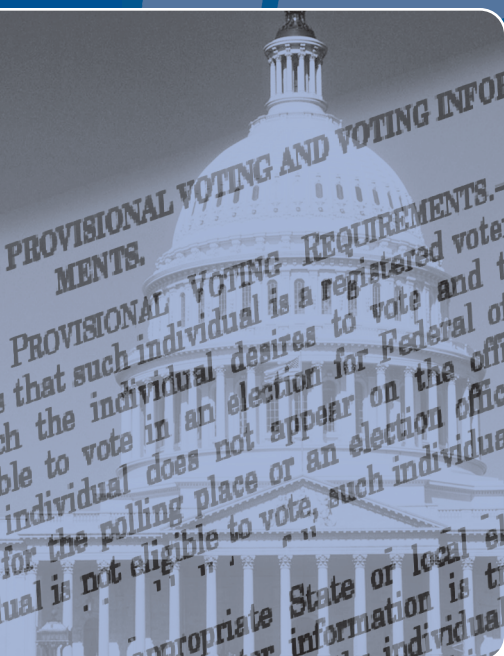


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Briefing



Solution or Problem? Provisional Ballots in 2004

They weren't quite the "hanging chad" of 2004, nor quite the safeguard envisioned by voting rights advocates. But regardless of how they were perceived, provisional voting was one of the most controversial aspects of post-Florida election reform around the country.

The federally-mandated system of provisional voting, included as part of the Help America Vote Act (HAVA), provides for voters who believe they are registered but whose names do not appear on polling place rosters. November marked the first time provisional ballots were required nationwide in a general election, with results that could generously be rated as mixed.

The election revealed quite dramatically that when it comes to provisional ballots, a national standard hardly means national uniformity – a reality that resonates across the entire issue of election reform and HAVA implementation.

This lack of uniformity in implementation of a uniform standard was especially stark with provisional ballots, where voters received such ballots under different circumstances and for different reasons. In Georgia, those not on registration rolls could have their provisional ballots counted if they were cast in the correct jurisdiction. Across the border in Florida, a voter found to be otherwise qualified would have his vote rejected if he cast it in a precinct other than his own.

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Additional differences complicated the process as well. In Connecticut, voters were told to go to their correct precinct before they could be given a ballot. In Florida, poll workers issued provisional ballots to voters in the incorrect precinct – if the voter demanded it.

Then there were distinctions within states. News reports in Ohio indicated some provisional ballots cast by people not in their assigned precinct were counted – an apparent violation of a state directive.¹

Some counties in Washington tracked down voters who would have otherwise had their provisional ballot rejected because they failed to complete part of their voter registration form.² This “second chance” for some voters had a number of politicians fuming as the state tried to sort out the closest gubernatorial election in Washington’s history.

“Some counties have gone above and beyond what’s required by law,” said John Pearson, the state’s deputy director of elections.³

It is these imbalances that have many concerned that Congress’ cure for what ailed much of the electoral system before the 2000 election might now be sick as well.

This 10th *electionline.org* Briefing investigates provisional ballots by analyzing the counting and rules for qualifying ballots in each state. Who received a provisional ballot and why? Where did they receive the ballot? Under what circumstances were their ballots counted or rejected? And overall, how many ballots ended up being included in the final tally?

By looking at the numbers from each state, *electionline.org* found the differences in provisional ballot rules from state to state affected how many ballots were counted.

This report does not intend to imply that provisional ballots were a failure. To the contrary, more than 1.6 million voters received provisional ballots in the 2004 presidential election. More than a million were counted.

Five years ago, hundreds of thousands of those voters would have been turned away at the polls with no remedy – even if they were left off the rolls through no fault of their own.

Prior to the passage of HAVA in 2002, most states, but not all, offered some form of provisional ballot. No state gave the voter the right to find out the status of their ballot after the election, as required by the federal act. In Florida, thousands of voters who had been wrongly pegged as felons were denied the right to vote. Lacking any recourse, Florida election officials sent those voters home – and cemented the state’s place as ground zero for arguably the most controversial presidential election in American history.

There were dozens of factors that affected whether ballots were counted or not counted. In some cases, the data did not fit any known assumptions.

Our national survey found that 70 percent of provisional ballots were counted in states with rules that allowed those ballots to be considered if cast anywhere in the correct jurisdiction.⁴ That number dropped

to 62 percent in states limiting consideration of provisional ballots to those cast in the correct precinct.

Some states with seasoned statewide voter registration databases had fewer provisional ballots, possibly indicating fewer problems managing new applications.

For example, Alaska and Michigan both have statewide voter registration databases. However, Michigan, which ranks 8th nationally in population, distributed 5,610 provisional ballots. Alaska, ranked 47th in population, issued more than 23,000 provisional ballots. In terms of the total vote count, Alaska led the nation in provisional votes, with the fail-safe ballots accounting for more than 7 percent of the state’s vote total, compared with Michigan, where provisional ballots accounted for less than one-tenth of 1 percent of the vote.⁵

For more details, see the “Key Findings” section on page 5 and the tables beginning on page 11.

Provisional voting can and did work for many on Nov. 2. But the disparities in the application of the law have been of continuing concern to lawmakers, policy experts and civil rights advocates. This study seeks to explore what those differences in application of federal law meant to voters in all 50 states and the District of Columbia. It is by no means comprehensive enough to offer a final say on the use of provisional ballots in 2004. But it does begin to reveal some trends that could prove significant as HAVA implementation moves forward.

Executive Summary

November 2, 2004 marked the first time all states offered federally-mandated provisional ballots in a general election. While the use of fail-safe, affidavit, or provisional ballots was not new to more than two-thirds of states before the passage of the Help America Vote Act (HAVA), the requirements enacted by Congress requiring notification for voters of the dispensation of their provisional ballot were.

The use of provisional ballots could, in one sense, be considered a national success. Nearly 1.1 million provisional ballots were counted out of 1.6 million cast. Many of those voters would have been otherwise disenfranchised.

But that success was not unqualified. The study of provisional ballot statistics from around the country revealed that even a national standard does not mean uniformity. The lack of uniformity has raised concerns from civil rights groups to the halls of Congress. And for good reason – if the intention of HAVA was to make sure every vote counted, the national mandate for provisional ballots did not always achieve that goal.

The pre-election controversy over how provisional ballots would be cast and counted continues. Ballots counted in one state would be discarded in another. In one state, poll workers would issue ballots to voters in the wrong precinct – sometimes knowing those ballots were destined to be disqualified. In some counties, election officials defied state law or practice to count ballots that in other counties in the same state would not be counted.

