

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**AUGUST 3-4, 2015**

**RESOLUTION**

RESOLVED, That the American Bar Association urges election administrators, officials, and legislators at the federal, state, local, territorial, and tribal levels to adopt and implement policies designed to achieve a thirty-minute maximum per voter wait time at the polls.



## REPORT<sup>1</sup>

### Introduction

Every election year, Americans nationwide are privy to scenes that illustrate what electoral participation in our country involves today: campaign signs in front yards and on roadsides, “I Voted” stickers on the lapels of strangers and colleagues, and, much less gratifyingly, long lines of voters seeking to cast their ballot at their local precinct. In many countries, standing in long lines to vote is a badge of honor demonstrating a commitment to democracy. In recent U.S. elections, however, long lines have been widely viewed as a sign of mismanagement and even disenfranchisement.

During the 2012 election, voters in Florida, Virginia, Maryland, and South Carolina, among other states, reported waiting in line as long as five hours.<sup>2</sup> In some cases, voters simply gave up and went home before casting their ballots: researchers from Ohio State University found that 49,000 people in Florida alone were discouraged from voting due to long lines.<sup>3</sup> Press coverage of the debacle was widespread, and pundits railed against what many viewed as a less obvious form of disenfranchisement.<sup>4</sup>

President Barack Obama called on election officials to streamline the process in order to make certain that every elector was afforded the chance to vote without suffering an exorbitant wait.<sup>5</sup> Accordingly, President Obama established the bipartisan Presidential Commission on Election Administration (PCEA) to identify best practices in election administration and make recommendations to improve the voting experience.<sup>6</sup>

The ABA’s Standing Committee on Election Law commissioned its own report on the sources of election delays in 2012 in order to identify the problems that most need to be addressed.<sup>7</sup> The ABA’s Standing Committee on Election Law has a long and consistent history of past resolutions advocating for improvements in the voting process and experience.

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<sup>1</sup> The Standing Committee on Election Law gratefully acknowledges the assistance of the William & Mary Law School’s Election Law Program for the research and drafting of this report, specifically Professor Rebecca Green and Election Law Fellows Ben Ader 2018 and Allison Davis 2017.

<sup>2</sup> David Damron & Scott Powers, *Researcher: long lines at polls caused 49,000 not to vote*, ORLANDO SENTINEL (Dec. 29, 2012), [http://articles.orlandosentinel.com/2012-12-29/news/os-discouraged-voters-20121229\\_1\\_long-lines-higher-turnout-election-day](http://articles.orlandosentinel.com/2012-12-29/news/os-discouraged-voters-20121229_1_long-lines-higher-turnout-election-day).

<sup>3</sup> *Id.*; see also Pam Fessler, *Fixing Long Lines At The Polls May Be Harder Than you Think*, NPR (Feb. 12, 2013, 3:24 AM), <http://www.npr.org/blogs/itsallpolitics/2013/02/12/171513524/fixing-long-lines-at-the-polls-may-be-harder-than-you-think>.

<sup>4</sup> Josh Harkinson, *Florida: Is This 2000 All Over Again?*, Mother Jones (Nov. 6, 2012, 7:20 PM), <http://www.motherjones.com/politics/2012/11/ballot-shortage-broken-voting-machines-long-lines-disenfranchise-florida-voters>; Amanda Terkel, *Florida’s Long Lines On Election Day Discouraged 49,000 People From Voting: Report*, HUFFINGTON POST (Dec. 29, 2012, 3:21 PM), [http://www.huffingtonpost.com/2012/12/29/floridas-long-lines-election-voting\\_n\\_2381482.html](http://www.huffingtonpost.com/2012/12/29/floridas-long-lines-election-voting_n_2381482.html).

<sup>5</sup> *Obama forms commission on long lines to vote*, CNN POLITICAL TICKER (Mar. 28, 2013, 3:08 PM), <http://politicalticker.blogs.cnn.com/2013/03/28/obama-to-form-commission-on-long-lines-to-vote/>.

<sup>6</sup> PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, <http://www.supportthevoter.gov/the-commission/> (last visited Jan. 8, 2015).

<sup>7</sup> AMERICAN BAR ASSOCIATION, ELECTION DELAYS IN 2012 (May 2013), which served as the basis of the Standing Committee’s Resolution and Report No. 110, adopted by the American Bar Association House of Delegates at the 2013 Annual Meeting.

Both the PCEA and the ABA's Standing Committee have the shared goal of pinpointing areas of concern that lead to long lines and addressing those elements of the voting experience that cause unnecessary friction for both electors and election administrators.<sup>8</sup>

One of the PCEA's key recommendations was the establishment of a "30-minute rule." In essence, this rule would require election administrators to implement measures to ensure that no voter waits in line more than 30 minutes after arriving at the polling place.<sup>9</sup> Acknowledging that sometimes long wait times are a direct result of problems in the voting booth or at the ballot box (e.g. machine failures), this rule affirmatively does not seek to limit the amount of time that voters spend casting their ballot in the voting booth. Rather, the rule would help streamline the process by which voters are checked in and given their ballots. Clearly, the PCEA's 30-minute rule recommendation is aspirational, as no election administrator can guarantee the length of wait times due to the many pressures—foreseen and unforeseen—on Election Day. Still, the PCEA's 30-minute rule sets an important goal for election administrators to work toward.

