



HELPING AMERICA VOTE

A Guide to Implementing the New Federal Provisional Ballot Requirement

Investigations after the 2000 elections revealed that between 1.5 million voters and 3 million voters were not able to cast a ballot in the 2000 presidential election because of registration problems. While problems with voting machines grabbed the national spotlight in the aftermath of that historic election, flaws in voter registration systems were just as severe. Accordingly, when Congress passed the Help America Vote Act of 2002 (HAVA), it included a requirement to protect these voters.

Under the new law, voters whose eligibility is in doubt on Election Day – voters whose names are not on the registration rolls or whose eligibility has been questioned – will be allowed to cast a provisional ballot that will be counted once election officials determine the voter is eligible.

The concept and language of HAVA's provisional ballot requirement establishes a new and fundamental principle that no voter coming to the polls on Election Day will be turned away without being given an opportunity to cast a ballot. And if the voter is eligible, that vote will be counted.

In establishing provisional ballot procedures that comply with the new law, states have important choices to make, and these choices will have a significant impact on how effective this protection proves to be in practice.

Prior to 2000, 25 states offered some form of contingent voting which allowed certain voters, about whom questions were raised, to cast a ballot that would be counted after election officials verified their eligibility. These ballots were called “special ballots,” “conditional ballots,” “provisional ballots” or “affidavit ballots.” The other states either allowed voters to appeal their exclusion from the list or simply offered no recourse

at all for voters whose eligibility was in doubt. In the ensuing year, nine additional states passed provisional ballot legislation. The numbers of provisional ballots cast in these nine states and, equally impressive, the numbers of those ballots counted, demonstrates the importance of this safeguard.

HAVA defines provisional ballots broadly and lays out a detailed process for their application. The law names four specific circumstances triggering the provisional ballot process: (1) when a voter's name does not appear on the registration list for the polling place, (2) when a voter's eligibility is challenged by an election official, (3) when a voter lacks the required identification, and (4) when a voter votes after the polling place has closed. All states will either have to revise existing procedures or create new ones to meet the new requirements.

For this report, the League of Women Voters has compiled a set of model practices that ensure provisional ballots serve their intended purpose. The League surveyed states that have enacted provisional ballot systems since 2000 and consulted available research on states with long experience with this procedure. This report is intended as a guide for states and election officials as they hammer out details of how to imple-

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ment this safeguard. The report also addresses a topic new to most state election offices: the requirement that certain voters present identification at the polls.

The League's recommendations, summarized below, are based not on theory but on practice; they are shaped by two principles: (1) maximum protection of the right of eligible voters to cast a ballot that will be counted and (2) administrative feasibility. The recommendations are as follows:

- (1) **States should work to reduce the need for provisional ballots by addressing registration problems ahead of time and by resolving eligibility questions at the polling place so that voters may cast a regular ballot. Provisional ballots should be considered a last resort rather than a catch-all solution for eligibility questions that arise at the polling place.**
- (2) **States must not turn away a voter who asserts he or she is eligible to vote on Election Day without giving that voter the opportunity to cast a provisional ballot. Regardless of circumstance, states must provide the opportunity to vote rather than turn the voter away.**
- (3) **States should allow voters to cast their ballots at the polling place where they show up. Election officials should transmit provisional ballots to the voter's assigned precinct and count votes for all contests in which the voter was qualified to vote. In states that don't follow this practice but instead require provisional ballots to be cast in the assigned**

precinct, poll workers should have access to the entire official list or, at a minimum, the means to determine the voter's assigned precinct.

- (4) **States should design a verification process that guards against administrative error; voters should not be penalized for errors – either those of election officials or their own.**
- (5) **States must establish clear standards for counting provisional ballots.**
- (6) **States should allow adequate time to conduct the investigation of all provisional ballots.**
- (7) **States should ensure that poll worker training on the administration of provisional ballots is professional and uniform across the state.**
- (8) **States must take steps to ensure uniform application of the law in the state.**

In designing their procedures, states should consider carefully how the process interacts with existing protections established by the National Voter Registration Act (NVRA or "Motor Voter") and procedures for dealing with voter challenges.