Voters in some counties were given a chance after the election to fix problems with their registration forms that kept them off the rolls – offering essentially a second chance to have their votes counted. Most, however, did not have that opportunity and instead had their votes discarded, sometimes for technicalities such as an unchecked box on a registration form.

In a number of key battleground states that lacked safeguards previously, including Florida, Ohio and Pennsylvania, the federal rules ensured that voters who would otherwise

be turned away from the polls if their names did not appear on registration rolls at least had the opportunity to cast a ballot and have their vote counted if they were found to be properly registered voters.

Among the findings in the report:

THE DATABASE EFFECT

The use of statewide voter registration databases did not necessarily decrease the percentage of list omissions. There is little difference between the percentages of provisional votes counted in the 17 states with statewide voter registration databases than the states without them. However, statewide voter lists might have led to fewer provisional ballots being cast.

VOTE COUNTING VARIED WIDELY

Around the country, the percentage of provisional ballots counted ranged from a national high in Alaska of 97 percent to a low of 6 percent in Delaware. Further study is needed to determine why some states counted so many and some so few. State practices could play a significant role.

IN-PRECINCT VS. OUT-OF-PRECINCT RULES

Whether a state accepted a provisional ballot cast outside of a voter's home precinct or not had some impact on the percentage of provisional ballots cast. In the states where ballots were partially or fully counted if cast in the wrong precinct but correct jurisdiction, 70 percent of provisional ballots were counted. In the states that did not count ballots cast in the incorrect precinct – and provided data – 62 percent were tabulated.

There are holes in the provisional balloting data that make comparison difficult, but not impossible. The varying state practices – when a provisional ballot is given, to whom and in what location – lead to the “fruit salad” problem where an apples-to-apples or even apples-to-oranges comparison is not possible. But this report does begin to form conclusions about how provisional balloting worked – or did not – in November 2004.

The Trouble with Numbers

Caveat Lector (Reader Beware)

By compiling and releasing the enclosed data on provisional ballot acceptance rates, *electionline.org* hopes to further inform the ongoing debate about the provisional voting requirement in the Help America Vote Act (HAVA). The research, however, has its limits.

These figures are not definitive on the subject of provisional voting, for two key reasons:

■ **States cannot be directly compared (a.k.a. the “fruit salad” problem).**

Because HAVA allowed states to implement provisional voting as they saw fit – resulting in widely varying requirements and procedures nationwide – there is no way to make definitive comparisons of one state to another. Moreover, because of varying state practices, *electionline.org* collected the enclosed data at different times from different sources in different states. [Indeed, as this Briefing went to press, some states had yet to release final official provisional voting statistics.] This variation makes comparisons very difficult; as Ohio’s Dana Walch says, comparing provisional ballot statistics is not like “apples to apples.” In fact, given the degree of variation between (or even within) states, any provisional ballot comparison is not even apples to oranges – it is more like fruit salad.

■ **Correlation is not causation.**

Throughout this Briefing, we make observations about the differences in provisional ballot rates associated with

different conditions such as statewide voter databases (or lack thereof), voter identification requirements or “in-precinct” voting rules. As noted in our key findings, some of these conditions appear to be associated with different acceptance rates of provisional votes between states. It does not mean, however, that such conditions “cause” increases or decreases of provisional ballot acceptance rates – such conclusions can only be drawn after a more careful examination.

Why, then, compile these figures at all?

The answer is that this first analysis serves to identify areas of future inquiry for policymakers and election officials on the subject of provisional voting.

For example, the figures suggest that states without statewide voter databases count only a slightly higher percentage of provisional ballots (68 percent) than states with such databases (65 percent). This small difference would seem to run counter to the conventional wisdom that new databases will significantly reduce the impact of provisional voting.

Yet, upon closer examination, we see that fewer provisional ballots were cast in states with databases – partly because several larger states have yet to develop databases (such as California and Ohio), but perhaps also because the database states have the ability to screen out voters who should not vote

provisionally. And in states where databases are new, there is also the implementation problem – as Election Assistance Commission member Ray Martinez noted at the recent hearing in Columbus, Ohio, such new databases sometimes create more problems than they solve in the short run.

In any event the lack of clear statistical separation between database and non-database states should serve as a signal to policymakers and researchers to actually test the belief that better lists will reduce the impact of provisional voting – and if so, to identify more concretely if such lists will inform voters of the right (or lack thereof) to cast a ballot.

Provisional voting has become a politically and emotionally-charged issue, with partisans and advocates debating its impact on the tradeoff between access and integrity in the voting process. By identifying potential linkages between certain conditions and provisional voting, the preliminary numbers in this Briefing – messy, incomplete and admittedly imprecise – nonetheless suggest ways in which election reform stakeholders across the spectrum can focus the debate on HAVA’s provisional voting requirement.

To put it another way, these figures are not the final word on HAVA’s provisional voting requirement – but they are intended to help move the conversation forward.

Key Findings

Thousands of voters in Florida lost their voting rights in 2000 because of administrative errors and database problems. State law had no remedy for voters missing from registration rolls. Qualified voters – most often African Americans – were sent home, disenfranchised by registration roll mistakes caused by a private company managing a purge. Under the radar, safeguards were lacking in other states as well.

The outrage was widespread and bipartisan. Congress passed the Help America Vote Act (HAVA) in 2002, sweeping legislation responding to the troubled 2000 vote that included mandating the use of provisional ballots nationwide.

The rules, though not new to more than two-thirds of the states (not including, of course, Florida), nonetheless codified the national minimum standard allowing those whose names are not on voter lists but believe they are registered to cast ballots that could be checked later to verify a voter's eligibility.⁶

The provisional ballot mandate was the most widely hailed aspect of federal election reform, touted as a cure to some of the problems that plagued Florida in 2000.

Good intentions, however, did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.

Good intentions did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.



It became clear well before November 2 that provisional ballots would be dealt with differently in different states. National standards, even those seeking to achieve precisely the same goal, did not mean uniformity. To the contrary, provisional voting – once a bipartisan goal in the wake of 2000 – became one of the most contentious election administration issues before, during and after November 2 and led to litigation, legislation and calls to federally standardize the process.

Provisional ballots in 2004

Despite the controversy, provisional ballots could be considered a success. Over 1.6 million provisional ballots were cast and nearly 1.1 million, or 68 percent, were counted.⁷ Unlike in 2000, there were no reports of large numbers of voters being turned away at the polls. To the contrary, in some states, large numbers of voters stood in long lines at the polls, waiting because there were too many of them and too few machines.

electionline.org's survey of provisional ballot results had some clear indications and also some challenges. Thus, the findings have some caveats.

