RESOLVED, That the American Bar Association adopts the *American Bar Association Election Administration Guidelines and Commentary*, dated August 2020, to supplant all earlier versions, and recommends that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of these Guidelines; and

FURTHER RESOLVED, That the American Bar Association urges that federal, state, local, territorial, and tribal governments provide state, local, territorial, and tribal election authorities with adequate funding to implement the Guidelines and Commentary.
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ELECTION ADMINISTRATION GUIDELINES AND COMMENTARY

1.0 Voter Education, Rights and Responsibilities

1.1 Voter Rights and Responsibilities

State and local election authorities should be tasked with the responsibility of ensuring that voters are informed of their rights and responsibilities in participating in the electoral process through dissemination of information prior to Election Day, through various means of outreach, and at polling places on Election Day. All educational information should be translated into as many languages as practicable, and at a minimum those languages required by state or federal law.

Civic and political organizations can provide supplemental information, but the primary source of voter education and materials should be state and local election authorities.

At a minimum, voters should be informed that they have the following rights and responsibilities:

a. The Right to:

1. Inspect a sample ballot
2. Receive a demonstration or further instruction from a poll worker/officer of election of the voting mechanism at the polls
3. Receive language and accessibility assistance at the polls
4. Cast a provisional ballot if your status as a qualified voter is in question
5. Request a replacement ballot if you make a mistake or if your ballot is damaged
6. Vote if you are in line by the time the polls close
7. Vote for the candidate or issue of your choice on the ballot
8. Ask for help, at any point in the process, if you have questions

b. The Responsibility to:
1. Know your local voter registration requirements and register to vote
2. Notify the registrar of any change of address or circumstance that might affect your registration status
3. Figure out the voting option that will best suit your needs
4. Find out the hours and location of your polling place
5. Bring your identification or other supporting documentation to the polls, if required
6. Vote

1.2 Voter Education Programs

Voter education programs should be created to teach all citizens that voting is a responsibility as well as a right of citizenship. State and local election officials, working with schools, civic and political organizations, should have primary responsibility for creating and implementing these programs. Such programs should include instruction on the fundamental rights of voters, as outlined in Sec 1.1 a., voter registration, maintenance of registration, operation of the particular voting mechanism in that locality, language and accessibility assistance, and information on when and where to vote, including the options of early and absentee voting. Such programs should be made available and translated into as many languages as practicable, and at a minimum those languages required by state or federal law.

1.3 Provision of Sample Ballots and Voting Instructions

a. In each jurisdiction the local election authority should send a sample ballot and voting instructions, translated into as many languages as practicable, and at a minimum those languages required by state or federal law, to each registered voter within a reasonable period of time before the election.

b. Sample ballots and voting instructions should be made available at locations easily accessible to the general public. Copies should also be made available to civic organizations for dissemination.

c. Sample ballots and voting instructions should be visibly posted at each polling place.

2.0 Voter Registration
2.1 Lists

a. State and local election authorities should maintain a current and accurate roll of registered voters, including a centralized, electronic list maintained by the state government and readily accessible to all election officials at each polling place. States should authorize and encourage the use of modern technologies for this purpose. Applicants should be asked to supply an email address if they have one. The public should have broad access to voter registration lists, with appropriate limitations for privacy and security concerns.

b. Pre-Election Day Challenges to Voter Lists

States should develop specific procedures related to pre-Election Day challenges to voter lists.

1) Any registered voter who resides within the jurisdiction of the applicable challenge should be allowed to challenge the registration of a registered voter.

2) The challenge should be made in writing to the chief election officer. The challenge must also be signed and affirmed by the challenger.

3) The challenge should be made no later than 5 days after the close of registration.

4) The challenge should be resolved in a hearing that is open to the public. The individual whose registration is being challenged and the individual who initiated the challenge should receive notice of the hearing and the disposition of said challenge.

5) If the voter does not receive notice of the hearing and contests the challenge at the polling place, he or she should be permitted to cast a provisional ballot.

2.2 Registration Procedure

a. Voter registration applications should require the signature of the applicant.

Alternative methods of verification should be offered to those unable to sign their name. In addition, information bearing on the applicant’s eligibility to vote and contact information should be required fields on the application. Applicants should also be asked to supply an email address.
b. Each election authority should take the following steps to encourage and increase voter registration:

- improve and simplify state and local voter registration procedures;
- streamline voter registration by mail;
- enact preregistration for 16 and 17-year olds;
- authorize and support voter registration efforts by civic and political organizations, including allowing such organizations to distribute voter registration applications and materials and return them to election officials;
- provide for same-day voter registration during any early voting period and on Election Day;
- explore new technology that improves the registration process;
- extend the hours and time frame for voter registration;
- provide additional registration facilities at locations that are easily accessible and open during convenient times; and
- increase voter registration through state and local agencies that have direct contact with the public.

c. Voter Registration Drives

Voter registration drives conducted by individuals or community organizations should be encouraged and regulated only to the extent necessary to protect the public.

1) Individuals or organizations submitting voter registration forms on behalf of more than 25 voters should be required to register with the state election authority as volunteer registrars. Organizations that do so should be required to identify an agent who will be responsible if the election authority needs to contact the organization. All volunteer registrars should be required to satisfactorily complete a training on voter registration drives and sign an oath or affidavit of good faith.

2) The organization should exercise quality control over its volunteer registrars and keep records of basic information from each registration form, including who collected it.
3) Volunteer registrars should not duplicate, copy, or otherwise make use of information provided on the completed voter registration form, except basic contact information for the purpose of “Get Out the Vote” activities.

d. Applications for voter registration should request the last address at which the voter was registered. Upon recording the new registration, the election authority should cancel the prior registration if within the same jurisdiction. If outside the jurisdiction, the election authority should notify the prior jurisdiction that the voter has registered in the new jurisdiction so that the prior registration may be cancelled. States, counties, and local jurisdictions should work cooperatively to achieve this goal.

e. After receipt of a registration application, the election authority should mail to the voter a non-forwardable, return postage guaranteed notice containing a voter registration card if the registration is accepted. If the application is rejected, the applicant should be informed why and, if appropriate, instructed how to remedy the problem.

f. Election officials should issue registration cards to each registered voter. The card should advise the voter that registration is complete and provide polling place information and contact information for the local election authority. Voters should not be required to present their voter registration card at the polling place as a prerequisite to voting, but the card may be used by the voter as an acceptable means of identification at the polls, if the state requires identification.

2.3 Voter Verification

Current and correct registration lists of eligible voters should be maintained by the election authority through periodic voter verification programs. Failure to vote should not be the reason for initiating the voter verification process and may never be a factor in cancelling a voter’s registration. State election authorities should widely disseminate advance public notice of an upcoming list maintenance procedure and how it will be conducted.

a. An on-going verification program should seek to identify unqualified voters. It should be uniform, non-discriminatory, and in compliance with the Voting Rights Act. It must be completed at least 90 days before an election.

b. The verification program should solely rely on address data gathered
from the National Change of Address (NCOA) system maintained by
the Postal Service, the Electronic Registration Information Center
(ERIC), a cooperative program in which 30 states share data that is
based on the states’ motor vehicle records and voter rolls that indicate
interstate moves, or some comparable program. In addition, routine
mailings from the election authority that are returned as undeliverable
may be the basis for initiating a verification process. Death, incapacity,
and criminal conviction records, where applicable, should be supplied
by the appropriate government agencies.

c. State election authorities should provide clear and consistent
guidance to local election officials for voter verification activities.
Guidance may include appropriate sources of information on eligible
voters and protocols for notice, reactivation and cancellation. State
election officials should provide easy access to all directives and
advisories for reference by local election officials and the public on
the agency’s official website.

2.4 Notice of Inactive Status

A voter who appears to have changed address, as indicated by the
NCOA, the ERIC system, or another comparable program, or mail
returned to the election authority as undeliverable as addressed, should
have his or her registration put on an inactive list, unless the voter moves
to a different address within the same jurisdiction and the election
authority has the authority to automatically update the voter’s address for
registration purposes. If a voter’s registration is designated as inactive, a
notice with forwarding instructions to the post office, should be sent
promptly to the address of registration. The notice should also be sent by
email, if available. The notice should advise the voter of the inactive
designation, state the reason for the change, and list the steps the voter
can take to reactivate the registration. A postage prepaid postcard pre-
addressed to the election authority should be included with the notice. It
may be used by the voter to reactivate the registration at the same
address if an error was made or to request a transfer of address if the
voter has moved to a new address within a jurisdiction that does not
automatically update a voter’s address for registration purposes. A voter
who has not moved may so indicate and return the postcard, and the
registration will be reactivated.

If the voter has moved to a location outside the election jurisdiction and
confirmed in writing that he or she has moved from the jurisdiction, the
voter should be removed from the voter roll and should be instructed how
to register in the new jurisdiction.

