The 2000 presidential contest was a disaster and, since then, disturbing election problems have occurred in Ohio, Colorado, Florida and elsewhere. Will the 2008 presidential election be similarly flawed, or will it go smoothly? To help answer this question, Election Law @ Moritz researched dozens of election law issues over 17 states, categorized the approach of each state, and plugged the data into a series of interactive maps and charts (see also our analysis of the states with the greatest risk of pre-election litigation going into November). Interactive maps and charts. The states were chosen based on our analysis of whether they might be critical to the result of the presidential election. We divided the issues into ten groups: Institutional arrangements, voter registration/statewide database, challenges to voter eligibility, provisional voting, early and absentee voting, voting technology, polling place operations, ballot security, emergency preparedness, and post-election processes (counting, recounting and post-election lawsuits). Key conclusions are summarized immediately below, while other conclusions are contained in the detailed discussion of each of the ten areas.

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Text in red italics denotes a hyperlink.
Key Conclusions

• **Institutional arrangements.** Most states could do more to improve the quality and extensiveness of the training required of local election administrators. Many states should also look at the entity that is responsible for counting provisional ballots and consider whether that entity should not include some more representation from the minority political party. The party affiliations of local election officials are easy to determine in some states, and difficult to determine in others. On average, more election administration problems seem to have occurred in states where it is easy to identify political affiliation.

• **Voter registration/statewide database.** The federal Help America Vote Act asks that states make some attempt to match the personal information contained on incoming voter registration applications against information contained in external government databases. However, the language of HAVA is vague, and in most cases there is no black-letter state law to clarify the rules. In the absence of any clear guidance, administrations have simply created their own rules, most of which are not contained in any publicly available document. Fortunately, the current practice in many states allows most voters to cast a regular ballot at the polls, even if officials were unable to match their information.

• **Provisional voting.** There is no one standard for determining whether a provisional ballot counts, but a host of standards, each of which only applies in certain situations. The most generic standard applies when the voter’s name is not on the precinct roster, in which case the ballot will generally count if the voter is registered and eligible. This standard does not vary much across states. However, there is a great degree of interstate variance on the issue of whether officials should count provisional ballots that are cast in the wrong precinct, and also on the issue of whether officials should count provisional ballots when the voter failed to present ID at the polls.

• **Voting technology.** Most of the 17 states that will be important to the 2008 presidential result use optical scan technology predominately or exclusively. However, Colorado, Indiana, North Carolina, Nevada, Ohio, Pennsylvania and Virginia use significant numbers of touchscreen voting machines. Pennsylvania, Indiana, Colorado and Virginia do not require touchscreens to be equipped with a paper trail.
Key Conclusions

- **Polling place operations.** The required amount of poll worker training varies widely and, in some states, it is not required at all. States could do more to make their training programs more frequent and more robust.

- **Ballot security.** Various states require different forms of ID at the polls, but that is not the real issue. The real issue is the legal consequence of failure to present ID. We found that only Colorado, Missouri and Indiana require physical ID of all voters, force voters without ID to cast a provisional ballot, and refuse to count provisional ballots unless the voter later returns with some form of ID. In the rest of the states, most voters without ID should nevertheless be able to cast a ballot that will count without post-voting follow-up from the voter.

- **Emergency preparedness.** Most states have little or no law telling officials what to do if there is a violent natural disaster or other emergency that interferes with the conduct of an election. While this does not mean that officials are not prepared for such occurrences— they are free to develop their own voluntary preparations— it does mean that courts would have a very difficult time trying to decide a lawsuit by a candidate who claimed he or she would have won the election but for a disaster that interfered with voting. States should do more to develop clearer rules in this area, to avoid putting a court in the position of having to make up its own rules on an ad hoc basis. Many states also have little or no policy telling officials or the courts what to do in case of a ballot shortage or touchscreen malfunction that interrupts voting.