A thorough analysis of provisional ballot data presents problems and complexities that make drawing broad generalizations difficult. "Comparing provisional ballot numbers between states is not comparing apples to apples," stated Dana Walch, election reform project manager in Ohio.⁸

Those difficulties and differences can be defined in categories – who gets a ballot, which ballots are counted and what laws for fail-safe ballots existed prior to the passage of HAVA.

Who receives provisional ballots and which provisional ballots are counted vary from state to state. Sometimes, counting rules even varied over county lines.

Who gets a provisional ballot?

In many states, the universe of voters who could potentially receive provisional ballots is much larger than just those voters who claim they are registered to vote but are not on precinct rosters. HAVA also

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states they can be issued when an election official claims an individual is not eligible to vote.

Many states issue provisional ballots to voters who do not show ID but are required to do so, either because of HAVA's minimum standard or because of other state law. There are other reasons for the ballots to be issued as well – to voters who are challenged or if the poll hours have been extended.

Whose ballot gets counted?

Whether a provisional ballot was counted relied largely upon the home state of the voter.

In 28 states, a provisional ballot cast in the wrong precinct was not counted. In 17 states, a ballot cast in the wrong precinct but correct jurisdiction would be counted.⁹ This disparity in state practice – more than any other election reform issue – triggered a number

of lawsuits in battleground states in the weeks and months leading to the November election.

In the post-election period, the issue has led some at the state and federal level to call for national standards of counting provisional ballots. Kay Maxwell, president of the League of Women Voters, told *The Associated Press* that her organization is urging a reconsideration of the precinct-only rules limiting pro-

Provisional Ballot Notification Process

The Help America Vote Act (HAVA) requires every state to “establish a free access system (such as a toll-free telephone number or an Internet Web site) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.”¹⁰

However, it too has been implemented differently in different states. Which free-access system or systems are used, when information is available to voters and whether or not the information is available from the county or state level differs across the country.

States were left with some leeway on how to meet the free-access system requirement. A toll-free number and/or Web site as mentioned in HAVA are used by a number of states, but many also use written notification, either in conjunction with one of the other systems or on its own.

Texas, for example, sends out written notification 10 days after the election.¹¹ An official with the Texas Elections Division told *electionline.org* that counties could choose to use a Web site or toll-free number, but none of them do so at this time.¹²

The length of time that the states have to make the information available also differs by state. By statute, Alaska has 60 days after the certification of an election to send a letter to the voter¹³ and has 30 days to make the information available through a toll-free number,¹⁴ whereas Alabama does it within 10 days as a matter of policy, not law.

Pennsylvania's Web site has provisional ballot information available for most counties three days after the election,¹⁵ while North Carolina has their information available eight to 10 days after the election.¹⁶

Virginia has a toll-free number provisional voters can use to check the status of their ballots. Those whose ballots did not count receive a letter, but anyone can call the number. Information is available several days after the election, depending on when the local electoral boards end their meetings to determine the status of the ballots. Provisional voters and political party officials have the right to be present at those meetings in order to present evidence either for against the counting of specific provisional ballots.¹⁷

Other states also leave the notification process up to the counties, including (but not limited to) Alabama, Arkansas, Arizona and Washington.

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visional voting in more than half of the states.

“We felt strongly that individuals who ended up in their so-called wrong precinct ... they should have been able to cast ballots for president and vice president and any statewide offices,” Maxwell said. “If it’s a problem for even a couple of people, then it’s a problem that needs solving.”¹⁸

However, leaving this issue up to the states was by no means unintentional. During the Senate debate over HAVA, Sen. Christopher Dodd, D-Conn., stated, “whether a provisional ballot is counted or not depends solely on state law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter’s eligibility to vote is determined under State law.”¹⁹

Prior to the 2004 election, approximately two-thirds of the states were using some form of provisional voting, meaning laws and mechanisms were in place that already varied from state to state.²⁰

The provisional voting experience

With state-by-state differences in mind, data from the 2004 election still can provide some general insights into the experience nationally using provisional voting.

■ *Counting varied*

Alaska had the highest percentage of provisional ballots cast with 97 percent and five other states counted more than three-quarters of their provisional ballots – Oregon, Washington, Nebraska, Ohio and Colorado.

The lowest percentage of counted provisional ballots came from Delaware which tallied only 6 percent. Five other states counted 15 percent or fewer of their provisional ballots – Hawaii, Oklahoma, South Dakota, Kentucky and Indiana.²¹

■ *The ‘good database’ effect?*

Five of the six states that had the lowest percentage of provisional ballots cast have statewide registration databases in place. Indiana was the sole exception.

Prior to the November 2004 election, conventional wisdom among election experts was that a healthy statewide voter registration database would reduce errors. That would, in turn, lead to a

databases in use during the November election with those that did not, there is little difference in the percentage of ballots counted. In states with databases, 65 percent of provisional ballots were counted. In states without databases, 68 percent of these ballots were counted.

■ *Number of ballots issued*

Several states issued a large number of provisional ballots. More than 3.5 percent of votes cast for highest office in three states and the District of Columbia were provisional ballots.

Ned Foley, a law professor at Ohio State University, said he wondered if in states with low rates of provisional ballot use, voter registration data was handled better.

Whether a provisional ballot counted relied largely upon the home state of the voter.



reduced need for provisional ballots. Further, “good” statewide databases would mean fewer mistakes in list maintenance.

The same conventional wisdom also suggests that those seeking provisional ballots in states with good databases probably were not properly registered, filled out a form incorrectly or perhaps were never registered at all.

The preliminary data does not support convention wisdom.

When comparing states that had statewide voter registration

“Maybe states with lower usage rates were able to put out fires ahead of time,” Foley told the Election Assistance Commission in February 2005.²²

■ *In-precinct vs. out-of-precinct rules*

In the states where ballots were counted or partially counted if they were cast in the wrong precinct but correct jurisdiction (county, township), 70 percent of provisional ballots cast were counted. Eleven of these states counted more than 50 percent of these ballots.

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In the states that did not count provisional ballots cast in the wrong precinct (and provided data), 62 percent of the ballots counted. Sixteen of these states counted fewer than 50 percent of these ballots.

■ *Election-day registration*

Six states – Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming – have election-day registration and are exempt from HAVA provisional ballot rules. Four of these states

Ohio, arguably the most watched state during the 2004 election, was one of five states, along with Colorado, Florida, Michigan and Missouri, that faced a lawsuit over the counting of provisional ballots cast in the wrong precinct. The court ruled for the state and agreed that ballots cast outside the correct precinct should not be counted.

