Voter Registration: What Did and Didn’t Happen After HAVA

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Prepared for presentation at the conference “HAVA @ 10”, held in Columbus, Ohio at The Ohio State University Moritz College of Law
In the aftermath of the 2000 election, the media focused on the problems in Florida associated with voting technologies, especially the ‘chads’ that are a part of punch card voting. However, the studies done by the primary commissions and research organizations created in late 2000 and early 2001 found that voter registration was an equal culprit in the failures of America’s voting process in the 2000 election.¹ The Caltech/MIT Voting Technology Project report “What Is, What Could Be” used Census data to estimate that between four and six million voters were “lost” in the 2000 election and that up to three million of those votes were lost because of issues related to voter registration (Caltech/MIT VTP 2001). The National Commission on Federal Election Reform (NCFER) found that it was likely that one reason so many votes were lost in voter registration was because of a lack of coordination across jurisdictions within states related to voter registration.² The NCFER recommended the creation of statewide voter registration systems to improve voter registration coordination across jurisdictions within states.

The focus that these commissions and groups placed on voter registration extended concerns that the academic community have expressed for some time regarding voter registration. For example, Wolfinger and Rosenstone (1979, 1980) examined the ways in which changing voter registration requirements could make it easier to register and to vote. The strongest finding in their work was determining that moving the registration closing date closer to Election Day, including election day voter


² The NCFER was also known as the Carter-Ford Commission, after the two presidents who co-chaired it. This should not be confused with the Carter-Baker Commission, which met later in the decade.
registration (EDR), would likely increase registration and voting rates.\(^3\) These academic works provided the foundation for various electoral reforms, including the National Voter Registration Act (NVRA), which made it easier to register to vote at state departments of motor vehicles, state public service agencies, and by mail.\(^4\)

The VTP identified clearly the affect that registration difficulties can have on turnout and lost votes. Both the VTP and the NCFER identified a larger issue, related to the administration of voter registration. Both groups argued that the fragmentation of voter registration systems across local jurisdictions results in problems with voter registration for several reasons, including a failure to implement maintenance to voter registration systems and failures to account for the mobility of the American population across jurisdictions within states. In this paper, we consider the problems that were identified with voter registration pre-HAVA, the reforms contained in HAVA, and whether the post-HAVA implementation of voter registration reform actually address the problems that were identified.

**Pre-HAVA Voter Registration**

In their study of the election process after the 2000 election, the VTP was able to quantify the impact of the problems related to voter registration on turnout. Consider the following key findings they made, using data from the Census Bureau’s Current Population Survey (CPS). First, the VTP estimated that the number of potentially eligible voters in the United States was over 200 million and was increasing by approximately two percent every two years. This meant that the US was adding roughly

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\(^3\) See Nagler (1991), Leighley and Nagler (1992), Knack (1995), and Rhine (1995) for additional research regarding how moving deadlines can increase voter registration and likely turnout.

\(^4\) See [http://www.eac.gov/assets/1/workflow_staging/Page/27.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/27.PDF) for the language of NVRA.
four million registered voters to its registration rolls every presidential election. Second, the 1990s were a time of increasing rate of mobility among Americans. Between Mary 1998 and 1999, 30 million people changed their place of residence, and 40% of those people (approximately 12 million) moved across county or state lines. From March 1998 to March 1999, 30.4 million people 18 years old and older moved, with 12.9 million of those moves being inter-county moves. Together, the mobility of the US population and the natural growth of the citizen population meant that, each year, election officials across the US were, in aggregate, having to update up to 34 million voter registration files (Caltech/MIT VTP 2001).