In response to the PCEA's recommendations, in March 2014, U.S. Senators Barbara Boxer (D-CA) and Bill Nelson (D-FL) introduced legislation to implement the 30-minute rule.<sup>10</sup> This legislation—the Lines Interfere with National Elections (LINE) Act—was reintroduced in January 2015, and has not yet progressed in the Senate. The ABA, however, believes that the reform goal the recommendation prompts is not limited to federal legislative action. By introducing best practices that fit their individual jurisdictions and sharing the results of their success, state and local election administrators can carry out reforms geared toward the *de facto* achievement of the 30-minute time limit on voter wait time.

The ABA's Standing Committee on Election Law supports the adoption of the 30-minute rule as a means of addressing long lines and potential voter disenfranchisement, and proposes that certain reforms should be prioritized in order to achieve this goal. The Standing Committee emphasizes that the proposed 30 minute rule is aspirational— with no sanction if the rule is "violated." The suggestions in this report are intended to address practicalities of voting that may stand in the way of voters efficiently casting ballots. Some voting inefficiencies may be correctable on an individual basis; others may be impossible to address due to factors often outside the control of election planners. With these caveats aside, the ABA believes some of the causes of long lines are addressable. This report examines the reasons why the ABA supports the 30-minute rule to address the problem of long lines, as well as the most important approaches (gleaned from recommendations made to the PCEA by interested parties) to successful implementation of the rule. Section I discusses the reasoning behind the implementation of a 30-minute rule, Section II reviews several key recommendations made by the PCEA that would most contribute toward the realization of this rule in future elections, and Section III discusses line-shortening reforms that several jurisdictions put into place during the 2014 election cycle.

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<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, THE AMERICAN VOTING EXPERIENCE: REPORTS AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 13 (Jan. 2014), available at <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

<sup>10</sup> Press Release, Senator Barbara Boxer, Boxer, Nelson Introduce Legislation to Ensure Voters Wait No Longer than Thirty Minutes to Vote (Feb. 12, 2014), <http://www.boxer.senate.gov/press/release/boxer-nelson-introduce-legislation-to-ensure-voters-wait-no-longer-than-thirty-minutes-to-vote/>.

## I. Why Have a 30-Minute Rule?

The right to vote for the candidate of one's choosing is a fundamental aspect of American democracy.<sup>11</sup> Thus, it follows that lawmakers and regulators should seek to make the electoral process as smooth as possible for voters. Unfortunately, several aspects of American elections slow the voting process.

First, most elections take place on Tuesday—a business day—when most voters are at work and unable to sacrifice more than a few minutes of their time. Thus, most voters must cast their ballots in the mornings or the evenings, cutting into their commute time and forcing those with children to make alternative arrangements. In the morning, many voters simply cannot afford to spend time waiting in line and risk missing work; in the evenings, wait times tend to stretch past the official time for the close of polls. Individuals with young children or who are in lower income brackets tend to suffer most: it is often difficult or impossible for them to arrive at work late or to afford child care in the evenings while they wait in line to vote.<sup>12</sup> Assurance of a 30-minute limit to the wait could reduce this burden and help those in low-wage jobs and working parents to find time to vote.

Second, as the PCEA noted in its report, although isolated incidents at individual polling places can lead to long wait times, systemic problems are both more widespread and easier to identify and address.<sup>13</sup> Such problems include improper allocation of election resources and staff, poor training for poll workers, and limited days and hours for voting. Providing election officials with a goal—a 30-minute rule to strive for—will encourage election administrators to address the issues that arise time and time again, election after election.

Third, a 30-minute rule would set a nationwide standard. At the present time, widespread monitoring of Election Day lines at the local level is not in place.<sup>14</sup> Systematically collecting wait time data would ultimately help states allocate resources more effectively. Researchers have found that precincts in which wait times are long and problems repeatedly occur—which are usually in poorer areas—have lower voter turnout.<sup>15</sup> Such precincts tend to have the same issues: insufficient accessibility, inadequate signage, less physical space, poor organization, inadequate parking, and so on.<sup>16</sup> A 30-minute rule would help election administrators better identify precincts with problems and compel resource reallocation to bring these precincts up to speed.

Finally, a multitude of studies have addressed the link between long lines and voter confidence in elections.<sup>17</sup> Additionally, news reports include anecdotal evidence that frustrated

<sup>11</sup> U.S. CONST. amend. XIV, § 2; *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“The case of the political franchise of voting is ... regarded as a fundamental political right, because preservative of all rights.”).

<sup>12</sup> *See, e.g.*, CHARLES STEWART III, *WAITING TO VOTE IN 2012* 2 (2013), *available at* <https://www.supportthevoter.gov/files/2013/08/Waiting-to-Vote-in-2012-Stewart.pdf>.

<sup>13</sup> PRESIDENTIAL COMM’N ON ELECTION ADMIN., *supra* note 9, at 13-14.

<sup>14</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, *OBSERVATIONS ON WAIT TIMES FOR VOTERS ON ELECTION DAY 2012* 14 (2014), *available at* <http://www.gao.gov/assets/670/666252.pdf>.

<sup>15</sup> Matt A. Barreto, Mara Cohen-Marks, & Nathan D. Woods, *Are All Precincts Created Equal? The Prevalence of Low-Quality Precincts in Low-Income and Minority Communities*, 62 *POLITICAL RESEARCH QUARTERLY* 3, 445-46, (2009).