Dana Walch stated the high number of provisional ballots cast – over 150,000 – could be at least partially explained by the state’s pol-

sional voting surfaced. According to newspaper reports, fewer than 50 percent of provisional ballots cast were counted. The number was even lower in some mid-state counties.

“Some people thought they could just come in the day of the election and vote with a provisional ballot. I also think a lot thought they were registered and they actually weren’t,” Steven G. Chiavetta, director of Dauphin County’s elections and registration bureau told *The Patriot News*.²⁷


In-state variation

Not only does the question of whose ballot gets counted vary from state to state, it sometimes varies even within a state.

In Arizona, a state that requires provisional ballots be cast in the correct precinct to be counted, at least two counties, Gila and Pinal, counted provisional ballots cast in the wrong precinct.²⁸

Illinois had a similar issue. During the state’s presidential primaries, Illinois did not count provisional ballots cast in the wrong precinct. The State Board of Elections issued a directive for the November election instructing counties to count ballots cast in the wrong precinct for some federal races. Some counties followed the directive, while others citing state law requiring the correct precinct did not.²⁹

And like everything else in election administration, procedure matters. In King County, Washington – the center of the contentious guber-



Maybe states with lower usage rates were able to put out fires ahead of time.

– Ned Foley, Ohio State University.

do not use provisional ballots – Idaho, Maine, Minnesota and New Hampshire.²³

Wisconsin and Wyoming, however, use provisional ballots for first-time voters who were not on the voter list and do not have identification. Both states had small numbers of provisional ballots cast and a low percentage of provisional ballots counted – Wisconsin counted 32 percent of its 373 provisional ballots and Wyoming counted 25 percent of its 94 provisional ballots.²⁴

State-by-state variation

A brief examination of how provisional voting is handled in several states demonstrates just how varied the process is.

icity of issuing provisional ballots to voters who moved and did not update their registration forms. Those voters were eligible to have their ballots counted.²⁵

In the opposite case – an unusually small number of provisional ballots cast and/or counted – state law or practice can adequately explain the numbers.

Vermont, one of the least populous states, had an extraordinarily low number of provisional ballots cast – 101 cast, 37 counted. The state avoids issuing provisional ballots to most by allowing voters to use a sworn affidavit at the polling place on Election Day and vote a regular ballot.²⁶

In Pennsylvania, reports of confusion about registration and provi-

Provisional Ballots Spur Activity in Congress and State Legislatures

The inclusion of provisional ballots in the Help America Vote Act was universally hailed as a major step in ensuring the right to vote for Americans who might otherwise be turned away from the polls.

As the 2004 presidential election approached, it also became clear that the varied ways in which states planned to handle the ballots could swing the election one way or the other.

A high-stakes race, new territory in election law and partisan feuding combined to produce a frenzied fight over provisional voting in the months leading up to the November vote, when advocates and others challenged provisional voting rules in five states – Colorado, Ohio, Florida, Michigan and Missouri.

At the center of the lawsuits was the method of distribution and rules for counting ballots. Some argued that ballots cast in the wrong precinct should be completely voided while others claimed that votes cast on provisional ballots for federal and statewide offices should be counted no matter where they were cast.

After the election, calls to standardize provisional ballot rules emerged, not surprisingly from those states where the ballots had the greatest impact in determining the outcome of races.

In the state of Washington, Democrats and Republicans introduced legislation that would make provisional ballots distinguishable from standard and absentee ballots. Lawmakers want the ballots to be marked by different colors in order to avoid a repeat of what occurred on Election Day in King County when more than 300 provisional ballots were improperly run through tabulating machines before the voters' registration status could be verified.

Jim Kastama, D-Tacoma, said the state must set high standards to assure public trust in elections. "You have no other choice but perfection," said Kastama, the chairman of the Senate Government Operations and Elections Committee. "To do otherwise is to say that you discount someone's vote."³⁰

Lawmakers in Illinois re-opened the pre-election debate on standards for when a provisional ballot should be counted. The distribution and counting of provisional ballots in Illinois varied so widely that according to news reports only some of the state's 110 jurisdictions followed the State Board of Elections' recommendation that provisional ballots cast in the wrong precinct should still count for some federal offices.³¹

Democratic lawmakers in North Carolina passed a measure during the first week of March that affirmed a 2003 law that allows for the counting of out-of-precinct ballots cast on Election Day.³²

At the federal level, Rep. John Conyers, D-Mich., introduced legislation that would amend HAVA to mandate that provisional ballots cast by eligible voters anywhere in a state would count. Two other bills, one proposed by Sen. Hillary Clinton, D-N.Y. and the other by Sen. Christopher Dodd, D-Conn., include provisions that would do the same.

In mid-February, Florida's Secretary of State's office recommended that those who cast provisional ballots should be given a week, instead of two days, to prove their eligibility as well as grant supervisors and canvassing boards more time to review the ballots, eliminating some of the pressure to make a decision during an election.³³

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natorial election – hundreds of provisional ballots were incorrectly counted in polling place counting machines before they could be verified as eligible votes.³⁴

Litigation, legislation and looking ahead

Not surprisingly, the problems some states faced with provisional ballots have led to both post-election litigation and legislation.

North Carolina election officials, following state law, initially counted provisional ballots if they were not cast in the correct precinct. The state Supreme Court unanimously ruled, however, that the offi-

A similar bill has been introduced in Illinois which would require counting races for federal and statewide offices on provisional ballots cast out of precinct.³⁶

Federal response to provisional ballot confusion

Several bills have been introduced at the federal level amending HAVA to require out-of-precinct provisional ballots to be counted. Sen. Hillary Clinton, D-N.Y., introduced S. 450 which states, “the determination of eligibility shall be made without regard to the location at which the voter cast the provisional ballot and without regard to any require-

individual who cast such ballot is otherwise eligible to vote.”³⁸

However, a bill introduced by Sen. Mitch McConnell, R-Ky., and Sen. Christopher “Kit” Bond, R-Mo., demonstrates the ever-present partisan divide over state authority and may be an indicator of the difficult road any moves to further standardize provisional ballot rules face at the federal level.

“As we expressed throughout the debates standard requirements for elections are to be implemented by the state. On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide,” Bond said when he introduced the bill.³⁹

Not surprisingly, state officials agree. In an open letter to Congress, the National Association of Secretaries of State urged lawmakers not to pass federal legislation creating national standards for administering elections.

“The passage of any such law would undercut the states’ ability to effectively administer elections and interfere with the progress they have made in implementing election reforms. Perhaps most importantly, it would discount our country’s unique political philosophy — the belief in the division of authority between state and federal governments,” the letter states.⁴⁰

“On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide.”