These two issues were generally problematic. However, both the VTP and the NCFER found that these problems were exacerbated by the decentralized nature of the voter registration databases used in the US. Instead of there being a single national voter registration database, or even 50 statewide voter registration databases, voter registration was often handled on a local basis – at the county or municipal level. Without centralized voter registration databases, it was easy for voter rolls to become inflated with the names of registered voters who had moved, died, or for some other reason could no longer vote in the jurisdiction where they were registered. These problems existed alongside duplicate registrations, where a person might be registered twice – under a married name and a previous name, with and without a middle initial, and in many other ways. When local jurisdictions compared their registration rolls to their population records in the Census numbers, it was not uncommon for jurisdictions to find that they had more registered voters than was possible according to the Census.
The problem with voting records and voting systems reflected a larger issue in how Congress handled voter registration prior to the 2000 election. What Congress has done, historically, is to make general changes to voter registration laws but assume that state and local government could figure out how to implement these laws. For example, the National Voter Registration Act (NVRA) made it easier to register to vote by requiring states to make voter registration a part of the process of getting a driver’s license and other forms of government social services. And although NVRA did make voter registrations more permanent and relatively easy for the voter, it still put the primary burden of recording and maintaining these voter records in the hands of the 13,000 local election jurisdictions across the United States.

The administrative burdens associated with voter registration can be quite severe on local and state jurisdictions, especially because NVRA contained no funding for making voter registration systems more effective. The law placed a burden on local jurisdictions to keep all registration records up-to-date and no effort was made by the federal government to create or maintain an official record of American citizens who are eligible to vote. Federal laws prevented the federal government from sharing with state and local governments the tax and social security records that might be used to create a comprehensive voter registration registry.

NVRA not only delegated voter registration to local election officials (LEOs) but it also delegated voter registration to numerous other groups with whom LEOs were expected to coordinate, which caused an array of problems and concerns. Both the VTP and the NCFER found that public assistance agencies and motor vehicle bureaus often failed to deliver completed voter registration forms to LEOs in time for them to be
entered into the central election registry. Other groups that conducted voter registration drives, like political parties and community organizations, also tended to delay the delivery or fail to deliver the applications to the central election office. In addition, these groups often accepted applications that were incomplete, ineligible, or gave voters misleading information that caused voter confusion concerning the registration process. As a result of these mishaps, people arrived at the polls prepared to vote and were turned away because their name was not on the registry.

The registry problems were exacerbated because, in practice, LEOs were not only managing a central voter registry but then distributing that registry by hand to polling places on election day. Problems with the voter registry on election day could only be solved by having the precinct election officials calling the LEO, a time consuming and distracting process. LEOs, in turn, could be forced to print entire new registries in the days before the election if problems were identified or a flood of late registrations had to be processed.

Reforming Voter Registration: State-Centered Voter Registration Registries

The primary reform that was identified by the VTP, NCFER, and advocacy organizations such as Demos, was the centralized, computerized, state-centered voter registration registry (not heretofore but, now and hereinafter, referred to as state registries). The rationale for a state registry was simple: states are central repositories for most of the data that underlie a voter registration system. The department of motor vehicles, death statistics, and public service agencies all are state-level entities. The state is, therefore, best equipped to coordinate the movement of data across these organizations. A state registry also has the potential to identify more easily duplicate
registrations caused by voters moving within and across counties. A state registry can also help to ensure that there is a single point of responsibility for voter registration within a state. The NCFER touted the Michigan state registry model as one worthy of duplication because of its clear coordination across state agencies and state databases.

**HAVA and Voter Registration**

The reports by the VTP and the NCFER played a role in helping to shape the Help America Vote Act (HAVA) of 2002. Although HAVA, primarily focused on addressing issues associated with voting technologies, there were several sections of the law that addressed issues with voter registration. It is worth quoting in full the primary section of HAVA related to the statewide voter registration database, because it is the interpretation of this section that many view as most problematic about the post-HAVA voter registration world.

**SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.**

(a) Computerized Statewide Voter Registration List Requirements.-- (1) Implementation. — (A) In general.--Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.
(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
(iv) The computerized list shall be coordinated with other agency databases within the State.
(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception.--The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

SEC. 305. METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.
The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

This section contains several clauses that seem to require a very specific type of voter registration system be used to meet the requirements of this section of HAVA. The voter registration system should be:

1. a state-administered, single, uniform, official, centralized, interactive computerized statewide voter registration list;

2. the state single system for storing and managing the official list of registered voters;
3. the list of every legally registered voter in the State including a unique identifier assigned to each voter;

4. coordinated with other agency databases within the State;

5. immediately accessible by election officials in the State;

6. be as the official voter registration list for all Federal elections.

