DIALOGUES ON ELECTION REFORM:
A CONTINUING CONVERSATION WITH THE STATES (May 1, 2014)

DEVELOPING AND EXAMINING WAYS TO IMPROVE THE FEDERAL ELECTORAL PROCESS
IN ORDER TO PERMIT THE BROADEST, LEAST RESTRICTIVE ACCESS BY AMERICANS TO THE BALLOT BOX
DIALOGUES ON ELECTION REFORM: A CONTINUING CONVERSATION WITH THE STATES (MAY 1, 2014)

A REPORT BY THE

ABA Standing Committee on Election Law

AMERICAN BAR ASSOCIATION
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FOREWORD

INTRODUCTION

I EARLY VOTING

II VOTER IDENTIFICATION

III VOTER REGISTRATION AND ELECTION ADMINISTRATION

IV REDISTRICTING

V VOTING TECHNOLOGY AND INNOVATION

ENDNOTES
May 1, 2014

Dialogues On Election Reform: A Continuing Conversation with the States (May 1, 2014) (“Dialogues on Election Reform”), was created by the American Bar Association (“ABA”) Standing Committee on Election Law (“Standing Committee”), to represent ABA President James R. Silkenat’s election law initiative.

In early Spring 2014, the Standing Committee hosted several town halls with a particular focus on election reform: at the University of Miami School of Law in Miami, Florida on Election Day and Early Voting; the Philadelphia Bar Association in Philadelphia, Pennsylvania on Voter Identification; the Ohio State University Moritz College of Law in Columbus, Ohio on Voter Registration and Election Administration; the Austin Bar Association in Austin, Texas on Redistricting and Election Administration; and most recently at the Sandra Day O’Connor College of Law at Arizona State University in Tempe, AZ on Election Reform and Next Steps. The Town Halls were created with the purpose of promoting a dialogue on election reform within the States with members of state and local bar associations, state and local election administrators and civic groups, local election lawyers, as well as representatives of both political parties.

This document was originally conceived as a white paper on election reform, to be released on Law Day (May 1) in celebration of this year’s theme, “American Democracy and the Rule of Law: Why Every Vote Matters.” Following our Spring 2014 Town Halls, however, it has now evolved to become a discussion draft, of sorts, that will serve to promote an ongoing dialogue between the Standing Committee and the States on matters related to election reform.

Election reform is not a new topic to the Standing Committee, created in 1973, with the purpose of ensuring that the nation’s election laws are legally sound and are drafted to permit the broadest, least restrictive access by Americans to the ballot box. In fact, in 2001, the Standing Committee, under the leadership of then Chair, Thurgood Marshall, Jr., first developed ABA policy on Election Administration Guidelines and Commentary, which covers a broad range of electoral issues, such as voter education, registration, voting, provisional balloting, and post-election issues that can be applied to all elections. The Standing Committee continues to make updates to this policy as necessary.

Dialogues on Election Reform is not a response to the report of the Presidential Commission on Election Reform issued in January 2014. Rather, it seeks to bring a different focus and is representative of our continued study of the issue. This document also represents our efforts to work with state and local election administrators, civic and political party organizations, and the organized bar to create and promote practical and achievable next steps toward election reform.
Our work on election reform does not end with the publication of this document. We are committed to promoting and fostering an ongoing dialogue with the end goal of creating feasible next steps toward improving our nation’s electoral process. Toward these ends, Dialogues on Election Reform as well as a survey to provide public comment through July 15, 2014, can be found at http://www.lawyercitizen.org. We welcome your comments and look forward to working with you in creating an open and fair electoral process for our nation.

John Hardin Young
Chair, Standing Committee on Election Law
DIALOGUES ON ELECTION REFORM: A CONTINUING CONVERSATION WITH THE STATES (MAY 1, 2014)

INTRODUCTION*

The right to vote is the foundation of our democracy, and problems during recent elections demonstrate a need for improvements to secure this right and to ensure public confidence in the electoral process.

This document reviews election processes in five key areas that provided a basis for the following series of ABA Standing Committee on Election Law Town Hall Meetings:

I. **Early Voting**, Miami, FL (Facilitators: Raquel Rodriguez and Jon Greenbaum)(February 12, 2014)


III. **Voter Registration and Election Administration**, Columbus, OH (Facilitator: H. Ritchey Hollenbaugh)(February 25, 2014)

IV. **Redistricting**, Austin, TX (Facilitator: Nina Perales and Christopher Saucedo)(March 6, 2014)

V. **Voting Technology and Innovation**

An additional Town Hall was held in Tempe, AZ (Facilitator: Kimberly Demarchi)(April 26, 2014) on **Election Reform and Next Steps**.

Although most can agree that our system of elections needs reform, there are diverse views on how to fix it. This document strives to incorporate views from all sides, putting forth key questions that must be addressed. Additionally, it seeks to examine the issues from a nonpartisan perspective, laying out basic descriptions of the challenges in each of these five areas and compiling suggested reforms.

Members of the ABA Standing Committee on Election Law recognize that the management and supervision of U.S. elections is highly complex and decentralized. Running elections requires taking into account human error, public opinion, and cost; it is not possible to improve elections overnight. That said, the Standing Committee hopes that convening Town Hall Meetings will bring the conversation usefully forward, shine light on the areas most in need of improvement, and bring us closer to ensuring that our system of elections satisfies the collective needs of our citizens.

* The Standing Committee on Election Law and its Advisory Commission gratefully acknowledge the efforts and patience of the William & Mary Law School’s Election Law Program, specifically Professor Rebecca Green and her students Emily Lippolis ’14, David Noll ’15, Jacob Derr ’15, Shana Oppenheim ’16, and Allison Davis ’16 for their efforts in the research for and drafting of this report.
I. EARLY VOTING

Introduction

In the face of low voter participation in U.S. elections, election administrators have sought to make voting more convenient. One increasingly popular form of “convenience voting” is early voting. Where it has been implemented, early voting has influenced the conduct of campaigns, the preparation of registrars and county boards of election, and the national dialogue on voter turnout and participation. This section discusses two primary types of early voting. The first is supervised early voting, also known as early in-person voting (EIPV). EIPV refers to the practice of a person voting at a polling place staffed by election officials prior to the date of the general or primary election. The second type of early voting is absentee voting. Absentee voters request that a ballot be sent to their home address and mail the completed ballot back before Election Day.

As states experiment with different modes of early voting, there are important lessons to be learned from its successes and potential challenges.

Recent Issues

Long lines at polling places were the big news story of the 2012 election. President Obama mentioned such lines during his election night acceptance speech, imploring “we have to fix that.” While analysis of voter data reveals that lines were not significantly longer in 2012 than in 2008, many voters still waited in line until the early hours of the morning, a predicament that most find unacceptable in an advanced democracy. Furthermore, evidence suggests that minorities waited in line for a longer time than white voters. In the wake of the 2012 election, many wonder whether early voting can help alleviate congestion on Election Day and provide a smoother experience for voters. Others see EIPV and absentee voting as problematic, believing they create voter confusion and divert needed resources from Election Day voting.

History of Early In-Person Voting

States began introducing early in-person voting in the late 1980s, and EIPV has quickly become one of the more popular election reforms of the modern era. In 1987, Texas began allowing its citizens to vote up to three weeks before the election. The practice was adopted thereafter in Colorado (1992), Nevada (1993), and Tennessee (1994).
Today, 9% of Americans vote in person before Election Day. According to the National Conference of State Legislatures, thirty-two states and the District of Columbia allow EIPV. Since the 2012 election, at least twenty states have introduced legislation to offer or expand in-person early voting opportunities. Enthusiasm for EIPV has not been universal; at least seven states have introduced legislation to restrict opportunities for citizens to vote early in person.

**Viewpoints Favoring Early In-Person Voting**

*Increased Turnout*

Proponents argue that EIPV increases overall turnout, and the Presidential Commission on Election Administration has endorsed early voting. Early research supported this contention: an analysis of the 1992 general election in Texas suggested that a 1% increase in the votes cast early increased total voter turnout by 0.07%, a marginal but real impact. A study of the 1994 midterm election in Tennessee found that turnout increased 9% once early in-person voting began. In addition, proponents note that EIPV may indirectly enlarge the electorate over time by increasing the likelihood that voters will stay in the electorate over more election cycles. The theory is that EIPV will translate to fewer voters leaving the electorate.

*Convenience*

It is apparent that voters like early voting and feel that it makes voting easier. In Texas, for example, voters can cast ballots up to three weeks before the election, at any location in the county in which they are registered. Other states provide early voting periods on nights and weekends. Voters have expressed satisfaction with more voting options, such as “voting while shopping.” A longtime early voter in Tennessee observed that “[e]specially if it’s a big election, it’s so crowded [on Election Day]… usually early voting is not that crowded, and it’s easier to get in and out without having to stand in line.”
The U.S. Census asks non-voters why they choose not to vote. About 20% of those surveyed responded that they were too busy or had some other conflict on Election Day, roughly 10% reported being out of town on Election Day, and about 15% said that they were ill on Election Day. Still others cited transportation problems, inconvenient polling places, or inclement weather. John Fortier of the Bipartisan Policy Center suggests that this group of non-voters could be mobilized by enabling them to perform their civic duty while shopping or running errands, and that establishing a period of several weeks for voting can address the other common reasons why voters say they stay home.20

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<th>Georgia Case Study: Voters Wanted</th>
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| In 2008, 45.3% of Georgia’s electorate voted before Election Day (7.6% by mail), owing to Georgia’s generous 45 day window in the lead up to the 2008 election. For most of this period, voters may cast ballots at the central county registrar’s office. The week leading up to Election Day is termed the “advanced voting period,” during which additional hours and locations are added, including all government buildings in the county. Georgia shortened this period to 21 days for the 2012 election.

In Forsyth County, 64% of voters cast ballots in-person before Election Day. Forsyth County election officials implemented an extensive outreach to inform communities about early voting opportunities. Prior to Election Day, clerks reviewed data on early voting to shift resources to precincts where greater numbers of registrants had not yet voted early. Finally, on Election Day, local government agencies used their websites to allow voters to check wait times at all open facilities in the county.

Forsyth County’s positive experience with EIPV suggests EIPV works best in counties in which administrators (1) carefully examine data and voting patterns to gauge the appropriate number and locations of EIPV sites and (2) set location and hours of operation based on the unique characteristics of different locations.

Reducing Election Day Congestion

Many states implementing early in-person voting regimes cite reducing Election Day congestion as a major impetus. An elections director in North Carolina reported that the rush of Election Day “no longer exists” thanks to early voting.21 An election official in Utah reported using fewer machines and staff on Election Day as a result of EIPV.22 In addition to less congestion, shorter lines are also a benefit: early voting could help decrease the long lines that were an issue in the 2012 elections.

Discovering Administrative Problems

Another argument in favor of EIPV is its effectiveness in helping election officials discover and diagnose common technological and administrative problems before the crush of Election Day.23 When problems occur on Election Day, the soonest they can be detected, diagnosed, and solved is very often after the election. While this helps improve future elections, it does little for poll workers and voters during the cycle in which the problems appear. The Voting Technology Project advocates local experimentation with early in-person voting as a way to diagnose mechanical failures and technological issues before the surge of Election Day. Early voting
periods also (in the words of one Board of Election director) provide more “time to control things [than on Election Day] … help[ing] to make sure that everyone who is entitled to a ballot gets a ballot.”

### Maryland Case Study: New EIPV, New Tech

| Maryland, a relative newcomer to EIPV, began the practice in 2010. Nikki Charlson, Director of the Maryland State Board of Elections (SBE), reports that the state has experienced strong turnout during early voting periods and that in her view its implementation has eased the stress of Election Day for both voters and poll workers. Maryland’s SBE continuously studies its process, researching comparative wait times, the feasibility of extending EIPV through the Sunday before Election Day, and determining whether, by checking use logs in electronic voting machines, administrators can better allocate machines to districts with different voter volumes on Election Day. Maryland uses automated data to measure voter volume, traffic, busiest hours, and more. The SBE uses data from previous elections to plan how to allocate workers and machines to individual locations in future elections. Maryland’s data gathering provides an example of how states can use data to enhance the effectiveness of early voting. |

Additionally, early voting provides poll workers with the opportunity to gain experience. When early voting is in place, poll workers are better able to handle issues and questions on Election Day because they have had time to learn the system and build an understanding of it.

### Campaign Use and Improvement

Recent election cycles have demonstrated the potential benefits of early voting for political campaigns. The Obama campaign, for example, combined its voter registration drives with early-voter mobilization. Barack Obama was the first Presidential candidate to cast an early ballot as part of a general effort to encourage early voting. The Obama campaign recognized the social efficiencies EIPV gave their candidate: once the campaign knew that a person had voted early, the campaign urged these early voters to mobilize their friends. Furthermore, as Election Day approached, the Obama campaign used early voting data to target those who had not yet voted.

### Minority Use of Early Voting

A final benefit of EIPV in the eyes of its proponents is for minority voters who are often concentrated in urban precincts with fewer voting resources. Researchers from Dartmouth College and the University of Florida found that African-American voters in Florida cast more ballots during the early voting period in 2008 than on Election Day, and also comprised a larger portion of the EIPV electorate than Election Day electorate. The U.S. District Court for the District of Columbia in *Florida v. U.S.* confirmed these statistics. The Lawyers Committee for Civil Rights Under Law further estimated that African-American voters in Cuyahoga County, Ohio used EIPV 26.6 times more than white voters in 2008. This research suggests that EIPV assists minority voters in taking part in elections.
Viewpoints Opposing Supervised Early Voting

Early Voting Does Not Increase Turnout

Opponents of EIPV challenge claims it increases turnout by highlighting studies concluding that turnout decreases when researchers controlled for other forms of early voting such as no-excuse absentee and vote by mail.30 Opponents of expanded EIPV challenge the idea that EIPV mobilizes new groups of voters, contending that those who vote early tend to be those with particular zeal for voting—the same people who would have come out to vote regardless of whether they could vote early or only on Election Day.31

Early Voting Saps Resources

Opponents to expanding EIPV reference its cost to election administration, arguing that instead of reducing costs and saving time, EIPV adds to both. A Wisconsin survey measuring county clerks’ receptivity to EIPV found that 85% of respondents felt that EIPV would make their jobs more difficult.32 One commenter noted that “[it] could be a nightmare to find enough poll workers to handle the additional days/hours that would be required.”33 As another administrator explained, “[e]arly voting would be a hardship for the numerous part-time clerks that do not maintain regular office hours and work additional jobs. We neither have the manpower, resources, or security needed to do the job over multiple days/weeks.” These responses make clear that additional staff still needs to be hired and that gains on Election Day are offset when staff is retained days—if not weeks—in advance of Election Day.34 New Jersey Governor Chris Christie vetoed a bill to implement early voting in his state, reasoning that the fifteen-day period would cost $23 million the first year and $2 million per year after that.35

Cost to Campaigning

Opponents also argue that early voting (including absentee voting, which is discussed below) negatively impacts political campaigns. As early voting is introduced, candidates must focus on an electorate that may be voting a full month before Election Day. Indeed, some voters will cast their ballots before the first presidential debate. The “wider strike zone” created by early in-person voting requires a more sustained get-out-the-vote (GOTV) campaign. Campaigns will increasingly be tasked with front-loading information to voters to ensure that they are not missing the candidate’s message, and some voters will cast ballots they later regret.36 An analysis of the 2008 election showed that even when administrators gave periodic data to campaigns about which voters had voted and which had not, cost and uncertainty for campaigns were not reduced.37
Civic Cost of “Diffusing” Election Day

Finally, scholars have theorized that we may be missing out on the civic importance of holding a single, national Election Day. Some believe that rather than diverting resources to non-Election Day voting alternatives, states ought to focus on the quality of voter participation on Election Day. An element of this focus is discovering why voters come to the polls. Successful GOTV efforts are often marked more by a personal approach to entice voters that celebrates the value of a community election. If the single Election Day is lost in favor of stretching the voting period to days or even weeks, personal GOTV campaigns will lose their ability to mobilize, and voter interest could wane. The Voting Technology Project takes issue with this idea, arguing that this theory lacks statistical evidence. Critics insist that these same civic virtues are lost when citizens must wait in long lines on Election Day.