By providing model practices and a discussion of the many considerations involved in implementing this provision in HAVA, the League hopes to ensure the law fulfills its purpose: to provide an effective, workable protection of the right of each eligible voter to cast a ballot and have it counted. ■

RECOMMENDED PRACTICES FOR IMPLEMENTING PROVISIONAL BALLOTS

RECOMMENDATION #1: States should work to reduce the need for provisional ballots by addressing registration problems ahead of time and by resolving eligibility questions at the polling place so that voters may cast a regular ballot. Provisional ballots should be considered a last resort rather than a catch-all solution for eligibility questions that arise at the polling place.

Notwithstanding the broad scope of the protection afforded by HAVA, provisional ballots should be an extraordinary procedure. Too many provisional ballots will delay election results and extend the decision into the post-Election Day period. Such delays open the door to political mischief and, in addition, can diminish public confidence in the results. Reducing the number of provisional ballots will reduce the administrative burden of verifying and counting these ballots after Election Day. The need for provisional ballots can be reduced both by improving the registration system and by making every attempt to allow the voter to cast a regular ballot before moving to a provisional ballot process.

Resolving registration and eligibility questions before Election Day

It hardly needs saying that the best way to ensure voters are allowed to cast a regular ballot is to fix problems in the registration process prior to Election Day.

In particular, states that have experienced problems with NVRA registrations – primarily, the transmission of registration applications from such agencies as motor vehicle agencies to the registrar – should take steps to improve that process.

Some registrars, for example, have experienced a high volume of incomplete registration applications received from other agencies. These voters believe they have registered and will show up on Election Day asserting they registered. Election officials must notify such voters and give them the opportunity to complete the form prior to Election Day.

Ensuring that the list used on Election Day contains the names of all legally registered voters – a HAVA requirement – will take care of many problems. For example, states must include the names of inactive voters on the list used at the polls so that when an inactive voter shows up that person can be given a regular ballot, as provided under the NVRA. Lists that are out-of-date or inaccurate invite problems that will swell the number of provisional ballots.

States that fail to provide internal checks that prevent erroneous purges of eligible voters will also experience a high number of provisional ballots. No database is 100 percent accurate; election officials must verify any information received as a result of matching voter records against other databases. Under HAVA, voters purged from the rolls must

still be allowed to cast a provisional ballot so that the correctness of the purge can be checked.

MODEL PRACTICE: In Michigan, the voter registration records and driver’s license records are integrated into one database. A single database ensures that voter registration information, including changes of address as well as new registrations, given to the motor vehicle agency is transmitted automatically, accurately and expeditiously to the voter file. The automatic transfer of information facilitates compliance with the NVRA and reduces the likelihood of problems on Election Day.

Resolving eligibility questions at the polling place

Provisional ballots should not be considered as a backup for poor polling place operations or a catch-all procedure for all problematic situations. The more eligibility questions that can be resolved at the polling place, the fewer provisional ballots there will be.

The single most effective tool for resolving eligibility questions at the polling place on Election Day is access to the complete official list for the registrar’s jurisdiction. Unfortunately, under the current system in many states, poll workers call the registrar’s office to get information about who is or is not on the official list. Too often, however, there aren’t enough phone lines to get through or, in some cases, the polling place has no phone connection. With substantial federal funds for implementing the new requirements, states should consider addressing this critical problem.

Provisional ballots should not be used as a catch-all at the polling place

States should design an Election Day process that first attempts to determine eligibility at the polls so that the voter may cast a regular ballot rather than a provisional ballot. In other words, poll workers should conduct a preliminary inquiry to resolve the question so that eligible voters can cast a regular ballot. Otherwise the number of provisional ballots will balloon, creating a substantial administrative burden following Election Day.