However, the law contains two important exceptions. First, the law does not require states with Election Day Voter registration to have such a registry. Second, the law explicitly states that “the specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State,” which suggests that Congress may have been giving the states a great deal of discretion in interpreting the requirements noted above. The question would become how this last clause of this section would be interpreted by the Election Assistance Commission (EAC) and the states.

The goal of the law, prior to the final clause, was clearly centered on ensuring that every state had one voter registration database, controlled, managed, and administered by the state, that provided all election officials in the state with real time, current data on registered voters. The subsequent sections of this section of the law focus on keeping the voter registry “clean” and the process for adding and deleting voters from these rolls and the compliance requirements under HAVA and NVRA that were to be followed. However, these sections too center on the idea of a single state-run database.

The EAC: Defining Statewide Voter Registration – Top-Down v. Bottom-Up
The EAC offered guidance regarding how to interpret the state registry requirements in HAVA, guidance which, of course, had no power in law but was intended to help states navigate the questions associated with what was a statewide registry. The guidance made clear that the state was responsible for implementing this aspect of the statute and for ensuring that the state’s voter registry met the standards for being a single, uniform, centralized, interactive system. The guidance notes that LEOs have a role in doing list maintenance and in doing entry into the system but that states are ultimately responsible for the system’s implementation and administration. As the EAC noted:

A State database hosted on a single, central platform (e.g., mainframe and/or client servers) and connected to terminals housed at the local level (often referred to as a “top down” system) is most closely akin to the requirements of HAVA. However, other database systems may also meet the single, uniform list requirement as long as they function consistent with the general rule [that it is a single, uniform, centralized interactive system].

The top-down system is the model that was suggested in the reports of the NCFER. It also suggests, in design, that the state would be playing a much larger role in the voter registration process than was historically the case. The idea was that the state would be the key actor in facilitating the interactions between the state voter registry and the other state databases.

However, the other format for doing a statewide voter registry is through a “bottom-up” system. The bottom-up idea is that states would “tie together” the many LEO databases in a state and combine their data into a single, statewide database. As the EAC described it,

a State database that gathers or uploads its information from local voter registration databases to form the statewide voter registration list (often
referred to as a “bottom up” system) may serve to meet the single, uniform list requirement. This is true as long as the State database, the data and the data flow are defined, maintained, and administered by the State. Thus, the State database must house the only official list of registered voters; establish interactive and compatible software and user protocols that allow each local jurisdiction to seamlessly transfer data to and from the State; require local databases to routinely upload or electronically send registration information to the State; and ensure that the data that forms the official voter registration list is regularly downloaded or otherwise sent electronically to local officials so that they may have immediate access to the entire official list.

It is important to understand that in a “bottom up” system the official statewide voter registration list is that list hosted on the State’s database and downloaded to local jurisdictions. The list remains static until the State electronically provides the next, updated version. Registration information held solely in a local database is not a part of the official registration list until it is electronically sent to the State and added to the official list.

The key question here is whether a bottom-up database really a state database that consolidates local data, adds state administrative value added (the database maintenance, searches for duplicates, coordination across state databases for matching, etc.) or whether the database is merely “touching base” at the state level but is really just a set of LEO databases in practice.

**Top-Down v. Bottom Up: Is there a Difference?**

In the next section, I briefly examine the possible affects of the creation of statewide voter registration databases on voter registration problems reported at the polls and also examine the differences that may exist between states with top-down systems and those with bottom-up systems, to determine if there are measurable differences in problems with voter registration at the polls, based on the type of voter registration
system states have. In Figure 1, below, I show the percentage of registered non-voters who reported that they did not vote because of registration problems for the 2000, 2004, and 2008 presidential elections. In 2000 and 2004, few states had statewide voter registration systems. However, by 2008, most states – with of course California and New York among the very few perpetual non-compliant states – had statewide voter registration databases in place. We see that there is an almost one (1) percentage point decline in the number of individuals reporting that they did not vote because of registration problems between 2000/2004 and the 2008 election.  