Early In-Person Voting Controversies

Equal EIPV Opportunities For All Voters

The question of whether EIPV voting could be made available to certain segments of the voting population was asked and answered in the Sixth Circuit in 2012. In the leadup to the 2012 election, the Obama campaign sued Ohio Secretary of State John Husted after he moved to restrict EIPV for all voters except UOCAVA voters on the Friday before Election Day. The Obama campaign challenged the rule as a violation of the Fourteenth Amendment’s equal protection clause, arguing that the state had no legitimate reason to deny the right to vote early to non-UOCAVA voters, and sought an order restoring the three voting days. The Sixth Circuit ruled that Ohio could not open early voting only to UOCAVA voters without violating the equal protection clause. The court did not take issue with Ohio’s move to scale back early voting; the court instead took issue with the state’s decision to scale it back only for certain
voters, saying “While we readily acknowledge the need to provide military voters more time to vote, we see no corresponding justification for giving others less time.”

The Supreme Court denied Secretary Husted’s motion for a stay of the ruling but has not ruled on the merits (meaning the reach of this decision is unclear outside the Sixth Circuit). Nonetheless, election administrators will undoubtedly take note that unequal access to EIPV opportunities is constitutionally problematic. The Sixth Circuit ruling has not stopped many states from reducing EIPV opportunities across the board. In 2013 alone, eight states—Arizona, Indiana, Nebraska, North Carolina, Ohio, Tennessee, Texas, and Wisconsin—passed legislation that reduced the time frame for early voting.

Opening Adequate Days/Locations

The 2012 election also suggested that election administrators think carefully about the distribution of resources for early voting. In the run-up to the 2012 election, the Florida legislature reduced the number of EIPV days from fourteen to eight, allowing local supervisors to decide whether they would continue to use all 96 voting hours available to them or if they would only provide the state-mandated 48 hours. Local supervisors also determined whether to add new polling places, machines, or workers for the days retained. Polling places were closed statewide the Sunday before Election Day. In the end, long lines during Florida’s early voting period in 2012 suggest that at least some Florida local election administrators chose unwisely:

Theodore Allen of Ohio State University estimates that roughly 50,000 Floridians chose not to vote because of polling place lines. As a result of national scrutiny of Florida’s early voting snafu and the resulting litigation, Florida Governor Rick Scott approved the legislature’s plan to reinstate fourteen EIPV days, increase early voting times from eight to twelve hours, allow precincts to open the Sunday before Election Day, and open additional early voting sites in non-governmental civic centers and stadiums during the EIPV period.

Appearance of Minority Disenfranchisement

The Obama campaign’s suit in Ohio hinged on the perception that African-American voters were prevented from voting because Secretary Husted’s proposal would
have closed the polls on the Sunday before Election Day. This last Sunday has been colloquially termed “Souls to the Polls” because it had become something of a tradition for minority churches to meet after services and vote en masse.

Research suggests that African-American voters were more adversely affected by the reduction in early voting days in Florida. According to researchers, voters in Miami-Dade County at precincts with more Hispanic and African-American voters tended to have longer wait times on Election Day than those at precincts without comparable minority participation.

**Absentee Voting**

A second type of early voting is absentee voting, which allows registered voters who fit state-determined criteria to request mail-in ballots. Absentee balloting was first implemented during the Civil War to allow soldiers at war to vote. Its use has greatly expanded since. Today, more than half of states permit “no excuse” absentee voting, meaning that absentee voters need not list a reason for requesting an absentee ballot. Some states allow permanent absentee status, whereby voters register to receive mail in ballots for every election. Today, NCSL reports that 27 states and the District of Columbia allow no-excuse absentee voting for non-military voters. Other states have made absentee voting easier, by for example dropping notarization and witness requirements and adopting less stringent rules for absentee voters who require an excuse. Washington and Oregon’s vote by mail elections represent the extreme: all-absentee ballot elections. Doug Chapin of the Humphrey School of Public Affairs predicts “[b]y 2016, casting a ballot in a traditional polling place will be a choice rather than a requirement.”

**Viewpoints Favoring Unsupervised Voting**

Supporters of unsupervised voting cite its benefits for voter convenience, Election Day logistics, and cost.

**Voter Turnout & Convenience**

Proponents of absentee voting praise increased voter turnout, citing greater convenience. Jennifer Drage Bowser of the National Conference of State Legislatures notes that relaxed requirements for absentee voting “[have] to do almost entirely with voter convenience… . The more options there are outside the traditional polling place, the more voters like it.” Voters polled by the organization “Why Tuesday” (which advocates moving Election Day to the weekend) strongly favored voting convenience: 94% said society ought to make it “as convenient as possible” for citizens to vote, and 58% thought that Congress should work to make voting easier. 56% favored allowing early voting by mail.

**Easier Access for Disabled and Elderly**

Absentee voting offers voters who have traditionally had difficulty accessing the polls on Election Day the opportunity to cast a ballot without significant impediments. Despite election
administrators’ concerted attempts to make voting accessible to all voters and federal mandates requiring accessibility, many polling locations remain inaccessible to disabled voters, who are often advised that the onus is on them to either find an accessible location or suggest a best practice alternative. Disability advocates estimated in 2007 that as many as 40% of the disabled electorate used absentee balloting. Proponents believe that expanding absentee voting increases access to this segment of the electorate.

**Better-Informed Voters**

Advocates of increased absentee voting note that it requires campaigns to convey more information to voters earlier, thereby enhancing the likelihood of an informed electorate. In addition, particularly in states with long ballot initiatives, absentee voting gives voters a chance to digest and reflect. NBC News interviewed a typical participant in Oregon’s vote-by-mail system who liked the opportunity to sit quietly and read her ballot completely after her children were in bed. The voter felt this allowed her to cast a more strongly-supported vote: “There’s no way my kids would allow me to stand in line and do that.”

**Less Strain on Poll Workers During Election Day**

Election administrators face a variety of difficulties prior to and on Election Day. Proponents of absentee voting contend that, like EIPV, absentee voting helps alleviate Election Day problems. Professor Gronke concludes that EIPV and absentee voting help administrators generate a more accurate vote count. It is less clear that administrators save money with expanded absentee voting. While states with all-vote by mail (VBM) systems have dramatically decreased their costs, there is a dearth of evidence on whether expanded absentee voting reduces the costs of running elections in other states. The primary cost reduction in an all-VBM system is that polling places are no longer required; hybrid systems with both absentee and traditional Election Day voting therefore do not enjoy the same dramatic cost reductions, as polling places must be maintained.

**Skepticism of Expanded Use of Absentee Balloting**

**Loss of Ballot Secrecy and Increased Opportunities for Fraud**

Ballot secrecy is a hallmark of the modern election system. Critics suggest that unsupervised absentee voting provides many opportunities for the voter’s choice to be compromised either through fraud or undue influence.

Since absentee voting was first implemented during the Civil War, its detractors have campaigned against it, fearing “fraud, corruption, and [a] lack of privacy in voting.” These concerns are still cited as a potential downside to absentee voting. The Carter-Baker Commission agreed that absentee voting incurs risks, concluding “absentee ballots remain the largest source of potential voter fraud.” This is not merely conjecture: a Pennsylvania Congressman was removed from office after investigators discovered he had “helped” nursing home patients fill out their ballots. The elderly are a common

**Absentee ballots remain the largest source of potential voter fraud.**
target for “granny farming” of votes. The Connecticut State Elections and Enforcement Committee investigated allegations in November 2013 that a New Haven City Clerk improperly collected ballots directly from the elderly at a local nursing home and nearby apartment buildings.65 Alabama indicted eleven GOP operatives for buying absentee votes in exchange for alcohol in 2013.66

Absentee voting is also vulnerable to the less openly pernicious—but still no less dangerous—practice of individuals improperly overseeing certain voters as they cast absentee ballots. Although some surveys conclude such coercion is rare in all-VBM states like Oregon, some note that such coercion is difficult to detect.67 The Government Accountability Office has also documented instances in New Mexico of third parties going to door-to-door, first encouraging people to apply for absentee ballots and then returning to offer to help them fill out these ballots.68 Whether such exhortations would rise to the level of intimidation or coercion varies and is difficult to capture in a survey. However, the nature of our campaign system suggests that outside parties have access to voters in every election cycle in a way that could give rise to such intimidation.69 The Department of Justice concluded a five-year investigation and found almost no evidence of a sustained or significant effort to coerce voters or defraud election workers in the absentee ballot process.70 Furthermore, many discoveries initially classified as absentee ballot fraud actually turned out to be voter mistakes or clerical errors.71 However, there is a measure of agreement that, to the extent that voting fraud occurs, it is most likely to occur in the context of absentee ballots.72

Spoilage

Professor Charles Stewart III at MIT points out that rates of spoilage for absentee votes are potentially higher than for in-person votes.73 In the case of voting machines and optical scanners, for example, voters are alerted of a problem with their ballot immediately; absentee voters receive no such warning when mistakes, such as voting for two candidates in the same race, occur. Professor Stewart’s research suggests that mail balloting procedures could cause as many as 4.1 million mail votes to go uncounted during an election because of relatively routine mistakes like pencil smudges or errant marks. Stewart also estimates that unsupervised voting provides twice as many opportunities for votes to be lost, citing evidence that nearly 13% of ballot requests were unfulfilled, lost, or returned but not counted nationwide in 2008.74 A 2004 GAO study estimated that the majority of jurisdictions nationally routinely received absentee ballots that lacked the required signature by the voter on the return envelope.75

While most states reject less than 2% of absentee ballots,76 that number can be as high as 5 or 10% in some states.77 Missed deadlines due to voter error are cited as the top single reason for rejected ballots, but missing voter signatures, non-matching voter signatures, and missing witness signatures collectively were responsible for almost 40% of rejections.78
Voting Should Not Be “Convenient”

Some observers worry about the cost of “multiple electorates.” A survey of county clerks in Wisconsin revealed skepticism about absentee voters. One clerk was emphatic: “If folks do not vote when the scheduled voting is set up, they are not interested or perhaps they should not be voting. If a person is not responsible enough to be prepared and have the knowledge to know when or how or who to ask about the voting process, how can they possibly have the knowledge to make a responsible decision to vote?” 79 From this perspective, enabling an electorate of marginally interested voters to enter the pool through loose absentee voting rules dilutes the votes of those who care about the outcome of an election.

Absentee Voting Best Practices

States have experimented with expanding absentee voting opportunities. Some clear best practices have emerged.

Develop and Articulate a Clear Standard to Evaluate Errant Votes

Observers suggest that clear rules on absentee voting should be set out far in advance of elections. Voters and election administrators must have clear instructions on what information must be completed for the vote to count and how stray marks will be evaluated. To further this end, experts push for states to adopt systems, whether online or otherwise, allowing and encouraging absentee voters to confirm whether their ballots were accepted and counted. 80 Such a system—already adopted in states such as California 81 and Minnesota 82—could also help administrators create an internal audit trail. 83

Establish Clear Deadlines

Scholars disagree about whether states should require that absentee ballots be received by the close of Election Day or whether states should count ballots postmarked by Election Day regardless of when they arrive. Proponents of “postmark deadlines” cite concern with reliance on the postal service. These fears were realized in Mooneyhan v. Husted, where a voter hospitalized in advance of the election requested an absentee ballot. Election administrators mailed the ballot on time, but the mail service failed to deliver her ballot by Election Day. 84 Others oppose the postmark deadline standard, citing the danger that an election will turn on states that accept votes after Election Day, thus delaying determination of the outcome potentially for days after the election. 85

Regulate Third Party Influence

States have a variety of methods to restrict unwanted influence of third party intermediaries in the absentee voting process. Some recommend that states reintroduce a witness signature requirement and limit the number of absentee votes to which any one person can act as a witness. 86 The Carter-Baker Commission recommended that states improve data sharing to
ensure that voters are not allowed to ask for absentee ballots in more than one state. The Commission also favored the use of serial numbers on absentee ballots to enable any voter registration forms handled by third-party organizations or authorized messengers to be tracked. Others call for a blanket ban on third party involvement in the transportation, dissemination, or collection of absentee ballots, allowing no one other than a registered voter (and the post office) to handle their own ballot.

Another common approach to securing the absentee ballot process is to check absentee ballot signatures against the signature on the voter registration application. Because such efforts can be tedious, some states are experimenting with signature verification software. Another approach involves requiring voters to enclose photocopied identification with their absentee vote, as is done in Wisconsin and Tennessee. Yet another approach is establishing coercion reporting hotlines and initiating independent investigations to survey absentee voters regarding fraudulent practices.

Following (and Breaking from) UOCAVA

Finally, overseas and military voting serve as useful laboratories for more widespread civilian absentee balloting processes. Some advocate that states mail ballots forty-five days before Election Day, as occurs under UOCAVA and the MOVE Act, and create a stronger version of the confirmation of receipt that UOCAVA allows through military mail. Others see benefits in steering away from UOCAVA practices and shortening the length of time given to absentee voters to return their ballots. Coupling concerns about chain of custody and information deficit by voters and the relative efficiency of domestic mail service, some suggest the forty-five day window is too long for domestic absentee voters.

National Uniformity in Early and Absentee Voting?

The Federal Voting Assistance program encourages the use of the standards set forth by the Federal Postcard Application (FCPA) and the Federal Write-In Absentee Ballot (FWAB) programs, which are designed to smooth the process of registration and absentee ballot requests for overseas and military voters. However, states diverge on how stringently they adhere to these standards, which adds to the difficulty involved in including these two groups in the electoral process. The Presidential Commission on Election Administration has encouraged standardization of these guidelines across the United States.

At the same time, as highlighted above, much of the forward momentum in early and absentee voting has been accomplished through state and local experimentation. While there are commonalities in the way most states implement EIPV and absentee voting, real gains emerge from the laboratories of the states. In addition, a national standard may fail to take into consideration regional variation.
ABA Town Hall Meeting: Miami, Florida (February 12, 2014)

Participants discussed issues related to early voting, including EIPV and absentee voting. Participants were asked if anybody was opposed to early voting or absentee/mail-in voting in concept; one participant was opposed to early voting in concept and no participants were opposed to absentee/mail-in voting in concept. Most agreed that although early voting confers myriad benefits, election administrators must seek to increase coordination between legislators, campaigns, and elected officials in order to improve the voting experience. Furthermore, administrators should remain mindful of the problems presented by overcrowded polling place, long lines, and poll worker and voter fatigue. Finally, some participants recommended that the ABA work to increase member involvement in the election process in order to relieve the burdens on election administrators. The items listed below reflect some of the views expressed by one or more participants but do not necessarily reflect a consensus.

Early In Person Voting

- **Benefits**
  - Helps to accommodate a growing metropolitan population: not everyone can vote on Election Day, as the current infrastructure can’t support it
  - Diminishes long lines
  - Will further enable the use of technological advances: technology allows people to vote in more ways
  - Early voters are often the most informed and enthusiastic voters
  - Eliminates many of the problems created by provisional ballots that result in disenfranchisement

- **Detriments**
  - Voting over a long period of time can lead to less-informed voters and people who vote too early, and miss out on key issues
  - Breakdown in civic experience: no longer one day where everyone votes

- **Barriers to effective implementation**
  - 12-hour days/3 weeks of early voting can lead to election official fatigue
  - Too few locations for EIPV at this point in time
  - Since EIPV is mostly in urban areas, favors Democrats
  - Current facilities (e.g. libraries) are far too small to accommodate the number of early voters

Absentee Voting

- **Benefits**
  - Voter convenience
  - Reduces burdens on polling places on Election Day

- **Detriments**
  - Need to further examine the processing of absentee ballots in order to eliminate fraud and increase transparency
  - Higher voter error rate than with in-person voting

- **Barriers to effective implementation**
  - Need to enforce ordinances that require campaigns to provide a list of their employees that work on absentee ballots
• Branding issues: instead of calling it “absentee voting,” call it “voting by mail”
• Florida’s system of having a three-person canvassing board in each county review each absentee ballot is impracticable
• Florida’s rule of sharing who votes by absentee raises the potential of third parties that receive this information engaging in absentee ballot fraud
• Need to combat potential for voter fraud in nursing homes and assisted living facilities

**Long Lines**

- **Contributing Factors**
  - Long ballots
  - Large number of voters assigned to certain precincts
  - Equipment shortages
  - Polling places with inadequate space

- **Possible Solutions**
  - Get rid of precinct system: reapportionment is no longer as much of a concern
  - Implement vote centers
  - Reduce bottlenecks by splitting up tasks for poll workers
  - Early in person and absentee voting
  - Vote centers
  - Electronic poll books
  - Better poll worker training
  - Using county employees as poll workers
  - More resources

**Recommendations**

- **Preparation**
  - Every election should be planned with the expectation of maximum turnout
  - Better training and improved incentives for poll workers
  - Change statutes to allow for weekend early voting
  - Make sure that EIPV election volunteers are not “burned out” by Election Day
  - Allow people to drop off absentee ballots at EIPV locations

- **Coordination**
  - Need to better connect legislators with election officials: legislators frequently do not have a sufficient connection to on-the-ground experience to make good policy decisions on elections
  - Provide for flexibility of authorization for election administrators to accommodate the realities of election day
  - Need elected/appointed election supervisors to ensure continuity and smoothness in election systems

- **Location**
  - Take early voting out to underutilized locations like shopping malls, banquet halls, etc. in order to benefit Republicans in rural areas
  - Schools are often the best choice for voting centers, due to central location and plentiful parking, but need to deal with security concerns
Role of the ABA with Respect to Early Voting

- Ongoing work with Lawyer Citizens: helping to recruit lawyers to serve as election officials
- Need to increase involvement of professionals in election process
- Encourage law firms and businesses to give employees a day off of work to engage in public service
II. VOTER IDENTIFICATION

Introduction

In recent years, Voter Identification (“ID”) laws have been at the forefront of state election reform and litigation. Some believe Voter ID laws are too weak; others believe that adopting stricter ID requirements will decrease turnout, or worse, disenfranchise voters.