Some states that implemented provisional ballots after 2000 use the provisional ballot process to handle voter challenges – that is, voters whose eligibility is challenged by another voter at the polling place – and voters who have moved without updating their registration. States should instead consider methods to resolve the eligibility of such voters at the polling place, allowing these voters to cast regular ballots.

The provisional ballot process set forth in HAVA reinforces protections that NVRA affords voters who move within the registrar’s jurisdiction without updating their registration information. Under the NVRA, voters who have moved are given the right to vote; implementation of HAVA cannot become a mechanism for abridging this right. States that require voters who have moved to go to their new

NUMBER OF PROVISIONAL BALLOTS ISSUED

Number of provisional ballots issued and counted in states that implemented the process for the first time in 2002. Florida, Wyoming, Nebraska and Georgia did not track provisional ballots at the state level.

	Provisional ballots issued	Prov. ballots counted
Utah	10,686	8,315
Colorado	27,366*	24,099
Maryland	1,451**	437
Missouri	3,601	2,000

*Colorado allowed voters who had been issued absentee ballots to cast a provisional ballot on Election Day; Colorado estimates over half the provisional ballots were cast by absentee voters.

**Maryland issued provisional ballots only to voters who had attempted to register at Bureau of Motor Vehicles, and counted only those ballots of voters whose registration had not been processed due to administrative error.

polling place and vote a provisional ballot cannot, under NVRA, establish a counting standard that requires voters to be registered in the new precinct.

MODEL PRACTICE: In the District of Columbia, when a voter is challenged, the precinct captain attempts first to resolve the challenge at the polling place. If the challenge is resolved in favor of the voter, the voter is allowed to cast a regular ballot. If the captain’s determination goes against the voter, the voter is allowed to cast a provisional ballot.

MODEL PRACTICE: Missouri has retained a separate procedure for voters whose names do not appear on the list at the polling place because they have moved. Under Missouri law, these voters sign an affidavit attesting to their new address and vote a regular ballot at their new polling place. Election officials use the information on the affidavit to update the registration list. Both of these procedures provide protection for the voter while minimizing the number of ballots to be processed after Election Day.

RECOMMENDATION #2: States must not turn away a voter who asserts he or she is registered and eligible to vote on Election Day without giving that voter the opportunity to cast a provisional ballot. Regardless of circumstances, states must provide the opportunity to vote rather than turn the voter away.

Traditionally, provisional ballots were those ballots given to voters whose names did not appear on the registration list. HAVA significantly broadens the scope of voters eligible to vote a provisional ballot.

In addition to protecting the right of voters whose names do not appear on the list, HAVA offers the same protection to voters if “an election official asserts that the individual is not eligible to vote.” Anyone claiming to be eligible who is denied the right to cast a regular ballot, must be given a provisional ballot. Under this definition, a provisional ballot provides an all-purpose safeguard that extends to any circumstance in which a voter might not otherwise be allowed to vote.

If, for example, the voter’s name appears on a list of ex-felons in a state that does not permit ex-felons to vote, that person has the right to a provisional ballot. The election officials will have to verify after the election whether the voter was the same person who was a felon. Similarly, if a person shows up on Election Day without a photo ID in a state that requires all voters to present ID, that person has the right to cast a provisional ballot and to have that voted counted if the voter meets eligibility requirements.

RECOMMENDATION #3: States should allow voters to cast their ballots at the polling place where they show up. Election officials should transmit provisional ballots to the voter’s assigned precinct and count votes for all contests in which the voter was qualified to vote. In states that don’t follow this practice but instead require provisional ballots to be cast in the assigned precinct, poll workers should have access to the entire official list at the polling place or, at a minimum, the means to determine the voter’s assigned precinct.

