballots are not given to voters who appear at the wrong polling place. ³⁷⁰	[No Change.]	<u>Unsatisfactory</u>
Suppression/Challenges			
Deceptive Practices Law	State law prohibits the dissemination of false information to voters and attempts to influence their voting via force or coercion. ³⁷¹	[No Change.]	<u>Acceptable</u>
Challengers	Election inspectors and other electors may challenge any person they believe is not eligible to vote. Challenges can be made at the polling place. ³⁷²		<u>Inconclusive</u>

³⁷⁰ Election Day Manual p.35, Wisconsin Board of Elections, August 2006

<<http://elections.state.wi.us/docview.asp?docid=872&locid=47>>

³⁷¹ Wisconsin Statutes Chapter 12: Prohibited Election Practices. See 12.05 "False representations affecting elections," and 12.09 "Election threats." Web: http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=34656927&infobase=stats.nfo&jump=top.

³⁷² Wisconsin Statutes Chapter 6, Subsection V. See 6.92 "Inspector making challenge," 6.925 "Elector making challenge in person," 6.94 "Challenged elector oath," and 6.95 "Voting procedure for challenged electors." Web: <http://www.legis.state.wi.us/statutes/Stat0006.pdf>.

<p>Polling Place/Poll Workers Training</p> <p>Recruitment</p>	<p>Poll workers attend at least one training program every two years. Further requirements vary among municipalities.³⁷³</p> <p>Teenagers as young as 16 may volunteer as poll workers. Also, the state eliminated an examination requirement for chief inspectors because they were believed to be a disincentive to participate.³⁷⁴</p>	<p>[No Change.]</p> <p>[No Change.]</p>	<p><u>Unsatisfactory</u></p> <p><u>Acceptable</u></p>
<p>Voting Machines Distribution</p> <p>Verification</p>	<p>State law requires that polling places provide one voting machine for every 200 voters registered in that precinct. Municipalities using DREs are required to provide one DRE for every 200 voters registered in that precinct.³⁷⁵</p> <p>The state uses a variety of voting technologies; Wisconsin does not require electronic voting devices to include a voter verified paper trail.</p>	<p>[No Change.]</p> <p>Electronic voting machines must produce a permanent paper record that can be verified by the voter.³⁷⁶</p>	<p><u>Exemplary</u></p> <p><u>Acceptable</u></p>

³⁷³ Wisconsin Statutes Chapter 7.315,

³⁷⁴ Assembly Bill 518 (2004) < <http://www.legis.state.wi.us/2003/data/AB-518.pdf> >

³⁷⁵ Email from Kevin Kennedy, Executive Director, Wisconsin State Elections Board, 22 September 2006.

³⁷⁶ Electionline.org: "Voter-Verified Paper Audit Trail Laws and Regulations." Web: <http://electionline.org/Default.aspx?tabid=290>.