Currently, 32 states have Voter ID laws requiring proof of identification upon voting. Voter ID laws, it should be noted, are distinct from identification requirements for voter registration. Voter ID rules govern the presentation of identification when voters check in at the polling place.

The Help America Vote Act (HAVA) requires states to obtain identification at the polling place from voters who registered by mail and did not provide a driver’s license number or the last four digits of their Social Security number. If a voter falls under this category, they must either show a photo ID or a document that proves state residency and has the voter’s name on it (i.e. a utility bill, a paycheck etc.) when they arrive to vote. However, HAVA does not restrict states from imposing stricter Voter ID requirements.

Not all Voter ID laws are the same. Some states have very restrictive Voter ID laws requiring certain state-issued photo identification. Other state Voter ID statutes allow a wide range of documents satisfy proof of identity, including documents that do not contain a photo. Some but not all Voter ID statutes require the state to issue free IDs to all registered voters.
In the 2008 U.S. Supreme Court case *Crawford v. Marion County Election Bd.*, the Court rejected a facial challenge to an Indiana statute requiring that all in-person voters show a government-issued photo ID to vote. The *Crawford* Court applied a balancing test whereby the severity of the burden to voters determines the level of scrutiny applied. The government’s interest in supporting election laws that present a heavy burden on voters must meet strict scrutiny; and laws that only present a slight burden may be supported by a lesser state interest. In *Crawford*, the Court determined that the appellants had failed to produce reliable evidence demonstrating a heavy burden on voters. As a result, the plaintiffs failed to prove that strict scrutiny should apply. Under a lesser standard of scrutiny, the *Crawford* Court concluded that the state’s interests in deterring and detecting voting fraud, safeguarding voter confidence, and modernizing election systems were sufficient to outweigh the burdens on voters imposed by Indiana’s photo ID law.

Since *Crawford*, opponents of strict Voter ID laws have amassed evidence to show that Photo ID requirements present significant burdens for certain voters, particularly poor and elderly voters, who may find it difficult to obtain supporting documents (like birth certificates) that are needed to obtain the required photo identification. Many question the costs of these programs in the face of dubious evidence about voter impersonation—the form of voter fraud voter identification laws seek to prevent. Others note that, particularly just after new photo ID laws are adopted, voters are often unaware of or uneducated about this requirement, which can lead to confusion on
Election Day. These problems provided the underpinnings for the Pennsylvania Voter ID case, *Applewhite v. Commonwealth of Pennsylvania*.

In August 2013, two months after *Shelby*, the Department of Justice filed a civil suit against Texas, alleging violations of the Voting Rights Act and the 14th and 15th Amendments. The DOJ complaint cites the discriminatory impact of the Voter ID law and Texas’s history of discrimination against minorities as the foundation of the federal government’s need to intervene. Texas, now a strict photo ID state, allows voters who lack ID to apply with Department of Public Safety (“DPS”) and receive an ID, but they must go in person to obtain it. The DOJ alleges that this law was adopted with discriminatory intent, basing this claim on legislative history, floor debate on the bill, the disproportionate number of minorities that do not possess these IDs, and the difficulty minorities face in reaching a DPS location to obtain an ID. The DOJ complaint further alleges that the implementation of this law is discriminatory because of the process to obtaining the ID, as well as the general electoral system, are now, and historically have been, less open to minorities.

Similarly, the DOJ has challenged North Carolina’s Voter ID law on the ground that it has the “purpose, intent and effect of discriminating on the basis of race.”102 The ACLU with the Southern Coalition for Social Justice and the NAACP with the Advancement Project have also filed suit challenging North Carolina’s law.

**Public Opinion and the Impact of Voter ID**

Because Voter ID has become such a hot-button issue, many organizations and government bodies have conducted polls to determine the degree of public support for these laws at the state and national levels.103 At the state level, polls show support for strict photo ID laws. However, when polls include questions about whether a voter should be turned away for failing to have a photo ID, the responses become less clear-cut. In 2012, Minnesota voters became the first to vote down an amendment that would require voters to show photo ID at the polls.104

**Voter ID and the Inherent Difficulty of Measurement**

While there is relatively good data on public opinion of Voter ID laws, it is still inherently difficult to measure the effect of strict voter ID laws on in-person voter fraud (e.g. how many people showed up to the polls, how many are voting fraudulently).105 In Texas, a strict voter ID state, Attorney General Greg Abbot can cite two fraudulent votes that might have been stopped by the Texas ID law.106 To put it another way, that is one out of every 18.7 million votes cast in Texas during Abbots’s 13 years in office.107

However, in North Carolina a recent report by the State Board of Elections shows that more than 35,000 people who voted in the N.C. 2012 general election had the same name and birthdate as voters registered in another state.108 Seven hundred and sixty five (765) voters also matched social security numbers with a voter in another state.109 No one has been charged with fraud and it is not clear that this new data is not simply the confluence of slow registrar processing and
simple coincidence. Further, strict voter ID may not impact this sort of in person voter “fraud,” which speaks more to the need for increased communication between states and registrars. Additionally, data on the burden of strict photo ID laws may fail to account for would-be voters who do not attempt to vote because of the state’s ID requirement.

Arguments Against Strict Voter ID Laws

Photo ID Laws Address a Non Existent Problem

Opponents of strict Voter ID point to the very small number of convictions or charges brought for in-person voter fraud—the only form of voter fraud strict Voter ID laws prevent. Opponents of strict Voter ID laws suggest that partisan legislators are passing Voter ID laws in a cynical attempt to make it more difficult for members of the opposing political party—namely Democrats—to cast ballots. Several high profile statements, particularly during litigation about Pennsylvania’s Voter ID statute, bore this theory out.

In January of 2012, Texas submitted data to the U.S. Attorney General concerning the proportions of voters that lacked the requisite ID as part of the now-defunct preclearance process under the Voting Rights Act. That data showed 10.8% of Hispanic voters lacked sufficient ID to vote under the law, making Hispanics 46.5%-120% more likely to lack the requisite ID compared to non-Hispanics. The U.S. Attorney General, and a three-judge panel in a following trial, denied preclearance of the Texas law on the grounds that the ID requirement, combined with the ability of minorities to reach DPS offices, would disproportionately disenfranchise minority voters.

Strict Photo ID Laws Disenfranchise Minority Voters

According to detractors of strict photo ID laws, bias (e.g. racial, ethnic, and class) presents itself in two distinct ways. In strict ID states, racial minorities and poorer citizens are less likely to have the requisite ID. In non-strict ID states, evidence suggests that these groups are asked to present ID at a higher rate than others.

In 2004, the U.S. Election Assistance Commission (EAC) studied how Voter ID affects turnout. This study found that strict Voter ID laws reduce turnout slightly across the board. However, Voter ID laws decrease turnout by 6-10%, and by 5% among less-educated minority voters. Several other studies find no such drop in voter turnout. Some studies point to growing voter turnout since Voter ID laws have come into effect, suggesting that confidence-building in the system has actually improved voter participation. Critics of those studies point to the historic nature of the 2008 and 2012 elections as an indicator of why minority turnout might have increased.
Strict Voter ID Laws Disenfranchise Young and Elderly Voters

Strict Voter ID laws may negatively impact younger voters. Youth voters aged 17-24 have one of the lowest voter turnout rates. A recent report found that youth turnout drops even lower in states with restrictive Voter ID laws. Recent studies suggest that 700,000 to one million minority youths may be disenfranchised by Voter ID laws because of low rates of ID possession by youths and the concern of general demobilization in this group of voters. Because voter turnout among youths has been on the rise, critics worry that strict Voter ID laws will halt or reverse this trend.

Critics of strict Voter ID laws argue that such laws may also negatively impact elderly voters because members of this demographic often lack the original documents (such as a birth certificate) required to obtain a valid form of ID to vote in a strict ID state. It is often difficult or impossible for the elderly to obtain birth records: in many cases, they have been destroyed or simply cannot be located without great cost. Some seniors were never issued birth certificates at all. This burden becomes even greater in cases where elderly voters have moved across state boundaries.

Costs of Voter ID Administration

In Pennsylvania, a survey of state offices showed that government offices were incapable of fulfilling ID administration requirements. ID centers lacked proper forms or signs to inform people of ID options. Polling place employees were unfamiliar with the ID program and gave out incorrect information. These problems further raise the costs of obtaining IDs. A study by Professor Justin Levitt at Loyola Law looked at some of the costs for implementing Voter ID laws. Levitt found that Indiana’s strict Voter ID law would cost more in yearly recurring costs than the Election Division's annual budget.

2 Id. at 1.

Implement and Cause Voter Confusion

Critics of strict photo ID laws also point to increased costs in implementing lawful statutes. In addition to costs associated with printing ID cards for individuals who lack required identification, state election officials are also saddled with the expensive task of educating voters about what identification will suffice at the polls.

Arguments in Favor of Restrictive Voter ID Laws

Support for strict Voter ID laws is based on the idea that every fraudulent vote dilutes the votes of the law-abiding citizenry. Although voter fraud has always been illegal, without some kind of check, there is little chance for detection or enforcement. Proponents of stronger Voter ID laws point out that the low chance of being caught means there is little or no deterrence for wrongdoers. Furthermore, proponents argue that stricter Voter ID rules are needed because of
the flawed registration verification process. Proponents believe poor registration verification processes require strong photo ID to ensure that only eligible citizens vote.

Second, proponents of strict Voter ID laws cite evidence that requiring photo ID has little impact on voter turnout. Proponents criticize studies showing the number of people that could be disenfranchised because they include a large pool of voters who commonly fail to participate in elections.

Strict Voter ID proponents also note that public confidence in election integrity is critical to a well-functioning democracy, citing reports that many in this country question the integrity of elections. One study, for example, found that a quarter of those polled believed voter fraud was “very common.” These numbers decreased in a 2008 poll, but have remained over 10%. Proponents stress that Voter ID laws, and especially photo ID laws, enhance public confidence that those voting are doing so legally and that election results are valid.

**Voter ID Litigation in 2013**

After *Shelby County* eliminated the Voting Rights Act preclearance requirement for previously covered jurisdictions, Attorney General Eric Holder cautioned that the Department of Justice “will not allow the Supreme Court’s recent decision to be interpreted as open season for states to pursue measures that suppress voting rights. The Department will take action against jurisdictions that attempt to hinder access to the ballot box, no matter where it occurs.”

**Operational Best Practices**

Although previously-covered states are now unburdened by VRA Section 5 preclearance requirements, lessons learned from the process of preclearing Voter ID laws prior to the *Shelby County* decision are instructive for how states might craft Voter ID laws without overburdening eligible voters. One such example is South Carolina, which revised its Voter ID law after the DOJ initially denied it preclearance. South Carolina implemented several changes to address the Justice Department’s concerns. First, the state expanded its educational and notice mechanisms so voters are more likely to learn of the law. Second, South Carolina made it easier for voters to obtain the required photo ID. Under South Carolina’s new scheme, registered voters can acquire a photo voter registration card from county voter or elections offices by providing their date of birth and the last three digits of their Social Security number. Voters can also get an ID at the DMV by showing documentation that proves their citizenship and residency.

Finally, South Carolina chose to interpret a “reasonable impediment” exception broadly. The exception allows a voter to offer any reason for not obtaining an ID. If a South Carolina voter presents a “reasonable impediment,” that voter is exempt from the ID requirement.

Indiana is another state with a Voter ID program that might prove instructive to other states considering new or revised legislation. The Indiana program covers the expense for voters who seek to obtain photo IDs. Doing so costs the state about $2.5 million a year. On average, Indiana gives out 190,000 IDs to voters each year. What sets Indiana apart is that birth certificates can also be provided to voters.
for free. By providing free birth certificates, Indiana reduces the concern that voters will not be able to afford the indirect costs of obtaining the requisite ID. Furthermore, Indiana has invested heavily in voter education about ID requirements, spending $2.2 million in the first five years of the current program in addition to the $2.5 million a year for operational costs.

National Voter ID Standards?

Should voter identification requirements be federalized? The 2005 Carter-Baker report suggested that states require “real ID card[s],” a form of ID that includes the full name, date of birth, digitally captured signature, and photograph. The Carter-Baker report rejected the option of a national voting identification card, citing the expense and concerns that voters would forget or lose them. Notable election law scholars have also advocated for a national standard. In The Voting Wars, author Rick Hasen endorses universal voter registration conducted by the federal government, combined with a national Voter ID card. The card would assign each potential voter a unique Voter ID number, which would stay with the voter her entire life as she moves across the U.S. The card would provide the option of providing a thumbprint, so that if a voter ever forgets or loses the card, she can verify identity at the polls via thumbprint.

ABA Town Hall Meeting: Philadelphia, Pennsylvania (February 20, 2014)

Participants discussed issues relating to Voter ID. These included how to reframe the issue so as to concentrate on common areas of agreement to provide the basis for a Voter ID system that would have the least adverse impact on access, but also improve public confidence in the outcome of elections. Furthermore, administrators should remain mindful that Voter ID is only one part of improving public confidence and stopping fraud. The most successful way to achieve the goals of detecting and deterring fraud and improving public confidence is to systematically give everyone adequate ID first, and then impose Voter ID restrictions.

Stricter Voter ID

- Benefits
  - Enhances public confidence
  - One piece of modernizing our election practices in a transient society
  - Possibility of preventing in person voter fraud
- Detriments
  - Unnecessary burden on the people’s exercise of the voting franchise
  - May lead to disenfranchisement that affects sub-groups more frequently (e.g. elderly, poor, students, racial minorities)
  - Highly motivated persons intent on committing in person election fraud will know how to make a fake ID card and trick a poll worker who has been trained for a few hours.
- Recommendations
  - Reframe the issue:
    - You can’t have integrity in an election if you don’t have full access
    - Concentrate on common areas of agreement for a Voter ID system that would have the least adverse impact on access but improve public confidence in the system
- Voter ID is a distraction from a systematic issue
- The question isn’t in person voter fraud, but improving confidence in the electoral process
  - Criminal Penalties
    - Verification by signature, backed up by rigorous criminal penalties (similar to witnesses on the stand under threat of perjury)
  - Shift the Burden to Government
    - Create an affirmative duty on the part of the government to make sure everyone gets an ID that complies with strict Voter ID standards
    - Put a photo on the registration card
    - Change the places you can get a state approved Voter ID from the DMV to polling places
      - In PA: 71 DMV access points v. 9,300 polling place access points
    - Take the $6 million (in PA) spent on advertising for the Voter ID law and spend it on educating poll workers, voters, and poll watchers on the process
  - Engage Voter Responsibility
    - Require more citizen participation, not only in voting, but being accountable for the conduct of elections
    - Minority inspector program from each neighborhood
  - Follow the Ohio model
    - Have all county boards of elections review all allegations of voter fraud or suppression and send their investigations to the county prosecutor’s office to be put on the website.
    - In 2012, there were 5.6 million votes cast and 135 referrals of irregularity (not fraud). This unbiased information can help assess the real problem. Voter fraud v. Public confidence.
  - Implementation of Photo-Voter ID Over Long Period
    - Barriers to access will phase out
    - Over three or four presidential election cycles poll workers take your picture at the polling place, and compile a database. When you vote in the future, poll workers can compare face along with signature.
III. REGISTRATION AND ELECTION ADMINISTRATION

Election administration is a broad topic involving the “behind-the-scenes” functioning of elections. This section covers only a subset of topics in this area. They are: (1) Voter Registration; (2) Poll Workers; (3) Accessibility; (4) Provisional Voting; (5) Poll Watchers and Challengers.

