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EXECUTIVE SUMMARY

THE SUBJECT OF ELECTION REFORM has garnered enormous public attention since the dramatic 2000 presidential election. From voting machines to provisional ballots to voter identification requirements, the “nuts and bolts” of the country’s election systems have generated concern across the political spectrum. Yet in the face of considerable disagreement over what changes should be made, the debate has too often proceeded without an adequate understanding of existing rules and practices. Particularly in need of scrutiny is how the changes required by the Help America Vote Act of 2002 (“HAVA”), passed by Congress in response to the 2000 presidential election, as well as many recent state-initiated changes, have altered the election environments at the state and local level.

This report seeks to help fill that gap by describing the results of a yearlong study of election administration in five key Midwestern states: Illinois, Michigan, Minnesota, Ohio, and Wisconsin. Not only have these five states historically played a pivotal role in national politics, but they also provide examples of a variety of approaches to election administration. The views and experience of these five states – some five years after HAVA’s passage and one year before the 2008 general election – are therefore of significance not only regionally but also nationally.

THE ECOSYSTEM MODEL

We have divided the election administration topics addressed in this report into nine areas: (1) institutional arrangements; (2) voter registration; (3) challenges to voter eligibility; (4) voting technology; (5) early and absentee voting; (6) polling

place operations; (7) ballot security; (8) provisional voting; and (9) vote counting, recounting, and contests. We approach this study with the conviction that, within each state, these nine areas should be understood as constituting an election “ecosystem.” By that, we mean that changes in any one part of the system are likely to affect other areas, sometimes profoundly.

Part I of the report (Chapters 1 and 2) sets forth the goals and methodology of our report. A healthy election ecosystem should promote three core values: access, integrity, and finality. The value of access seeks to ensure that all citizens in our representative democracy can readily and equally participate in the selection of those who represent them (and in decisions regarding ballot issues). The value of integrity seeks to ensure that the election process occurs in a fair, accurate, and transparent manner that protects voter privacy and minimizes the potential for fraud. The value of finality recognizes that the outcomes of elections need to be determined expeditiously and conclusively. These values are sometimes in tension with one another, but a sound election ecosystem must serve them all. As part of our analysis of the election laws and practices of the five states, in each state we conducted a series of interviews with state and local election officials, as well as with others knowledgeable about a particular state’s election system. Though focused on these five states, the study provides insights on election administration that are of national importance.

FINDINGS IN THE FIVE STATES

Part II of the report (Chapters 3 through 7) draws upon the nine areas of analysis to de-

scribe the distinctive features of each state's system for administering elections, including the manner in which the state has endeavored to comply with HAVA's requirements and significant issues that have emerged in each state in recent years. Each state chapter is followed by a summary description of that state's law and practice in each of the nine areas of election administration. We discuss the states in an order roughly reflecting the health of their election ecosystems, beginning with the states having the most pressing problems.

OHIO FINDINGS

No state's election system has received greater attention in recent years than Ohio's, and for good reason. The state's recent history exhibits serious issues in a variety of areas, including voter registration, provisional ballots, voter identification, and voting technology. In the 2004 election, voters in some parts of the state reportedly experienced lines of up to ten hours. Cuyahoga County, where Cleveland is located, has had some especially troubling problems in recent elections, including difficulties in transitioning to new voting technology and polling places opening late. Key features of Ohio's election ecosystem are:

- *The prominent role of the secretary of state*, including former Secretary of State Kenneth Blackwell and his successor, Jennifer Brunner;
- *Deficiencies in the state registration database* required by HAVA, which falls short of the goals set by Congress and the needs of local election officials;
- *Variations in the administration of elections across counties*, especially in provi-

sional balloting, the training of poll workers, and election technology;

- *Troubles in Cuyahoga County*, Ohio's most populous county, which includes Cleveland; and
- *Persistent election litigation*, including over twenty active suits pending against the state as of January 2007, relating to every aspect of Ohio's election ecosystem.