<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g.*, Stewart, *supra* note 12; *see ALSO* DAVID C. KIMBALL, *WHY ARE VOTING LINES LONGER FOR URBAN VOTERS?* 9 (2013), *available at* <http://www.umsl.edu/~kimball/d/SSSA13-Kimball.pdf>.

voters have a low level of trust in the process.<sup>18</sup> After the 2012 election, the Orlando Sentinel noted that hours-long lines led some to compare the 2012 election in Florida to the state's 2000 election—a comparison that sends shudders down the spines of those who care about public confidence in elections.<sup>19</sup> If lines are shorter, voter confidence is less likely to erode.

In short, a 30-minute rule addresses burdens on voting for individual voters, provides impetus to address systemic problems, and prompts better data gathering that should lead to reallocation of staff and resources to bring all precincts toward a fair and equal mean. Widespread adoption of a 30-minute rule has real potential to improve voter confidence in our system of elections. The following pages describe individual reforms—proposed by the PCEA and recommended for prioritization by the ABA's Standing Committee on Election Law—that election administrators could consider implementing in order to achieve a nationwide 30-minute maximum on voter wait time.

## II. Recommendations for Reform

In a study released in September 2014, the U.S. Government Accountability Office (GAO) found nine key factors that affected wait times on Election Day: inadequate or malfunctioning voting equipment, insufficient staffing and training of poll workers, opportunities (or lack thereof) to vote before Election Day, poll book type, ballot characteristics, polling place design, voter education, voter eligibility, and resource allocation.<sup>20</sup> Many of the PCEA's proposed solutions address these factors directly. The following section will set forth the ways in which election officials could use the PCEA's recommendations to address these concerns.

### A. Document Voting Machine Failure and Implement Testing Protocols

Twelve years after Congress passed the Help America Vote Act of 2002 (HAVA)<sup>21</sup> in order to help state election officials update voting systems to meet new mandatory minimum standards, many of the voting machines purchased with HAVA funding are on their last legs.<sup>22</sup> Older machines are far more inclined to malfunction or simply stop working during heavy Election Day use, and funding for new machines is often hard to come by.<sup>23</sup> The importance of testing older machines prior to the opening of polls is therefore more important than ever. When a voting machine malfunctions, more voters are forced to use any remaining machines that are still in working order. Alternatively, when precinct machines malfunction, some states require a move to paper ballots, which can be more time-consuming to distribute, complete, and collect,

<sup>18</sup> See generally PEW RESEARCH CENTER, *LOW MARKS FOR THE 2012 ELECTION* (2012), available at <http://www.people-press.org/files/legacy-pdf/11-15-12%20Post%20Election.pdf>.

<sup>19</sup> Damron & Powers, *supra* note 2.

<sup>20</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 14, at 1.

<sup>21</sup> Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666.

<sup>22</sup> PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 9, at 4.

<sup>23</sup> See, e.g., Len Lazarick, *Outdated Md. voting machines will not be replaced before 2014 election*, MARYLANDREPORTER.COM (Mar. 5, 2013), <http://marylandreporter.com/2013/03/05/outdated-md-voting-machines-will-not-be-replaced-before-2014-election/>; Will Drabold, *Aging voting machines could jeopardize elections, officials say*, COLUMBUS DISPATCH (Feb. 13, 2014, 6:27 AM), <http://www.dispatch.com/content/stories/local/2014/02/13/aging-voting-machines-could-jeopardize-elections-officials-say.html>.

especially when poll workers are not properly trained in their use and handling—and especially when their use is compelled as a Band-Aid to cope with a problem on Election Day.<sup>24</sup>

Several states have statutory or regulatory guidelines mandating the testing of voting machines prior to each election,<sup>25</sup> but a nationwide standard for how such tests should be conducted does not exist. In the absence of such a national standard, states should ideally attempt to mandate testing by law according to their needs and equipment. Ensuring the accuracy of voting equipment is of great interest across the political spectrum, so such proposals are unlikely to face opposition.

The Brennan Center has suggested creating a national database of voting equipment failures (accessible to state and local election officials) in order to track malfunctions by manufacturer and model.<sup>26</sup> The EAC currently maintains a quality-monitoring program for election equipment, and such a database would supplement this program by aiding election officials in addressing machine failure and learning from past incidents. Additionally, a database would create accountability for voting machine manufacturers who seek to earn additional contract business from states.

### *B. Step Up Poll Worker Recruitment*

Polls are largely administered by volunteers, and relying on a volunteer workforce on Election Day can lead to chronic understaffing at polling places. Fewer people to manage lines, check in voters, and provide assistance when needed often leads to longer wait times.<sup>27</sup>

In addition, most volunteer poll workers are elderly and/or retired: indeed, the largest groups of poll workers are in their 60s and 70s; and 44% of U.S. poll workers are retired.<sup>28</sup> While older poll workers are very often hard-working and committed civic participants, many older poll workers express discomfort with new technologies that are now commonplace at the polls.<sup>29</sup> Widespread recruitment of high school- and college-age poll workers could work wonders in alleviating staff shortages on Election Day and provide the ancillary benefit of increasing youth civic participation. In order to help effectuate this goal, election officials should

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<sup>24</sup> See Theodore Allen & Mikhail Bernshteyn, *Mitigating Voter Waiting Times*, CHANCE 19, no. 4 (2006); ALEXANDER S. BELENKY & RICHARD C. LARSON, INST. FOR OPERATIONS RESEARCH AND THE MGMT. SCI., TO QUEUE OR NOT TO QUEUE? (June 2006), available at <http://www.orms-today.org/orms-6-06/queues.html>; William A. Edelstein & Arthur D. Edelstein, *Queuing and Elections: Long Lines, DREs and Paper Ballots*, Proceedings of EVT/WOTE 2010 (2010); Ugbebor O. Olabisi & Nwonye Chukwunoso, *Modeling and Analysis of the Queue Dynamics in the Nigerian Voting System*, OPEN OPERATIONAL RESEARCH J. 6 (2012).