Sometimes voters show up at a polling place other than the one to which they are assigned. Furthermore, once they figure out the proper polling place, there isn’t always time for the voter to get there. Sometimes this is the voter’s error; sometimes it is the election official’s or the poll worker’s error. In one state, some voters found themselves shuffled to as many as five different polling places before finding their way to the right one. This confusion places an undue burden on the voter and turns voting into a time-consuming hassle. It can also result in disenfranchising voters. Confusion or, worse, misinformation regarding a voter’s assigned precinct reflects badly on election officials – particularly when the voter is penalized as a result of such problems.

Allowing voters to cast a limited provisional ballot within the registrar’s jurisdiction protects the voter. On a limited provisional ballot, only votes the voter is eligible to cast, such as presidential, congressional or statewide races, will be counted. This measure not only protects the voter, it also protects election officials from voter anger and frustration created by inefficiencies and poor polling place operations.

In the future, advances in information technology will likely make it possible for electronic voting systems at any polling place to produce the correct ballot for any voter. Until that time, a limited provisional ballot ensures that eligible votes will not be lost due to problems in the administration system or confusing jurisdictional boundaries.

MODEL PRACTICE: In Washington State, voters may cast a provisional ballot from any polling place in the registrar’s jurisdiction. Election officials transmit provisional ballots to the proper precinct and votes that the voter is eligible to cast are counted.

Protecting voters from poor polling place operations

When the Department of Justice approved Florida’s new provisional ballot measure, which required that provisional ballots be cast in a voter’s assigned polling place, it did so on the condition that poll workers direct voters to that precinct. Provisional ballots become a hollow remedy if states stipulate a requirement that the voter cannot meet because of poor or inadequate polling place operations.

Poll workers should be able to determine a voter’s precinct using resources at the polling place. In view of the Justice Department’s pre-clearance decision in Florida, a failure in this regard may be more than bad election management – it may be illegal.

For any state that requires voters to cast provisional ballots in their assigned precinct, difficulties in figuring out the proper polling place – difficulties readily acknowledged by many election officials – create a significant obstacle for the voter. Confusion over precinct maps, inadequately trained poll workers or, simply, imperfect communication between the polling place and the central election office often lead the voter to give up before casting a ballot. States should act to ensure such confusion doesn’t disenfranchise eligible voters.

MODEL PRACTICE: South Carolina offers voters access to the statewide list online. Voters can check their registration status and locate their polling place online.

MODEL PRACTICE: Florida now requires that every polling place be equipped with the means to determine a voter’s polling place that does not rely on making phone contact with the central office.

MODEL PRACTICE: The Nebraska Secretary of State’s office supplies counties with jurisdictional and precinct maps.

RECOMMENDATION #4: States should design a verification process that guards against administrative error; voters should not be penalized for errors – either those of election officials or their own.

The purpose of provisional ballots is to protect eligible voters from flaws such as clerical errors in the registration system. A verification process must therefore be designed to catch those errors.

Possible errors range from something as small as a data entry error to the erroneous removal of an eligible voter. In particular, the verification process should provide a safeguard against the failure to transmit registration applications from other agencies, such as the motor vehicle authority or social service agencies, to the registrar.

The verification of provisional ballots, in fact, begins on Election Day when poll workers attempt to resolve the problem at the polling place. In Nebraska, poll workers interview voters to discover why they might not be on the list; this is the first step in figuring out where the problem lies. Voters are asked if they've moved or changed their name, and where and how they registered (i.e., at the motor vehicle agency, disability or other social service agency, county registrar's office, by mail). Some states have included this information on the provisional ballot application to assist post-Election Day verification.

Election officials should take care, however, to design polling place procedures that do not create new reasons, unrelated to eligibility, to invalidate ballots. For example, one state ruled that ballots would not be counted if the voter failed to check a box on the affidavit indicating the reason for needing a provisional ballot. A simple error on the part of either the voter or the poll worker assisting the voter could lead to disqualifying the ballot of an otherwise eligible voter. In other words, an error in the process designed to protect the voter produced the opposite result.