– Sen. Christopher “Kit” Bond, R-Mo.

cially were incorrectly interpreting state law and threw out at least 11,000 provisional ballots cast in the wrong precinct. In response, Democratic lawmakers passed a measure that clearly allows for the counting of out-of-precinct provisional ballots. An appeal is likely.³⁵

ment to present identification to any election official.”³⁷

Rep. John Conyers, D-Mich., has introduced a similar bill H.R. 533 stating, “notwithstanding at which polling place a provisional ballot is cast within the state, the state shall count such ballot if the



Table 1: Provisional Ballots Cast and Counted by State

State	Cast	Counted	Percent Counted
Alabama	6,560	1,836	28%
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
Arkansas	7,675	3,678	48%
California	668,408	491,765	74%
Colorado	51,477	39,163	76%
Connecticut	1,573	498	32%
Delaware	384	24	6%
District of Columbia	11,212	7,977	71%
Florida	27,742	10,017	36%
Georgia	12,893	3,839	30%
Hawaii	346	25	7%
Illinois	43,464	22,167	51%
Indiana	4,029	598	15%
Iowa	15,406	8,038	52%
Kansas	45,563	31,805	70%
Kentucky	1,494	221	15%
Louisiana	5,971	2,411	40%
Maryland	48,936	31,860	65%
Massachusetts	10,060	2,319	23%
Michigan	5,610	3,277	58%
Missouri	8,183	3,292	40%
Montana	653	357	55%
Nebraska	17,003	13,298	78%
Nevada	6,154	2,447	40%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Ohio	158,642	123,548	78%
Oklahoma	2,615	201	8%
Oregon	8,298	7,077	85%
Pennsylvania	53,698	26,092	49%
Rhode Island	2,147	984	46%
South Carolina	4,930	3,207	65%
South Dakota	533	66	12%
Tennessee	8,778	3,298	38%
Texas	36,193	7,770	21%
Utah	26,389	18,575	70%
Vermont	101	37	37%
Virginia	4,172	728	17%
Washington	87,393	69,645	80%
West Virginia	13,367	8,378	63%
Wisconsin	373	120	32%
Wyoming	95	24	25%
TOTAL	1,626,160	1,097,933	68%

Table 2: States Ranked by Percentage of Provisional Ballots Counted

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	1,626,160	1,097,933	68%

Table 3: Provisional Ballots Counted: Database Status

Statewide registration database in place

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Louisiana	5,971	2,411	40%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Massachusetts	10,060	2,319	23%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%

TOTAL 211,159 137,366 65%

Statewide registration database not in place

State	Cast	Counted	Percent Counted
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%

TOTAL 1,415,001 960,567 68%

Table 4: Provisional Ballots Counted: In vs. Out-of-Precinct

Provisional ballots eligible for counting if cast outside correct precinct

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Maryland	48,936	31,860	65%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Vermont	101	37	37%
Georgia	12,893	3,839	30%
Delaware	384	24	6%

TOTAL 1,113,338 790,930 70%

Ballots disqualified if cast outside correct precinct

State	Cast	Counted	Percent Counted
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Kansas	45,563	31,805	70%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
Montana	653	357	55%
Iowa	15,406	8,038	52%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Florida	27,742	10,017	36%
Connecticut	1,573	498	32%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%

TOTAL 492,822 307,003 62%

Table 5: Percent Counted of Total Vote⁴¹

State	Cast	Counted	Percent Counted	Vote for Highest Office	% Counted of Total Vote
Alaska	23,275	22,498	97%	312,598	7.20%
California	668,408	491,765	74%	12,419,857	3.96%
Arizona	101,536	73,658	73%	2,012,585	3.66%
District of Columbia	11,212	7,977	71%	227,586	3.51%
Kansas	45,563	31,805	70%	1,187,756	2.68%
Washington	87,393	69,645	80%	2,859,084	2.44%
Ohio	158,642	123,548	78%	5,627,903	2.20%
Utah	26,389	18,575	70%	927,844	2.00%
Colorado	51,477	39,163	76%	2,129,630	1.84%
Nebraska	17,003	13,298	78%	778,186	1.71%
Maryland	48,936	31,860	65%	2,386,678	1.33%
North Carolina	77,469	42,348	55%	3,501,007	1.21%
New Mexico	15,360	8,767	57%	756,304	1.16%
West Virginia	13,367	8,378	63%	755,887	1.11%
Iowa	15,406	8,038	52%	1,506,908	0.53%
Pennsylvania	53,698	26,092	49%	5,769,590	0.45%
Illinois	43,464	22,167	51%	5,275,415	0.42%
Oregon	8,298	7,077	85%	1,836,782	0.39%
Arkansas	7,675	3,678	48%	1,054,945	0.35%
Nevada	6,154	2,447	40%	829,587	0.29%
Rhode Island	2,147	984	46%	437,134	0.23%
South Carolina	4,930	3,207	65%	1,617,730	0.20%
Tennessee	8,778	3,298	38%	2,437,319	0.14%
Florida	27,742	10,017	36%	7,609,810	0.13%
Louisiana	5,971	2,411	40%	1,943,106	0.12%
Missouri	8,183	3,292	40%	2,731,364	0.12%
Georgia	12,893	3,839	30%	3,301,867	0.12%
Alabama	6,560	1,836	29%	1,883,415	0.10%
Texas	36,193	7,770	21%	7,410,749	0.10%
Massachusetts	10,060	2,319	23%	2,912,388	0.08%
Montana	653	357	55%	450,434	0.08%
Michigan	5,610	3,277	58%	4,839,252	0.07%
Connecticut	1,573	498	32%	1,578,769	0.03%
Indiana	4,029	598	15%	2,468,002	0.02%
Virginia	4,172	728	17%	3,198,367	0.02%
South Dakota	533	66	12%	388,215	0.02%
Oklahoma	2,615	201	8%	1,463,758	0.01%
Kentucky	1,494	221	15%	1,795,860	0.01%
Vermont	101	37	37%	312,309	0.01%
Wyoming	95	24	25%	243,428	0.01%
Delaware	384	24	6%	375,190	0.01%
Hawaii	346	25	7%	429,013	0.01%
Wisconsin	373	120	32%	2,997,007	0.00%
TOTAL	1,526,160	1,097,933	68%	104,980,618	1.05%

NOTES FOR TABLES 1-5:

- States with incomplete data - not all counties have reported provisional ballot numbers: Indiana, Pennsylvania, South Carolina and Virginia
- No data from Mississippi, New Jersey and New York.
- No data for states with election-day registration (Idaho, Maine, Minnesota and New Hampshire).
- North Dakota does not require voter registration.
- Data compiled from phone calls and emails to state election officials, data provided by the U.S. Election Assistance Commission, an *electionline.org* survey and press reports. For more information, see the methodology.