<sup>25</sup> GA ADC 183-1-12-.02; GA ADC 183-1-14-.01, 04

<sup>26</sup> Lawrence Norden, *Voting System Failures: A Database Solution* 3, BRENNAN CTR. FOR JUSTICE (2010), [http://www.brennancenter.org/sites/default/files/legacy/Democracy/Voting\\_Machine\\_Failures\\_Online.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/Voting_Machine_Failures_Online.pdf).

<sup>27</sup> See generally Christopher Famighetti, Amanda Melillo, & Myrna Pérez, *Election Day Long Lines: Resource Allocation*, BRENNAN CTR. FOR JUSTICE (2014), <http://www.brennancenter.org/sites/default/files/publications/ElectionDayLongLines-ResourceAllocation.pdf>.

<sup>28</sup> BARRY C. BURDEN & JEFFREY MILYO, *THE RECRUITMENT AND TRAINING OF POLL WORKERS: WHAT WE KNOW FROM SCHOLARLY RESEARCH* 3 (2013), available at <https://www.supportthevoter.gov/files/2013/09/The-Recruitment-and-Training-of-Poll-Workers-Burden-and-Milyo.pdf>.

<sup>29</sup> Ian Urbina, *New Laws and Machines May Spell Voting Woes*, N.Y. Times, Oct. 19, 2006, <http://www.nytimes.com/2006/10/19/us/politics/19voting.html?pagewanted=print>.

work with local school boards and post-secondary institutions to increase the ranks of student volunteers to receive academic credit for working the polls. Some election administrators have worked with local school officials to enable students who volunteer to take Election Day off from school as a no-penalty “civic participation” day.<sup>30</sup> Moreover, the Bar at all levels should make it a priority to encourage lawyers to use their considerable talents by volunteering to serve in the election workforce. The Standing Committee is encouraging the recruitment of lawyers as poll workers through its “Lawyer as Citizen” program.

Additionally, election officials are often confronted with voters who speak English as a second language—or not at all. In 1975, Congress expanded the Voting Rights Act to include special protections for language minorities; and states and counties with substantial populations of language minorities were required to provide ballot and election materials in languages other than English.<sup>31</sup> Yet, to this day, poll workers who only speak English are often unable to properly assist these voters when they need help casting their ballots.<sup>32</sup> The Advancement Project has suggested that state and local election officials can improve minority turnout and election participation—as well as the general experience for voters who speak little or no English—by recruiting poll workers from language-minority communities via bi-lingual recruiting advertisements, social media outlets, and messages on foreign-language radio stations.<sup>33</sup>

### C. Improve Poll Worker Training

Proper operation of the polls requires properly trained poll workers, and in 2012, 36% of jurisdictions surveyed by the GAO believed that insufficient training was a contributing factor to long wait times.<sup>34</sup> Since poll workers are mainly volunteers who provide their services episodically,<sup>35</sup> it is imperative that election officials provide comprehensive training in a way that keeps matters reasonably simple while still emphasizing the importance of adhering to strict protocols. The editors of the Field Guide to Ensuring Voter Intent have set forth guidelines for

<sup>30</sup> Alverno College students have Election Day off; Some work at polls. Nov. 6, 2012. <http://www.wisn.com/politics/election-results/Alverno-College-students-have-Election-Day-off-Some-work-at-polls/17289136>.

<sup>31</sup> Act of Aug. 6, 1975, Pub. L. 94–73, 89 Stat. 400 (amending the Voting Rights Act of 1965).

<sup>32</sup> See, e.g., J. Mijin Cha & Liz Kennedy, *Millions to the Polls 2*, DEMOS (2014), <http://www.demos.org/sites/default/files/publications/Millions%20to%20the%20Polls%20Language%20and%20Disability%20Access.pdf>, see also James Thomas Tucker, Remarks before the Presidential Commission on Election Administration 4 (Aug. 8, 2013), available at <https://www.supportthevoter.gov/files/2013/09/Jim-Tucker-Barriers-to-Language-Minority-Voters-and-How-to-Overcome-Them-Testimony-to-PCEA.pdf>.

<sup>33</sup> ADVANCEMENT PROJECT, PLIGHT OF THE POLL WORKER: EFFORTS TO IMPROVE TRAINING AND SUPPORT FOR POLL WORKERS IN OHIO, PENNSYLVANIA, MARYLAND, FLORIDA, AND MICHIGAN 7-8, available at [https://www.supportthevoter.gov/files/2013/08/Advancement\\_Project-Plight-of-the-Poll-Worker.pdf](https://www.supportthevoter.gov/files/2013/08/Advancement_Project-Plight-of-the-Poll-Worker.pdf).

<sup>34</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 14, at 33.