Figure 1: Percentage of Voters Reporting Not Voting Because of Registration Problems

It is important to note that the Census Bureau underestimates the frequency of problems voting because of the way that they report their data. The Census reports all non-respondents, including people who were not asked the question, in the denominator of their percentages. Doing so reduces the number of people reporting a registration problem by 3/10 of 1 percent. In an election with 100 million voters, that equals 300,000 people.
In the 2008 election, with most states having adopted statewide voter registration systems, it is possible to determine if there are advantages to using a top-down system compared to a bottom-up system. We include as bottom-up California, which to this day does not have a statewide voter registration system. In Table 1 the analysis here is quite basic – it does not control for any socio-demographic or political factors – but we do see that there is a gap, just over 1 percentage point, between those reporting a problem in bottom-up states compared to those in top-down states. If the rate of problems had been the same in bottom-up states as it was in top-down states, approximately 80,000 fewer people would have reported having a registration problem.

Table 1: Top-Down v. Bottom Up and EDR v. Non-EDR Registration Problems

<table>
<thead>
<tr>
<th>Registration Problem at Time of Voting</th>
<th>Type of Statewide Voter Registration System</th>
<th>Election Day Voter Registration States</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Problem</td>
<td>Top-Down 5.7</td>
<td>No EDR 6.5</td>
</tr>
<tr>
<td></td>
<td>Bottom-Up 6.9</td>
<td>EDR State 3.7</td>
</tr>
<tr>
<td></td>
<td>Total 6.3</td>
<td></td>
</tr>
</tbody>
</table>

In the bottom half of Table 1 we examine the differences in reports of non-voting because of voter registration problems between EDR states and non-EDR states as a point of comparison. We know that EDR is explicitly designed to solve registration problems at the polls and that many studies have found that EDR boosts turnout, so it makes a nice point of comparison for examining the impact of top-down/bottom-up voter

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6 Note that here, we are reporting the Census data where we have dropped the non-respondents from the analysis.
registration systems on reports of problems. The differences in reports of problems between EDR and non-EDR states are large, almost three (3) percentage points, and much larger than the differences between registration problems in top-down v bottom-up states.

In Table 2, we consider the reasons why people report not being registered to vote to determine if there is some difference between top-down and bottom-up registration states. We again use EDR and non-EDR states as a point of comparison. First, we see that there are differences between the top-down and bottom-up states but these differences are relatively random. There is not some systematic difference that explains the difference between the two categories. Second, we see interesting responses to the EDR non-EDR categories, especially that 6.8% of respondents in EDR states reported they are not registered because they didn’t meet registration deadlines, even though the registration deadline is Election Day! This probably reflects that some people are not aware that EDR is a possibility for them.

Table 2: Reasons Why Not Registered to Vote

<table>
<thead>
<tr>
<th>Type of Statewide Voter Registration System</th>
<th>Didn’t meet registration deadlines</th>
<th>Did not know where or how to register</th>
<th>Did not meet residency requirements</th>
<th>Permanent illness or disability</th>
<th>Difficulty with English</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top-Down</td>
<td>14.9</td>
<td>3.4</td>
<td>4.1</td>
<td>5.6</td>
<td>0.9</td>
</tr>
<tr>
<td>Bottom-Up</td>
<td>14.4</td>
<td>4.3</td>
<td>3.2</td>
<td>5.2</td>
<td>2.0</td>
</tr>
<tr>
<td>Total</td>
<td>14.7</td>
<td>3.8</td>
<td>3.7</td>
<td>5.4</td>
<td>1.4</td>
</tr>
<tr>
<td>Election Day Voter Registration States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No EDR</td>
<td>15.5</td>
<td>3.8</td>
<td>3.7</td>
<td>5.4</td>
<td>1.5</td>
</tr>
<tr>
<td>EDR</td>
<td>6.8</td>
<td>3.9</td>
<td>3.9</td>
<td>5.5</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>14.7</td>
<td>3.8</td>
<td>3.7</td>
<td>5.4</td>
<td>1.4</td>
</tr>
</tbody>
</table>

Conclusions

A CONCLUSION WILL BE HERE EVENTUALLY.
BIBLIOGRAPHY

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