2.5 Reactivation
An inactive voter who has not moved to a new address or has moved within the same election jurisdiction may be reactivated at the polling place during early voting or on election day simply by voting. The voter should be permitted to cast a regular ballot.

2.6 Cancellation

A voter may be removed from the voter roll only after the voter has not voted or otherwise interacted with the election authority for a period comprising two federal general elections following the voter’s failure to respond to the notice. The voter should then be sent a notice of the cancellation at the last known address and by email, if available, and advised how to re-register. A public record of cancelled registrations should be maintained by the election authority for at least two years.

2.7 Public Records

Election authorities should maintain all records related to voter verification activities, including advance notices of the list maintenance procedure and cancelled registrations for at least two years and make these records available to the public to the fullest extent permitted by state law. Statewide voter registration databases should maintain the records of names removed from voter registration lists, including a record of who authorized removal. Lists of inactive and cancelled voters should be made available to third parties upon request, in the same manner as voter registration lists, and should be brought to the polls on Election Day.

3.0 Absentee Voting

3.1 Absentee Voting Procedures

a. All registered voters should be allowed to vote by absentee ballot regardless of cause.

b. Absentee voting procedures and instruction materials should be as simple as possible for those authorized to vote absentee. Absentee ballots should be distributed early enough to accommodate the deadline for return of the ballot.

c. To assure the rights of persons who are blind or otherwise disabled to vote privately and independently, each election authority must provide the option of a ballot marking tool that allows voters to mark an electronic version of the absentee ballot on devices such as computers, tablets, or smart phones. Voters must still print and mail in these ballots.
d. Each election authority should authorize and support requests for an absentee ballot or early voting application by civic and political organizations.

e. To confirm their identity, absentee ballot applicants should be required to provide basic identification, including an address, date of birth, signature, and identifying number, such as their driver’s license or state identification card number, the last four digits of the social security number, or other identification number provided at registration.

f. States should implement an electronic verification process in connection with their voter database maintenance requirements under federal law, similar to that used for online voter registration, which would instantaneously confirm the identifying number of the voter, with either the state voter registration database or the driver’s license system, in the process of a voter requesting an absentee or mail ballot.

g. To reduce the number of individuals touching or handling voted or sealed absentee ballots, states should consider a law or regulation to authorize only family members, household members, supporters who help people with disabilities understand, make, and communicate their own decisions, or other caregivers to collect the absentee or mail ballots of a voter and return them to the election office for counting and tabulation.

h. State and local election officials should develop new ways to confirm the identity of voters, such as using identification information provided by the voter when he or she registered, prior to counting the ballot. Signature comparisons between the registration application, absentee ballot requests, and returned ballots should be required by the election authority with confirmation that such comparisons have been completed.

i. Lists of absentee ballots issued by the election authority should be available to the public prior to the election and to the precinct officials by Election Day. A voter who has requested an absentee ballot may vote in person on Election Day by surrendering the voter’s unvoted absentee ballot and voting a regular ballot, or through a provisional ballot cast at the polling place instead, if the voter subscribes in writing that he or she did not return an absentee ballot to the election jurisdiction.

j. The absentee ballot return envelope should indicate whether the voter had assistance and, if so, the assisting party and the voter
should be required to certify in writing that no coercion or influence was involved and that the ballot was cast secretly.

k. The deadline to request absentee or mail ballots should be set in advance of Election Day to allow for the mail system to provide voted ballots by Election Night. The increase in mail ballots that arrive on or near Election Day has resulted in the delay of reporting of results for days and sometimes weeks after Election Day. This delay is often caused by the need to confirm voter identity by signature and research.

3.2 Counting Absentee Ballots

Poll watchers should be permitted to observe the counting of absentee ballots and to challenge individual absentee ballots. Challenged ballots should remain segregated until the validity of the challenge is determined.

3.3 Return of Absentee Ballots

As a standard practice, election authorities should require that absentee ballots be received by the close of polling hours on Election Day in order to be counted. However, if states allow for return of absentee ballots, including military and overseas voters' ballots, after Election Day, they should provide clear standards for postmarking of such ballots.

3.4 Cure of Absentee Ballots

State laws should provide that for absentee ballots timely received by election officials, if there is an error or omission by the voter, a signature that does not match the signature on file for the absentee mail ballot voter, or the identifying number does not match the registrant, the election officials should notify the voter of the discrepancy and allow the voter to cure the signature problem by providing a missing signature or a signature that matches the voter's registration affidavit signature within a reasonable time before the canvass of the vote is completed.

3.5 Counting of Absentee Ballots

The processing of mail absentee ballots by election officials should start well in advance of Election Day, although no preliminary or unofficial results should be released to the public or political parties. To speed up the counting and release of unofficial results on election night, the envelopes of mail ballots should be evaluated promptly to confirm identifying or required information, and the canvassed ballots should be scanned prior to Election Night and the first reporting of results.
3.6 Resource Allocation

In addition, as the number of mail ballots delivered close to Election Day increases, an election office must be prepared to increase personnel and resources to promptly process and tabulate mail ballots and release results in a timely manner. This process should be transparent while protecting the secrecy of the mail ballots and open to observers representing the political parties or candidates in the election.

3.7 Tracking

To improve voter confidence in voting by mail, state and local election officials should provide online access to mail ballot processing information that will allow a voter to closely track the status of their ballot in all stages of the process – ballot request, ballot transmittal, ballot return, and ballot counting process – to permit voters to know if their ballot was received and counted, and if not, how the voter may attempt to remedy the problem.

4.0 Alternative Voting Methods

As innovations in voting and emerging technology create opportunities for improved voter participation and voting systems, election officials should periodically review and upgrade voting procedures and equipment as necessary.

4.1 Early Voting

States and localities that allow early voting should create specific guidelines in order to ensure that:

a. An adequate number and location of polling places is assigned to each jurisdiction, and such polling places should afford reasonable and equitable access to all voting populations;

b. Adequate notice of polling hours and location of polling places is given;

c. An appropriate time frame for early voting is allowed, and an appropriate end period to voting is determined in order to ensure that the rolls may be adjusted for voters who have voted before Election Day;

d. There is no announcement of results or tallying of early voting ballots until after the close of polls on Election Day,

e. Laws and regulations that govern activity at polling places are applied and enforced during the early voting process;

f. Voter accessibility for disabled voters is provided as required by
4.2 Vote Centers

a. Where states employ vote centers in lieu of traditional precinct voting, vote centers should be equipped and linked to local election offices by secure electronic connection to facilitate voters’ casting a ballot for all appropriate offices and resolving registration, re-registration, or other issues that might affect the voter’s ability to cast a regular rather than a provisional ballot.

b. Vote centers should be located as much as practicable to afford reasonable and equitable access to all voting populations.

c. States implementing vote center systems should phase in use and provide ample public notice and education about the switch to new voting methods to minimize voter confusion.

d. Voter accessibility for disabled voters is provided as required by federal law and according to standards set forth in Section 5.8 of these Guidelines.

5.0 Election Day

For purposes of this section, “Election Day” refers to the entire period during which a voter can vote in-person at a designated location (see also, Section 4.1 Early Voting).

5.1 Election Day Officials

a. Election Day officials should be representative of diverse political parties. The official responsible for appointing Election Day personnel should solicit recommendations of civic and political organizations for the appointment of Election Day officials and should utilize civic and political organizations to recruit for Election Day officials, especially bilingual Election Day officials.

b. Election Day officials should conduct themselves impartially in the execution of their responsibilities.

c. Election Day officials should be well-versed in applicable federal and state laws related to voting rights.

d. Election Day officials should utilize a “service model” approach to working poll sites on Election Day. Additionally, bilingual Election Day
officials in jurisdictions with language assistance requirements should proactively seek to engage voters.

5.2 Training

a. All states should provide Election Day officials with formal training. Provisions also should be made to provide formal training for poll watchers.

b. Training should include basic requirements of state and federal voting laws, including but not limited to those serving language minority voters and voters with disabilities. In jurisdictions with language assistance requirements, training must include compliance and what that means for Election Day officials.

c. Training should include cultural competency training around assisting voters with disabilities and limited English proficiency. Training should include a role-playing component in order for Election Day officials to best understand how to properly engage with voters.

d. Election Day officials must attend at least one training per election cycle in order to stay current on changing voting laws. Jurisdictions should offer online opportunities for training in addition to in-person trainings.

5.3 Compensation

Election Day officials should be adequately compensated for their services through the voting period. Extra compensation should be provided for the time actually spent in training.