- **Post-election processes.** The deadlines for approving official results and other post-election processes in many states are late enough that there is a risk of bumping up against the federal safe harbor deadline that protects states from having their choice of president disregarded. In 2000, the US Supreme Court used this risk as a justification for ending further attempts at obtaining an accurate vote count in Florida. However, there is not necessarily any reason for concern in this area, because officials do not generally take all of the time they are legally permitted to approve official results. The true danger is that a few states are still relying on a vague “intent of the voter” standard to determine whether a ballot with nonstandard markings should count. This is similar to the standard that caused the delays and confusion in 2000.
Institutional Arrangements

Local administrator training. Requirements for the training of local election officials vary widely. The strictest state, North Carolina, requires LEOs to attend an initial four-week certification course, complete with a test at the end (it also requires LEOs to attend three training sessions every two years thereafter). Other states—Minnesota and Oregon—require administrators to attend training every year (Florida has yearly training that is non-mandatory, but has a $2,000 bonus attached to it, and everybody attends). The most lax states—Colorado and Pennsylvania—only require that training be offered to new LEOs and also make that training completely voluntary. Other states fall somewhere between these two extremes.

Policy recommendation: North Carolina’s four-week initial training course for LEOs is a good idea. This extensive training should give officials enough time to assimilate their new knowledge, network with one another, and develop a team attitude. It is also a good idea to test officials at the completion of training, something that most states actually do not do. North Carolina also requires training before each major election. This is better than simply requiring training every year, because it allows officials to be briefed on any important changes that have recently developed. The only remaining question is how to incentivize officials to attend training. On this point, it is probably not enough to simply have a rule saying that training is “required.” This kind of rule means nothing unless state law prescribes an actual consequence for failure to attend the “required” training. Practically speaking, LEOs are generally not accountable to the chief election authority and the authority has no real power over them. The solution to this conundrum is financial incentives, such as the $2,000 bonus in Florida. If state law required that LEOs pay be docked by $2,000 for failure to attend, and offered a $2,000 bonus for attendance, attendance would be maximized.

Partisan composition of local election officials. All but seven of the states we researched assign responsibility for aggregating precinct returns to some kind of special canvassing board. Partisan composition of entities that aggregate results obtained from different precincts. These canvassing boards are separate entities from the local election officials that govern most parts of elections, although...
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in many cases the LEO is one of the members of these boards. The seven states that do not use special canvassing boards assign responsibility for precinct returns to the same LEO that performs most other election duties. These states are Indiana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, and Virginia. The LEOs in Indiana, North Carolina, Ohio, Pennsylvania, and Virginia are bipartisan boards, such that one could say that, when they are aggregating returns, they function as a sort of “canvassing board.” However, the idea of a canvassing board is really something different, because it is a board that is a separate entity from the LEO.

Most states that use separate canvassing boards do not require that these boards be evenly bipartisan, or even include one member of the minority party. These states include: Florida, Iowa, Michigan, Minnesota, Nevada, New Mexico, and Washington. Colorado, Missouri, and Wisconsin require that at least one member of each political party be on the canvassing board. Policy recommendation: Every state should aggregate precinct returns using an evenly bipartisan board. Election officials have admitted to Moritz in the past that it is possible to corrupt the results of an election during aggregation by “forgetting” certain precincts or committing other errors. The aggregation process might also be abused to cover up embarrassing mistakes or make judgments that members of the minority would, if they knew about them, deem unfair.

Partisan composition of provisional ballot-counting entities. There are two types of entities that count provisional ballots. The first type of entity is the local election officials themselves. The clerk or board of elections counts the provisional ballots. Some clerks are elected, some appointed, and boards of elections are generally bipartisan. States that have provisional ballots counted by an elected or appointed clerk include Colorado, Michigan, Nevada, New Mexico, Oregon, and some parts of Missouri and Wisconsin. States that have provisional ballots counted by a bipartisan board of elections include Indiana, North Carolina, Ohio, Pennsylvania, Virginia and the more urban parts of Missouri and Wisconsin.