Election officials should be prepared for researching records from other registration agencies by establishing, prior to Election Day, how they will gain access to those records.

MODEL PRACTICE: In Florida, election officials receive not only the registration applications from the motor vehicle agency but also the declination forms. In other words, if the voter conducted a transaction at the motor vehicle agency, the election official should have either an application or a declination form. In Florida, if the election official determines the voter intended or attempted to register, that voter's ballot will be counted.

MODEL PRACTICE: In Nebraska's 2002 election, one voter who cast a provisional ballot had four transactions with the motor vehicle licensing agency; in three of those transactions the voter had declined to register but in the course of one of those transactions the voter did not decline to register. The state interpreted the failure to decline as the intent to register and counted that vote.

Verifying provisional ballots cast by challenged voters

Investigating provisional ballots cast when a voter's name is on the registration list but the voter's eligibility has been challenged by an election official will, of course, require a different sort of investigation since according to the registration list the voter is eligible. Voters can be challenged on the grounds of party affiliation for a closed primary or that the person does not live in the registrar's jurisdiction, for example. Verifying their eligibility may require a hearing or another type of inquiry.

Verifying provisional ballots cast by absentee voters

In 2002 both Florida and Colorado allowed voters who had received an absentee ballot to cast provisional ballots at the polling place. This practice protects voters who may have

INTERACTION OF VOTER ID REQUIREMENTS AND THE NVRA

Under the NVRA, states can allow registered voters who have moved within a registrar's jurisdiction to vote either at their old polling place or at their new polling place. The law expressly prohibits states from requiring any verification of address other than written or oral attestation if they are voting at their old polling place. For those states that choose to roll procedures for handling voters who have moved into their provisional ballot procedure, this prohibition still applies. For example, in states where a voter who has moved votes a provisional ballot at the old polling place, the state cannot require proof of residency for counting the vote.

States that require voters who have moved to go to their "new" polling place cannot, under the NVRA, establish a counting standard for provisional ballots that requires voters to be previously registered at the new precinct.

been late in mailing their ballots. In Florida, election officials reduced the number of provisional ballots by attempting to determine on Election Day if the absentee ballot had already been received.

RECOMMENDATION #5: State must establish clear standards for counting provisional ballots.

HAVA requires that if the election official "determines that the individual is eligible to vote under State law," that vote "shall" be counted. This language does not dictate any particular method for determining eligibility. There is no flexibility once a determination of eligibility has been made, however. The vote must be counted. Only when the election official determines the voter is ineligible should that vote be discounted.

The state should spell out the steps of the process, from the moment the voter is given a provisional ballot to the verification and counting of the ballot. One state in 2002 found itself in the position of issuing rulemakings on counting standards during the post-election period in a very close race. If the law is to be applied uniformly and consistently, the standards and procedures must be clear, detailed and available to the campaigns and public prior to Election Day. Election officials who have implemented the new law advised others to consider every contingency in making their rules.

MODEL PRACTICE: According to Nebraska law, if the investigation produces "credible evidence that the person was properly registered to vote before the election," that person's vote will be counted. This standard reflects the purpose of provisional ballots: to protect eligible voters against the possibility of administrative errors in the registration system.

RECOMMENDATION #6: States should allow adequate time to conduct the investigation of all provisional ballots.

Two states give local officials two days or less to verify the eligibility of provisional voters. Local election officials have said that's not enough time. Other states provide election officials at least seven days.

The narrow window in which states must verify the validity of all provisional ballots demonstrates the importance of reducing the need for provisional ballots. In 2002, Colorado had approximately 27,000 provisional ballots; Utah had more than 10,000.

Under HAVA, each voter must be notified of the final determination. States, therefore, must make a decision on each provisional ballot cast.

RECOMMENDATION #7: States should ensure that poll worker training on the administration of provisional ballots is professional and uniform across the state.