5.4 Poll Watchers

Qualified political parties and candidates should be authorized to designate poll watchers at each polling place and central counting station. If poll watchers have not been designated by qualified political parties or candidates, then stakeholders in referenda or ballot initiatives should be authorized to designate poll watchers at each polling place and central counting station. Interested parties should also be authorized to designate poll watchers at each polling place. The numbers of poll watchers at each location should be limited to avoid undue crowding. Parties or candidates designating poll watchers should certify in writing that each designee has been instructed as to the responsibilities of the position. Poll watchers should not be limited to those who reside in the precinct or election jurisdiction.

5.5 Observation by Poll Watchers
Poll watchers should be permitted to observe all official acts and records used at the polling places, to challenge unqualified voters, and to challenge improper voting practices. Poll watchers should present all objections and challenges directly to the Election Day officials and affirm that the information provided is true and correct.

Poll watchers should not confront or harass voters. National origin or language ability shall never be a valid rationale to challenge a voter as unqualified. Methods should be developed to minimize the disruption and delay of challenge procedures. Election Day officials should keep a record of all challenges by poll watchers, including the names of the challenging poll watchers. States and the federal government should ensure that voters are not challenged in contravention of the Civil Rights Act of 1964 and Voting Rights Act.

5.6 Provisional Ballot

A voter must be allowed to vote with a provisional ballot in situations where the individual claims to be properly registered and eligible to vote at the election district, but whose name does not appear on the general register and whose registration cannot be determined by the election officials; the individual voter who is unable to produce required identification; the individual has applied for an absentee ballot but has not returned the absentee ballot; the individual presents a judicial order to vote; or an election official asserts the individual is not eligible to vote. The provisional ballots should be segregated and secured until a determination of validity is made. Where mechanical or electronic voting machines are used, an alternative method for segregating the provisional ballots should be established. Election officials should provide assurance that eligibility issues will be dealt with promptly and that voters will be notified of the disposition of the ballot in question.

See Appendix A, Model Statutory Language on Provisional Balloting and Commentary, dated August 2020 for specific details and model language.

5.7 Challenged Ballot

Challenged ballots should be counted and segregated and marked as such for purposes of appeal. Where mechanical or electronic voting machines are used, an alternative method for segregating the challenged ballots should be established.

Election officials should provide assurance that eligibility issues will be dealt with promptly and that voters will be notified of the disposition of the ballot.
5.8 Voting Assistance

a. Any voter who requires assistance to vote for reason of disability or due to an inability to read or write should be given assistance by a person of the voter’s choice and offered the choice to use an accessible voting system.

b. All voting places should be accessible. Any disabled or elderly voter assigned to an inaccessible polling place, should, upon advance notice by the voter, be assigned to an accessible polling place or provided alternative means of casting a ballot. Finally, all voting places must provide at least one accessible voting system for persons with disabilities and the accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters receive. Accordingly, such accessible voting systems that produce printed paper ballots must provide ballots of the same design and size as paper ballots that other voters receive.

c. Voting materials should be provided by States or political subdivisions, at a minimum in the language of the statutorily-mandated minority language groups.

5.9 Polling Hours

States should undertake appropriate measures to ensure that polls are open to the public and that all registered voters are able to go through the voting process with minimal delay for the entire voting period.

Jurisdictions should be provided with appropriate funding to ensure that:

a. polling hours are sufficient to allow all registered voters an opportunity to vote at a time convenient to their schedules;

b. adequate polling equipment, locations, and personnel are provided; and

c. registered voters who are in line by the time the polls close are allowed to vote.

5.10 Polling Locations and Equipment

a. Jurisdictions must designate polling locations, including vote centers, for the entire voting process that equitably serve all voters and provide ample notice of these locations. Polling locations, including vote centers, during the entire voting process must be convenient and easily
accessible to voters by different modes of transportation, including public transportation, and do not introduce additional physical or psychological barriers to access (e.g. not located in a gated community or a police station).

b. Jurisdictions must limit changes to polling locations barring extraordinary circumstances and must notify the public of any changes through various channels, including use of traditional, social, and ethnic media, as well as through stakeholder partners. (See Section 11.0 Emergency Management of Elections)

c. Jurisdictions must equitably deploy their materials, Election Day officials, and equipment to polling locations in order to ensure each polling location is well-equipped to deal with the flow of voters, thus limiting the time needed to vote and lines of voters waiting to vote.

5.11 Election Day Troubleshooting

Jurisdictions should designate a person or process that will provide the public a mechanism to notify the election authority about problems on Election Day and receive real-time responses from the election authority.

6.0 Voter Verification

States should take necessary steps to ensure that the voter is the person registered to vote.

1. In jurisdictions where a signature is required, voters unable to sign because of disability or illiteracy should be verified by other reliable means, such as by producing acceptable identification, or by a registered voter in the same precinct signing a verification on the individual's behalf.

2. In jurisdictions where some sort of voter identification is required, only one piece of identification should be required. A variety of forms of identification should be accepted in order to meet this requirement. In the event that the voter is unable to produce a particular piece of identification, then the voter should be allowed to sign an affidavit of identity.

7.0 Ballots

7.1 Ballot Design

a. Simplicity of Ballot
Ballots should be designed to be as simple and clear as possible in order to avoid voter confusion. Ballot designs that have been shown to have a high error rate should be eliminated.

b. Uniform Ballot Design

Jurisdictions should strive to present a uniform ballot design to the electorate. For each voting mechanism used, the ballot design for that mechanism should be the same throughout the jurisdiction.

c. Testing and Publication of Ballots

The ballots should be tested for usability by the appropriate election authority and made available for public inspection prior to approval of the ballots. Where electronic voting machines are used, usability standards also should be approved by the state election officer.

d. Approval of Ballots

Local ballot design standards should be approved by the state election officer.

e. Translation Issues

In jurisdictions where a significant percentage of the voting population is non-English speaking, translated ballots and assistance must be provided, at a minimum, as required by law, during the voting process.

7.2 Ballot Machinery

a. States should implement testing programs to certify voting machines and vote counting machines and the software programs used in the systems for efficacy, security and for accessibility for disabled voters. States should require local election officials over whom they have general jurisdiction or supervision to submit for approval operational plans for election administration, voter outreach, conduct of canvass and audit programs, and compliance with federal and state cybersecurity best practices to ensure the integrity of voting systems.

b. Electronic voting machines should be required to have a voter-verified paper record of each vote or non-vote cast by the voter that will be used for audit purposes. The voter-verified paper record should not contain any personally identifiable information.
c. Voting machinery should identify an invalid vote or non-vote prior to the voter’s final submission of the ballot; once identified, however, the voting machinery should allow a non-vote, and the non-vote should be reflected in the final tally. If the voting system is technologically unable to do that, the system should have a ballot design that allows the voter to see the actual votes cast.

d. Election officials should eliminate voting mechanisms that have been shown to have a high error rate (e.g., undervote, overvote).

e. States and the federal government should provide adequate funding to upgrade voting machinery and personnel to assist voters in understanding such machinery.

f. Voting machinery should be appropriately maintained and tested for accuracy prior to an election.

g. States should be encouraged to adopt and apply appropriate voluntary minimum standards for voting machinery and software.

h. States should ensure that the right to cast a secret ballot is effectively implemented.

7.3 Pre-Vote Checking

a. Precinct Election Day officials should certify that ballot receptacles are empty prior to voting.

b. Precinct Election Day officials should certify that all mechanical and electronic vote counters are set at "0" prior to voting.

c. All vote counting equipment should be certified as to its accuracy in counting and reporting votes cast for all offices, candidates, and issues.

7.4 Observers

a. Observers should be allowed to observe all official tests and certifications.

b. Poll watchers should be permitted to observe ballot counts and canvass of vote at the polling place or central counting location.

c. The vote count should be publicly posted at the place of counting for at least 24 hours after the count is completed. A permanent record
must be maintained

7.5 Ballot Collection and Count

a. Paper ballots should be placed in the ballot box in the presence of the Election Day official.

b. The number of voters applying for ballots and the number of ballots cast should be recorded before counting the votes.

7.6 Computerized Vote Counting

a. Blank ballots and test decks should be available to qualified observers who should be allowed to run accuracy tests. Verification of the computer accuracy of vote counting should be allowed before and after the official count.

b. Where contract programmers are employed, they should be required to certify under oath to the accuracy of the program they have written or are operating. The election authority should certify the accuracy of any vote counting program both before and after the election.

c. Where a computer counting error is discovered, a complete report should be given to the public, political parties, and candidates.

d. A random sample manual recount of the computer count should be a part of the canvass of votes cast.

7.7 Ballot Audit

A system of ballot audit for each polling place should be established. The audit should account for all ballots or punch cards issued, the number of spoiled ballots, the number of ballots counted, and the number of ballots returned unused. Entries should be recorded in the poll book to account for spoiled ballots or voting machine failures. All voted ballots, unused ballots, spoiled ballots, and poll books should be returned to the election authority under seal with a copy of the results for the canvass.