The other type of entity that can count provisional ballots is a canvassing board. The canvassing board typically includes
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the relevant LEO and some other officials, perhaps the leaders of the local political parties or a local judge. Only two states, Florida and Iowa, used canvassing boards to count provisional ballots. Iowa requires that its provisional canvassing boards be evenly bipartisan, but Florida does not. Policy recommendation: The rules and standards for counting provisional ballots are often unclear or disputable, so it is probably best to require that representatives of both major political parties participate in the counting process. Florida and other states permit observers at their provisional counting process, but that it not good enough, because there is no guarantee that observers of both parties will reliably show up to observe.

**Partisan composition of statewide canvassing authority.** Six of the 17 states we studied assign primary responsibility for the statewide canvass to an elected Secretary of State. They are: Colorado, New Hampshire, Ohio, Oregon, Pennsylvania and Washington. Wisconsin also assigns responsibility to a single individual, the chairperson of the chief election authority, the governmental accountability board.

The rest of the states perform the state canvass using some kind of special canvassing commission. Nevada and New Mexico have canvassing commissions composed of elected officials, and there is no requirement for minority party representation. Florida, Minnesota and Missouri use a canvassing commission of individuals, some of whom are elected, and others appointed, but none of whom must be from the minority party. Indiana, Michigan and North Carolina use state canvassing boards that must be evenly bipartisan. Virginia’s state canvassing authority, the State Board of Elections, is a three-member board with one member of the minority party.

**Selection of local election officials.** Five states we researched—Indiana, North Carolina, Ohio, Pennsylvania, and Virginia—have bipartisan boards governing elections in all local jurisdictions. Missouri and Wisconsin have bipartisan boards in some jurisdictions (mostly large cities) but elected clerks in others. The rest of the states put a single individual—a county or municipal clerk or auditor—in charge of elections. Colorado, Florida, Iowa, New Mexico, and Washington use elected individuals (although Miami’s LEO is appointed). New Hampshire uses appointed individuals exclusively. Oregon generally uses elected individuals, but in three of the ten largest counties there is an appointed LEO. Nevada generally uses elected individuals,
but the vast majority of individuals vote under appointed LEOs in the two largest counties. About half of the clerks in Michigan’s largest municipalities are elected while the other half are appointed, although the Detroit clerk is elected. LEOs are appointed in Minnesota’s five largest counties, and seven of the ten largest counties. The names, method of selection, and party affiliation of each state’s LEOs may be found [here].

Party affiliations of LEOs. We attempted to determine the party affiliations of LEOs in most of the 17 states we researched. However, we did not research the party affiliations of LEOs in Indiana, North Carolina, Ohio, Pennsylvania, or Virginia, in which elections are run by bipartisan boards of election. The party affiliation of LEOs in the remaining states indicates that LEOs are generally Democrat-leaning in Iowa, New Mexico, and Washington (see Figure 1, below, which shows party affiliation of the top election administrators in each state, based on the populations of their respective local jurisdictions). In Colorado, Florida and Missouri, about half of prominent LEOs are Republican, and about half Democrat. None of the 17 states we researched had predominantly Republican LEOs. We were unable to determine the party affiliations of all or almost all the officials in Michigan, Minnesota, Nevada, New Hampshire, Oregon, and Wisconsin. Observation: It seems significant that, with the exception of Iowa, the states in which the political party of LEOs is most readily identifiable also happen to be states in which significant problems or controversies have occurred since 2000. Missouri has seen litigation over voter ID, NVRA implementation, and provisional ballots. New Mexico has seen litigation over voter ID, litigation over regulations governing third-party voter registration organizations and, almost, litigation over provisional ballots. Washington has been sued over HAVA matching provisions and provisional ballots, and experienced a very ugly gubernatorial election contest following the 2004 election. And Florida—the state in which it has been easiest to identify party affiliation—has experienced the most conflict of all. On the other hand, there has been little or no significant election administration litigation in Michigan, Minnesota, Nevada, New Hampshire, Oregon, or Wisconsin.