Registration

Well before the first vote is cast, voters must register. A voter’s eligibility to participate in elections is governed by state and federal registration statutes that attempt to accomplish two goals: first, providing election administrators with adequate time to verify registrants’ eligibility to vote; and second, enabling citizens the opportunity to vote without overly burdensome deadlines and procedures.

States have tremendous leeway in determining voter registration processes. States may choose to not have voter registration at all, as South Dakota has done. States may also create systems to automatically register persons of voting age, or re-register persons who become eligible to vote after a period of denial (e.g. due to a felony conviction). Generally speaking, the onus of voter registration is placed on the citizen. A 2012 Caltech report found that between 1.5 and three million votes are lost due to registration problems, representing the largest individual cause of voter disenfranchisement in U.S. elections.

Federal Voter Registration Provisions

Federal law governs many aspects of registration. For this reason, a summary of the federal law leads this section. The Constitution provides that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time make or alter such Regulations, except as to the Place of choosing Senators.” Congressional authority over federal elections is therefore quite broad. Congress has taken advantage of its authority by creating several election administration statutes that establish baseline voter registration requirements.

The Uniform and Overseas Citizens Absentee Voting Act

The Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) sets minimum standards and practices for registering overseas absentee voters by which states must abide. The methods prescribed in UOCAVA are limited to elections in which a federal office is on the ballot. Under this statute, states must accept a standardized registration form distributed by the government and must accept all registration forms received 30 or more days before the election.
The National Voter Registration Act

Congress passed the National Voter Registration Act (NVRA) in 1993 with the explicit goal of improving voter turnout by streamlining and unifying the nation’s registration process for voting in federal elections. The NVRA recognizes that discriminatory registration laws can have a damaging impact on the democratic process. In an effort to streamline registration for voters, the NVRA requires that all states offer registration both by mail and in person at elections offices, motor vehicle departments, public colleges and public assistance offices (Social Security offices, welfare, et. al.).

The NVRA requires that departments of motor vehicles, public assistance agencies, and other offices ask clients whether they want to register to vote when the client applies for services. It also establishes procedures for the transmission and confidentiality of voter registration information, which many have criticized as ineffective, due largely to many states’ failure to integrate the data gathered through DMVs with master voter lists. The Presidential Commission on Election Administration Report called for states to ensure that DMVs remove impediments to the seamless transfer of voter data to election administrators, reasoning that DMV lists are among the most accurate repositories of such data: citizens are far more likely, for practical reasons, to update their driver’s license when they move to another state then they are to update their voter registration.

The Help America Vote Act

Congress passed the Help Americans Vote Act of 2002 (HAVA) to address a range of election administration concerns after Bush v. Gore. HAVA’s registration provisions mandate that states create centralized statewide voter registries, optimally supplanting the county or municipality-maintained voter registries that many states used previously.

Methods of Registration

Beyond the NVRA’s registration standard, states may provide additional registration options as they choose. An increasing number of states, for example, have begun to offer online registration services. Minnesota, which added online registration in September of 2013, is the fifteenth and most recent addition.

The federal Election Assistance Commission (EAC) provides a standardized form for registration and gives voters additional information about the documents each state requires. The federal form requires registrants to provide standardized information. Some states have sought to require registrants to provide proof of citizenship or other documentation in addition to submitting the federal form. The Supreme Court recently addressed whether states could demand additional documentation when it denied Arizona’s attempt to require proof of citizenship for voter registration. Arizona (and Kansas) subsequently sued the EAC, asking that it be allowed
to amend the federal form, and the court held that the EAC’s refusal to include the States' additional requirements was unlawful. 148

_Election-Day Registration (“EDR”)_

Nine states plus the District of Columbia now offer voters the opportunity to register on Election Day. 149 The requirements to register on Election Day are fairly uniform: the voter must show proof of residency by presenting a driver’s license, or, in some states, a utility bill, paycheck, or similar proof of identification. Second, the voter must present a valid ID, with some states requiring a photo ID and some not. Some states permit voters to register and vote during the early-voting period. Some states do not allow voters to register at the polling place, but instead require registration at town halls, election offices, or other statutorily defined locales. Other states rely on electronic poll book systems to verify that the voter has not voted elsewhere already.

Studies have shown that EDR is particularly popular among minority voters. 150 Advocates of EDR, largely Democrats, say that EDR opponents’ concerns of voter fraud are overblown, 151 believing that modern registration methods sufficiently address concerns about fraudulent registration. 152 Maine repealed its EDR program because of fears about voter fraud in the state. 153

_Third-Party Registration_

Third-party registration occurs when an organization or individual assists applicants in registering to vote. Third-party registration groups are typically partisan organizations or interest groups that aim to register supporters to vote. 154 Third-party registration groups have been successful in registering demographic categories that are traditionally less likely to vote, such as minorities, the poor, and the elderly. 155

For many years, non-profits like the NAACP and the League of Women Voters have undertaken voter registration drives to expand the franchise for eligible voters. More recently, some third-party voter registration groups have

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**FIGURE 8. States with Same-Day Registration**

<table>
<thead>
<tr>
<th>Same-Day Registration States</th>
<th>Year Enacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>California*</td>
<td>2012</td>
</tr>
<tr>
<td>Colorado</td>
<td>2013</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2012</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>2010</td>
</tr>
<tr>
<td>Idaho</td>
<td>1994</td>
</tr>
<tr>
<td>Iowa</td>
<td>2007</td>
</tr>
<tr>
<td>Maine</td>
<td>1973</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1974</td>
</tr>
<tr>
<td>Montana</td>
<td>2005</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1998</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1975</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1994</td>
</tr>
</tbody>
</table>

_Source: National Conference of State Legislatures_

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**Third Party Registration Statutes: New Mexico and South Dakota**

- **New Mexico:** N.M. Stat. Ann. § 1-4-49 (West) requires that the group register with the secretary of state, as well as provide the names, addresses, dates of birth and sworn statements to follow all state laws of all people collecting registration forms. Completed forms must then be mailed in within 48 hours.

- **South Dakota:** S.D. Codified Laws § 12-4-3.2 requires that registration forms collected by any third party be delivered within ten days of the forms being filled out.
explored online registration outreach. A good example is TurboVote, which provides an online platform allowing voters in all fifty states to enter their information, complete required registration forms, and fill out forms requesting absentee ballots. The site also sends users automatic reminders and information about upcoming elections.\textsuperscript{156}

Despite the benefits that third-party registration groups bring to the table, these groups have generated some controversy. In 2008, the non-profit Association of Community Organizations for Reform Now (“ACORN”)\textsuperscript{157} became an inadvertent figurehead for concerns about third-party groups when it admitted that some of its workers had submitted registration applications with false information.\textsuperscript{158}

State statutes governing third-party voter registration groups vary. The most common scheme is to require such groups to register, to provide information on staffers registering voters, and to set strict guidelines on the return of completed forms.\textsuperscript{159} Some states do not regulate third-party voter registration groups.\textsuperscript{160} Other states require those working for third-party registration groups to sign and provide their information in designated portions of each voter’s registration form.\textsuperscript{161} Observers have suggested a middle ground between strict regulation and no regulation of third-party voter registration groups. One such framework would require registration for third-party groups at the state level instead of the county level. Permitting longer deadlines for the return of registration forms is another way to balance accountability with practicability. South Dakota, for instance, gives registration groups ten days to send in forms from registration drives.

An alternative to third-party registration is to encourage state election officials to become more active in the registration realm.\textsuperscript{162} Some advocates also push for Election Day registration and universal registration as additional (though controversial) alternatives.

\textit{Voter Rolls and “List Maintenance”}

Statewide registration databases aim to ensure that no person is registered in multiple locations within the state, and that deceased persons and ineligible voters are not on the rolls. State election officials routinely eliminate ineligible voters from the polls, a routine process often called “list maintenance.” Routine list maintenance combats voter fraud, increases public confidence in election outcomes, and ensures that ineligible voters cannot cast ballots.\textsuperscript{163} Some states also take steps to remove “inactive” voters from the voter registry. Though state definitions of “inactive” vary, most refer to voters who have not voted in the last two election cycles. This definition is so common because it is a standard set forth in the NVRA.\textsuperscript{164} Generally, state officials are required to provide notice before removing voters’ names from the rolls, and voters are given an opportunity to provide necessary evidence of their eligibility to vote.\textsuperscript{165}

\begin{table}[h]
\centering
\begin{tabular}{|l|}
\hline
\textbf{Virginia Voter Rolls} \\
\hline
Virginia law requires the State Board of Election to maintain an accurate voter registry. Voter rolls are checked against deceased persons lists every October first. Conducting this check, every year, keeps rolls current and prevents an overwhelming number of exclusions just before an election.

Virginia also requests registration information from neighboring states to ensure no duplicative voting occurs. Lists of ineligible felon residents are also sent to the State Board of Elections to be removed from the voting lists. The mentally incompetent and non-citizens are identified using lists from clerks of the circuit courts and the DMV respectively.

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\end{tabular}
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The Pew Charitable Trusts has developed a system to aid states in the process of maintaining accurate voter rolls: the Electronic Registration Information Center (“ERIC”) is a cross-state database system that checks names, addresses and other pieces of information from registration forms to ensure that the persons remaining on voter rolls in one state are still eligible to vote and are not voting in other states. Several states have also joined a consortium, started in Kansas, that helps states assess duplicative voter registrations across state lines.

States also check voter rolls against other state and federal records, such as Social Security registries and lists of non-citizens maintained by the federal Immigration Database, among others. Some argue that relatively late registration deadlines under the NVRA and HAVA can leave inadequate time to cross-check voter rolls against other state and federal databases. Election Day registration, permitted in a handful of states, also complicates list maintenance processes.

State election administrators’ efforts to clear voter rolls of ineligible voters often come under fire. This issue recently arose in both Florida and Colorado when state officials sought to remove thousands of voters from the rolls based on citizenship concerns. In both cases, very few ineligible voters were ultimately removed, and the Eleventh Circuit recently held that Florida’s voter roll purge based on immigration records violated the NVRA.

**Poll Workers**

Poll workers encounter an increasingly complex set of Election Day responsibilities: setting up voting sites, powering up and preparing voting machines and poll books, troubleshooting machine glitches and voters’ problems, and ensuring the security and proper transmission of completed ballots—all amidst increased scrutiny of their work and growing dissatisfaction with the voting experience.

**Poll Worker Recruitment**

The vast majority of people who run U.S. elections are not state or local election administrators, but an army of volunteers. States’ reliance on volunteer poll workers is often cited as one of the main causes of Election Day problems. Strapped with tight budgets and difficulty recruiting volunteers, staffing the polls on Election Day remains a difficult challenge for administrators in most states.

Poll workers are often asked to work a sixteen-hour Election Day for as little as $100 per diem. A large percentage of poll workers cite a sense of civic duty or a call to public service, rather than money, as their main reason for manning the polls. Many poll workers are advanced in age, with an average age of 72. Data suggest that workers in larger jurisdictions tend to be younger and more educated; a 2006 study concluded that poll workers are more than twice as likely than the general population to have a college degree. A significant number of poll workers attend trainings but fail to show up on Election Day. For
instance, almost 20% of the poll workers scheduled to work the 2006 Congressional primaries in Cuyahoga County, Ohio, never showed on Election Day. Nevada has tried to combat absenteeism by allowing any available citizen to be appointed as a replacement for an absent worker if administrators are satisfied that person can perform the duties. Other states do not have an easy alternative when poll workers fail to show up.

Recruitment remains a persistent problem. While there is substantial variation across jurisdictions, more than 40% reported difficulty finding enough workers to staff locations in 2008. Poll workers represent the largest one-day workforce in the United States (approximately two million workers nationwide), but are tasked with staffing 110,000 polling locations. This shortage puts state election administrators in a difficult position; they are often forced to accept whoever shows up.

Poll Worker Training

Poll worker decisions have a significant impact on the public’s voting experience and on overall confidence in the fairness of elections. The 2008 Survey of the Performance of American Elections found that over 4.4 million people reporting a problem affecting their ability to vote rated the performance of the poll workers who helped them as either “fair” or “poor.” Election administrators recognize the value of good poll worker training, citing it as their most pressing concern regardless of the size of their jurisdiction.

Most jurisdictions use manuals to train poll workers. Manuals are routinely consulted during voting to diagnose and solve common issues and aid in troubleshooting more complex problems. Some states, such as Utah and Washington, take no active role in the creation of training materials, instead leaving the job of creating these materials entirely to local election administrators. Other states, like Oklahoma and California, have standardized training manuals for use by county administrators statewide. Still other states, like Iowa, partner with universities or private organizations to create materials. Groups like Project Vote have advocated for states to take a more active role in preparing uniform training materials for poll workers. Ideally, these materials would have input from local election officials who have succeeded in developing quality training programs and from voters who experience Election Day problems firsthand.

In-person poll worker training formats vary from state to state. Typically, in-person training consists of a two to four hour session before Election Day. Some workers receive more training; others receive none at all. Longer training sessions are uncommon for two principal reasons: budget constraints, and difficulty getting volunteer poll workers to attend lengthy training. When asked why elected poll workers in Pennsylvania were not required to undergo training, Philadelphia City
Commission Member Edgar A. Howard gave voice to the problem: “So we make it mandatory and they don’t show up. Then what?”

Systematic analyses of poll worker training programs are in short supply. One study contrasted the experience of Utah’s Third Congressional District and Cuyahoga County, Ohio. Utah’s training included hands-on instruction in a small class environment, while Cuyahoga County used larger seminars. Researchers discovered that Utah achieved much better results and managed to make poll workers more likely to return to work the next election. The study also noted that Ohio revised its manual in the weeks leading up to Election Day, causing confusion, and that outside contractors, rather than experienced administrators and poll workers, ran training courses.

Poll worker error results in problems ranging from voter dissatisfaction to accusations of fraud and even litigation. In Hunter v. Hamilton County Board of Elections, an Ohio court ordered the state board to count provisional ballots cast incorrectly due to poll worker error. Voters had cast ballots at the correct polling location, but poll workers had sent them to the wrong table to vote—in one instance, because the poll worker believed 798 to be an odd number.

Improvements to Poll Worker Recruitment and Preparedness

Scholars and election experts have suggested numerous solutions to improve poll worker recruitment and performance. Some suggest encouraging poll worker specialization by giving volunteers focused training on discrete parts of the poll operation. Another proposal, made after analyzing the results of an earlier election cycle in California, calls for organizing poll workers according to prior experience and using relative seniority to tailor small group instruction. In a separate survey of California poll workers, most said they received general procedural training, but only around half received training on troubleshooting malfunctioning equipment. Specialized training would allow each jurisdiction to have relative “experts” on staff.

Online training could also improve poll worker competency. Texas contracted with a private firm to collect information and advice from local county clerks and election administrators and used the resulting input to create online tutorials. However, others doubt whether online training can adequately replace in-person training.

Researchers have proposed rewriting voter manuals to provide information to workers in more easily readable formats that replicate the cognitive processes necessary to follow the instructions. The Advancement Project, for example, has suggested providing poll workers with pocket cards with some of the most common fixes to voting problems, and posting answers to common questions in conspicuous view at all polling places.
Another approach to improving poll worker quality is to examine training and retention failures as a human resource problem. A survey of poll workers in California revealed that some asked simply to be recognized for their work and to feel more appreciated by local administrators. Election administrators have also long been urged to develop more fruitful relationships with high school and college students, particularly those in civics or political science programs. Students make ideal poll workers and can often earn class or extra credit for working the polls on Election Day. Students have the added advantage of comfort with technology—a quality that elderly poll workers often lack.

Others have called for greater professionalism in election administration, for example through development of election administration graduate programs.