7.8 Physical Security of Ballots and Voting Equipment

Election officials should ensure ballot security. In particular, voting equipment, ballots, and other election materials should be kept secured during the counting process and until the time for contesting the election has passed.

7.9 Availability of Election Day Remedies
Courts of competent jurisdiction and review should sit on Election Day to handle expedited actions relating to Election Day activities.

8.0 Recounts

8.1 Availability of Recounts

a. States should establish a threshold for an automatic recount based on statistically sound data that would likely affect the outcome of the election.

b. Candidates not meeting the threshold for an automatic recount should be allowed to request a recount within a certain period of time after election results are announced. Such candidates should bear the cost of funding the recount, unless the election result is changed as a result of the recount. States should permit a defeated candidate to request that a recount be suspended.

c. State statutes should make clear the circumstances under which candidates or interested parties, in the case of a ballot initiative, may request a recount and, at a minimum, should explain the timing, form of filing, venue, and procedural steps required for the request and recount.

d. The cost of a recount should be reasonable and not cost-prohibitive to those seeking a recount.

8.2 Methods of Recounts

a. States should permit sufficient time to complete the recount. In setting the time frame, consideration should be given to the total number of votes to be counted, the method in which the votes were cast, and the manner in which the recount will be conducted.

b. States should establish uniform recount standards for each separate voting technology.

c. States should mandate that, generally, recounts should be performed for the entire jurisdiction affected by the race. If a recount is ordered as a remedy to an election challenge, then only those jurisdictions named in the order must participate in the recount.

d. States should permit each candidate affected by the recount to have observers present throughout the entire process.
e. States should specify the circumstances that would warrant a manual recount or a machine recount.

9.0 Challenges to an Election Result

State statutes should make clear under what circumstances candidates or interested parties may challenge an election result. At a minimum, the language should contain reference to the timing, form of filing, venue, procedural steps, and available remedies.

10.0 Election Administration

a. Any officials supervising or certifying elections, recounts, or challenges should not be involved in any official capacity in any election in which they may be called upon to exercise their duties or in which they are a candidate.

b. Members of canvassing commissions should be prohibited from being active in partisan political activity in any election in which they may be called upon to exercise their duties as a member of such an entity.

11.0 Emergency Management of Elections

11.1 Emergency Planning

State, local, territorial, and tribal governments should develop, enact, and disseminate written plans to preserve the election process in the event of an emergency.

11.2 Characteristics of Emergency Planning

a. Emergency plans should include, at a minimum, the following components:

1) Designation of alternative locations, times, and manner of conducting elections, including the voter registration process and methods of voting that differ from originally scheduled methods of voting, while balancing the need to ensure that such changes do not serve to further disenfranchise underrepresented or vulnerable populations

2) Clear designation of the individual (for example the governor, secretary of state, or director of elections) or individuals who are given the statutory power to delay or reschedule an election or to enact emergency election procedures and authorization of one or more election officials to modify procedures and
deadlines related to ballot access qualification

3) Provision for the back-up and preservation of election and voter data, including paper precinct registers in lieu of electronic poll books

4) Storage and testing of back-up of voting equipment to be used in an emergency, including paper ballots in lieu of touch-screen technology

5) Procedures to ensure the physical safety of polling places for voters and poll workers/officers of elections

6) Evacuation procedures for polling places

7) Establishment of systems that will assure continued reliable communication between election administrators and poll workers/officers of elections

8) Development of effective plans for communicating with voters through various media during emergencies

9) Recruitment and training of additional poll workers/officers of elections in the event of an emergency

10) Consideration of individuals who require additional assistance, due to either language or disability, to vote

11) Consideration of individuals directly impacted by an emergency or who are responding to an emergency

b. Emergency plans should be developed for different emergencies, as the remedy may vary depending on the situation, in order to maintain the safety and integrity of the electoral process.

c. Emergency plans should balance the safety of the public and election workers with ensuring that elections are conducted in as timely a manner as possible.

11.3 Types of Emergencies

a. Natural or manmade disaster

b. Public health emergency

c. Cyber attack
d. Armed conflict

### 11.4 Coordination with Appropriate Governmental Agencies

Depending on the scale of the emergency, there should be open communication and coordination with relevant federal, state, local, territorial, or tribal government agencies.

### 12.0 Penalties and Notices

a. Appropriate sanctions should be established and enforced for violations of voter registration, balloting, and election procedures.

b. Election officials should post notice of the penalties for violation of election laws and procedures at all polling places. Such notice should be placed on all voter registration forms, applications for ballots, and absentee ballots and envelopes. The notices should be coordinated for uniformity within the state.

c. All election officials, deputies, and employees (including contract employees) should be advised as to the penalties that exist for violating election rules, laws and procedures and should subscribe in writing under oath to perform their duties.

### 13.0 Bar Associations

a. Bar Associations should assign qualified attorneys on a voluntary basis to assist in development of local programs to ensure the integrity of the electoral process.

b. Bar Associations should encourage attorneys to serve as Election Day officials.

### 14.0 Definitions

#### 14.1 Ballot

A presentation by paper or other method (e.g., touch screen) that lists the candidates or issues to be voted on in an election.

#### 14.2 Challenge

A motion made in dispute of the certified election results on the basis of alleged irregularities during the voting process.

#### 14.3 Challenge to Voter

A voter’s registration is questioned by an election official.
14.4 Challenged Ballot
A voted ballot which is questioned by a poll watcher on the basis of an improper voting practice on the part of the voter.

14.5 Election Authority
A clerk or a Board of Elections appointed and charged with the duty of conducting elections.

14.6 Election Day
The entire period during which a voter can vote in-person at a designated location (e.g., a traditional polling place or a vote center)

14.7 Election Day Official
A person appointed by election officials and assigned Election Day duties.

14.8 Election Official
A person assigned any official duty or function in the electoral process.

14.9 Jurisdiction
A political boundary of precincts which encompasses the entire scope of an election (e.g., the entire state for an election for the U.S. Senate, the district for an election for the U.S. House of Representatives).

14.10 Poll Watcher
An observer of all official actions and records at the polling place and challenger of unqualified voters and improper voting practices at the polling place.

14.11 Provisional Ballot
A voted ballot that is kept segregated and sealed and not counted until a voter’s qualifications to vote have been determined. If the voter is determined qualified, the ballot is unsealed and counted in the canvass.

14.12 Recount
A process to verify the vote count in an election. A recount is ordered or requested prior to the certification of election results.
Commentary to Election Administration Guidelines

Commentary - 1.0 Voter Education, Rights, and Responsibilities

It is every citizen’s civic responsibility and right to vote for the candidate or issue of their choice. State and local election officials have an obligation to make sure that all voters are informed of their rights and responsibilities as voters. Voter education should encompass all aspects of the voting process, including the fundamental rights of voters; voter registration; all methods available for voting; time, location and deadlines for registration and voting; language and accessibility assistance and information, as covered under Section 203 of the Voting Rights Act, the American with Disabilities Act, and other federal or state laws; and a basic understanding of the rights and responsibilities associated with voting. Voters have a right to choose their assistor, so long as the assistance is not provided by the voter's employer or union representative. Election officials should disseminate such information, translated in as many languages as practicable, at a minimum in those languages required by state or federal law, through a variety of means prior to an election, such as via mailings, email, the internet, and social media. Materials should also be readily available and in visible locations at polling places. The importance of voter education and all voter education materials should also be a component of online and in-person training of election officials.

Though state and local election administrators should bear the primary responsibility of providing voter education materials, the provision of such materials and information need not be limited to election officials. Schools, civic, and political organizations should also be involved the process. Voter education drives could be held in conjunction with voter registration and get out the vote drives. Additionally, a voter’s” rights and responsibilities card” could be distributed during the registration process, at get out the vote drives, and at polling places. Although specific rights and responsibilities may vary slightly by jurisdiction, the American Bar Association believes that, at a minimum, voters should be informed of the basic rights and responsibilities afforded to all voters, as outlined in Section 1.1 of these Guidelines.

The provision of comprehensive, translated, and accessible voter education materials is critical to the success of the voting process. Studies and statistics have shown that first time voters, those likely to need the most education and resources, are less likely to vote again if they have a poor or unsuccessful experience voting.

Commentary - 2.0 Voter Registration

Applications for voter registration should require a signature and ask for data relating to the applicant’s eligibility, as well as contact information. Email and cell phone (SMS) information should also be sought as they provide multiple options to reach voters. The postcard registration form included in the National Voter Registration Act provides a model for the content of the application.
Available modern technologies permit rapid addition, deletion, or cancellation of names from voter registration lists. Copies of the registration lists should be available to the public at reasonable or no cost, depending on the format of the list. The cost, if any, should reflect the cost of reproduction and should not be used to discourage availability.