This analysis suggests a certain rule of thumb: Where the party affiliations of election administrators are readily identifiable in the news and elsewhere, it is reasonable to suspect that the culture of the state is a more partisan
one in which conflicts are more likely to occur. Where the party affiliations of election administrators are not readily identifiable, it is reasonable to suspect that the culture is a more cooperative one in which conflicts are less likely to occur. This rule of thumb, however, would not apply to states with bipartisan boards. Because the party affiliations of the directors of those boards are often difficult to determine, the rule of thumb would suggest that these areas are less partisan. However, that is not the case. Rather, because bipartisan boards are often created to guard against partisanship and corruption, they tend to exist in places that are perceived to have more partisan, and potentially corrupt, administrative cultures. For instance: Ohio, Pennsylvania, Philadelphia, Chicago, and East St. Louis.

**Other information concerning institutional arrangements:** Party affiliations of state chief election officials.

**Voter registration/statewide database**

**Registration deadline.** Almost all states require individuals wishing to use the regular voter registration procedure to effectively register between three and four weeks before election day. Oregon has the most generous deadline of 21 days before the election, while Michigan, Ohio, Pennsylvania and Washington all require voters to submit their registration applications a relatively strict 30 days before the election. Except for Iowa, Minnesota, New Hampshire and Wisconsin, all of which have election day registration, the deadlines for the remainder of states fall between the two extremes of 21 to 30 days before the election. Policy recommendation: State policymakers should consider adopting election day registration. It is not necessarily appropriate for every state, and may be especially inappropriate in states with a reputation for fraud. Nevertheless, election day registration could be a valuable part of many states’ election systems by reducing problems associated with failure to register, HAVA database matching conflicts, and provisional voting. It could also increase voter turnout.
Notice of registration error. All states provide some sort of notice to voters when those voters submit voter registration applications that are not sufficiently filled out or suffer from other defects. Ohio law, like the law of all of the other 17 states we researched, used to explicitly require this type of notice to voters, but the explicit language was recently removed. Nevertheless, materials obtained from the Ohio Secretary of State’s website indicate that county boards of election should still be sending out notice, despite the requirement’s removal from black-letter law. Note that just because a state gives voters the right to notice of error, that does not mean that voters have the right to correct the error after the normal voter registration deadline. Rather, our research indicates that most states do not offer this opportunity, although some do (see next section). It is important to note that the laws of most states do not say when notice of error must be sent out, creating the risk that voters will not learn of the error until the registration deadline has passed and it is too late.

Opportunity to correct defective registration after regular deadline. Some states permit voters who submit flawed registration applications to amend those applications after the registration deadline and still have them be effective for the upcoming election. However, there is no statute or administrative regulation addressing the issue in 7 of the 17 states we have researched (Michigan, New Mexico, Ohio, Pennsylvania, Virginia, and Wisconsin). Colorado, Nevada and Washington permit voters to correct after the deadline, while Florida, Indiana, Nevada, North Carolina, and Oregon allow certain types of corrections but not others. Iowa and Minnesota do not allow corrections after the deadline per se, but EDR solves this issue (EDR is also available in New Hampshire and Wisconsin, where it is unclear whether officials allow corrections to ordinary applications after the deadline).

Policy recommendation: Laws should require that notices of error be sent out promptly (say, within 3 days of rejection) so that voters still have an opportunity to correct before the deadline. However, it would be even better for states to permit corrections after the deadline. As long as the voter meets the “safe harbor” deadline by submitting their original application on time, they should be permitted to correct. The number of applications that would have to be corrected would probably be small enough that it would not overwhelm LEOs right before the election. Nevertheless, as insurance against that possibility, it might be best to prohibit attempts to correct that occur too close to the election (for instance,
the day before the election). A reasonable policy would be to permit corrections at any time prior to the “point of no return,” at which the value to society of registering still more voters no longer justifies whatever cost is represented by distracting election officials from their other duties. Policymakers could consult with election officials to determine where this point of no return lies. Allowing correction up to that date would give individuals enough time to receive notice and attempt to correct, while still protecting officials from a flood of corrections at the very time they are being overwhelmed by election day preparations.