Finally, some recommend more evaluation of poll worker readiness before elections, and performance evaluations afterwards. Evaluations of the training poll workers received and their performance afterward were undertaken in about 40% of large jurisdictions and only 10% of small jurisdictions. The quantity of training is easier to measure, but quality may be just as—if not more—important than the total number of hours trained.

Poll worker preparedness dramatically affects the election experience and presents a difficult human capital problem for officials. Administrators across the country ought to examine these and other creative strategies to improve the effectiveness of training and the performance of these volunteers.

**Polling Place Accessibility**

The Presidential Commission on Election Administration (PCEA) has called for states to work with community groups in order to better understand the needs of voters with disabilities and limited English proficiency. These advisory groups can assist election authorities by counseling on decisions involving resource allocation and designing tailored poll worker and polling place training programs to meet the needs of these underserved communities.

For disabled voters, the PCEA recommends that the states and localities adapt new training models and comprehensive management practices to ensure accessible polling places. The Civil Rights Division of the Justice Department published a pamphlet and checklist that can help to ensure each polling place is accessible to voters with disabilities. Election officials are encouraged to keep the completed checklist for each polling place on file in the office, and it should be updated prior to each election. Additional informational training films, developed by the Elections Department of the County and City of San Francisco as well as the Pennsylvania Department of State, serve as a model on how to educate poll workers about voters with disabilities. Finally, states are encouraged to routinely audit their polling places to determine
their accessibility and keep state authorities up to date about any problems in polling place design. 204

For voters with limited English proficiency, the PCEA recommends that jurisdictions provide bilingual poll workers to any polling place with significant numbers of voters (they suggest over 5%) who do not speak English. Bilingual poll workers could be recruited from area schools, and the students given credit for their services. Even in jurisdictions without large non-English speaking populations, the commission recommends all jurisdictions test the usability of their voting and polling place materials with the “plain language” standard as a guideline, as even native English speakers can be confused by directions written in bureaucratic language.205

Provisional Voting

The Help America Vote Act206 requires that provisional ballots be issued to voters who do not appear on the poll lists, or who are otherwise challenged at the polls. Once election administrators verify their eligibility to vote, the ballot must be counted. Though HAVA requires that provisional ballots be offered, what a voter must show to prove eligibility and the timeline for doing so varies from state to state.

Courts have been willing to issue injunctions forcing officials to count provisional ballots207 or to delay provisional ballot rule changes until future elections. 208 Several incidents of high-profile arbitrary application of provisional ballot procedures have taken place in Ohio. Hunter v. Hamilton County Bd. of Elections concerned the election board’s counting of provisional ballots cast at the correct voting center but not the correct precinct table.209 Poll worker error greatly contributed to voters casting provisional ballots at the wrong table. The board chose not to count or even investigate 849 provisional ballots cast at the wrong precinct to see whether poll worker error was a factor. The court found this to be an equal protection violation, and enjoined the board to not count otherwise valid ballots that were cast at the right center but the wrong precinct.210

Because of inconsistencies from state to state in processing provisional ballot and challenges such as the Ohio example above, some observers propose a uniform, nationwide system to enable voters to more easily cast provisional ballots, and when necessary, to have those ballots counted where the voter ultimately proves eligible.211 Uniformity could prevent unnecessary confusion for voters, poll workers, and election administrators alike.

Many believe the lack of standards and uniformity in provisional vote processes is a ticking time bomb. In recounts, problems with provisional voting have already caused quite a stir in numerous state races.212 The nation dodged a bullet in the 2012 Presidential race in Ohio when Ohio election officials issued 210,000 provisional ballots, with the final tally giving Obama a lead of only 166,214 votes.213 Had the Presidential race come down to Ohio’s provisional ballots, Bush v. Gore might have looked like a cake walk.
Poll Watchers & Challengers

States are divided over the proper place of unofficial civilian poll watchers and challengers in the election process and in interactions with the voting public. Generally speaking, poll watchers are only permitted to observe election proceedings, while poll challengers are permitted to challenge the eligibility of a voter. The Brennan Center reported in 2012 that 46 states allow private citizens to challenge voters either on or before Election Day. Many states make no practical distinction between poll watchers and poll challengers, using the term in their law and literature interchangeably.

State law varies widely on who may participate in observing the election process. Wisconsin allows anyone to be present at the polling place to observe an election, while West Virginia explicitly prohibits the presence of anyone besides voters, election officials, and the police.

Poll watchers and challengers impact the voting process at two points, both of which are controlled by state law. Prior to Election Day, challengers may submit information to registrars contending that some registered voters ought not to be allowed to vote because they do not meet eligibility requirements. State law concerning this information runs the gamut from vague and permissive to strict and prohibitive. Colorado requires pre-Election Day challenges to be submitted 60 days before the election, mandates documentation to support the challenge, and only allows challenges to a voter’s citizenship, residency, and age. Other states, such as Pennsylvania, have lower evidentiary standards, only requiring an affiant to present knowledge of the person’s ineligibility, and many states allow challenges up to ten days or sooner before Election Day.

Many states allow poll challengers to contest voters’ eligibility requirements on Election Day. States set different standards for which party has the burden of proof and what that burden is. Twelve states put the initial burden of proof on the challenger, requiring challengers to demonstrate that a voter is ineligible. The other 38 states put the onus on the voter themselves to prove they are eligible once they have been challenged at the polling place. State laws are often unclear about the challenge process and what makes a voter eligible. In North Carolina, even after a person has made an oath or affirmation under penalty of law that they are eligible to vote, officials can make them use a provisional ballot if they are not “satisfied that the challenged registrant is a legal voter.” How officials could be “satisfied” is not codified. Colorado, on the other hand, has a series of questions in its law that may be asked of a voter. If the voter answers these questions under oath, he or she cannot be denied a traditional ballot. Finally, if the challenge is
successful, the states are nearly evenly split on whether the voter may cast a provisional ballot or whether their ballot is discarded entirely.\textsuperscript{219}

The courts have a limited role in regulating poll watchers and challengers. State laws allowing them to be present at polling places have largely gone unchallenged. However, two cases were brought in 2004 regarding the constitutionality of Ohio’s law allowing poll challengers in the polling place. The plaintiffs claimed that the law would cause delays on Election Day and unfairly discourage some voters from taking part. The federal district courts in both the Northern and Southern districts of Ohio initially determined that, while the state had an interest in the integrity of the vote, the presence of poll challengers was not the least burdensome method of accomplishing the state’s goals. The courts determined that the appointment of official election law judges more than met the state’s needs. These decisions were appealed on Election Day 2004. The Sixth Circuit stayed the decisions of both courts. Using the Supreme Court’s test from \textit{Anderson v. Celebrezze}, which balances “the precise interests put forward by the State” against “the burden imposed by the rule,” the Sixth Circuit held that the plaintiffs failed to prove that the existence of the poll watchers constituted a “severe burden” on their right to vote.\textsuperscript{220} Of particular importance to the court was the fact that the poll challengers only initiate the challenge process, which is later decided by presiding judges.\textsuperscript{221}

Election observers can play an important role in preventing fraudulent practices and genuine mistakes from impacting the voting process and in enhancing transparency at the polls. Some fear that observers negatively impact the conduct of elections and intimidate certain classes of voters. Some argue for states to explicitly require complaints be lodged before Election Day.\textsuperscript{222} Others argue that states ought to tighten rules governing challenges.\textsuperscript{223} The Carter-Baker report recommended creating clear guidelines for challengers and requiring them to defend later actions, implicitly placing the onus on the challengers rather than the challenged to demonstrate disqualification from voting.\textsuperscript{224} Others suggest preventing observers from interacting with the voting population at all, allowing instead only contact with poll workers.

\textbf{ABA Town Hall Meeting: Columbus, Ohio (February 25, 2014)}

At the Columbus Town Hall, participants discussed issues related to voter registration and election administration, including online registration, poll worker training, polling place location, and regulatory and funding matters. Although participants seemed receptive to online voting as a potential way to expand voter access, panelists expressed concern about lagging election technology and public skepticism about security. Ultimately, panelists agreed that voter access can best be expanded through programs mandating integration of databases on a nationwide level, uniformity of basic registration and administration policies, increased funding, and improved poll worker training. The following set of bullet points summarizes the main themes of the Town Hall conversation.
Voter Registration

- Expanding Voter Access
  - In 2014, 190 bills expanding access were introduced in 31 states
  - Voter registration affects participation more than any other aspect of election administration

- Online Registration
  - Upsides
    - Voters prefer to engage with election officials electronically
    - Improved accuracy of voter data
    - Transaction costs are reduced
    - Lessens pressure on local budgets
  - Downsides
    - Not everyone has access to the Internet
    - Third-party organizations help voters register, but often provide pre-printed registration forms with incorrect addresses and spelling, which is not corrected by voters themselves
    - Government IT systems lag behind private sector IT systems
  - Recommendations
    - Online voter registration combined with affirmative voter registration requirement
    - Registration is mandatory unless voter opts out
    - Expand opportunities for affirmative registration at universities, through Social Security, and through the VA
    - Create permanent and portable voter registration that follows individuals around as they move
    - Seamless integration of motor vehicle databases with voter registration databases
    - Keep elections process at a local level in order to help voters feel that they have ownership over the process
    - Need to affirm public confidence in the system by creating a system that is simple and easily understood

Election Administration

- Regulatory Burdens and Uniformity
  - State commissions should review the burdens of election laws, much like state agencies review regulatory impact on businesses
  - Determine which policies need to be uniform in order to satisfy equal protection requirements

- Poll Workers and Training
  - Create standardized training materials that are the same for all jurisdictions within a given state
  - Need to improve recruitment and training of poll workers by reaching out to schools, business, civic, and church groups

- Polling Locations
  - Increase accessibility to public transportation
  - Invest in Vote Centers
Technological Improvement
- Certification standards should be set at the national level to allow states to innovate
- Need additional funding commitments/appropriations from the federal government through the creation of a dedicated funding stream
- Create central EAC to provide IT support and training

Role of the ABA with Respect to Voter Registration and Election Administration

- Seek solutions that reduce litigation
- Facilitate conversations between election administrators and the legal community
- Educate policymakers in order to help provide guidance for potential solutions
IV. REDISTRICTING

Introduction

Redistricting ensures that each vote is weighted equally when there are population shifts, and provides communities with the ability to elect a candidate of their choice. Redistricting is very often a deeply partisan process that gives incumbent politicians a significant amount of power in “choosing their voters” in a way that many view as fundamentally unfair. The following section offers a primer on redistricting and a discussion of recent reform trends.

What Is Redistricting?

Several key terms dominate in redistricting. Redistricting itself is the process by which state officials determine the shape of legislative districts. States must draw new districts for their state legislature and U.S. Congressional seats after each decennial national census to account for changes in population. After every national census, the reapportionment of the 435 seats in the House of Representatives means that some states will gain or lose representatives. The term “gerrymandering” is often used interchangeably with redistricting, but the former term only refers to instances when redistricting is used for what is believed to be overtly partisan or discriminatory ends.

There are many different ways to redistrict a state, and each way may have different consequences for political parties and interest groups. For example, imagine fictional State X, which has ten voters from each of the two parties, represented here by Circles and Triangles. State X has four districts with five members each. Here is State X with no district:

If the Circles have control of the redistricting process and choose to take a partisan approach, they will draw the lines in a way that gives them the maximum amount of seats. They can gain three out of the four seats by “packing” Triangles into a single district (giving them a simple majority in the rest):
Similarly, if the Triangles are in control of redistricting, they could do the same thing:

An independent, bipartisan redistricting commission may instead draw the districts to reflect the equal proportion of Triangles and Circles in the state, which would result in each controlling an equal number of districts:

Let's now imagine State Y with four Triangles and twelve Circles. All of the Triangles are gathered in one urban center. The state must draw four districts with four members each:
For the Triangles to have a representative of their choice, the districts must be drawn to give Triangles the majority in at least one district. This could be done as follows:

If Circles are in control of redistricting, they may choose to “crack” the urban center and split up the Triangles so that they cannot effectively elect a representative of their choice:

The way district lines are drawn can significantly impact the outcome of an election and the relative voting power of different groups. Relatively homogenous states can end up with a strong majority party; communities of interest can lose their ability to elect the candidate of their choice.
Vote Dilution and Equal Population

In the 1960s, the U.S. Supreme Court established that states must weight votes equally, meaning that states could not draw districts with varying populations. This is known as the “one man, one vote” principle. The Court determined that districts varying dramatically in size “diluted” voter influence in populous districts. For example, if District A has 400 voters, and District B has 100 voters, voters in District A have one-fourth the power to elect a representative as those in District B. To fix this problem, the Supreme Court ruled that states must have districts of equal population size “as nearly as practicable.”

Before a state can assure equal population, however, it must decide who counts as a member of that population. Do minors count? Non-citizens? People who are not registered to vote? The courts have traditionally used the total population in redistricting cases, however, they have also looked at the more limited voting age population (or “VAP”) to determine whether minority voters have the opportunity to elect the candidate of their choice. In states like Texas, which have a large population of non-citizens who are ineligible to vote, some have called for a standard that only includes the eligible voting age population.

Single Party Control

During redistricting, many describe the phenomenon of the majority party “picking its voters” by drawing lines in a way that will either “pack” or “crack” communities of opposing party voters. This phenomenon can result in dominant party entrenchment. Each redistricting cycle allows the majority to gain more control in the state legislature or the House of Representatives, making it more difficult for voters from the opposing party (or third parties) to have a meaningful voice, even when they have enough voters to elect their own representatives.

Entrenching Incumbents

Redistricting has also been used to draw districts around incumbents to either protect them from competition or eliminate it entirely. For instance, if an incumbent state legislator from the majority party feels a challenger threatens her reelection, she may try to redraw the district so that the challenger is no longer a resident. Incumbent protection can also reach across party lines as incumbents in one party barter and trade voters in the line-drawing process with incumbents in opposing parties to ensure their reelection.

Avoiding Partisan Extremes

Some argue that partisan control over the redistricting process feeds political extremism. The argument is that the real competition is shifted from the actual election to the majority party primary. Legislators may not have to worry about being pushed out by a minority party rival if they can draw districts to protect themselves against the opposing party. But single-party dominated districts have their downsides: candidates fear being pushed out by their own

“Some argue that partisan control over the redistricting process feeds political extremism”
party during the primary. In this way, the argument goes, elected officials are incentivized to stick to extreme party positions instead of representing moderate members of their parties (and appealing to moderate members of the opposing party). This phenomenon has caused some to blame partisan redistricting for the fall 2013 government shutdown. However, others maintain that the trend towards political extremism is more the result of broader political polarization and demographic trends than of redistricting alone.\textsuperscript{228}

**Who Draws the Lines?**

In most states, the legislature draws a redistricting plan subject to gubernatorial approval, just like any other legislation. Five states pass redistricting plans by joint resolution, with no gubernatorial approval required.\textsuperscript{229} In twenty-two states, some form of a commission participates in the redistricting process. Six states use independent commissions that draft and approve maps with limited involvement of politicians. Other states use bipartisan independent commissions to either advise the legislature, or to act as a backup in case the legislature fails to pass a plan (this happens frequently, for example, when state legislatures are evenly split along party lines). Five states appoint “advisory commissions” to help guide the legislature, but the commission's advice is not binding.\textsuperscript{230} Several states use “politician commissions” in which bipartisan commissions composed of elected officials draw the district lines. In some states, the judiciary is involved by either choosing the members of the independent commission or with judges serving on the independent commission themselves. Some states require courts to step in and draw the lines in the event of the legislature failing to pass maps before the set deadline.\textsuperscript{231}

<table>
<thead>
<tr>
<th>State Redistricting Commissions</th>
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<tbody>
<tr>
<td>Redistricting commissions can be broken down into four categories: independent, politician, advisory, and backup.</td>
</tr>
<tr>
<td>Idaho is an example of a state with an <strong>independent</strong> commission. There, six commissioners are chosen: the legislative leaders choose a total of four from each party, and the state party chairs choose two.</td>
</tr>
<tr>
<td>Arkansas has a <strong>politician</strong> commission consisting of the governor, the secretary of the state, and the attorney general.</td>
</tr>
<tr>
<td>Iowa has an <strong>advisory</strong> commission consisting of a nonpartisan professional staff with five advisors appointed by legislative leadership.</td>
</tr>
<tr>
<td>Texas has a <strong>backup</strong> commission, where the lieutenant governor, the speaker of the house of representatives, the attorney general, the comptroller of public accounts, and the commissioner of the general land office will step in to redraw the districts if the legislature cannot reach an agreement.</td>
</tr>
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Traditional Redistricting Principles

Compact and Contiguous

State constitutions and redistricting statutes typically require that districts to be reasonably compact. “Compactness” is defined in various ways. Some look more to geometric shape and whether a district could be condensed, while others look to “cultural cohesion” among the residents, or whether the lines follow pre-existing county, city, or natural boundaries. In general, compactness requirements exist to prevent the drawing of districts that look too oddly shaped to be a result of neutral decision-making. In the 49 states that require contiguity for at least one state chamber, “contiguity” means that one could move between any two points in the district without crossing its boundary.