Certainly, the Internet allows for many cost-efficient methods that can be used to make such lists available to the public. These methods must be balanced, however, against legitimate privacy and security concerns of registered voters and must be restricted to non-commercial usage. States should also be encouraged to develop standards for pre-Election Day challenges to voter lists.

Voter registration drives conducted by political parties, nonprofit organizations, and other interested individuals and organizations have served to increase the number of people registering to vote. In some instances, federal and state laws already govern the conduct of third-party voter registration drives, on issues such as permissible conduct and procedures. In the instance where a volunteer registrar submits the voter registration form for the prospective voter, states should adopt more stringent guidelines in order to ensure that there is some measure of accountability and safeguard that the registration forms will in fact be delivered and submitted in the appropriate manner. Voters who register through voter registration drives should also check with the appropriate election authority to verify their registration.

As more steps are being taken to increase voter registration, there is a concomitant responsibility on local election officials to verify the identity of people registering to vote. Verification of the eligibility of the registrant is necessary to protect the integrity of the election system. There are numerous suggested methods of verifying registration, including requiring the applicant to sign at registration. Difficulties in verification procedures arise partly because of mail registration, the desire to maintain the privacy of the individual seeking registration, and costs. Additional problems occur when voters, either because of social circumstance, illiteracy, or disability, do not possess a photo identification or are unable to sign and whose registration must be authenticated by others. In such instances, alternative verification procedures should be devised. States should not create an overly onerous verification process. States may prefer one form of identification over another, but should be forgiving of circumstances that may not allow a particular voter to conform to the preferred method. For instance, if a state requires a photo identification and a voter does not possess one, the voter should have an opportunity to provide what he has and sign a document attesting to his or her identity. There is a legitimate interest in verifying the identification of voters, but the process should not be one of repeated verification, which could be interpreted as a form of intimidation or harassment.
Voter verification programs should be dependable, accurate, and conducted with precision, care, consistency, and transparency. A person’s failure to vote, even over multiple election cycles, should not raise an inference that the voter has moved or is otherwise ineligible to vote. Any process to verify a voter’s address or other eligibility factors should not emanate from voter history, but rather from reliable public records, including change of address, death, criminal convictions, or returned mail from the Post Office. This being said, in 2018, the U.S. Supreme Court ruled that a jurisdiction may send return cards to registrants who have not engaged in certain “voter activity” for two consecutive years, while reiterating that in no circumstance may a registration be cancelled by reason of the person’s failure to vote. An inactive voter who interacts with the election authority—whether by voting, attempting to vote, returning mail, or appearing at the election office for any reason—is no longer in inactive status.

The following should not be factors in initiating the voter verification process: (i) minor mismatches in a registrant’s name across government records; (ii) similarities among registrants’ names; or (iii) a registrant’s failure to update Division of Motor Vehicle records upon being granted U.S. citizenship. State election authorities should not rely on data sources that have not been independently verified as reliable, such as the Social Security Administration’s Death Master File.

Election authorities should also consider the use of new technologies to ensure the integrity of the registration lists. If there is a discrepancy with an individual’s registration, election officials should flag and investigate the registration and require supplemental evidence of residence from that individual, if appropriate. If an election authority contracts with an outside vendor to verify the eligibility of registered voters, standards and safeguards must be adopted to ensure the reliability of such information.

These guidelines do not take the position that registration should be a required procedure. It is recognized that some jurisdictions have not found a need for registration or may adopt an enrollment system in the future.

Commentary - 3.0 Absentee Voting
Absentee voting is an important method of assuring that registered voters who are unable to go to the polls, for whatever reason, on Election Day are able to exercise their right to vote. This process must be secure and as uncomplicated as possible. States and localities must ensure that applications for absentee voting and ballots are distributed as early as possible, so as not to unduly burden the right of those entitled to vote in that manner.

The nature of absentee voting requires a stringent standard of ballot integrity, from the identification required on applications for absentee ballots and on voted ballot envelopes. Only in limited circumstances should a third party handle a ballot. Third parties, such as political or civic organizations, may be involved in
the absentee voting process to the extent that they facilitate requests for ballots. Localities upon receipt of the absentee application must mail the ballot directly to the registered voter and the completed ballots must be returned only by the registered voter or an identified relative or household member of the voter.

There must also be consideration given to military and overseas voters whose return of the ballot may be complicated by circumstances beyond their control, such as reliance on foreign mail service. Methods that might be considered to expedite the return of ballots include, but are not limited to, internet voting and a reduction in the time of transmittal of ballots back to the locality administering the election. Specifically, the Department of Defense should examine ways to facilitate the prompt return of ballots cast by servicemembers.

There should be methods to allow voters to cure problems with timely-delivered absentee ballots, such as absence of a signature or mismatched signatures, with notice to the voter of the deficiency and a defined deadline for the voter to correct the problem.

Methods should be adopted to allow the voter to ascertain whether the absentee ballot was received and counted, to increase voter confidence in the absentee ballot process.

Commentary - 4.0 Alternative Voting Methods

Alternative voting methods that serve to increase citizen access and participation should be supported, provided that issues of technology and funding can be adequately addressed. Authorities should also take care to assure that voting procedures and systems are reliable and do not increase opportunities for fraud. We recognize that efforts are already being undertaken in this area, such as early voting, mail voting, and vote centers, and we would encourage further study, testing, and careful implementation of new efforts to ensure that voters understand the changes being implemented and that implementation not result in voter confusion or discouragement. Methods such as telephone voting and Internet voting have been studied in the last decade, and the studies indicate challenges to administrative security and integrity of such voting methods under current technological standards.

As instances of early voting have become a more popular alternative to in person voting on Election Day, states should develop guidelines in order to assure that the same laws and regulations that govern Election Day voting are applied to early voting. In order for early voting to become a fair and successful method of voting, guidelines should be developed that ensure adequate notice, number and equitable distribution of polling places, and time to vote and to assure that polling places are accessible to all voters.

Additionally, the laws governing conduct at early voting locations should be the same as those that govern Election Day polling places (e.g., prohibitions on campaigning too close to or inside a polling place).
Vote center systems have evolved from early voting procedures as a substitute for traditional precinct-based voting. Many of the same recommendations applicable to early voting should apply to operation of vote centers. Studies indicate voters have difficulty transitioning from traditional precinct voting to vote center methods, and this difficulty threatens to affect voter turnout rates, so States that choose to adopt vote centers as a substitute for traditional precinct voting should phase in such programs and undertake substantial voter education about the transition to this new voting process.

Commentary - 5.0 Election Day
Election Day encompasses the merging of different individuals and machines with often differing roles. Voters, election officials and election observers each play a different role in the election, although they all share the same goal: ensuring and participating in an election that allows each registered voter to vote in an environment that is secure and free from intimidation and harassment. For example, in order to best serve American Indian populations, it may require that a polling location be located on a reservation.

Furthermore, in recognition of jurisdictions providing more days for in-person voting through early voting, the provisions in this section apply to the entire period during which a voter can vote in-person.

The processes involved on Election Day should be a seamless as possible. Training should be provided to Election Day officials and poll watchers in order to facilitate their understanding of their appropriate role and duties at the polling place and applicable state and federal voting laws. Election Day officials should be properly trained to assist language minority voters and voters with disabilities and should proactively seek to assist them.

Adequate funding of the electoral process is a key aspect of successful elections. States and localities must provide adequate polling hours, equipment, and personnel as a necessary component of any election. At the same time, it is critical that these resources are provided in an equitable manner across a jurisdiction in order to ensure that there are not certain segments of the population that experience long lines due to an insufficiency of equipment and materials in their polling locations. Additionally, jurisdictions with a history of excessive delay in the voting process should provide additional equipment and personnel in order to better facilitate the process. A study on factors contributing to delays in the voting process should also be conducted. For example, states could undertake studies to see if a per capita standard of voters per type of voting machinery can be established.

Additional concerns about equity require that polling locations must be located equitably within a jurisdiction, must be conveniently located and easily accessible to voters by different modes of transportation, including public
transportation, and do not introduce additional physical or psychological barriers to access. Furthermore, ample notice must inform voters about where the polling locations are and, barring extraordinary circumstances, the polling locations should not be changed before the election. In the rare instance where a change to the polling location must be made due to extraordinary circumstances, the jurisdiction is required to notify the public of any changes through various channels, including use of traditional, social, and ethnic media, as well as stakeholder partners.

Another important aspect of an election is the security of the ballots being cast. Poll watchers are tasked with the important role of challenging unqualified voters and improper voting practices. This role is a part of ensuring the integrity of the polling place, but most importantly, these duties must be carried out in a manner that is consistent with the Voting Rights Act and the Civil Rights Act of 1964. In no instance should selective challenges and minority voter intimidation be allowed to occur.