**HAVA database matching standards.** The Help America Vote Act includes some language that has caused states to develop information technology procedures that attempt to match the personal information contained on incoming voter registration applications against information contained in state department of motor vehicle or federal Social Security Administration databases. Part of the idea behind the matching procedures is to prevent fraud, eliminate old registrations, and ensure accuracy. Under HAVA, successful matching also exempts people who are voting for the first time and who registered by mail from having to comply with the voter identification requirements that ordinarily would apply to them under federal law. However, HAVA left it up to the states to determine most of the details of the matching procedures themselves, and the result is that different states treat the issue in very different ways.

The matching issue boils down to two sub-issues.

**Definition of a match.** The first issue is the state’s definition of a match. If the voter’s application fits into this definition, the voter will be effectively registered and will not have to comply with the federal first-time voter ID requirement. Most states do not have their matching standards written down in any publicly available statute, regulation or memo, but instead are operating on a standard defined by some sort of internal memo or other internal policy (of the 17 states we researched, only Colorado, Iowa, Minnesota, and Washington have statutes or administrative regulations governing the matching process). Nevertheless, through oral interviews, Moritz was able to obtain information for most states, though not all. Some states (Colorado and Oregon-- but note that Colorado does not currently perform an SSA match) require that the information contained on voter registration applications exactly match that contained in certain fields of the outside databases. Other states
require only that, based on the judgment of local election officials, there is a substantial match (Minnesota). Most states, however, do something in between, which is to require an exact match for verification against the SSA database but only a substantial match against state department of motor vehicles databases (Florida, Iowa, Michigan, Missouri, Nevada, North Carolina, and Washington). Indiana, New Hampshire and New Mexico do not currently attempt to match information contained on incoming voter registration applications at all, and it is believed that Ohio falls into this camp as well, though officials would not confirm this. Virginia officials did not get back to us with an exact description of their matching standard, although one of them did indicate that she thought some type of substantial match standard was used. A Wisconsin official indicated that he believed his state used an exact match standard for both motor vehicle and SSA databases, although the matching technology has only recently been implemented in Wisconsin and he was not sure. Moritz obtained an internal memo that originated in the Pennsylvania Secretary of State’s office that indicated that Pennsylvania has no meaningful statewide matching standard, but that local administrators should use their own judgment to determine whether information sufficiently matches outside databases (however, an exact match is required for social security matches).

**Consequences of failed match.** It is impossible to understand the implications of the definition each state has supplied for a database match without also understanding the consequences that each state has assigned to the failure of the state to obtain such a match. While some might fear that failure to obtain a match will deprive the voter of the ability to cast a ballot that will count, that is actually not the case in most of the states we researched. In fact, Florida is the only one of the 17 states we researched in which we were able to determine definitively that unmatched voters are legally deprived of the ability to cast a ballot that will count. In contrast, in the majority of states, failure to match only results in the voter having to show minimal HAVA-type ID at the polls (Colorado, Iowa, Michigan, Nevada, North Carolina, Virginia and Washington are the relevant states on this point - and Colorado, Michigan, Virginia and Washington would generally require ID regardless, making the matching-related ID requirement largely moot). Minnesota will not register an unmatched voter, but a determined voter may still cast a
regular ballot by using the state’s election day registration process (EDR does not allow for matching to occur, except after the fact). As noted in the previous section, Indiana, New Hampshire, New Mexico, and Ohio do not currently have any matching program, so there is no reason to fear that any voters will be disenfranchised due to flaws in the matching process in those states. Oregon registers unmatched voters and allows them to cast regular ballots, but will not count any votes for federal office contained on the ballot of an unmatched voter. Wisconsin only recently got its matching technology online and currently assigns no legal consequence whatsoever to failure to match—unmatched voters are treated just the same as matched ones. Pennsylvania also treats both types of voters the same. Based on phone conversations with Missouri Secretary of State staff, Moritz believes that Missouri does not currently have any statewide policy that prescribes a certain result in the event of failure to match, but instead has left this decision up to local election officials by default.

Challenges to voter eligibility

**Pre-election challenges.** Most states permit any registered voter to challenge the registration of any other voter in the jurisdiction by filing certain paperwork with the local election official or the courts. Of the 17 states we surveyed, only two do not authorize such challenges (Indiana and Missouri). In states where challenges are permitted, the general procedure is that the local election official or other designated entity will schedule a hearing, give notice to all parties, and decide the challenge. The consequence of a successful challenge is generally cancellation of the voter’s registration (appeal to the courts is often allowed). However, in Florida, pre-election challenges are not decided prior to election day, but instead the challenged voter is required to cast a provisional ballot. The voter’s registration will be decided later, at the time disposition of the provisional ballot is decided.