Equal Population

As discussed above, districts must be the same size “as nearly as practicable” to be considered constitutional. A small amount of variation is allowed in state legislative races. Very little variation is allowed in the case of U.S. Congressional districts.

Voting Rights Act: Allowing Communities of Interest to Elect the Candidates of Their Choice

Districts must be drawn to allow minorities and common-interest communities to elect the representatives of their choice. Section 2 of the Voting Rights Act of 1965 forbids racial discrimination in electoral practices. The recently invalidated Section 5 of the VRA required certain jurisdictions with histories of discrimination to “pre-clear” new district maps through the Justice Department (or a federal court in the District of Columbia) before implementing any new maps. Although the Supreme Court invalidated key portions of the Section 5 preclearance process, Section 2 of the VRA remains in force, along with the 15th Amendment, prohibiting discriminatory racial gerrymandering in redistricting.

Partisan Gerrymandering

Although several plaintiffs have tried, a U.S. Supreme Court majority has not settled upon an articulable standard for how far is too far when it comes to partisan gerrymandering. Plaintiffs have forwarded 14th Amendment claims, alleging that overly partisan gerrymandering violates their right to equal protection under the law. The Court, wary of entering the “political thicket” to prevent overly partisan gerrymandering, has come close to ruling partisan gerrymandering claims non-justiciable, but has not yet done so.

Redistricting Post-Shelby

Many argue that the preclearance process mandated by Section 5 of the Voting Rights Act prevented covered states from drawing maps that disadvantage minorities.
that disadvantage minorities. Texas is a good example. When *Shelby County* invalidated the preclearance formula requiring certain states with histories of discrimination to seek preclearance for changes in their voting laws, Texas was embroiled in litigation over whether preclearance for its maps should be denied. Now that Texas is freed from the preclearance burden, however, the state has become embroiled in litigation under VRA Section 2, which forbids minority vote dilution in line drawing. While Section 2 remains a means of addressing discrimination in district drawing, critics of *Shelby County* point out that challengers must now wait until district maps have been implemented—and done harm—before filing suit. Others, especially line-drawers and election administrators in former pre-clearance states, believe that the removal of preclearance mandates allows elected representatives more flexibility in drawing district lines and provides the opportunity to redistrict quickly after receiving new census data, causing less voter confusion.

**Public Role in Redistricting**

Many of those who advocate for redistricting reform are dissatisfied with the current system, which in many states allows political majorities and incumbents to pick their voters and perpetuate their power. When the political party in power redraws district lines, they may either “pack” opposing party voters into few districts or “crack” groups of opposing party voters and spread them across multiple districts, denying opponents majority power in any district.

Reformers also believe that the redistricting process suffers from a lack of transparency. Redistricting is often left to self-interested state legislatures with a habit of cloaking the process in secrecy, with little electorate and minority party participation. The public cannot evaluate the data, criteria, and documentation of the redistricting process if they are not available, and often they are not.²³⁷

One way to both increase transparency and solve the complex puzzle of redistricting is for redistricting bodies to reach out for public participation. The 2010 census marked the first time when both the data and the technology needed to allow members of the public to draw their own redistricting maps existed.²³⁸ After the 2010 census, numerous private citizens got into the redistricting game. For example, Amanda Holt, a piano teacher, used publicly available census data to draw her own version of the Pennsylvania district map. The map was so much more in line with redistricting ideals than that of the legislature that opponents used it to challenge the legislature’s plan in front of the Pennsylvania Supreme Court.²³⁹ Some states, like Virginia²⁴⁰ and New York,²⁴¹ have involved college students by holding redistricting competitions. In Virginia, students from institutions like William & Mary and the University of Virginia competed for cash prizes for drawing Virginia districts most in line

“…citizen redistricting committees are easy prey for manipulative political parties.
with the law and the governor’s executive order after the 2010 census. Redistricting bodies are now able to harness the resources of the public to assist in line drawing and finding alternatives that allow better representation, transparency, and public input. Critics of public participation in the redistricting process argue that citizen suggestions often fail to account for complexities that only redistricting experts and experienced legislators can account for. Others believe that citizen redistricting committees are easy prey for manipulative political parties.

Reform Trends

After the 2010 census, the U.S. House of Representatives introduced the Redistricting Transparency Act of 2010, which would have required public participation in all state redistricting plans. The proposed legislation would have required each state to make redistricting information publicly available. It would also have required states to publish the legislature-approved plan, including the reasoning behind it. While the Act did not pass, many states have proposed legislation to increase transparency and public participation in the redistricting process. For example, in 2011, Pennsylvania HB 134 proposed a requirement to make redistricting data available to the public and allow members of the public to submit their own maps. Ohio took this one step further in 2011 by holding a public competition to help the redistricting commission draw its maps. The Illinois Redistricting and Public Participation Act of 2011 required the legislature to hold four public hearings regarding existing districts and communities around the state before any plan can be approved. Passed in 2011, this law makes the legislature more accountable to the electorate while affirmatively acknowledging the presence of minority communities in the public hearings.

Many states have implemented or are exploring independent redistricting commissions. Independent commissions are popular among voters because they are widely perceived as helpful in bringing needed neutrality and bipartisanship to avoid many of the problems that plague the legislative redistricting process. Some state commissions, such as California’s, emphasize diverse commission membership to encourage bipartisanship and compromise. Currently, the following states employ independent commissions for redistricting:

- In 2010, California voters passed a ballot proposition taking redistricting powers out of the hands of the legislature and putting these powers into the hands of a citizen commission with no personal stake in the outcome of the redistricting scheme.

- Arizona passed a similar ballot proposition in 2000. Their commission is composed of two Democrats, two Republicans, and one independent selected by majority and minority leaders from a list of candidates chosen by the state’s panel for appellate judges.

- Iowa is unique in its approach to redistricting. Nonpartisan legislative staff members develop plans, upon which the legislature then votes. These staff members are given
census data, but they are not given data on the addresses of incumbents so that they may remain focused on the primary redistricting considerations.

- In Washington, “majority and minority leaders of the House and Senate each select one member. These four members then select a nonvoting fifth to chair the commission. No commission member may be a public official.”

**ABA Town Hall Meeting Notes: Austin, Texas (February 25, 2014)**

Participants discussed issues related to redistricting, including the use of independent commissions, criteria to measure successful redistricting, and ways to move forward with redistricting reform. Panelists expressed qualified support for the Austin City Council model of an independent commission. Ultimately, panelists agreed that there is a conflict of interest when legislatures create districts, and different methods of independent redistricting should be explored at the local and state level.

**Themes**

- **Independent Redistricting Commissions (Austin Model)**
  - Commissioners were 14 average citizens
    - 460 people applied
    - Could not be a lobbyist, employee of the city, or city council member
    - Must be a registered voter and have voted in 3 of the last 5 elections in Austin
    - Independent review panel made up of City Auditors chose 60 of the most qualified
    - Random ping pong ball used to draw 8 commissioner
    - The 8 commissioners chose from the remaining 52 to balance themselves out geographically, racially, gender, age...
      - Commissioners signed contract not to run for office for 10 years
      - Focus on transparency during the process, footage of hearings online
  - **State Auditor’s Office as Independent Review Panel (Austin Model)**
    - There is no source of nonpartisan election expertise in American system
    - Think broadly about creating certificate program where people could be trained and make a career of non-partisan election administration
  - **Bipartisan Commissions**
    - Increase politicization
    - Draws plans to please incumbents on both sides
  - **Retired Judicial Commissions**
    - Judges are used to weighting evidence based on non political complications
    - Screened by Commission on Judicial Conduct for decisions
    - Tie-breaker from state chair of League of Women Voters or State Bar
    - However, even retired judges (especially elected) may not be non-partisan
  - **Commission Based on Diversity**
    - Taking into account the demographics of a state including ethnicity, gender, age, geography etc....
  - **Efficiency of Redistricting**
o A special 60-day session exclusively to implement statewide redistricting. (The first 30 days would consist of releasing maps and soliciting community input. The next 30 days would allow the legislature to give proper consideration and vote).

- Scaling Up Independent Commissions
  o Most state legislatures will not approve an independent citizen commission, like the Austin model, in the state level
  o Recommendations
    ▪ Grassroots movement with the Austin Model as a template
    ▪ May be easier in states that have initiatives and referendum
    ▪ Statewide Demonstration Project - put together a shadow redistricting commission, based on the Austin Model, that would follow the actual process as it takes place but release an independent analysis.
    ▪ Federal Judge can set up an independent commission the next time a redistricting case comes before them

- Measuring Success of Redistricting Plan
  o Public Confidence - people do not believe redistricting is done in the best interest of the constituents but rather the politicians
  o Legally sound map (1 person, 1 vote and the VRA)
  o Legitimate input, measured by whether there are amendments after the map is released
  o Compactness and Competiveness (Compactness more important)
  o Get the independent body off and running legally, quickly, and constructively, and bring the product in on time without affecting the integrity of the map or transparency

- Annexation and Redistricting Outside of Decennial Census
  o Austin Model
    ▪ Annexations will go to single-member district where they are attached (or the district with the longest shared border if there is more than one).
  o Cannot legislate for unexpected events (e.g. Hurricane Sandy)
  o Redistricting should only be every 10 years
  o One voter, one person is Constitutional but if there was a significant proportion change to make a mockery of that standard, the courts may allow redistricting.

- Variable Number of Districts
  o Upsides
    ▪ In 1912 the average district had 210,000 constituents
    ▪ In 2014 the average district has 750,000 constituents
    ▪ If the smallest state defined the number of representatives in the House, we would grow the house by about 335 (+130 seats).
    ▪ Enable more minority representation
  o Downsides
    ▪ The larger the legislative body, the more difficult it is to legislate
V. VOTING TECHNOLOGY AND INNOVATION

Modern technology offers the potential to remedy many of the problems that face our voting system today. Fast-paced changes in technology, the short shelf life of many voting technologies, and the high cost of replacement means that many states have taken a conservative approach to deploying new technologies to aid the voting process. This section will examine the state of election technology today and explore innovations in election administration that hold promise to enhance the efficiency of elections to come.

Voting Technology: Current Realities and Future Challenges

Voting Machines

After Bush v. Gore and the passage of the Help America Vote Act (HAVA), states and localities received federal money to help modernize voting machines. Due to the highly iterative nature of technology, state-purchased machines using HAVA funds are already coming to the end of their natural lives, and most of them are coming to the end of their manufacturer’s warranty period as well. Additionally, voting machines are single-purpose and expensive, and many jurisdictions are simply unable to afford the constant maintenance and upgrades required to stay ahead of (or even slightly behind) the technology curve. Hence, the PCEA has expressed deep concern about an “impending crisis in voting technology” in the coming years, which must be addressed if election administrators seek to keep up with problems that arise during the election process.251

In light of tight state budgets and lacking federal funds to purchase more machines, overcoming these economic barriers will require election officials to collaborate with specialists both in government and in private industry in order to develop voting technologies that effectively balance security concerns with innovation and cost by utilizing existing, cheaper technologies, such as tablet computers.

Figure 16. Voting Machines
The public remains skeptical of voting technology and wary of the potential for machine tampering, and problems can go beyond tampering or hacking in the machines themselves. The Vulnerability Assessment Team (“VAT”) at Argonne National Laboratory at the University of Chicago has pushed for more machine security. This includes secure transport of machines, bonding of technicians who will work on the machines, and oversight of all mechanical repairs. Further security measures address securing the chain of custody by requiring passwords from anyone taking custody of each machine and ensuring accountability for each custodian. The VAT has also asked for election workers to require independent security audits and reviews, and for workers to foster a culture of security.

Faced with these difficulties, the question on the minds of most election officials throughout the country is “who will pay to replace these election machines?” Or, perhaps more appropriately, as federal funds do not seem forthcoming, “how will states pay to replace these machines?” So far, no consensus has emerged on how states will pay to update voting machines. Some states are looking at options to lease equipment or pay it down over time. Continuing to use the machines through the 2014 midterm seems like an option for many states, but the risk of malfunction increases as administrators hold onto the machines past that point in time. New York recently experienced a dramatic example of this phenomenon: in its September 2013 gubernatorial primary election, to the horror of many, state election administrators pulled out creaky old lever machines after snafus with optical scan machines during the 2012 election. Perversely enough, although many grumbled about the need for future improvements in election technology, many local news outlets supported the decision because of problems with the electronic machines in 2012. Nonetheless, old machines open administrators up to further lawsuits for using outdated and potentially malfunctioning machinery.

A common refrain is the call for a single, nationwide voting machine to be used in all fifty states in every election. Uniformity might prevent voter and poll worker confusion and delay on Election Day. The idea is not outlandish; many if not most other countries have unified voting technology. However, those arguing against voting machine standardization note that uniformity would severely limit innovation and competition. Picking one company to administer the technology nationwide would stifle innovation and competition that could lead to improved voting technologies, potentially sticking administrators, poll workers, and voters with a sub-optimal product.

Electronic Poll Books

Poll books—the list of registered voter names that poll workers use to check in voters when they arrive at the polling place—have traditionally been in paper form. Before the advent of computers, localities maintained voter registries because local election officials were best able to keep the lists as accurate as possible. In a pre-digital world, list maintenance was an inexact art.

The Help America Vote Act required states to modernize voter registration lists by creating centralized statewide computer registries that accurately reflect who is eligible to vote in the
Electronic poll books became a natural outgrowth of the centralized registry and have numerous benefits over paper poll books.

Jurisdictions in twenty-seven states use electronic poll books, as indicated in Figure 17. Some states use statewide electronic poll books. Others use a combination of paper poll books and electronic poll books. Many jurisdictions use electronic poll books, but keep a paper copy available in case of machine malfunction.

Electronic poll books may improve election accuracy. For example, electronic poll books allow administrators to quickly compare the number of checked-in voters with the number of cast ballots to catch discrepancies.

Another benefit of electronic poll books is a faster check-in process: poll workers need only type in a name, swipe a card, or scan a barcode to look up a voter instead of leafing through a paper poll book.

Many states’ poll books have two sections: one for active voters, and one for inactive voters. Sometimes, poll workers cause unnecessary delay—or even falsely deny a voter a ballot—when they mistakenly search for an active voter on the inactive list in a paper poll book. Electronic poll books eliminate this problem by automating the name-search process. Some even argue that electronic poll books could eliminate the need for a photo ID by using pre-existing information from other state agencies instead of a picture to cross-check voter information.

Critics voice concerns that electronic poll books are held to a lower security standard than other voting equipment (such as voting machines), although many of the same security concerns are present. Experts fear the possibility of a malevolent party hacking into voter registries loaded into poll books for fraudulent purposes.

Another concern is electronic poll books’ vulnerability to malfunction. Electronic poll books are uniquely vulnerable to power outages, unstable Internet connections, or poll workers unaccustomed to technology, in a way that paper poll books are not. To manage electronic poll book failure, states such as Colorado mandate use of paper poll books as backup.
Finally, procuring and maintaining electronic poll books is expensive. While the cost of this technology may decrease over time, electronic poll books currently cost between $1,500 and $2,000 each.\(^{268}\)

As legislators and voters become more comfortable with the security of electronic poll books, and as the technology becomes less expensive over time, more states will almost certainly replace paper poll books with electronic poll books.

**Election Technology and Innovation**

*Election Day Apps*

*FIGURE 18. Election Apps*
Given the prevalence of cell phones in modern American society, many consumer services companies and government agencies have begun to develop applications, or “apps,” to smooth consumer and constituent experiences and interfaces. Mobile apps are also starting to permeate the election process. Political campaigns have begun to use apps to mobilize voters and manage campaign staff in real time. Election administrators are also experimenting with using apps to assist voters in the voting process and improve voter education and outreach. Examples include the Carbarrus County Polling Place Finder (Figure 18). Apps that assist voters in determining the correct polling place location, assessing real-time polling place congestion, learning about candidates and ballot propositions, and confirming voter registration and absentee ballot status. Thus far, the use of mobile apps in elections is relatively sporadic and uneven, but going forward, their use seems guaranteed to proliferate.