The recommendations above provide the basis for an effective legal safeguard. But offering a legal safeguard is only half the battle. Ensuring it works as intended on Election Day requires much more. People run elections, not laws. And people need to be trained.

In-person elections depend on a workforce of temporary, low-wage workers. Training this workforce represents a challenge for election officials – training this workforce to use new equipment and apply new administrative rules makes this challenge truly formidable. During the 2002 primary elections in Florida's Broward and Miami-Dade counties, the consequences of inadequate poll worker training became painfully clear. Poll workers were unable to operate the new equipment. Confusion over the new procedures led to violations of state law by poll workers. In its report on the 2002 primary debacle, the Miami-Dade County Inspector General concluded that the problem “does not lie in the caliber or technological experience of the poll worker, but is grounded in the absence of quality training and written training materials.”

The problems experienced in Florida's 2002 primary were not unique. In the 2002 election, many localities suffered serious difficulties caused by poll workers either not understanding or simply not following new procedures. In one county, for example, 80 percent of the poll workers failed to indicate on the provisional ballot envelope that the voter had presented the required identification. This failure posed difficulties for election officials who sought to ensure after Election Day that eligible voters were not disenfranchised as a result. In several states, confusion wrought by poll workers led to disparate treatment of provisional ballots among counties.

Traditionally, states have rarely played a role in training poll workers. However, since HAVA makes states accountable for the uniform application of the new requirements and since poll worker training is a significant and demonstrable cause of disparate application of the law, states will almost certainly have to play a larger role in training.

The Miami-Dade County Inspector General, on reviewing training in other counties, recommended training that is “longer in duration, more repetitive, more hands on, and above all contain[s] complete verification procedures to insure poll worker trainees [are] sufficiently knowledgeable and proficient . . .” Changes in training improved the conduct of the general election. In a report on the general election, the Center for Democracy noted that in-person, hands-on training by professional trainers was a vast improvement.

The new provisional ballot requirement is more than one more procedure, it's a new mindset about how we treat voters and the importance of not allowing administrative errors or flaws to deny someone's right to cast a ballot. This task will require focused attention on training – and on how to adapt training to this purpose. Jurisdictions that believe they can conduct training as usual in this new environment risk the fate suffered by Miami-Dade and Broward counties in 2002.

MODEL PRACTICE: Georgia now requires local election officials to be certified in the operation of voting systems, as well as state and federal law. The state provides training materials for poll workers.

TIPS FROM ELECTION OFFICIALS WHO IMPLEMENTED PROVISIONAL BALLOTS FOR THE FIRST TIME IN 2002

- Keep an eye on the clock. Local election officials need time to absorb and plan for the new procedures. In particular, if states are playing a role – and they should be – in designing forms and ballot envelopes they should allow adequate time to follow up with local officials to review the process and how to handle contingencies that arise on Election Day.
- Print both the application and affidavit for receiving a provisional ballot on one side of the envelope. Several election officials noted that poll workers only look at one side of the envelope.
- Simplify poll worker paperwork. For example, use the information provided on the provisional ballot affidavit to register voters whose registrations were not verified rather than have the voter fill out a separate application form. Poll workers should follow the same procedure for any voter whose name does not appear on the registration list.
- Make sure the media, the parties and the public understand the provisional ballot process – and the fact that the final results may be delayed – prior to Election Day.

RECOMMENDATION #8: States must take steps to ensure uniform application of the law in the state.

Two key words in HAVA are “uniform” and “nondiscriminatory.” Experiences in both 2000 and 2002, vividly illustrate the challenges that lie ahead in administering uniform elections.

In Colorado, for example, which implemented in-precinct provisional ballots for the first time in 2002, the post-election counting of provisional ballots brought to light differences among the counties’ application of the law. During the post-Election Day period, the Secretary of State issued a rulemaking instructing the county clerks not to count a ballot if the voter had failed to check a box on the provisional ballot envelope offering a reason for needing a provisional ballot. The problem was, one county’s envelopes didn’t ask for this information.