**Election-day challenges.** Election-day challenges are authorized in all states except Oregon (a state that does not have an election day), and generally follow the same pattern in every state. Authorized persons in the polling place fill out a form stating that the challenged
voter is not registered or eligible, and then the voter has to cast a provisional ballot unless the challenge is withdrawn. In Virginia and a few other states, the challenge must be withdrawn if the challenged voter signs an affidavit of registration and eligibility. Also, note that New Hampshire and Minnesota do not have provisional ballots. In New Hampshire, the challenged voter may obviate the challenge by signing an affidavit of registration and eligibility, and then may cast a regular ballot. In Minnesota, the challenged voter may not cast a ballot at all, unless the challenge is withdrawn.

Provisional voting

Provisional ballots. It is confusing and misleading to talk about “provisional ballots” as if those words represent a single, unitary concept. For instance, there is no single standard in each state that determines whether a provisional ballot should count but, rather, there are several different standards in each state. The standard that applies depends on the reason why the provisional ballot was cast. If the provisional ballot was cast because of failure to present ID, one standard applies (see voter ID, below). **Voter’s name not in poll book.** However, if the provisional ballot was cast because the voter’s name did not appear in the pollbook, another standard applies (typically the standard is simply whether the individual was registered and eligible). This standard does not provide a lot of guidance, yet it seems difficult to provide much more without risking creating hypertechnical statutes that try to anticipate every issue but succeed only in reducing clarity even further (Ohio’s twisted provisional ballot statute is a good example).

**Wrong precinct.** If the provisional ballot was cast because the voter was in the wrong precinct, yet another standard applies. In Florida, Indiana, Iowa, Michigan, Missouri, North Carolina, Ohio, Virginia and Wisconsin, provisional ballots cast in the wrong precinct will not count at all, but in many other states at least some of the votes will. In Colorado and Nevada, the votes for federal office will count (but note that, in Nevada, none of the votes will count if the ballot was cast in the wrong congressional district). In New Mexico and Pennsylvania, provisional ballots cast in the correct county will count, but only for those races in which the individual was eligible to vote, based on residence. In Washington and Oregon, provisional ballots will be counted even if cast in the wrong precinct and county, but only for those races in which the voter was eligible to vote. Minnesota and New Hampshire do not have provisional voting at all. Provisional ballots may also be cast when records show the voter
requested an absentee ballot, when records show the individual has already cast a ballot in the precinct, when the voter’s eligibility is challenged at the polls, when the voter’s registration file has been marked inactive due to failure to vote in two election cycles, and for other reasons. While the various standards for each of those situations are beyond the scope of this research project, the standards are usually straightforward and generally just what one would expect them to be. For instance, provisional ballots cast by individuals who have requested an absentee ballot or who may have already voted a regular ballot will not count unless officials determine the individual actually did not cast another ballot. Provisional ballots cast by individuals who were challenged at the polls will generally count if officials determine that the individuals were registered and eligible to vote, and were whom they purported to be at the polls.

Other provisional voting information:

Note that Colorado and Ohio have rates of provisional voting over 2% of polling place voters, and that North Carolina’s rate is over 1%. New Mexico and Iowa have between a 0.5% and 0.99% provisional voting rate, and the remaining states have fairly low provisional voting rates. Washington has a high provisional voting rate as a percentage of ballots cast at the polls, but that rate is artificially inflated because polling place ballots are only cast in the two Washington counties that still have polling place voting.