Voting assistance is an integral aspect of election administration. The right to assistance at the polls by a person of the voter’s choice, as required by Section 208 of the Voting Rights Act and other applicable law, ensures that voters who require assistance to vote for reason of disability or due to an inability to read or write can exercise their right to vote without intimidation or manipulation. All voting places should be accessible, any disabled or elderly voter assigned to an inaccessible polling place should be assigned to an accessible polling place or provided alternative means of casting a ballot. Further, all voting places must provide at least one accessible voting system for persons with disabilities that provides the same opportunity for access and participation, including privacy and independence, that is afforded to voters without disabilities. Voters with a disability must be able to fully and freely exercise their fundamental right to vote as required by the Americans with Disabilities Act; the Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA); the Help America Vote Act of 2002, and other applicable laws. For example, ensuring that the size of ballots utilized for persons with disability is the same as those used by other voters regardless of the type of voting system used is critical to privacy for voters with disabilities. Finally, the provision of language assistance, including translated voting materials, as required by Section 203 of the Voting Rights Act and other applicable laws, ensures that voters who are not fully proficient in English are afforded the opportunity to be effectively informed of and fully participate in voting.

The proper implementation of voting assistance will not only ensure all voters are able to fully exercise their fundamental right to vote but will also provide a more efficient and smoothly run Election Day.

**Commentary - 6.0 Voter Verification**

To prevent multiple voting and voting by those not qualified to do so, methods should be devised to verify that the person voting is the same person who is registered. One method is to obtain the voter's signature at the polling place.
Other methods must also be developed so that the rights of the disabled and nonreaders to vote will not be abridged.

Election officials should develop procedures to minimize disruption at the polls created by verification and challenge procedures and to reduce delay and other adverse impacts such procedures may have on those waiting to vote. The maintenance of a centralized list of registered voters that is broadly accessible to the public would improve the process. For example, voters could find out if they were properly registered prior to appearing at the polling place; a voter who appears at the improper polling place could be directed to the proper polling location. (See 2.1(a) of the Guidelines)

A variety of forms of identification should be permissible in jurisdictions that require identification. A voter registration card may be used as a method of voter verification, although a voter should not be required to present the card in order to vote.

Commentary - 7.0 Ballots
There are many components that make up the ballot that will be cast, such as the actual design of the ballot, individual ballot machinery, and the counting of the ballots. The successful integration of these components should result in a polling place where a voter casts a ballot with certainty as to the candidates or issues for which the voter intended to vote.

One important method of minimizing voter confusion is the development of uniform voting mechanisms, both ballots and machinery, within a jurisdiction. Statewide standards should be developed to provide a sense of uniformity, and thus less confusion, within the voting system, as well as a check and balance on local election official ballot designs (e.g., the butterfly ballot). The federal Election Assistance Commission and various other entities have developed and continue to update voting system standards that should be adopted by the states. At a minimum, an adequate number or poll workers must be available to provide assistance with voting machinery. States and localities must provide adequate funding to improve voting machinery and personnel at the polls. Certainly, there must be careful consideration of potential confusion on the part of the voter with respect to designing the ballot. For instance, punch cards should generally be discouraged, and ballots should be designed to ensure that all candidates running for the same office are included on the same page. The selection of voting mechanism should be made with an eye toward changes and improvements in technology.

Voter education is another key element to a successful ballot. Voters must receive assistance in operating voting machinery if necessary, and voters must also be informed that they are not required to vote for all issues or all candidates on the ballot.
In situations that require a judicial review on Election Day, the reviewing body must be adequately prepared to deal with such matters. The Supreme Court has adopted a prudential rule that last-minute orders modifying election processes should be avoided unless absolutely necessity is demonstrated.

**Commentary - 8.0 Recounts**
Recounts are ordered prior to the certification of election results. The “trigger” that determines the threshold for establishing an automatic recount should be based on whether or not a recount would likely affect the outcome of the election. Examples of situations that could trigger a recount include, but are not limited to, an election where there was a significant “undercount” (i.e., falloff in votes cast for down ticket candidates as compared with top-of-the-ticket candidates), different results are found during the auditing process, or the difference between the votes cast for each candidate in a race is 0.5% or less than the total number of votes cast. A recount of the entire jurisdiction should not be required if the candidate requesting the recount or on whose behalf a recount is sought agrees to limit the recount to selected precincts.

**Commentary - 9.0 Challenges to Election Results**
Challenges are made post-election. A challenge is made to the certified election results on the basis of alleged irregularities during the voting process. States and localities must establish clear and uniform standards within the jurisdiction regarding challenges.

**Commentary - 10.0 Election Administration**
In order to protect the integrity of the electoral process, there must be no appearance of bias on the part of those involved in the administration of elections. Any election official who will be involved in an election dispute or recount must avoid any apparent conflict of interest. Any election official who is a candidate in the election must be recused.

Statewide standards should be established that clearly delineate the forms of partisan activity, if any, in which election administration officials may participate. If an official is unsure of whether or not a particular activity is permitted under the standards of the state, that official should consult the appropriate governing body.

**Commentary - 11.0 Emergency Management of Elections**
The act of voting is a crucial element of any democracy and is a core component of the rule of law in a democratic society. The management of elections in the United States is not a federal function; instead election authority is vested at the local government level. Accordingly, state, local, territorial, and tribal governments should take steps to ensure that the management of the electoral process may continue unimpeded in the face of an emergency.

Most states have adopted emergency Election Day plans, which have traditionally been reactions to local or regional disasters, such as hurricanes or
even the horrific 9/11 terrorist attack. Thus, most plans generally revolve around finding different locations for polling places, due to the inability to access or wholesale destruction of existing polling places. For example, following Hurricane Katrina, New Orleans, Louisiana set up an enormous vote center in the Super Dome, which enabled voters to cast ballots in a central location that was accessible to all. The COVID-19 pandemic, which started globally in 2019 and became a national pandemic in 2020, revealed that a public health emergency presents different obstacles that must be surmounted in order to ensure that elections are able to be held on schedule, or at least as close to on time as possible. Simply put, how do you hold an election if voters are ordered to stay at home for their own health and welfare? How do you maintain the safety of the polling place? How do you contain the possible spread of a virus from human contact to polling machinery, ballots, or even pens and paper? Is all mail voting the solution? How do you reconcile the fact that historically, vote by mail has not been practical for all segments of the population? The rub lies in the fact that elections are not always a one-size fits all situation. Any remedy to conduct elections in an alternative fashion should consider methods of voting that will not further disenfranchise our most vulnerable populations, such as the elderly, language minorities, individuals with disabilities, or low-income communities.

It is indisputable that the challenge to ensure that elections can be conducted in close proximity to an emergency prior to or on Election Day is extremely difficult and a complex undertaking. It is for this reason that states, localities, territories, and tribal election authorities should take the proactive steps necessary to ensure that elections, under any circumstance, are conducted in the safest manner possible, for both the public and those administering our electoral process. Our democracy is at its most successful when our citizens can participate freely and without fear. It is also equally important to ensure that any changes to our electoral process allow ample opportunities for notice and communication, through timely and comprehensive education drives from all media platforms to inform voters of any changes and the options that are available to them.

**Commentary - 12.0 Penalties and Notices**

The vigorous enforcement of election laws may be necessary to ensure the efficacy of any voting system. Prosecution, even in isolated cases, may be necessary to create an environment in which norms of election conduct are established and to guarantee civil liberties.

**Commentary - 12.0 Bar Associations**

The American Bar Association has long been on record in urging all lawyers to register and vote and that all lawyers should encourage and assist employees in their offices and firms to participate in the electoral process by registering and voting in federal, state, local, and territorial elections. These Guidelines seek to take that commitment a step further and encourage state, local and territorial bar associations to assist in the development of programs that will ensure the integrity
of the electoral process. Lawyers understand the need for due process and equal
protection as a part of the electoral process and thus are well suited to serve as
Election Day officials.
SECTION I  PROVISIONAL BALLOTS AND ENVELOPES

1) At all elections, the following individuals shall be permitted to cast a provisional ballot:

   a) an individual who claims to be properly registered and eligible to vote at the election district, but whose name does not appear on the general register and whose registration cannot be determined by the election officials; or

   b) an individual voting at the election district, but who is unable to produce required identification; or

   c) an individual who has applied for an absentee ballot, but who has not returned the absentee ballot; or

   d) an individual who presents a judicial order to vote; or

   e) an individual whom an election official asserts is not eligible to vote.

2) Prior to casting the provisional ballot, the elector shall be required to sign a uniform affidavit, that shall be used by all jurisdictions within the state, on the provisional ballot envelope.

   a) Each jurisdiction shall provide to each provisional voter printed information on the provisional ballot envelope notifying the voter that in order for the provisional ballot to be evaluated by the canvassing board, the elector must print his/her name and address and sign and date the affidavit.

   b) A jurisdiction may place notice of penalties for violations of election laws and procedures on the provisional ballot envelope.

   c) A jurisdiction may allow an elector to provide additional information, such as date, location or means of registration, on the provisional ballot envelope in order to facilitate the evaluation by the canvassing board, so long as the provision of such information is voluntary.