ILLINOIS FINDINGS

Illinois has a long reputation for political corruption, and not without some justification. Its history of election fraud and abuse, although diminishing, has contributed to a culture of suspicion and lack of cooperation between election officials that disserves the state's highly decentralized ecosystem. The various counties and cities with responsibility over elections conduct their business in many different ways. The state's biggest challenge is to put the past aside and work together to create a reasonably consistent experience for every voter and a reasonably consistent treatment of every ballot. The distinctive features of Illinois' election ecosystem include:

- *Decentralized administration* with a relatively weak central elections authority that does not effectively ensure consistency across counties and cities;
- *A history of fraud* that, while diminishing, continues to pose risks and to foster distrust and lack of cooperation among the highly decentralized local election officials;

- *Chicago and Cook County*, two huge, separate election jurisdictions that face a level of complexity in administering elections that is unsurpassed in the Midwest;
- *Inconsistencies across jurisdictions* within the state, on everything from provisional voting to post-election procedures, a phenomenon largely attributable to the lack of a strong central authority; and
- *The risk of litigation*, especially Equal Protection claims similar to those brought in Ohio, should there be a close election.

MICHIGAN FINDINGS

Michigan has experienced fewer election administration problems than Ohio or Illinois in recent years, although Detroit’s mishandling of absentee ballots in that city’s 2005 municipal election was the culmination of years of concern about the city’s election administration. Michigan is now implementing a voter identification requirement that had been on hold for a decade until the state supreme court, divided on party lines, approved it earlier this year. The partisan split in the state judiciary over this issue highlights a concern over whether state courts generally are well-suited to handle potential election litigation in a manner that will inspire public confidence. Key features of Michigan’s election ecosystem are:

- *The predominant role of municipal officials*, including over 1,500 city and township clerks who have primary responsibility for running elections.
- *A healthy working relationship between state and local election officials*, marked by the responsiveness of the state’s bu-

reau of elections to municipal clerks, which contributes greatly to consistency in the administration of elections;

- *Michigan’s “Qualified Voter File,”* now almost a decade old, which serves as Michigan’s HAVA-compliant statewide voter database and has been a model for other states;
- *A uniform system of optical-scan voting*, now in use throughout the state; and
- *Concern about the state supreme court*, now bitterly divided along party lines on voter identification and other issues, should potentially determinative election litigation come before it.

WISCONSIN FINDINGS

Wisconsin’s current election system retains features of the political culture associated with the LaFollette era of progressive reform. Since 1976, the state has permitted voters to register at the polls on Election Day, a reform that has spurred exceptionally strong turnout. Wisconsin has mostly been free of the accusations that have dogged some election officials in other states, particularly those elected on a partisan basis. At the same time, Wisconsin’s decentralized system of running elections – in which responsibility rests among 1,851 municipal clerks – has a downside. Foremost among the challenges is the difficulty of achieving uniformity in the administration of elections across the state. Key features of Wisconsin’s election ecosystem are:

- *A culture of nonpartisanship and professionalism* in the administration of elections, which helps ensure consistency among Wisconsin’s municipalities;

- *An Election Day Registration system*, which has successfully increased turnout without increasing fraud, and has the added benefit of reducing reliance on provisional ballots;
- *Problems in the state voter registration database*, including slowness in the system, the inability to check voter records against other records, and problems in generating absentee ballots;
- *A system for resolving post-election disputes* that likely would be seriously tested in the event of a close statewide race, especially if Wisconsin were the critical state in a presidential election.

MINNESOTA FINDINGS

Minnesota, another Election Day Registration state, has the highest percentage of voter participation in the nation, with virtually no evidence of unlawful voting. Elections in both 2004 and 2006 were widely regarded as having gone smoothly throughout the state, with minimal problems. Yet in the recent past the state also has weathered some serious criticism that its election officials, particularly its former elected secretary of state, have behaved in an excessively partisan fashion. And its underlying culture of cooperative decisionmaking shows some signs of waning, thus increasing the chances that the state's election processes may become a casualty of partisanship. Key features of the state's election ecosystem are:

- *A healthy political culture* that emphasizes both civic engagement and electoral integrity;
- *The central role of the secretary of state* in

Minnesota election administration, though sometimes one that has been played controversially;

- *The importance of Election Day Registration*, which is largely responsible for the state's exemplary turnout and has been a model for other states; and
- *Uniform technology and sound procedures*, which help promote consistent and fair treatment of voters across the state.