Snapshots of the States

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Alabama

CAST: 6,560 ■ COUNTED: 1,836 (28%)

Summary: Provisional ballot issued if name is marked off voter list because he/she applies for absentee ballot, if voter does not provide the required proof of identity or voter is challenged.⁴² Provisional ballot eligible to be counted if cast in correct precinct.

Alaska

CAST: 23,275 ■ COUNTED: 22,498 (97%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity and is not known by elections board⁴³ or if voter is challenged.⁴⁴ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Arizona

CAST: 101,536 ■ COUNTED: 73,658 (73%)

Summary: Provisional ballot issued if voter moves to a new address within the county and does not notify the election board before the deadline.⁴⁵ Provisional ballot eligible to be counted if cast in correct precinct.

Arkansas

CAST: 7,675 ■ COUNTED: 3,606 (48%)

Summary: Provisional ballot issued if voter is challenged.⁴⁶ Provisional ballot eligible to be counted if cast in correct jurisdiction.

California

CAST: 668,408 ■ COUNTED: 491,765 (74%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,⁴⁷ or if voter moves within the county, does not re-register, and votes at the polling place assigned to their new address.⁴⁸ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Colorado

CAST: 51,477 ■ COUNTED: 39,163 (76%)

Summary: Provisional ballot issued if voter's name is marked off the voter list because he/she applies for an absentee ballot,⁴⁹ if voter does not provide the required proof of identity,⁵⁰ or if voter moves to a new address within the state and does not notify the elections board before the deadline.⁵¹ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Connecticut

CAST: 1,573 ■ COUNTED: 498 (32%)

Summary: Provisional ballot issued if voter is challenged or if the voter does not provide the required proof of identity.⁵² Provisional ballot eligible to be counted if cast in correct precinct.

Delaware

CAST: 384 ■ COUNTED: 24 (6%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

District of Columbia

CAST: 11,212 ■ COUNTED: 7,977 (71%)

Summary: Provisional ballot issued if voter moves to a new address within the District and does not fill out a form before Election Day.⁵³ Provisional ballot eligible to be counted if cast in correct precinct.

Florida

CAST: 27,742 ■ COUNTED: 10,017 (36%)

Summary: Provisional ballot issued if a voter registers for the first time by mail and does not provide the required proof of identity, a voter is challenged, or the voter either refuses to sign an oath as to his or her eligibility or a majority of the clerks and inspectors doubt the voters eligibility.⁵⁴ Provisional ballot eligible to be counted if cast in correct precinct.

Georgia

CAST: 12,89 ■ COUNTED: 3,839 (30%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁵⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Hawaii

CAST: 34 ■ COUNTED 25 (7%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Idaho

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Illinois

CAST: 43,464 ■ COUNTED: 22,167 (51%)

Summary: Provisional ballot issued if voter is challenged and the challenge is sustained by a majority of election judges or if voter applies for absentee ballot but wishes to vote in person and does not produce the unused absentee ballot.⁵⁶ Provisional ballot eligible to be counted if cast in the correct jurisdiction.

Indiana

CAST: 4,029 ■ COUNTED: 598 (15%) (INCOMPLETE DATA)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Iowa

CAST: 15,406 ■ COUNTED: 8,038 (51%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide required proof of identity⁵⁷ or voter is challenged.⁵⁸ Provisional ballot eligible to be counted if cast in correct precinct.

Kansas

CAST: 45,563 ■ COUNTED: 31,805 (70%)

Summary: Provisional ballot issued if voter applies for absentee ballot but the ballot was spoiled, destroyed, lost, or not received,⁵⁹ the voter is challenged,⁶⁰ voter registers for the first time by mail and does not provide the required proof of identity,⁶¹ voter changes their name or moves within the county and does not re-register.⁶² Provisional ballot eligible to be counted if cast in correct jurisdiction.

Kentucky

CAST: 1,494 ■ COUNTED: 221 (15%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity or voter is challenged by all four precinct election officers.⁶³ Provisional ballot eligible to be counted if cast in correct precinct.

Louisiana

CAST: 5,971 ■ COUNTED: 2,411 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁶⁴ Provisional ballot eligible to be counted if cast in correct parish (county).

Maine

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration. State uses “challenge ballots” of which all are counted. The only time challenge ballots are looked at specifically would be in the case of a recount.

Maryland

CAST: 48,936 ■ COUNTED: 31,860 (65%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity, if voter applies for absentee ballot but wishes to vote in person, if voter moves to new address within the county or changes name and does not notify election board before deadline or if vote is challenged.⁶⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Massachusetts

CAST: 10,060 ■ COUNTED: 2,319 (23%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Michigan

CAST: 5,610 ■ COUNTED: 3,277 (58%)

Provisional ballot eligible to be counted if cast in correct precinct.

Minnesota

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

Mississippi

CAST: 25,975 (NUMBER DOES NOT INCLUDE TUNICA COUNTY) ■ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Missouri

CAST: 8,183 ■ COUNTED: 3,292 (40%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Montana

CAST: 653 ■ COUNTED: 357 (55%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,⁶⁶ or if the voter is challenged.⁶⁷ Provisional ballot eligible to be counted if cast in correct precinct.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Nebraska

CAST: 17,003 ■ COUNTED: 13,298 (79%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Nevada

CAST: 6,154 ■ COUNTED: 2,447 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁶⁸ Provisional ballot eligible to be counted if cast in correct precinct.

New Hampshire

CAST: N/A ■ COUNTED: N/A

Summary: Election-day registration.

New Jersey

CAST: NO INFORMATION ■ COUNTED: NO INFORMATION

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter moves to a new address within the county or changes his/her name and does not notify the elections board before the deadline.⁶⁹ Provisional ballot eligible to be counted if cast in correct precinct.

New Mexico

CAST: 15,360 ■ COUNTED: 8,767 (57%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁷⁰ Provisional ballot eligible to be counted if cast in correct jurisdiction.

New York

CAST: NO INFORMATION ■ COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

North Carolina

CAST: 77,469 ■ COUNTED: 42,348 (55%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁷¹ Provisional ballot eligible to be counted if cast in correct jurisdiction.

North Dakota

CAST: N/A ■ COUNTED: N/A

Summary: No voter registration.

Ohio

CAST: 158,642 ■ COUNTED: 123,548 (78%)

Summary: Provisional ballot issued if voter moves to a new address within the county or from one Ohio County to another during the last 28 days before Election Day.⁷² Provisional ballot eligible to be counted if cast in correct precinct.