Print-At-Home Ballots

Moviegoers and airline customers love the convenience of purchasing tickets online, printing them out at home, and scanning the tickets’ barcodes in at the theater or airport. The process saves time, speeds lines, and improves efficiency.

Election reformers have begun to examine the possibility of at-home ballot printing, which promises numerous advantages to the voting process. At-home ballot printing would allow registered voters to upload a ballot populated with the correct candidates and propositions for their precinct, print a ballot with an individualized barcode, consider and mark their choices, and then proceed to the polling place on Election Day (or earlier if voting early), ballot in hand. After checking in with the poll worker, the print-at-home voter would present her ballot to the poll worker, who would scan the barcode and cast the vote. At-home ballot printing is already taking place in the context of overseas and military voters and absentee voters in certain states (see Section I).

Online Registration

Many states have begun to implement online voter registration processes, which promise to revolutionize the registration process on a number of levels.

Online registration programs differ from state to state. In addition to state-based online registration efforts, several non-profit organizations, such as TurboVote, are experimenting with online platforms to assist voters with the registration process in all fifty states. Citizens registering online fill out and transmit their voter registration form on the Internet instead of the
traditional practice of requesting a paper application and returning it through the mail or filling out registration forms supplied by third-party registration groups. In the paper world, registrants included a signature on the registration application, which in many states is used to verify voter identity—for example, when a voter casts an absentee ballot. Some states, such as California, use signature-matching software to compare the signature on the voter registration form with the one on file with the DMV to ensure the validity of the voter registration form. Without paper signatures, states experimenting with online registration must look elsewhere to verify voter registrations. Arizona uses numerical identifiers, such as a driver’s license number or the last four digits of a Social Security number, to crosscheck information provided on the online registration form with information from a different state’s agency. As in the paper world, online registrants’ information is checked against pre-existing identification information from the Department of Motor Vehicles and other state and federal databases.

As of November 2013, nineteen states have implemented online voter registration:

Five more states proposed online voter registration bills in 2013, but failed to enact it (Arkansas, Missouri, Montana, North Carolina, and Texas).

The immediate benefit of online registration is voter convenience, which online registration advocates believe will result in an increase in registered voters. Experience has played this theory out: when Arizona introduced online voter registration in 2002, registration rates for 18-24 year olds shot from 28% to 53%. Young voters, who may have different expectations of where they can find information and how long the process ought to take, are more likely to appreciate the benefits of online registration than older voters, who may feel more secure with paper-based registration.
Another benefit of online registration is cost. Implementing online registration mechanisms significantly reduces both administrative costs to state election offices and the transaction costs to voters. Arizona officials, who pioneered online voting registration in 2001, estimate that each online registration costs 3¢ per person, compared to 83¢ per person for traditional paper registration. Online voter registration also eliminates the data entry process for state officials, which means, in addition to cost savings, less opportunity for human error.

Online registration is also helpful to third parties hoping to register voters and can smooth the process of registration completed by government agencies other than local registrars or state boards of election. Federal and state agencies required to offer voter registration under the NVRA sometimes fail to return voter registration forms. A 2011 investigation in Maryland revealed that about 25% of voter registration forms filled out at the DMV, for example, never made it to the proper registrar. The move to online registration means that there are no paper forms for agencies (or other third-party registrants) to lose.

A final benefit of online registration is that—depending upon how online registration is configured and on state data-sharing policies—election administrators can share voter registration information with other states. This allows election officials to more easily identify voters who have relocated and registered in a different state. The Interstate Voter Registration Cross Check Program (also known as “The Kansas Pact”) allows participating states to compare voter registration lists, while the Electronic Registration Information Center (ERIC) allows participating states to share DMV information to see if a voter has relocated. Twenty-four states are currently a part of the Kansas Pact (Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee and Virginia).

Seven states were a part of ERIC in 2012 (Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington); more are expected to join. However, the consequence of using these databases to clean up voter rolls does not come without controversy. Recently, the U.S. District court upheld Virginia’s decision to remove more than 38,000 names from its voting rolls against a challenge from the Democratic Party, which claimed that the removal would disenfranchise voters.

Some legislative efforts to introduce online registration have stalled due to fears that online registration will compromise the integrity of elections. These concerns stem mainly from the belief that online registration mechanisms are not secure. Proponents of online registration argue that online registration is more secure than online banking; its detractors feel that the level of security used for online banking is not sufficient to safeguard the electoral process. Another related concern is privacy, and the fear is that online registration will facilitate third parties’ ability to tap voters’ personal information for political ends or sell it to advertisers (a problem already taking place on registration websites not run by the government).
A final issue is that many states limit access to online registration to those who have separately registered with a state DMV (e.g. for a driver's license). Most states with online registration depend on information from the DMV to verify a voter’s identity. While using DMV information provides an efficient solution, it also means that people who have not obtained identification from the DMV cannot register online. This includes people who have never attempted to get a driver's license or learning permit, which may be problematic in urban areas where many people do not own cars or depend on driving for transportation, or for people who are disabled and do not drive.

This year, Minnesota introduced an online registration tool that does not require a signature from another state agency (like a DMV), but instead allows voters to use the last four digits of their Social Security number. The future of online registration may lie in creating systems that do not rely on other state agencies for security information, but instead use other identifying numbers like Social Security numbers or PIN codes.

Given the numerous efficiencies for voters and election administrators, the use of online registration systems is likely to grow. States are likely to innovate to address the concerns raised above. As long as online registration provides a secure means of registering voters, enhances information sharing within and among states, and decreases transaction costs for voters and election officials, its eventual adoption seems virtually certain nationwide.

Vote Centers

Precinct voting can cause a great deal of voter confusion, particularly after redistricting or after a voter has moved. One potential solution several states have adopted involves the use of “vote centers,” which combine multiple polling places into one centralized location. Any voter within a jurisdiction can cast a ballot at a vote center, regardless of the precinct to which the voter is assigned. Generally, vote centers are located at polling places large enough to accommodate large numbers of voters and are in a centralized location. In some instances, states have located vote centers in busy commercial areas such as shopping malls in an effort to make voting more convenient.

Figure 19. Vote Centers
Some states have experimented with a variation on the model of single, centralized vote centers by using multiple vote centers but allowing voters to choose the most convenient location. Ballots from every precinct are available at every vote center location. Larimer County, Colorado first adopted this system in 2003.\(^{287}\) Poll workers use electronic poll books to determine the correct ballot for each voter, since different voters will be voting in different local elections depending on their residency. Instead of keeping hundreds of ballots on hand for each possible locality, ballots are printed “on demand” for each voter.\(^{288}\) The voted ballots are then separated by precinct and either counted at the vote center or returned to the proper registrar.

The long-term savings from consolidating polling locations often outweighs the initial costs of implementing the vote center model. Since there are fewer polling locations, not as many poll workers must be trained and paid, not as many machines must be transported, and overhead costs are reduced.\(^{289}\)

The initial expense of setting up vote centers includes developing a voter database for use jurisdiction-wide, engaging in outreach campaigns to educate voters about new voting locations and procedures, and increased overhead costs (if new voting locations must be established). While these costs can be considerable and can outweigh the savings from the first election in which they are used, many state election administrators have determined that the cost savings in the long run make up-front costs worthwhile.\(^{290}\) Also, many administrators believe that these initial costs are worthwhile because vote centers are more convenient for voters.\(^{291}\) Vote centers allow people to vote on their way to or from work or during their lunch hour. Vote centers are also more convenient for voters who do not work in the same town in which they are registered. The ability to cast a ballot at any vote center in the county therefore makes voting easier for commuters. Several studies have attempted to show the effect vote centers have on turnout, but results are mixed. These studies show that vote centers may not significantly increase turnout, but do not appear to decrease turnout.\(^{292}\)

Vote centers may not be appropriate in every jurisdiction. For instance, vote centers in rural areas may decrease turnout if they significantly increase the distance people must travel to vote. Still, studies suggest that when the distance to a voting center becomes too great, determined voters will rely on alternative voting methods, such as absentee ballots.\(^{293}\)

Another criticism of vote centers is the potential for decreased accuracy due to more opportunities for human error. Poll workers at voter centers may, for example, hand out the wrong ballots or fail to return ballots to the correct registrar.\(^{294}\)

Election administrators in states like Indiana have indicated an interest in transitioning to vote centers when they can be assured that the benefits will outweigh the costs for their locality.\(^{295}\)
Vote centers are generally adopted on the local level, with the state merely opening the possibility of vote centers by statute. Many jurisdictions that have adopted vote centers report being pleased with the results.²⁹⁶

All-Mail Voting

Also known as “Universal Ballot Delivery,” all-mail voting describes a voting system in which all ballots in an election are cast through the mail instead of voters casting ballots in person at polling places. Registered voters receive their ballots by mail, fill them out at their convenience, and mail them back before Election Day. Currently, only two states—Oregon and Washington—vote entirely by mail. In some states, certain jurisdictions are vote-by-mail jurisdictions (i.e. in-person voting is not available). For instance, the Utah legislature recently passed a law allowing any precinct to switch to all-mail voting (used primarily in rural precincts where traveling to the polling place can involve traversing great distances), and has been continually legislat ing in favor of mail voting.²⁹⁷ ²⁷ states currently allow no-excuse absentee ballots.

One of the biggest benefits of all-mail voting is cost. Oregon has reportedly reduced election administration costs by 30% by eliminating polling places.²⁹⁹ The cost of postage has been passed on to the voter in Oregon and Washington,³⁰⁰ though the postal service in Oregon has historically delivered ballots lacking sufficient postage anyway.³⁰¹ Jurisdictions like San Francisco have formed agreements with the postal service to deliver ballots, regardless of postage costs.³⁰² However, the Federal Write-In Absentee ballot, which is subject to eligibility requirements by state, offers a postage-paid return envelope.³⁰³

A second benefit of all-mail voting is voter turnout (a bit of a misnomer in this context). While the extent of the increase in voter participation in all-mail voting has come under scrutiny recently,³⁰⁴ studies show that voter participation is generally higher in Oregon and Washington than in other states. In the 2012 election, Oregon had a turnout rate of 63.2% of the voting eligible population, and Washington had a rate of 64.1%. The national average in 2012 was 58.2%.³⁰⁵

Critics voice serious concerns about all-mail voting. Because most instances of voter fraud in the United States are related to absentee ballot fraud,³⁰⁶ some fear that all-mail voting makes a state particularly vulnerable.³⁰⁷ A related concern is that all-mail voting potentially impacts the right to a secret ballot, as personal information like one’s name and signature are submitted with the ballot.³⁰⁸ Additionally, voters casting ballots in their living rooms may be subject to pressure from family members or others as they cast their votes. Finally, some express concern that individuals mailing in ballots in Oregon and Washington are not who they say they are. Oregon and Washington use signature-matching technology to ensure that the ballot matches its registrant,³⁰⁹ but critics suggest that such protections are not enough.³¹⁰

It is doubtful that many states will adopt Oregon or Washington's approach and institute all-mail
elections. A 2009 survey showed that only 14.7% of respondents supported all-mail voting. However, the laws regarding mail-in absentee voting have become increasingly relaxed in many states, allowing people to vote by mail if they choose to do so.

All-mail elections have certainly piqued the interest of election administrators nationwide, and all eyes are sure to be watching as states experiment with all-mail in order to learn what works and what does not.

Internet Voting

Internet voting describes the process of voters receiving ballots, casting votes, and transmitting ballots back entirely online. Internet voting is distinguished from e-mail voting, which allows voters to transmit ballots as a picture files, an option which many states make available to overseas voters.

### Internet Voting in Estonia

Internet voting in Estonia requires entering information from a national ID card that uses a scannable chip and a PIN number to access a user's information. Estonians (like citizens in many other countries) are generally more comfortable than Americans with the idea of a national ID card for online voting. In Estonia, election officials and members of the public are not as concerned about hackers breaking into its electoral system. Part of the reason for this is that Estonia, like many other countries, uses proportional representation instead of winner-take-all. In proportional representation countries, since each political party will seat the number of representatives proportional to the percentage of voters who voted for that party, there is less incentive to hack into the system to preference one party over the other.

Internet voting is not a reality in the United States, though many have pushed for it. Currently, only Estonia, Canada, and other parts of Europe use Internet voting. Given how much of Americans’ lives take place online in the modern world, many are surprised that online voting is not available. In a world of widespread online banking and digital health records, many proponents argue the nation is ready to use the Internet to cast and tabulate votes. Young people who have grown up with the Internet have an especially hard time understanding why they must leave their homes or use “snail mail” to cast their vote. While the Internet would indeed provide a very convenient way to vote to many Americans, particularly those who are disabled or who have trouble leaving their home, U.S. citizens are a long way from being able to vote online.

The biggest hurdle to adopting an online voting system is security. In one frequently cited example, computer scientists from the University of Michigan were able to hack into a test Internet voting scheme in Washington, DC within 36 hours of its launch in 2010. The hackers demonstrated their hacking prowess by causing DC’s system to play the University of Michigan fight song on its webpage. This hack showed how easily a malicious hacker could pry into online voting systems, prompting many to conclude that Americans do not yet trust Internet voting systems. Subsequent hacks have further dampened enthusiasm for Internet voting. Furthermore, even if the systems used to collect and count ballots are secure, personal computers that voters use to access that system are still vulnerable to hackers. Voting is also not analogous to banking in that there is no legal remedy for a stolen vote in the same way that there is for fraudulent bank withdrawals or loan information. Banks anticipate that their accounts will be
hacked and funds will be stolen (indeed, banks lost approximately $11 billion to fraud in 2009), but they have decided that the benefits of offering online banking outweigh the cost of replacing stolen funds. There is no such luxury in the case of elections. A vote is not fungible; it is unique to the individual. A stolen vote cannot be replaced with a vote from somewhere else.

Additionally, much in the same way that DRE machines are incapable of producing a meaningful recount (often amounting to only a reprint), some cite the lack of a paper audit trail as a reason to reject Internet voting: Internet voting lacks physical evidence to use as a backup. Furthermore, personal information must necessarily be linked to one’s ballot when voting online to ensure that one receives a correct ballot, and to protect against voter fraud. Most people have no difficulty attaching personal information to other secure transactions like banking, but attaching names to ballots raises serious privacy concerns, especially when campaigns have become as adept at gathering information on voters as they were in the 2012 presidential election.

Online voting also raises significant voter access issues. Voting online is only convenient when one understands and has access to the technology. Based on the data compiled by the Pew Internet Project, online voting would favor the young, white, wealthy, and educated—groups who access the Internet more routinely than people of other ages, ethnicities, and income and education levels. For Americans who have difficulty using computers or accessing the Internet, online voting may impose a significant burden on their right to vote. Even if states maintain a parallel paper ballot system, potential equal protection issues might arise.

While the public will continue to push for online elections, Internet voting will probably not be a reality in the United States until there is a breakthrough in Internet security technology. However, many states allow limited electronic voting for military and overseas voters.

Electronic Voting for Military and Overseas Voters

For many military and overseas voters (UOCAVA voters), particularly those in dangerous or remote places, mailing in a ballot does not guarantee that it will reach the appropriate registrar by election day or that it will not inadvertently be lost or destroyed en route. States vary widely in making information and resources available to assist voters not in the country on election day.

Electronic voting enfranchises voters who may not be in the country on Election Day, or who have unpredictable deployment schedules. Traditional paper ballots are problematic because of the steps required to get the ballot to the voter and back. Using the traditional method, the voter must request the ballot and the registrar must mail the ballot, and then the voter must fill it out and return it before a cutoff date. If the voter is in the military, this process may be delayed if he or she is in a remote area. The uncertainty of whether the ballot will reach a UOCAVA voter and the time and costs of tracking down voters in remote areas is reduced dramatically, even in states where voters are required to return their ballot by mail but can receive their ballot electronically.
Another benefit of electronic voting is that developments for UOCAVA voters may cross over to benefit all voters. For instance, web portals built for UOCAVA voters to access their ballot can be opened up to all voters in no-excuse absentee ballot states.\textsuperscript{319}

Voting through e-mail or web portals poses the same security and privacy concerns that arise in Internet voting and electronic poll books. All states that allow faxed or e-mailed ballots require voters to sign a statement waiving their right to a private ballot, as election officials can easily see how a person voted.\textsuperscript{320}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{states_electronic_voting.png}
\caption{States with Electronic UOCAVA Voting}
\end{figure}

Voting electronically poses the same concerns that arise with traditional absentee ballots: human error, coercion in the absence of officials, or coercion of the voter.