When the Secretary’s ruling was appealed, the court ordered the clerks to count valid provisional ballots regardless of whether this box was checked on the ballot envelope. The judge based his decision in part on state statute and in part on the equal protection standard enunciated by the Supreme Court in *Bush v. Gore*. According to the judge, the Secretary of State and the clerks and recorders were headed down a path where different standards would be applied to similarly situated voters, resulting in unequal treatment of voters.

With few exceptions, states have three options for ensuring uniform compliance: training of local election officials, providing forms and materials, and rulemaking.

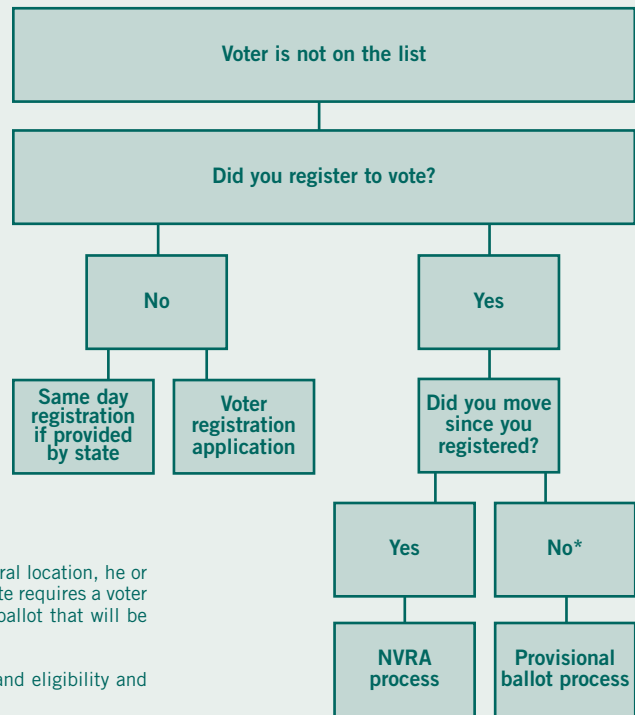
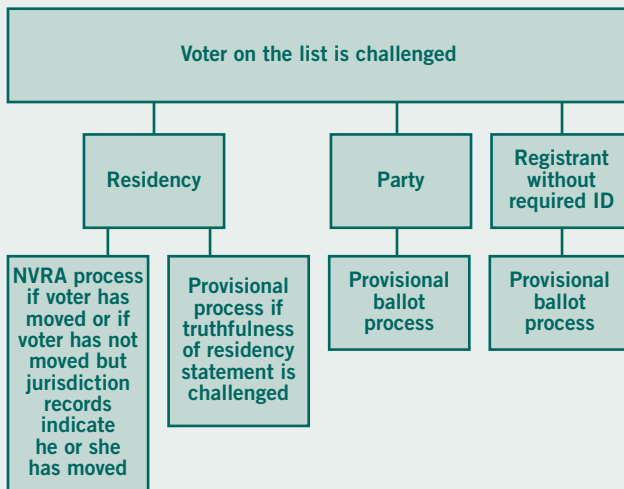
MODEL PRACTICE: Both Maine and Wyoming provide administrative forms to the localities. Maine provides ballots as well as other forms. The Wyoming Secretary of State’s office provides a variety of paperwork, including absentee ballot envelopes.

MODEL PRACTICE: In Virginia, the state provides training materials for local election officials.

MODEL PRACTICE: Colorado has increased the authority of the Secretary of State to ensure uniformity by giving that office the ability to conduct audits and monitor local election officials’ compliance with state law.

MODEL PRACTICE: In Maryland, state officials worked with local election officials to design the provisional ballot process. The result was a process that has the support of the officials in charge of administering it.