<sup>35</sup> Richard H. Pildes, *The Real Reasons You Waited Hours in Line to Vote*, THE ATLANTIC (Nov. 20, 2012, 1:00 PM), <http://www.theatlantic.com/politics/archive/2012/11/the-real-reasons-you-waited-hours-in-line-to-vote/265446/>.

effective training, which include simplifying training materials by using graphics instead of verbiage and extensive use of checklists.<sup>36</sup>

Nuts-and-bolts instructions, while useful, must also be combined with adequate preparation for situations that might arise during voting. Studies have shown that individual voters' interactions with polls workers and how they deal with problems—long lines, malfunctioning machines—largely shapes the electorate's perception of how fairly and accurately an election is conducted.<sup>37</sup> In order to increase poll workers' confidence in their abilities, researchers have recommended that training be hands-on, rather than in lecture form. By familiarizing themselves with actual machines and ballots, workers are provided with better practice for Election Day than training that consists only of passively watching a presentation or viewing PowerPoint slides.<sup>38</sup>

#### *D. Expand Early Voting*

An effective way to reduce lines on Election Day is to spread voting out beforehand, over multiple days or weeks. Although some have called on Congress to mandate early voting on the national level,<sup>39</sup> different states have different needs and resources. For example, in states with smaller populations spread out over a larger area, early in-person voting might not make practical sense whereas early voting by mail may offer numerous advantages. States with larger suburban populations may want to expand early in-person voting at vote centers that are easily accessible for those who commute to work by car. In states with large urban centers that have experienced severe Election Day delays in the past, expanded opportunities for early in-person voting at polling places or registrars' offices may be the best solution.

The PCEA has cautioned that expansion of early and by-mail voting should not come at the expense of Election Day operations: the U.S. Postal Service is facing its own funding crisis, and overloading an already overloaded system could result in delayed or lost ballots.<sup>40</sup> Thus, officials should be careful to allocate resources to adequately cover both early and Election Day operations.

#### *E. Modernize Voter Check-In*

In a 2014 study, the GAO found that in 35% of surveyed jurisdictions, election officials believed that the use of paper poll books contributed to longer wait times.<sup>41</sup> Paper poll books only contain the names of voters registered in a single precinct, while electronic poll books

<sup>36</sup> See generally FIELD GUIDES TO ENSURING VOTER INTENT: EFFECTIVE POLL WORKER MATERIALS (2013), available at <https://www.supportthevoter.gov/files/2013/08/Field-Guide-Vol-04-Effective-Poll-Worker-Materials.pdf>.

<sup>37</sup> See, e.g., Thad Hall, J. Quin Monson, & Kelly D. Patterson, *Poll Workers and the Vitality of Democracy: An Early Assessment*, 40 P.S.: POLITICAL SCIENCE AND POLITICS 4, 647 (2007).

<sup>38</sup> See ADVANCEMENT PROJECT, *supra* note 33, at 8, see also Hall, Monson, & Patterson, *supra* note 37, at 653.

<sup>39</sup> See, e.g., ADVANCEMENT PROJECT, WE KNOW HOW TO FIX THIS: RECOMMENDATIONS FOR THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, available at <https://www.supportthevoter.gov/files/2013/12/Final-Advancement-Project-Partners-Statement-to-the-PCEA.pdf>.

<sup>40</sup> Transcript of Public Meeting, Presidential Commission on Election Administration (Dec. 3, 2013), available at <https://www.supportthevoter.gov/files/2013/12/PCEA-WashingtonDC-Public-Meeting-Transcript-12-3-20131.pdf>.

<sup>41</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 14, at 28.

(EPBs) with access to more comprehensive voter databases allow poll workers to more quickly direct voters who are in the wrong polling place to the proper location, rather than holding up voters in line while the worker calls the state election authority to verify a voter's correct precinct.<sup>42</sup>

Numerous witnesses testified before the PCEA regarding the usefulness of EPBs, which poll workers can access via laptop computers or handheld devices. EPBs enable poll workers to quickly look up a voter who is checking in (rather than flipping through a heavy paper poll book), and provide real-time access to state and county voter lists.<sup>43</sup> The GAO's study also supported this recommendation, but cautioned that older poll workers may not be comfortable or familiar with the handheld technology used to operate EPBs. Thus, although EPB technology should be the standard for Election Day management at the precinct level, election officials should make sure to incorporate information on their proper use during poll worker training.

#### *F. Improve Polling Place Capacity, Design and Management*

The PCEA identified several steps that election officials can take in order to increase polling place capacity, speed up lines, and improve flow through the polling place, many of which can be implemented at little or no cost.

The simplest of these reforms involves publicizing a sample official ballot in advance of the election, so that voters are able to make their selections before entering the voting booth. Local officials could accomplish this by publishing the sample official ballot in local newspapers (which would likely be inclined to grant such a request in the interest of civic participation), posting the sample official ballot online, and making the sample official ballot available to individuals in line on Election Day.<sup>44</sup>

Additionally, "line walkers" could address individual voters in line to make sure that they are voting in the correct location, and direct them toward the correct precinct if they are not. Potential problems with partisan line walkers could be preempted by restricting their role to strictly information distribution, perhaps with scripted lines to work from. Line walkers can also cull the line, weeding out voters ineligible to cast ballots in that location before they reach the front of the line. Redirecting voters who are in the wrong place or who have registration issues from the general line will reduce waits for correctly registered voters.<sup>45</sup> It is worthy of note that the addition of the role of line walker will require additional recruitment and adequate training to ensure this role is performed efficiently and correctly.

Redirecting voters who have appeared at the incorrect polling place could also be done through a precinct map posted at the entrance of the voting location. This would allow voters an easy opportunity to verify they are in the correct location. The precinct could also send out postcards to the most recent address for each voter. This may prove ineffective if issues with non-delivery or late delivery make the receipt of the postcards difficult.