3) After the provisional ballot has been cast,

   a) the elector shall
i) place the provisional ballot in a secrecy envelope, and

ii) place the secrecy envelope in a sealed provisional ballot envelope;

b) the election official shall

i) provide written information to the elector explaining the system for verifying ballots as well as a provisional ballot envelope number,

ii) ensure that all provisional ballots shall remain sealed in their provisional ballot envelopes for return to the canvassing board, and

iii) certify the number of provisional ballots delivered to the polling place and the number of sealed provisional ballot envelopes containing voted ballots.

4) Prior to the certification of the election, the canvassing board shall examine each provisional ballot envelope to determine if the individual voting that ballot was entitled to vote at the election district in the election. One authorized representative of each candidate in a primary or election, who is an elector in the county, shall be permitted to remain in the room in which the determination is being made if he does not impede the orderly conduct of the determination. Uniform standards shall be developed and applied for the purposes of verifying provisional ballots within a state.

5) If it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast,

a) the ballot should be placed with other ballots that are eligible to be counted,

b) the tabulation of eligible ballots should not occur until a determination of eligibility has been made for all provisional ballots submitted, and

c) such tabulation should be made in accordance with the rules governing normal ballot tabulation.

6) If it is determined that the elector voting the provisional ballot was not registered or otherwise failed to establish his or her qualifications to vote under applicable state law,
a) the provisional ballot shall not be counted and the ballot shall remain in the provisional ballot envelope and shall be rejected as ineligible; and

b) a photocopy of the provisional ballot envelope shall be used by the election authority as a voter registration form if the information is properly submitted in accordance with state voter registration requirements.

7) If it is determined that the elector voting the provisional ballot was eligible to vote but not at the election district where the ballot was cast, the canvassing board shall open the envelope, with due regard to secrecy of the ballot, and only count the portion of the ballot that the elector would have been eligible to vote in the proper election district and at the election district where the vote was cast.

8) The election authority shall establish a World Wide Web site and a toll-free telephone number to permit an elector who cast a provisional ballot to determine, by means of a unique, non-public personal identification number, whether the vote was counted and, if the vote was not counted, the reason that it was not counted.

SECTION II DETERMINING ELIGIBILITY OF PROVISIONAL BALLOTS

1) Prior to accepting any provisional ballot, the election official shall determine that the information provided on the provisional ballot envelope by the elector is properly completed.

2) When ballots are transferred from polling places to the election authority for tabulation, provisional ballot envelopes

   a) should be segregated from other ballots and placed in separate containers; and

   b) should be photocopied, upon delivery to the canvassing board, by teams of election officials, with a representative from each major political party, for purposes of determining the eligibility of the elector; and

   c) should then be placed in a sealed container until tabulation.

3) The counting of provisional ballots shall not begin until the canvassing board has determined the eligibility of all provisional voters according to applicable state laws.

4) Determinations as to whether provisional ballots will be counted should be
based on

a) the statewide voter registration database, or

b) other state and local voter registration records, or

c) where an elector has registered through an agency authorized to conduct voter registration pursuant to the National Voter Registration Act of 1993, the election authority should make an inquiry of the registration agency.

5) Once the canvassing board has made a determination as to whether or not a provisional ballot is eligible to be counted, the canvassing board shall provide documentation on the copy of the provisional ballot envelope verifying the eligibility or ineligibility of the elector. Such documentation should include

a) name of elector casting a provisional ballot,

b) name of reviewer,

c) date and time of review, and

d) description of evidence that supports eligibility or ineligibility of elector.

6) The canvassing board should record on a provisional ballot disposition list the provisional ballot identification number and notation marking it as accepted or rejected.

7) Once a review has been made by the canvassing board, determining eligibility or ineligibility of all provisional ballots, the provisional ballots and copies of provisional ballot envelopes, shall be delivered to bi-partisan counting teams for review and tabulation. A record of such delivery should be kept and shall include a signed receipt from two election officials, one from each major political party.

8) Challengers and watchers, as provided by applicable state law, may be present at all times that the bi-partisan counting team is reviewing and/or counting provisional ballots, provisional ballot envelopes and copies of provisional ballot envelopes. The election authority must give proper notification to the county chairs of each major political party in advance of the review and counting of provisional ballot materials.

9) If the elector is found to be duly qualified and registered to vote, the ballot envelope should be opened and the ballot placed in a ballot box to be counted with other eligible provisional ballots.
10) If the elector is found not to be duly qualified and registered to vote, the ballot envelope should not be opened and the ballot should not be counted.

a) The copy of the provisional ballot envelope should be submitted as an application for voter registration for future elections so long as:

i) The information serving as an application for voter registration is easily separated from the information requested to cast a provisional ballot (e.g., insufficient information on the voter registration application should not disqualify an otherwise sufficiently completed application to cast a provisional ballot); and

ii) The provisional ballot envelope contains identical information that is required for voter registration in the applicable state

b) In the event that the voter registration portion of the provisional ballot envelope is not complete, the provisional ballot envelope should be treated as a voter registration application by the prospective voter.

11) Following the determination of eligible provisional ballots:

a) all eligible provisional ballot materials should be sealed in a container, dated and signed by each member of the reviewing team, and marked as “voted provisional ballots and ballot envelopes;”

b) all rejected provisional ballot materials should be sealed in a container, dated and signed by each member of the reviewing team, and marked as, “rejected provisional ballots and ballot envelopes;” and

c) upon receipt of the returned materials, the election authority should tabulate the eligible provisional vote.

SECTION III DEFINITIONS

1) **Canvassing Board** means the entity established by state law that is charged with determining the validity of voter registration for purpose of counting provisional ballots or certifying elections, recounts, or challenges in an election.
2) **Election Authority** means the state, local, territorial, or tribal entity responsible for the administration of elections (e.g., Department of Elections, Board of Election Commissioners, County Clerk, or Canvassing Board).

3) **Election Official** means an official sworn to conduct an election.

4) **Elector** means an individual who is eligible to vote.

5) **Jurisdiction** means a political boundary of election districts in which the election is administered (e.g., the entire state for an election for the U.S. Senate, the congressional district for an election for the U.S. House of Representatives).

6) **Provisional Ballot** means a ballot issued by an election official on Election Day to an individual who claims to be a registered elector when the individual's name does not appear on the general register or the individual's registration cannot be verified or where the individual is determined to be ineligible.

7) **Provisional Ballot Envelope Number** means the number assigned to the provisional ballot envelope.
Commentary to Model Statutory Language on Provisional Balloting

A balance must be struck between encouraging participation in the electoral process and encouraging the orderly and fair administration of elections. When a provisional ballot is cast, an affidavit stating that an individual is registered to vote in the jurisdiction where the individual desires to vote and that the individual is eligible to vote is required by the Help America Vote Act of 2002 (P.L. 107-252, § 302(a)(2)). Accordingly, the affidavit should not require any additional information in order to verify the information contained on the provisional ballot envelope.

By way of example, the affidavit may state the following:

PROVISIONAL BALLOT ENVELOPE NUMBER XXX

I affirm, that I am:

\[ \begin{align*}
  \text{i) } & \text{registered to vote in this jurisdiction} \\
  \text{and} & \text{ii) eligible to vote in this election.}
\end{align*} \]

Printed Name

Signature

Street Address

Date

City, State, Zip Code

The information in this box must be completed in order to process your provisional ballot.

Jurisdictions should, however, allow individuals to voluntarily provide additional information, such as date, location and method of registration, and/or the precinct in which the voter believes he or she is registered to vote, in order to facilitate the work of the canvassing board. Election officials should post notice of the penalties for violation of election laws and procedures on provisional ballot envelopes. The notices should be coordinated for uniformity within the state.

The presentation of affidavits should be uniform across the state. Uniform standards for verifying provisional ballots should be developed and applied to all ballots within a state in order facilitate the verification process and prevent confusion within the system.

As in all aspects of the electoral process, the secrecy of the ballot must be maintained during the provisional balloting process. The provisional ballot envelope number should only be associated with the provisional ballot.
envelope, including the verification of whether or not the ballot was counted, and not the provisional ballot itself.
The American Bar Association has traditionally been an active and guiding voice in matters involving the electoral process. The Standing Committee on Election Law, whose members represent a balance of political party, non-partisan, and independent views, is charged with developing and examining ways to improve the electoral process. As changes in the electorate and the electoral process occur, the Standing Committee continues to make cogent responses to emerging electoral issues on behalf of the Association. In particular, the Standing Committee, on behalf of the Association, has maintained a strong and historic interest in improving the level of participation and integrity of the electoral process.