GENERAL OBSERVATIONS AND RECOMMENDATIONS

Our examination of Ohio, Illinois, Michigan, Wisconsin, and Minnesota yields valuable insights for election administration across the United States. The specific background and traditions of each state substantially influence its election ecosystem. Nevertheless, we think it possible to draw some general lessons, which are set forth in Part III (Chapters 8 through 10). Our key observations and recommendations include:

- *Statewide equality should generally trump local autonomy.* It is critical for states to accord equal treatment to all their citizens, especially with respect to the casting and counting of ballots. Therefore, although each state ought to do more to foster local experimentation, this should occur only within a framework that guarantees the essential equality of the right to vote.
- *A strong state elections authority is critical.* The health of a state's election ecosystem depends on having an effective state elections authority, which can promote statewide consistency, avoid any

appearance of bias, and provide helpful guidance to local election officials. State legislatures must give their election officials the tools to enforce consistency in the application of state law across counties and municipalities.

- *States should work to improve both access and accuracy by relaxing barriers to registration and complying with existing federal laws governing registration.* One way of doing this is Election Day Registration (“EDR”), a reform that has achieved great success in increasing participation in Minnesota, Wisconsin, and the other states in which it has been implemented. EDR also has the side-benefit of virtually eliminating the need for provisional ballots, although for a state fearful of EDR, an alternative would be “provisional EDR,” in which new registrants at polling places would cast provisional ballots that would count upon verification of their registration information.
- *States should provide clear guidance on provisional ballots.* States that rely on provisional ballots must set clear rules for both who should receive a provisional ballot and the circumstances under which provisional ballots will be counted. It is also critical that the process for verifying and counting provisional ballots be transparent.
- *States should consider in-person early voting instead of expanded absentee voting.* In-person early voting promotes convenience, without the same risks of fraud and error that exist with liberalizing absentee voting by mail.
- *Election integrity efforts should focus on “insider” fraud.* Problems of election

fraud today almost always involve absentee voting or insider corruption. States should avoid instituting practices that might constitute barriers to voter participation in the name of preventing fraud and focus on refining the checks against insider fraud.

- *State and local officials must continue to enhance poll worker recruitment and training.* Among the greatest challenges facing our democratic system is the difficulty in staffing polling places with an adequate number of sufficiently trained workers. Larger, economically depressed urban areas are especially likely to have problems. Local entities should be encouraged – and funded – to experiment with new ways of attracting and preparing poll workers.
- *States should reexamine their post-election procedures, to ensure the evenhanded and prompt resolution of disputes.* It is of the utmost importance that vote counting and recounting be conducted in an evenhanded manner, either by nonpartisan officials or bipartisan teams. None of these five states has in place a final arbiter of a post-election dispute with the institutional credibility that both sides would perceive as fair. In that sense, all of these states – and probably most states in the country – have failed adequately to prepare for the next election.
- *Congress should revisit the statute governing presidential election disputes.* The timetable for resolving presidential elections needs to be revised to give states more time to resolve post-election disputes before the “safe harbor” date under federal law (now thirty-five days after the election).

SPECIFIC REFORMS FOR THE FIVE STATES

Chapter 10 recommends priority reforms tailored to the existing election ecosystems of each of the five states in this study. We have kept our list to the three most important priorities, both to maximize the ability of policymakers to focus on a few critical goals and to reduce the prospects of destabilizing change.

OHIO REFORMS

- Develop bipartisan leadership over election administration.
- Replace the elected chief elections officer with a nonpartisan statewide elections director.
- Create nonpartisan tribunals to resolve election disputes.

ILLINOIS REFORMS

- Replace the state board of elections with a nonpartisan statewide elections director.
- Increase trust in the integrity of state elections by making local election officials more accountable.
- Create nonpartisan tribunals to resolve election disputes.

MICHIGAN REFORMS

- Update the Qualified Voter File.
- Enhance the chief election officer's ability to ensure consistency among municipalities.

- Improve poll worker recruitment and training.

WISCONSIN REFORMS

- Create a strong election division of the new Government Accountability Board.
- Improve the Statewide Voter Registration System.
- Reform the post-election dispute resolution processes.

MINNESOTA REFORMS

- Improve poll worker recruitment and training.
- Experiment with in-person early voting, instead of expanding mail-in absentee voting.
- Develop nonpartisan institutions for administering elections and resolving disputes.

We close with one final, overarching theme that has repeatedly arisen throughout our study: Improvement of each state's election ecosystem depends upon nonpartisan and professional administration at every level, something that will require *structural* and not just attitudinal changes. We are optimistic about the prospects for reaching this goal, but recognize that it will take dedicated and concerted efforts on the part of elected officials, administrators, and citizens alike to get us there.