Finally, election officials may wish to adopt elements of queuing theory, a systematic means of evaluating how voters move through a polling place, how long they take at each point of service, and how fast the entire process must be in order to maximize volume while

<sup>42</sup> See PRESIDENTIAL COMM'N ON ELECTION ADMIN, *supra* note 9, at 44-45.

<sup>43</sup> *Id.*

<sup>44</sup> Robert Behre. *Sample ballots available online from State Election Commission for the first time*. May 7, 2014. <http://www.postandcourier.com/article/20140507/PC1610/140509478>.

<sup>45</sup> See PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 9, at 36.

minimizing wait times.<sup>46</sup> This data could help officials identify on the front end how much voting equipment and how many volunteers are needed at each individual precinct.<sup>47</sup> However, researchers have acknowledged that collection of such data must occur on a much larger scale in order to prove truly useful.<sup>48</sup> The PCEA has created a series of calculators and toolkits that aim to help election officials with line and machine optimization; ideally, election officials would make the use of these tools a standard part of preparation for Election Day.<sup>49</sup>

### G. Better Ballot Design

Improvements in ballot design are generally targeted at reducing voter confusion and improving accuracy, but they have the secondary benefit of helping voters complete their ballot more quickly.<sup>50</sup> Confused voters may ask election officials for assistance (which those officials may be prohibited by law from providing in certain states), thus holding up the line for voters behind them. Additionally, in jurisdictions that use optical-scan paper ballots, voters who make mistakes on their ballots and request a replacement create extra work for election officials, who must both provide the new ballot and make sure that the spoiled ballot is properly disposed.

The Brennan Center, among other organizations, has suggested several ideas to simplify ballot design, such as placing instructions for voters closer to their related actions, using more consistent formatting and fonts, eliminating disqualified candidates from the ballot altogether, and ensuring that different candidates for the same office are placed in the same column or on the same page.<sup>51</sup> In some cases, overly prescriptive state laws and regulations that mandate certain ballot designs prevent such reforms. The Brennan Center has suggested that state election codes should simply set out general principles for ballot design, which election officials can implement through the adoption of administrative rules. States that already have problematic laws in place should work with usability experts in order to develop new standards that cause less difficulty for voters.<sup>52</sup>

## III. Implementation of Reforms

Many jurisdictions that experienced long lines during the 2012 election put several of the aforementioned recommendations in place in advance of the 2014 election. This section

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<sup>46</sup> *Id.* at 38.

<sup>47</sup> See generally WILLIAM A. EDELSTEIN & ARTHUR D. EDELSTEIN, QUEUING AND ELECTIONS: LONG LINES, DRES, AND PAPER BALLOTS (2010), available at [http://static.usenix.org/event/evt/tech/full\\_papers/Edelstein.pdf](http://static.usenix.org/event/evt/tech/full_papers/Edelstein.pdf).

<sup>48</sup> See, e.g., PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 9, at 27-29.

<sup>49</sup> PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, <http://www.supportthevoter.gov/the-commission/> (last visited Jan. 8, 2015).

<sup>50</sup> See, e.g., SHARON J. LASKOWSKI & JANICE REDISH, MAKING BALLOT LANGUAGE UNDERSTANDABLE TO VOTERS (2006), available at [https://www.usenix.org/legacy/event/evt06/tech/full\\_papers/laskowski/laskowski.pdf](https://www.usenix.org/legacy/event/evt06/tech/full_papers/laskowski/laskowski.pdf), Lawrence Norden, Whitney Quesenbery, & David C. Kimball, *Better Design, Better Elections*, BRENNAN CTR. FOR JUSTICE (2012), <http://www.aapd.com/resources/publications/better-design-better.pdf>.

<sup>51</sup> See generally Lawrence Norden, David Kimball, Whitney Quesenbery, & Margaret Chen, *Better Ballots*, BRENNAN CTR. FOR JUSTICE (2008), <https://www.supportthevoter.gov/files/2013/08/Better-Ballots-Brennan-Center.pdf>.

<sup>52</sup> *Id.*

describes some examples. Time (and successfully-run future elections) will tell whether these reforms are effective in reducing voter wait times.

#### A. *Orange County, Florida*

In 2012, Florida had the longest lines in the country, and central Florida's Orange County had some of the worst lines in the state: the Orlando Sentinel found that 48% of Orange County residents who cast votes on Election Day lived in precincts that closed at least 90 minutes late.<sup>53</sup> Since 2012, local election officials have made meaningful reforms that could contribute significantly toward reducing wait times in 2014 and beyond.