Oklahoma

CAST: 2,615 ■ COUNTED: 201 (8%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter's political affiliation is disputed in a primary.⁷³ Provisional ballot eligible to be counted if cast in correct precinct.

Oregon

CAST: 8,298 ■ COUNTED: 7,077 (85%)

Summary: Provisional ballot issued if voter never received his/her mail-in ballot or if he/she wants to vote in person in a different town or county than the one in which he/she is registered.⁷⁴ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Pennsylvania

CAST: 53,698 ■ COUNTED: 26,092 (49%)

Summary: Provisional ballot issued if a voter is voting for the first time in his/her county or has recently moved to another residence within the county and does not provide the required proof of identity, or if a voter is challenged.⁷⁵ Provisional ballot eligible to be counted if cast in correct jurisdiction.

Rhode Island

CAST: 2,147 ■ COUNTED: 984 (46%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, if a voter is challenged, or if person whose name does not appear on the list of registered voters for the voting district but does appear on the community list contends he or she is voting in the correct voting district.⁷⁶ Provisional ballot eligible to be counted if cast in correct jurisdiction.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

South Carolina

CAST: 4,930 ■ COUNTED: 3,207 (65%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if a voter is challenged,⁷⁷ moves to a different precinct within the county and does not notify the county board of registration. Provisional ballot eligible to be counted if cast in correct precinct.

South Dakota

CAST: 533 ■ COUNTED: 66 (12%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, he or she signs an affidavit, and his/her affidavit is challenged.⁷⁸ Provisional ballot eligible to be counted if cast in correct precinct.

Tennessee

CAST: 8,778 ■ COUNTED: 3,298 (38%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Texas

CAST: 36,193 ■ COUNTED: 7,770 (21%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity or if a voter has applied for a ballot by mail but has not received it.⁷⁹ Provisional ballot eligible to be counted if cast in correct precinct.

Utah

CAST: 26,389 ■ COUNTED: 18,575 (70%)

Summary: Provisional ballot issued if a voter is challenged.⁸⁰ Provisional ballot eligible to be counted if cast in the wrong precinct and the ballot is identical to the one that the voter would have voted if he or she appeared at the correct jurisdiction.

Vermont

CAST: 101 ■ COUNTED: 37 (37%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

Virginia

CAST: 4,172 ■ COUNTED: 728 (17%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.⁸¹ Provisional ballot eligible to be counted if cast in correct precinct.

Washington

CAST: 87,393 ■ COUNTED: 69,645 (80%)

Summary: Provisional ballot issued if a voter requests an absentee ballot but wishes to vote in person.⁸² Provisional ballot eligible to be counted if cast in correct jurisdiction.

West Virginia

CAST: 13,367 ■ COUNTED: 8,378 (63%)

Summary: Provisional ballot issued if the signature on the poll slip and the registration card do not match, if a voter moves to a different precinct within the county or if a voter does not provide the required proof of identity.⁸³ Provisional ballot eligible to be counted if cast in correct precinct.

Wisconsin

CAST: 373 ■ COUNTED: 120 (32%)

Summary: Election-day registration. Provisional ballot issued if a voter registers for the first time by mail, does not provide the required proof of identity at the time of submitting the registration form, and does not do so at the polling place. In addition, if a voter's registration application was submitted as part of a voter registration drive, their application was not witnessed by an official voter registration deputy, and the voter does not provide the required proof of identity at the polling place, they are entitled to receive a provisional ballot. In order for the provisional ballot to be counted, the voter must provide the required proof of identity before Election Day, to poll workers before polls close on Election Day, or to the municipal clerk's office by 4:00p.m. the day after the election.⁸⁴ Provisional ballot eligible to be counted if cast in correct precinct.

Wyoming

CAST: 95 ■ COUNTED: 24 (25%)

Summary: Election-day registration. Provisional ballot issued if a voter does not have the required proof of identity when attempting to register on Election Day. The voter has until close of business the day after the Election to provide proof of identity to the county clerk. The same holds true for a challenged voter; after he/she signs an affidavit, he/she has until close of business the next day to have a proof of identity approved by the county clerk.⁸⁵ Provisional ballot eligible to be counted if cast in correct precinct.

Methodology

Information for this report was taken from primary sources – interviews with state election officials, an *electionline.org* survey of state election officials – as well as secondary sources including newspaper articles. In addition, data collected by the Election Assistance Commission in its February 9, 2005 *Testimony Before the House Administration Committee* was used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

Endnotes

- 1 Claussen, Nick. "Election board deals with provisional votes, employee complaint," *The Athens News*, November 18, 2004.
- 2 Willmsen, Christine and Kelleher, Susan. "Ballot checks vary widely across state," *The Seattle Times*, December 19, 2004.
- 3 Ibid.
- 4 Jurisdiction is generally defined as the geographic area served by one voter registrar – either county, township, or independent town or city.
- 5 Data is derived from information found in Table 5 and information provided by the U.S. Census Bureau at www.census.gov.
- 6 The Help America Vote Act (hereinafter HAVA), Public Law 107-252, § 302(a) ("If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.")
- 7 Data for some states is not final and for other states is incomplete – not all counties had reported to the state their provisional ballot numbers. New York and New Jersey did not provide data and Mississippi had numbers for how many ballots cast but not counted. For more detailed information on sources and data collection please see the methodology section.
- 8 Telephone interview with Dana Walch, February 2005.
- 9 The remaining states have election-day registration. North Dakota does not require voter registration.
- 10 HAVA § 302(5)(B).
- 11 Texas Elec. Code § 65.059.
- 12 Phone conversation with Texas election official, February 2004.
- 13 Alaska Stat. § 15.20.207(I)(2).
- 14 Alaska Stat. § 15.20.207(K).
- 15 Phone conversation with Julio Pena, Pa. Bureau of Commissions, Elections and Legislation, February 2005.
- 16 Phone conversation with Johnnie McLean, Deputy Director of Administration, N.C. Board of Elections, February 2005.
- 17 Phone conversation with Rosanna Bennoch, Policy Manager, Virginia State Board of Elections, February 17, 2005.
- 18 McCarthy, John. "League president: Wrong precinct no excuse for denial of vote," *The Associated Press* as published in *The Beacon Journal*, February 23, 2005.
- 19 148 Cong. Rec. S10504 (October 16, 2002).
- 20 See *electionline.org's Election Reform Briefing: The Provisional Voting Challenge*.
- 21 Indiana's data is incomplete because not every county has reported provisional ballot counts to the state.
- 22 Foley, Ned. Testimony before the Election Assistance Commission, February 23, 2005.
- 23 Maine has a "challenged ballot," whereby, "a new voter who declares residency on Election Day, but does not have satisfactory proof of such residency, must be allowed to vote a challenged ballot." These ballots are unlike provisional ballots in that they are initially counted as regular ballots. They are only examined if there is a recount and the challenged ballots would affect the outcome. Maine Rev. Stat. Ann. Title 21-A-696(1).
- 24 Wyoming is one of only a handful of states that has detailed information on its state Web site listing the status of all 94 provisional ballots. The two main reasons for ballots not being counted – acceptable ID never provided or the voter cast the ballot in the wrong precinct. "Statewide Provisional Ballots – Wyoming Official Summary – November 2, 2004," Wyoming Secretary of State Web site, <http://sos.wy.state.wy.us/election/2004/results/g-prov-b.pdf> (last visited March 11, 2005).
- 25 Telephone interview with Dana Walch, February 2005.
- 26 Email from Kathy DeWolfe, Vermont state elections director, May 5, 2004.
- 27 Sherzer, Jack. "Counties toss most paper ballots," *The Patriot News*, February 14, 2005.
- 28 Burnette, Daniel. "Ballots Cast in Wrong Precinct Counted – Sometimes," *Arizona Capital Times*, February 7, 2005.
- 29 "Election officials want uniformity in provisional ballot counts," *The Associated Press*, November 21, 2004.
- 30 McGann, Chris. "Senate Election-Overhaul Bills Advance," *The Seattle Post-Intelligencer*, February 18, 2005.
- 31 "Election Officials Want Uniformity in Provisional Ballot Counts," *ABC7 Chicago*, November 21, 2004.