While UOCAVA applies to both service members and civilians, there are some instances where these two groups are treated differently when it comes to submitting their ballot electronically. Some states only allow service members and their families to fax or e-mail their ballots. Military voters have access to expedited mail through the Military Postal Service for general elections. Some states relax registration requirements for service members for up to two years after their return home.\textsuperscript{321}

The number of states that offer some form of electronic voting to UOCAVA voters has been increasing steadily since Arizona implemented its system in 2002. While security is a major concern for state legislators and election administrators, many believe that the benefits of allowing UOCAVA voters—particularly those in combat zones—to cast a ballot from their computers or fax machines is worth the risk. More states are likely to adopt electronic systems for UOCAVA by the next Presidential election in 2016.
Some states that do not wish to allow electronic submission of ballots, like Connecticut, are still making voting easier for UOCAVA voters by building web portals where voters can access the ballot from their precinct online. These voters can then print and mail the ballot to their registrar. Merely reducing the time it takes to get a ballot to a voter can make a huge difference in whether a UOCAVA ballot is received in time for the election.

Each state has different needs when it comes to UOCAVA voters, and state legislatures vary in their concerns over security and privacy. However, standardizing the procedure in each state that decides to offer electronic voting may reduce the confusion in that community about proper voting procedures.

**Recent UOCAVA Litigation**

Electronic ballots may have saved both Alabama and Georgia from litigation arising from failure to transmit absentee ballots to UOCAVA before the statutory deadline. In United States v. Alabama and United States v. Georgia, a preliminary injunction was granted to extend the ballot deadline for UOCAVA voters because the state failed to transmit the absentee ballots 45 days before the election.

### Queuing Theory

Since 1910, scholars like MIT Professor Dick Larson have been studying how people wait in line. They combine the study of psychology, cultural norms, and mathematics to explore the most efficient methods of queuing people. Retail establishments, amusement parks, museums, and transportation hubs use findings from the study of queuing to keep customers happy and lines short.

Gathering data on queuing in polling places gives election administrators the tools to determine the ideal number of workers, machines, and polling locations. The study of queuing can also help administrators determine which method of queuing is best suited to the needs of a polling place. For a state to formally adopt queuing theory to help reduce congestion at polling places, it may develop certain rules that are adaptable to a variety of locations. Many states already suggest the most efficient ground plans for different kinds of polling places in their election worker handbooks. Furthermore, they may suggest different styles of queuing for different kinds of polling locations or situations to ease the process. Jurisdictions might even consider hiring queuing consultants to troubleshoot issues in the busiest locations. The first step for a state to use queuing theory to its advantage during elections is to offer poll workers the training and tools to implement the best solutions for their location.

Recognizing the benefits of applying consumer queuing theories in the voting context, President Obama appointed Brian Britton of Walt Disney Parks and Michele Coleman Mayes of the New York Public Library to his Presidential Commission on Election Administration (PCEA). The
Commission may suggest a closer look at queuing theory in future elections. Walt Disney Parks pioneered the use of queuing theory, and continues to invest in its research to ensure the happiness of their guests. Many of their strategies (and those of others in the business of processing large numbers of people in short periods of time) may be helpful in solving the problems that cause long lines on Election Day. The PCEA recommends election officials have greater access to industrial engineering tools that are regularly employed by private sector companies, such as Disney, to help manage customer service queues. Additionally, election officials are encouraged to take advantage of “resource calculators” that, prior to an election, allocate limited voting resources most effectively based on predicted turnout and expected time required for voting. Resource Calculators are available through the Commission’s website, www.supportthevoter.gov, and are hosted by the Cal Tech-MIT Voting Technology Project.

Tablet Computers

Tablet computers are proving useful on Election Day in many ways. For instance, election officials can use tablets as mobile electronic poll books to check the eligibility of voters while they wait in line so that all registration problems have been resolved by the time the voter reaches the check-in table. In Oregon, tablets are being deployed as mobile voting machines. An official with a tablet travels to the home of a disabled or home-bound person, who then uses the machine to vote. The ballot is then printed and mailed to the appropriate registrar. Similarly, in Denver, Colorado, tablets are used as voting machines in group residential facilities like nursing homes. In Virginia, tablets running software created by a private company called Democracy Live are being tested for widespread use as voting machines for all voters. Voters access, mark, and print their ballots using Microsoft Surface tablets running an application developed by Democracy Live called “LiveBallot.” However, it must be noted that voting on a tablet is not the same as voting online. Once a voter has marked the ballot on the tablet, the ballot must still be printed and submitted; no ballot information is transmitted over the Internet, and no voter information is stored in the machine.

There are many other benefits to using tablets at the polling place, but the biggest benefits are efficiency and accessibility. They also can be used to check wait times at other polling locations during the early voting period or to speak face-to-face with other election officials to troubleshoot problems. Most importantly, they are far less expensive than traditional voting machines, and the technology is updated more often because it develops as a consumer product. Tablets may also solve many of the problems of accessibility for voters who are disabled, elderly, or who have limited English proficiency. Only the touch of a finger is needed to use a tablet, which is beneficial to voters who have difficulty holding pencils due to arthritis or a disability. Disabled voters can also attach whatever tools they normally use with a personal
computer to a tablet, such as joysticks or paddles, so tablets are more easily adaptable to a wide range of disabilities. The portability of tablets means that they can travel to hospitals, nursing homes, or even to the parking lot of the polling place, to help those with limited mobility. Tablets also make it possible to easily adjust font sizes and have the ballot read aloud or even translated into a different language. Generally, tablet interfaces tend to be very user-friendly and intuitive, so they may be a better choice of technology to use with older poll workers and voters than traditional DRE machines.

Although tablets are cheaper than traditional voting machines, the cost of widespread use of tablets will be prohibitive for many jurisdictions. Tablets, like any other election technology, can break or fail on Election Day. Also possible is the idea that tablets might make the polling place a target for thieves. Finally, tablets are fragile and may not be able to handle the level of use that would be required on Election Day.

Presently, tablet voting is only available for a limited slice of voters in a limited number of jurisdictions. However, given the flexibility and cost of tablet computers, it is likely that states will continue to find ways to include them in the election process.
ENDNOTES


9 Id. at fn. 5 (Arizona, Indiana, Nebraska, North Carolina, Tennessee, Texas, and Wisconsin introduced legislation).

10 John C. Fortier, 40 ABSENTEE & EARLY VOTING: TRENDS, PROMISES, AND PERILS (2006); U.S. Election Assistance Comm’n, supra note 6, at 7.


13 Lilliard E. Richardson, Jr. & Grant W. Neeley, Implementation of Early Voting: The Tennessee Elections of 1994, SPECTRUM: THE J. OF STATE GOV’T (1996), at 16 (Fortier, supra note 10, remarks that the 1994 election was atypical, and historical evidence of the significant turnover in both houses of Congress bears this out).


15 Id.


18 Gronke, supra note 5, at 428.

19 Shelly Bradbury, Early Voting Gains Steam in Tennessee, CHATTANOOGA TIMES FREE PRESS (Jul. 21, 2012).

20 Fortier, supra note 10, at 47.


22 Id.


24 Kasdan, supra note 21 at 6.

25 Id. at 6.


28 Id. at 341 (While African-Americans make up only 13% of the electorate in Florida, they cast 22% of the EIPV votes in 2008).


32 Burden et al., supra note 30 at 18.

33 Id.


36 Gronke, supra note 5, at 434.

37 Id. at 434-35.

38 Fortier, supra note 10 at 60.

39 Id. at 61.


41 Fortier, supra note 10 at 60.

42 Hall et al., supra note 23 at 20.

43 Id.

44 The Uniformed and Overseas Citizens Absentee Voting Act, available at http://www.justice.gov/crt/about/vot/misc/activ_uoc.php (UOCAVA voters, or military voters under the Uniformed and Overseas Citizens Absentee Voting Act, are those who may be on duty at home or abroad and unable to make it to the polls. The UOCAVA voters who would be implicated over the final three days before Election Day would be those who were called to active duty during that period of time).

45 Obama for America v. Husted, 697 F.3d 423, 423 (6th Cir. 2012).

46 Id. at 437.


49 Norden, supra note 3 at 4.

50 Id.

51 Herron et al., supra note 27.


54 Id.

55 Fortier, supra note 10 at 46.


60 Gronke et al., supra note 5 at 642.


62 Tokaji, supra note 58 at 1022.

63 Fortier, supra note 10 at 68.


66 See Brianne Birtzius, Tuscaloosa candidate says 397 voters were bribed in municipal election, My Fox Alabama, available at http://www.myfoxal.com/story/23687715/tuscaloosa-candidate-says-397-voters-were-bought-with-drinks; see also CBS Worldwide, supra note 75.

67 Tokaji, supra note 58 at 1026.


70 Eric Lipton & Ian Urbina, In Five-Year Effort, Scant Evidence of Voter Fraud, The New York Times (Apr. 12, 2007) available at http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all&_r=0 (The DOJ had only charged 120 people and convicted 86 of them. The majority charged were Democrats, and confusion about eligibility rules appears to have been the cause of many fraud charges).


74 Id. at 589-90.

75 GAO Report, supra note 68 at 121.

76 Liptak, supra note 72.


78 Id.

79 Burden, supra note 77.

80 Id. at 15.


82 What is the status of my absentee ballot?, Office of the Minnesota Secretary of State, available at https://mnvotes.sos.state.mn.us/AbsenteeBallotStatus.aspx.


85 Gronke, supra note Error! Bookmark not defined. at 9.

86 Fortier, supra note 10 at 68.

87 Carter-Baker Commission, supra note 64.

88 Id.

89 Fortier, supra note 10 at 68.


94 Fortier, supra note 10 at 69; PCEA, supra note 11 at 59.

96 Herron, supra note 52.


98 Id.


100 Id. (Government must show a “compelling” state interest that is served by the law).


107 Id.


109 Id.

110 Id.


112 Cathy Cohen & Jon Rogowski, Democracy Remixed: Black Youth and the Future of American Politics; Matt A. Barreto, Stephen A. Nuno, and Gabriel R. Sanchez, Voter ID Requirements and the Disenfranchisements of


116 Id.


119 Id. at 5.

120 Id. at 2.

121 Id. at 6.


124 Id.


Email from Dale Simmons, Co-General Counsel, Indiana Elections Division (Oct. 21, 2013) (on file).

Id.

Id.

Carter-Baker Commission, supra note 64.


Registration laws exist in 49 of the 50 states. North Dakota has not had voter registration since 1951. Instead, North Dakota simply requires voters to present ID that shows they are eligible to vote. New voters are allowed to vote once their information is verified; they are then added to the list of voters in the county so they can vote more easily in the future.


Kurtis A. Kemper, Validity, Construction, and Application of National Voter Registration Act, 185 A.L.R. FED. 155 at Art. 1 §4.1. (Originally published in 2003) (pointing out that courts have recognized this clause as conveying the power to pass legislation like the NVRA).


Id. at § 1-102(3).

Id. at § 1-102(2).


Online Voter Registration, National Conference of State Legislatures, available at http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx (Minnesota’s online registration system is now under legal attack, with the legislature claiming that the Secretary of State was never authorized to create the system): Rachel Stassen-Berger, Minnesota’s New Online Voter Registration System Challenged, STAR TRIBUNE (Oct. 10, 2013) available at http://www.startribune.com/politics/statelocal/227325621.html.


147 Arizona v Inter-Tribal Council of Arizona, Inc.. 133 S.Ct. 2247 (2013).


150 Pedro De Oliveira, Same Day Voter Registration: Post-Crawford Reform to Address the Growing Burdens on Lower-Income Voters, 16 GEO. J. ON POVERTY L. & POL’Y 345 (2009).

151 Claire Foster Martin, Block the Vote: How A New Wave of State Election Laws Is Rolling Unevenly over Voters & the Dilemma of How to Prevent It, 43 CUMB. L. REV. 95, 116 (2013).

152 See De Oliveira, supra note 150 at 355.

153 Martin, supra note 151 at 116.

154 Joyce, supra note 143 at 320.


158 Joyce, supra note 143 at 323. ACORN is not alone in facing these kinds of allegations, both left and right leaning groups have been investigated for improper procedures. Patrik Jonnson, Potential Voter Registration Fraud in Florida: GOP’s own ACORN Scandal?, MINN. POST (Oct.1, 2012), available at http://www.minnpost.com/christian-science-monitor/2012/10/potential-voter-registration-fraud-florida-gop-s-own-acorn-scandal.


162 Martin, supra note Error! Bookmark not defined..

See e.g. KRS § 116.112. The NVRA forbids voter purges to be based on a failure to vote in federal elections. 42 U.S.C. s 1973gg-6(d).


See e.g., C.R.S. 1-2-302(6.7).


Scott, supra note 171.

Fabian, supra note 169.


180 Burden et al., supra note 176 at 3.

181 Id. at 20.


185 Id. at 508.


188 Burden et al., supra note 176 at 15.

189 Advancement Project, supra note 175 at 4.


193 Election Line, supra note 177 at 8.


196 Hall et. al, supra note 190.
197 Election Administration Research Center, supra note 192 at 14.


199 PCEA Report, supra note 11 at 59.

200 Kimball et al., supra note 186 at 16-18.

201 Burden et al., supra note 176 at 14.

202 PCEA, supra note 11 at 50-53.


204 Id.

205 Id.

206 42 U.S.C.A. §§ 15301 et seq.


212 See, e.g., Mah v. Board of County Commissioners, District Court of Shawnee County, Div. 1, Case No. 12-C-1214 (November 9, 2012).


Id. at 18.

Project Vote, supra note 216 at 10.


Kennedy et al., supra note 217 at 18.

Riley, supra note 214 at 9.


Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964) (“Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids ‘sophisticated as well as simpleminded modes of discrimination’.”).

Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964) (“We hold that, construed in its historical context, the command of Art. I, § 2, that Representatives be chosen ‘by the People of the several States’ means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.”).


Id.

Id.

Id.

Id.

In Mahan v. Howell, 410 U.S. 315 (1973), the Court held that state legislative redistricting standards are more flexible than those for congressional districts because the nature of local government elevates the importance of maintaining communities of interest over that of strict population equality.


240 Virginia Redistricting Competition, available at https://sites.google.com/a/varedistrictingcompetition.org/public/.


243 David Butler & Bruce Cain, 42 Congressional Redistricting: Comparative and Theoretical Perspectives (1992).


251 PCEA Report, supra note 11.


253 Id.


Conley et. al, supra note 264.


Carlos Villatoro, *Online Registration Causes Signature Matching Issue for Mail Ballots In Sonoma*
For Discussion and Comment (May 1, 2014)


272 Id.


277 Id.

278 Id.


283 The privacy statement of Registertovote.org states, in part, “We may share, license or sell your PERSONAL INFORMATION to third parties for various marketing purposes, including their online (e.g., e-mail marketing) and offline (e.g., telemarketing, cell phone text messaging, skip tracing, pre-recorded messages, automated attendant telemarketing, and direct mail) marketing programs.”


Scheele, *supra* note 289.

Id.


Hasen, *supra* note 101.


Paul Gronke & Peter Miller, *Voting by Mail and Turnout in Oregon*, 40 AM. POL. RES. 976, 977 (2012).


Gronke, supra note 299.


Gronke, supra note 299.


PCEA Report, supra note 11 at 59.


PCEA Report, supra note 11 at 42.

Id. at 42.


A report created by the Standing Committee on Election Law to represent ABA President James R. Silkenat’s election law initiative. In early Spring 2014, the Standing Committee hosted several town halls with a particular focus on election reform. The Town Halls were created with the purpose of promoting a dialogue on election reform within the States with members of state and local bar associations, state and local election administrators and civic groups, local election lawyers, as well as representatives of both political parties. Dialogues on Election Reform as well as a survey to provide public comment through July 15, 2014, can be found at http://www.lawyercitizen.org. We welcome your comments and look forward to working with you in creating an open and fair electoral process for our nation.