In an email interview, Orange County Supervisor of Elections Bill Cowles described several such reforms, which include the use of EPBs with real-time voter turnout information and "line walkers" with iPad Minis who will quickly be able to verify if those who are waiting to vote are in the correct precinct. These line walkers will also provide on-the-ground monitoring of wait times.<sup>54</sup>

Additionally, Cowles noted that in 2013, the Florida legislature reversed many of the changes that it made to the state's election laws prior to the 2012 cycle. The revisions require at least eight days of early voting, leaving it up to the discretion of the Supervisor of Elections to allow up to 14 days of early in-person voting, and the early voting period was expanded to include Sundays once again.<sup>55</sup>

#### B. *City of Chesapeake, Virginia*

In 2012, local news affiliates reported persistent long lines and hours-long delays at some of the largest precincts in Chesapeake. At that time, officials attributed wait times to voters who had moved and forgotten to update their address with state election authorities.<sup>56</sup>

Chesapeake General Registrar Al Spradlin confirmed in an email interview that the long lines in 2012 were limited to four or five of the largest precincts in the city, and those lines were not a problem in the vast majority of Chesapeake's 64 polling places. Spradlin also detailed several reforms that local officials had put into place in response to lines at the largest precincts, including expanding and improving his jurisdiction's EPB program by allocating more EPBs and experienced election officials at "problem precincts," adding a "problem-solving" table for voters with registration issues at the highest-volume precincts in order to remove these voters from the general line, and having highly-experienced election officials on standby and available for dispatch to the busiest precincts on Election Day.<sup>57</sup>

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<sup>53</sup> Scott Powers, *Studies: 2012 Florida voter lines were worst in nation*, ORLANDO SENTINEL (Oct. 1, 2014, 8:51 PM), <http://www.orlandosentinel.com/news/politics/os-studies-find-florida-voter-lines-worst-20141001-story.html>.

<sup>54</sup> E-mail from Bill Cowles, Supervisor of Elections, Orange County, to Ben Ader, Graduate Research Fellow, William & Mary Election Law Program (Sept. 22, 2014, 17:08 EST) (on file with author).

<sup>55</sup> *Id.* See Fla. Stat. § 101.657(d).

<sup>56</sup> *Virginia election problems: Large turnout, new law factors in long poll lines*, ASSOCIATED PRESS (Nov. 7, 2012, 9:19 PM), <http://www.wjla.com/articles/2012/11/virginia-election-problems-large-turnout-new-law-factors-in-long-poll-lines-81848.html>.

<sup>57</sup> E-mail from Al Spradlin, General Registrar, City of Chesapeake, to Ben Ader, Graduate Research Fellow, William & Mary Election Law Program (Sept. 24, 2014, 18:35 EST) (on file with author).

### C. Prince William County, Virginia

In 2012, certain precincts in Prince William County had lines that stretched for as long as four hours.<sup>58</sup> As a result of this experience, Prince William County created a total of nineteen new precincts for the 2014 election, which were fully staffed and stocked with the maximum number of polling machines available. Prince William County registrar's office staffer Diana Dutton said in an interview that by creating new polling places, a smaller total number of people would be assigned to each precinct to make "surge hours" more manageable.<sup>59</sup>

As Dutton described, one of the major barriers to creating these new precincts was finding locations that would be able to serve as polling locations. Many of the current precincts are located in schools, and the number of schools available for this purpose is limited due to lack of parking. Thus, the county also reached out to churches and other organizations with ample parking in order to identify locations that could be used as polling places.<sup>60</sup>

Prince William County has also taken measures to educate the public on new voter ID laws in Virginia: the registrar's office has sent representatives to volunteer at assisted living and nursing homes to take photographs of individuals who do not already have a photo ID.<sup>61</sup> The county has also made efforts to inform the public of the content of any constitutional amendments and referendums before voters arrive at their polling locations.

### D. Montgomery County, Virginia

In 2012, several precincts in Montgomery County, Virginia experienced newsworthy wait times at the polls.<sup>62</sup> Because of the presence of Virginia Polytechnic Institute and State University (Virginia Tech) in the county, the student population makes up a significant proportion of the voting population.

In past years, officials at Virginia Tech would not approve voting locations on campus. Due to this inconvenience, students often found it difficult to vote until after their classes were done for the day; thus, in 2012, nearly 40% of the student body had not voted until after 4:00 pm. This led to excessively long lines at the end of the day.<sup>63</sup> Additionally, most students no longer lived at the addresses where they initially registered to vote, and thus they were required to fill out additional forms to become registered at the correct address. These factors led to longer wait times.

In May of 2014, however, the Board of Supervisors at Virginia Tech approved the use of campus facilities for polling locations for students living in on-campus housing. In response, county registrar Randy Wertz and his staff put a variety of reforms into place to ease wait times for students, and the county has assigned two precincts to the campus with fully trained and experienced poll workers on staff. For these precincts, the county has increased the standard number of poll books from three to six. Also, aside from four registration tables, the county is

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<sup>58</sup> Antonio Olivo, *Md., Va. election officials are working to avoid repeating the long lines of 2012*, WASH. POST (Oct. 15, 2014), [http://www.washingtonpost.com/local/dc-politics/md-va-election-officials-are-working-to-avoid-repeating-the-long-lines-of-2012/2014/10/15/56ab9dfc-5492-11e4-ba4b-f6333e2c0453\\_story.html](http://www.washingtonpost.com/local/dc-politics/md-va-election-officials-are-working-to-avoid-repeating-the-long-lines-of-2012/2014/10/15/56ab9dfc-5492-11e4-ba4b-f6333e2c0453_story.html).

<sup>59</sup> Telephone Interview with Diana Dutton, Representative, Office of Prince William County Registrar (Oct. 8, 2014).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Telephone Interview with Randy Wertz, General Registrar, County of Montgomery (Oct. 7, 2014).