- 32 Robertson, Gary. "New Election, New Law are Focus in Provisional Ballot Hearing." *The Winston-Salem Journal*, March 2, 2005.
- 33 Kallestad, Brent. "Fla. Official Pitches Election Law Changes," *The Herald*, February 17, 2004.
- 34 "King County acts to avoid counting unverified provisional ballots," *Seattle Post-Intelligencer*, February 9, 2005.
- 35 *op.-cit.*, Robinson
- 36 Illinois General Assembly, HB0111.
- 37 S. 450.
- 38 H.R. 533.
- 39 151 Cong. Rec. S1626 (February 17, 2005).
- 40 National Association of Secretaries of State. "Open Letter to Members of Congress," February 7, 2005.
- 41 The vote for highest office data is derived from information provided by the United States Election Project at George Mason University. Total ballots cast data is not used because there is insufficient information gathering at the state level.
- 42 Ala. Code § 17-10A-2.
- 43 Alaska Stat. § 15.15.225(2)(c).
- 44 Alaska Stat. § 15.15.210.
- 45 Ariz. Rev. Stat. § 16-584(C).
- 46 Ark. Code Ann. § 7-5-312 (b)(1).
- 47 Memo from California Director of Elections John Mott-Smith, (http://www.ss.ca.gov/elections/hava_faqa/hava_id_prov_ball_req.pdf) (October 1, 2004) (updating California provisional ballot rules) (last visited March 11, 2005).
- 48 Calif. Election Code § 14311.
- 49 Colo. Rev. Stat. § 1-7.5-107(3.5)(d).
- 50 Colorado Secretary of State Amended Election Rules 26.2.3, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).
- 51 Colorado Secretary of State Amended Election Rules 26.1, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).
- 52 Provisional Ballot instructions, (<http://www.sots.state.ct.us/ElectionsDivision/HAVA/ProvisionalBallot3.pdf>) (last visited March 11, 2005).
- 53 D.C. Code Ann. § 1-1001.07 (i)(4)(C).
- 54 Fla. Stat. Title 9 Chapter 101.048.
- 55 Ga. Code § 21-2-417(b).
- 56 10 Ill. Comp. Stat. Ann. 5/18A.
- 57 Iowa Senate File 2269, (<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&frame=1&GA=80&hbill=SF2269>) (last visited March 11, 2005).
- 58 Iowa Code, Title 2, Chapter 49.81.
- 59 Kan. Stat. § 25-2908 (C).
- 60 Kan. Stat. § 25-409.
- 61 Kansas Secretary of State Election Standards - Chapter II (Election Administration) at 37 (http://www.kssos.org/forms/elections/election_standards/ChapII-ElecAdmin.pdf) (last visited March 11, 2005).
- 62 Kan. Stat. §25-2316c.
- 63 Ky. Rev. Stat. § 117.245.
- 64 Louisiana Secretary of State, "Provisional Voting" (<http://www.sos.louisiana.gov/elections/elections-index.htm#provisional>) (last visited March 11, 2005).
- 65 Maryland State Board of Elections, "Election Day Frequently Asked Questions" (http://www.elections.state.md.us/registered_voters/election_day_faq.html) (last visited March 11, 2005).
- 66 Mont. Code Ann. § 13-13-114 (2).
- 67 Mont. Code Ann. § 13-13-301(3).
- 68 Nev. Rev. Stat. § 293.3081 (2).
- 69 New Jersey Division of Elections, "Polling Place Poster" (<http://www.state.nj.us/lps/elections/poll-place-sign-eng.pdf>) (last visited March 11, 2005).
- 70 N.M. Stat. § 1-12-8.
- 71 N.C. Gen. Stat § 163-166.12 (c).
- 72 O.R.C. § 3503.16.
- 73 Phone conversation with Carol Morris, Oklahoma Elections Division, February 2005.
- 74 Oregon Elections Division, information provided by staff, February 2005.
- 75 Pennsylvania Voter Guide at 8-9 (<http://www.dos.state.pa.us/voting/lib/voting/guide/engguide.pdf>) (last visited March 11, 2005).
- 76 Rhode Island Board of Elections, Provisional Voting, (<http://www.elections.state.ri.us/provisional.htm>) (last visited March 11, 2005).
- 77 S.C. Code § 7-13-830.
- 78 South Dakota Polling Place Key (<http://www.sdsos.gov/Auditors/PollingPlaceKey.pdf>) (last visited March 11, 2005).
- 79 Tex. Elec. Code § 124.
- 80 Utah Elec. Code § 20A 6.
- 81 Va. Code § 24.2-643; 653.
- 82 R.C.W. § 29A.04.008.
- 83 W.V. Code § 3-1-41.
- 84 Wisconsin State Elections Board, "Provisional Voting Information," (<http://elections.state.wi.us/docview.asp?docid=2028>) (last visited March 11, 2005).
- 85 Wyo. Stat. §§ 22-1-101 through 22-29-408.



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Briefing

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