Association History on Electoral Reform
One constant area of study for the Standing Committee has been that of election reform. The Association first covered the subject of the administration of the electoral process with Ballot Integrity Standards Applying to Election Officials, dated August, 1989 ("Standards") which were developed as part of the rationale that the success of a democratic system of government depends in part on the integrity of its election process. In 1989, the Standing Committee and the Association determined that an election system must have several attributes in order to preserve the integrity of the electoral process: 1) that citizens who are eligible to vote be provided with a fair opportunity to vote; 2) that the ability to vote should be confined to those eligible to vote; 3) that voters be able to cast ballots freely without intimidation or improper influence; and 4) that the ballot be secure from the time it is cast to the time it is counted. The Standards, subsequently archived and supplanted by newer policies, were developed as a means of creating an electoral system that would protect the integrity of the ballot, without deterring political participation and voting by eligible citizens.

The 2000 presidential election necessitated a revisiting of the issue. Election Administration Guidelines and Commentary, dated August 2001 ("Guidelines") covered a broad range of electoral issues, including such topics as voter education, registration, voting, provisional balloting, and post-election issues, that can be applied to all elections. Although these Guidelines cover federal and state, local, territorial, and tribal elections, they are directed at the election administrators and officials at the state, local, territorial, and tribal level, who hold primary responsibility for election activities, both before, during, and after the actual election. The Guidelines are meant to enhance the integrity and public perception of the electoral process. As aspirations for the necessary reform of our electoral process, they are intended to ensure that all citizens who are eligible to vote have the greatest access to the ballot box. The Guidelines were updated in 2005, 2008, and 2009 to keep pace with changes in election law, technology, society, and the actual administration of elections.

Purpose of Current Report and Resolution
Based on our examination of the issue for the last decade, and in light of ongoing trends in voting and voter registration, advancements in technology, and the current COVID-19 pandemic, the Standing Committee has determined that it is necessary to revisit the
existing Guidelines with a fresh eye and seeks to adopt Election Administration Guidelines and Commentary, dated August 2020 (“2020 Guidelines”) to replace all earlier versions of the Guidelines.

New Features of the 2020 Guidelines
In general, this year’s comprehensive set of “best practices” for the administration of elections is similar to the prior version adopted by the House of Delegates in 2009. We have made minor edits for clarification, grammar, and punctuation. The only entirely new section is Section 11, devoted to Emergency Management of Elections. The need for this subject to be addressed at this time is obvious, though this is not the first time that the ABA has recognized that emergency situations demand more flexibility in planning for and administering elections. The provisions of Section 11 are not inconsistent with existing policy (14A113A), also sponsored by the Standing Committee, on the preservation of the electoral process during emergencies passed by the House in 2014. While the prior policy was focused more on conducting elections during natural disasters, the proposed resolution seeks to also provide a roadmap for conducting elections during public health and other emergencies.

Important additions have been made to several sections covered in the 2009 Guidelines to acknowledge developments in alternative models for elections during the period since those Guidelines were written. For example, vote centers, which have become more frequently used in recent years, have been added to the Alternative Voting Methods (Section 4). The Election Day Section 5 has added provisions acknowledging that the early voting period should be subject to the same principles as Election Day with respect to polling locations and equipment, the equitable distribution of which has been a growing issue in election administration. Section 5 also provides for election day troubleshooting, recommending the designation of a go-to person or office where problems can be addressed immediately, in the interest of keeping small problems from becoming big ones. The Absentee Voting Section 3 has also been fleshed out in much greater detail, recommending procedures for the return, curing, and tracking of absentee ballots.

Finally, in Section 2, Voter Registration, the subsections devoted to voter registration and list maintenance, have been substantially reorganized in the interest of clarity. We have attempted to explain these processes in chronological order. We emphasize the acceptable predicates for inquiries as to whether the voter has moved and the process that may ensue for dropping a voter from the roll. Removal of a voter for failure to vote is not permitted under the Guidelines, though the commentary acknowledges recent case law to the contrary.

As a whole, the 2020 Guidelines are more user-friendly and in a more logical sequence, and the Commentary has been updated to present time and is intended to substantively supplement the 2020 Guidelines. We hope they will be disseminated widely to Secretaries of State and other election officials responsible for the ongoing review and improvement of the election process in their states and localities, as well as to the United States Congress, which has authority to enact legislation governing federal elections.
Conclusion

Federal, state, local, territorial, and tribal governments are constantly working to improve the administration of elections to ensure public confidence and trust in our electoral system. The Standing Committee believes that the 2020 Guidelines, submitted for adoption by the House, are reflective of ongoing changes and trends in elections and will serve to enhance the administration and integrity of the franchise. The administration of elections is among the most underfunded of government activities, and the ABA should encourage the appropriation of necessary funding to election administration to ensure the integrity and efficiency of the electoral process, which is the foundation of our democratic society.

Respectfully Submitted,

Estelle H. Rogers
Chair, Standing Committee on Election Law
August 2020
1. Summary of the Resolution(s).

Recommends that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of these updated Guidelines and provide adequate funding in order to ensure the integrity and efficiency of the electoral process. These Guidelines supplant all prior versions approved by the House of Delegates: 01A112A, 05A101, 08A119A, and 09A116. The Guidelines were first adopted by the House in 2001 (01A112A) as a result of the 2000 presidential election and the need to provide uniform guidelines in election administration in order to enhance public trust and the integrity of our electoral process. The Guidelines were revised again in 2005 (05A101), 2008 (08A119A), and 2009 (09A116) due to changes and trends in election administration, including the need for standards for provisional balloting, which resulted in the inclusion of Appendix A, Model and Statutory Language on Provisional Balloting and Commentary, to the Guidelines.

2. Approval by Submitting Entity.

Approved at April 2020 Spring Meeting of the Standing Committee on Election Law.

3. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This would replace all prior versions of the Guidelines: 01A112A, 05A101, 08A119A, and 09A116.

4. If this is a late report, what urgency exists which requires action at this meeting of the House?

n/a

5. Status of Legislation. (If applicable)

There are numerous pending bills in Congress and in state legislatures regarding matters of election administration that are relevant to this resolution.

6. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

They will be disseminated widely to Secretaries of State and other election officials.
responsible for the ongoing review and improvement of the election process in their states and localities, as well as to the United States Congress, which has authority to enact legislation governing federal elections. The Committee encourages their use by the ABA Governmental Affairs Office and Amicus Curiae Committee in advocacy on behalf of the Association.

7. **Cost to the Association.** (Both direct and indirect costs)

   none

8. **Disclosure of Interest.** (If applicable)

   none

9. **Referrals.**

   Civil Rights and Social Justice
   Administrative Law Section
   State and Local Government Law
   Government and Public Sector Law
   Disability Rights
   Young Lawyers Division
   Law Student Division
   Senior Lawyers Division

10. **Name and Contact Information** (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

   Estelle H. Rogers
   Tel.: (202) 337-3332
   E-mail: 1estellerogers@gmail.com

11. **Name and Contact Information.** (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

   Estelle H. Rogers
   Tel.: (202) 337-3332
   E-mail: 1estellerogers@gmail.com
EXECUTIVE SUMMARY

1. Summary of the Resolution.

Recommends that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of these updated Guidelines and provide adequate funding in order to ensure the integrity and efficiency of the electoral process. This version of the Guidelines would supplant all prior versions: 01A112A, 05A101, 08A119A, and 09A116. The Guidelines were first adopted by the House in 2001 (01A112A) as a result of the 2000 presidential election and the need to provide uniform guidelines in election administration in order to enhance public trust and the integrity of our electoral process. The Guidelines were revised again in 2005 (05A101), 2008 (08A119A), and 2009 (09A116) due to changes and trends in election administration, including the need for standards for provisional balloting, which resulted in the inclusion of Appendix A, Model and Statutory Language on Provisional Balloting and Commentary, to the Guidelines.

2. Summary of the issue that the resolution addresses.

An election system must have several attributes in order to preserve the integrity of the electoral process: 1) that citizens who are eligible to vote be provided with a fair opportunity to vote; 2) that the ability to vote should be confined to those eligible to vote; 3) that voters be able to cast ballots freely without intimidation or improper influence; and 4) that the ballot be secure from the time it is cast to the time it is counted. The Standards were developed as a means of creating an electoral system that would protect the integrity of the ballot, without deterring political participation and voting by eligible citizens.

3. Please explain how the proposed policy position will address the issue.

The 2020 Guidelines are more user-friendly and in a more logical sequence, and the Commentary has been updated to present time and is intended to substantively supplement the 2020 Guidelines. They will be disseminated widely to Secretaries of State and other election officials responsible for the ongoing review and improvement of the election process in their states and localities, as well as to the United States Congress, which has authority to enact legislation governing federal elections. We also encourage their use by the ABA Governmental Affairs Office and Amicus Curiae Committee in advocacy on behalf of the Association.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None known.