<sup>63</sup> *Id.*

providing two laptops and poll books for a side table designed to specifically assist inactive voters in the re-registration process. On top of these improvements, the county has purchased two tablets for EPBs, and will have one line walker in each precinct to determine if voters are in the right location. With these improvements, Wertz and his staff hope to dramatically improve the wait times for the polling places in their county.<sup>64</sup>

Randy Wertz later related that in the November 2014 midterm election the new precincts were generally over staffed. He said that this was likely because the turnout for the campus precincts was 8.4% while the other precincts in the county averaged 40%. He is convinced that this is the result of being a midterm election and that in a presidential election the new precincts will now be more prepared for a higher turnout.<sup>65</sup>

#### IV. Conclusion

Voter wait time is a pressing issue that election officials cannot put on the back burner, and long lines are the result of a variety of factors, from obsolete technology to understaffed precincts to poor polling place design. In the absence of federal mandates, state and local election officials can and are working hard to evaluate what combination of reforms will best use limited election equipment and personnel. The PCEA, ABA, and various independent researchers have determined that long lines are a solvable problem and have proposed numerous ways election officials can streamline voting procedures. Indeed, a number of jurisdictions that experienced the country's longest wait times in 2012 have already made significant improvements.

A 30-minute rule—combined with the proper recommendations for its implementation—forces election officials to deal with systemic problems that lead to long lines, rather than dealing with issues piecemeal. Additionally, a 30-minute rule would serve to increase voter confidence by making the electoral process smoother and less time-consuming, thus affording more individuals the ability to cast their vote. Ultimately, every state, county, and precinct faces different challenges on Election Day. Election administration is not a one-size-fits-all endeavor.

Respectfully submitted,

John Hardin Young  
Chair  
Standing Committee on Election Law

August 2015

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<sup>64</sup> *Id.*

<sup>65</sup> E-mail from Randy Wertz, General Registrar, County of Montgomery, to Ben Ader, Graduate Research Fellow, William & Mary Election Law Program (Jan 5, 2015, 08:28 EST) (on file with author).

**GENERAL INFORMATION FORM**

Submitting Entities: Standing Committee on Election Law

Submitted By: John Hardin Young, Chair, Standing Committee on Election Law

1. Summary of Resolution(s).

This resolution urges election administrators, officials, and legislators at the federal, state, local, territorial, and tribal levels to adopt and implement policies designed to achieve a thirty-minute maximum per voter wait time at the polls.

2. Approval by Submitting Entity.

The Standing Committee on Election Law approved the resolution on 16 April 2015.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

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

In August 2010, the Association adopted policy urging states, localities, and territories to review their election systems and recent experiences of election delays if any, in light of available data and scholarship, including the Standing Committee on Election Law's Report on Election Delays in 2012. The resolution also encouraged the enactment of appropriate legislation or administrative rules to address the causes and potential remedies for election delays, including but not limited to technological improvements to provide statewide database access in real time to all polling places; as well as urging the enforcement of the deadline for the creation of statewide databases imposed by the Help America Vote Act ("HAVA") and compliance with the deadline. The proposed resolution would complement and expand the above listed Association policy.

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

N/A

6. Status of Legislation. (If applicable)

Several bills have been proposed in the House and Senate to improve the voting process and voter wait times. In January 2015, S.212 the Lines Interfere with National Elections (LINE) Act was introduced to implement the 30-minute rule. The Streamlined and Improved

Methods at Polling Locations and Early (SIMPLE) Voting Act of 2015, H.R.411, introduced in January 2015, requires that states provide sufficient election resources in federal elections to ensure a fair and equitable waiting time and that no voter wait longer than one hour to cast a ballot. The Universal Right to Vote by Mail Act of 2015, H.R.1618, introduced in March 2015, amends the Help America Vote Act of 2002 to prohibit states from limiting an individual's ability to cast a vote by mail in federal elections.

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

If adopted, the policy can be used to encourage election administrators, officials, and legislators at the federal, state, local, territorial, and tribal levels to adopt and implement policies that work toward achieving a thirty-minute maximum per voter wait time at the polls.

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

None.

9. Disclosure of Interest. (If applicable)

There are no known conflicts of interest with this resolution.

10. Referrals.

In late April 2015 the proposed report and resolution was circulated to the following entities:

Section of Administrative Law  
Commission on Disability Rights  
Commission on Hispanic Legal Rights and Responsibilities  
Section on Individual Rights and Responsibilities  
Commission on Racial and Ethnic Diversity in the Profession  
Coalition on Racial and Ethnic Justice  
Senior Lawyers Division  
Section of State and Local Government Law

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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**EXECUTIVE SUMMARY**1. Summary of the Resolution

This resolution urges election administrators, officials, and legislators at the federal, state, local, territorial, and tribal levels to adopt and implement policies designed to achieve a thirty-minute maximum per voter wait time at the polls.

2. Summary of the Issue that the Resolution Addresses

Long wait times at the polls can lead to voter frustration and inconvenience. President Obama established the bipartisan Presidential Commission on Election Administration (PCEA) to identify best practices in election administration and make recommendations to improve the voting experience. One of the PCEA's key recommendations was the establishment of a "30-minute rule." Both the PCEA and the ABA's Standing Committee have the shared goal of pinpointing areas of concern that lead to long lines and addressing those elements of the voting experience that cause unnecessary friction for both electors and election administrators.

3. Please Explain How the Proposed Policy Position will address the issue

The 30-minute rule as proposed by the PCEA would set a nationwide standard. It would require election administrators to implement measures to ensure that no voter waits in line more than 30 minutes after arriving at the polling place. The ABA's Standing Committee on Election Law's proposed resolution and report support the adoption of an aspirational 30-minute rule, as a means of addressing long lines and potential voter frustration.

4. Summary of Minority Views

None to date.