HANDLING ELIGIBILITY QUESTIONS AT THE POLLS



NVRA PROCESS: If the voter is allowed to vote at the old polling place or central location, he or she may sign an affidavit of current address and vote a regular ballot. If the state requires a voter to vote at the new polling place, he or she may sign an affidavit and cast a ballot that will be counted once the registration is confirmed.

PROVISIONAL BALLOT PROCESS: Voter signs an affirmation of registration and eligibility and casts a ballot that will be counted once eligibility is confirmed.

* See page 5 for a helpful list of questions that Nebraska uses in processing the provisional ballot.

PROVISIONAL BALLOTS AND VOTER IDENTIFICATION REQUIREMENTS

States have a responsibility to ensure only eligible voters vote, but they have an equal responsibility to ensure eligible voters are not wrongfully disenfranchised as a result of efforts to keep ineligible voters from voting. Nowhere is this principle and intention more clear than in the requirement to allow first-time mail-in registrants without ID to cast a provisional ballot.

In states that request ID – whether from first-time mail-in registrants or from all voters – if a voter is denied the right to cast a regular ballot because he or she lacks proper identification, under HAVA that voter is able to cast a provisional ballot that will be counted if the voter is eligible. To deny eligible voters the right to cast a provisional ballot – or to refuse to count that vote because they lack voter identification – turns the logic of HAVA on its head.

One state's experience in 2002 illustrates the risk posed by new ID requirements. State law required that poll workers indicate on the provisional ballot envelope whether they had checked the voter's ID. However, an overwhelming number of poll workers failed to mark the envelope. In one county, 80 percent of the provisional ballots could have been disqualified because of this poll worker error, resulting in the rejection of hundreds of ballots in a very close race. County officials handled this problem differently, but in all cases took responsibility and found methods to count eligible ballots.

States must design a provisional ballot process that will protect eligible voters from being disenfranchised by laws designed to keep ineligible voters from participating.

Determining residency

Asking voters to prove residency on Election Day presents significant problems. First, voters who have recently moved may not have updated their driver's licenses or other identification cards before Election Day. The reality is that people don't always update in a timely manner because, as one election official succinctly noted, "it's a hassle," and in many states it costs money.

Also, the NVRA governs how voters who have moved may be treated. For example, a registered voter who has moved who goes to the "old" polling place (where his or her name should still be on the list) can vote a regular ballot upon attesting, orally or in writing, to his or her current address. The NVRA standard, then, provides that once the question of the voter's registration status is known, a willingness to sign an affidavit offers sufficient proof of the voter's address. This is the standard that Missouri currently applies for voters who have moved. Under HAVA, the voter's registration status will be known once the election official checks the entire official list. Therefore, using the standard under NVRA, attestation of residency is sufficient to prove residency for the purpose of counting provisional ballots. See the box entitled "Interaction of voter ID requirements and the NVRA" on page 5.

Determining identity

In the context of HAVA, proving identity means proving that the voter casting the ballot and the voter on the registration list are one and the same. The least burdensome method, and still the most common one, is to request the voter to provide his or her name and/or signature.

MODEL PRACTICE: In Alaska, voters without ID are asked to provide some identifying information; they can provide their voter ID number, date of birth, Social Security number or place of birth. Following Election Day, election officials will try to match this information with state records. If no match is found, the officials will attempt to verify the voter's identity by matching a signature. The state also conducts voter outreach to ensure that Alaska voters know and understand the requirements prior to Election Day. According to state officials, only a handful of voters show up without the prescribed ID.

First-time mail-in registrants voting absentee

HAVA provides that first-time mail-in registrants casting their votes by mail include copies of ID with their ballot; if they fail to do so, under HAVA, their ballot is treated as a provisional ballot. Moreover, if the state can match the voter information with other state records prior to Election Day, the voter may be exempted from the requirement.

MODEL PRACTICE: In Washington State, the election authority will match voter registration records with other state databases in order to exempt most first-time registrants from the requirement. For those voters who mailed in their ballots without a copy of their ID, the state will check the signature, verify the registration record, and count the ballot.



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