Early and absentee voting

Convenience voting. Scholars have noted that there is a nationwide trend away from traditional polling place voting and a move towards early and absentee voting, and our study confirms this. We grouped our 17 states into four categories that can be placed on a continuum, with the most convenient states at one end and the least convenient at the other. The most convenient 6 states (Colorado, Florida, Nevada, New Mexico, North Carolina, and Ohio) have both early voting and “no-excuse” absentee voting, which permits anyone to cast an absentee ballot if they so desire. Four states
fell into the second two categories, which permit either early voting and traditional “excuse” absentee voting (Indiana), or “no-excuse” absentee voting only (Oregon, Washington and Wisconsin), but not both. The final group of 6 states were the least convenient ones, in which neither early nor “no-excuse” absentee voting were permitted (Iowa, Michigan, Minnesota, Missouri, New Hampshire, Pennsylvania and Virginia). It is worth noting, however, that 3 of these states—Iowa, Minnesota and New Hampshire—do offer election day registration, another form of convenience that perhaps removes the pressure to offer other forms of convenient voting. Wisconsin also offers EDR.

Voting technology

Eight of the 17 states we researched—Florida, Iowa, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, and Wisconsin—use optical scan systems exclusively or almost exclusively. Nevada is the only state that uses touchscreens exclusively, and it requires a paper trail to help ensure machine totals are correct. Colorado, Indiana, Pennsylvania and Virginia rely substantially on both types of technology, and none of them require a paper trail for touchscreens (North Carolina and Ohio also rely on both, but do require paper trails). Most counties in Washington and all counties in Oregon vote exclusively on paper ballots cast by mail. A county-by-county breakdown of population, voting machines and local election officials (including selection methods and party affiliations) may be found here.

Polling place operations

Partisan composition of poll workers. Every state except three—New Hampshire, Oregon and Pennsylvania—requires that at least one poll worker be of the minority political party. Oregon does not have poll workers, and New Hampshire requires that poll workers be evenly bipartisan. Pennsylvania elects poll workers and has no constraints on their partisanship. Policy recommendation: It is probably best to require that poll workers be evenly bipartisan. While one poll worker from the minority party should be enough to protect the rights of the minority party, some people are not assertive enough to voice their concerns unless they have others to back them up.

Poll worker training. The frequency and nature of poll worker training varies widely. The most stringent
states-- Florida, Indiana, Iowa, Michigan, North Carolina, and Virginia-- require training before each election. On the other hand, the laws of New Hampshire and Washington do not require poll worker training at all. Pennsylvania and Wisconsin require training only when LEOs deem it advisable. Colorado requires it once every four years, Minnesota and Ohio every two years, and New Mexico every year. State law requires training in Missouri and Nevada, but there is no specific requirement as to how often or when it must occur. Oregon does not have poll workers.

Wisconsin requires tests as part of its poll worker training, while Minnesota law expressly prohibits such tests. Michigan offers testing as an alternative to poll worker training. The laws of the remaining states are silent on the subject of tests.

Policy recommendation: Training should be required before every election, to refresh the memories of poll workers and also to inform them of any new information. In addition, states should consider whether it would be beneficial to administer standardized tests at the conclusion of poll worker training. It might not be that all poll workers should have to “pass” the test in order to serve, as this would only exacerbate the existing difficulty in finding enough poll workers. Instead, it is probably enough to require that two poll workers—one from each political party—achieve a high score on the test. A portion of the standardized test could be modified to reflect local technology and practices.

Ballot security

Voter ID. We divided the voter ID question into three parts. The first part answered the question, “What form of identification is sufficient at the polls to permit the voter to cast a regular ballot?” We found that all states except Oregon require at least some form of ID for at least some subset of voters. However, the majority of these states (6) required only the bare minimum ID that is required by the federal Help America Voter Act (Iowa, Minnesota, Nevada, New Hampshire, North Carolina, and Wisconsin). Oregon requires no identification of any kind, and New Mexico will accept an individual’s verbal identification of themselves. Pennsylvania requires HAVA-type non-photo ID of all first-time voters (not just ones who registered by mail), and Colorado, Missouri, Ohio and Washington require HAVA-type non-photo ID of everyone (Virginia requires some form
of non-photo ID but, unlike the other states mentioned in this list, generally requires an actual identification card and will not accept substitutes such as utility bills, bank statements, paychecks, government checks, etc.). The remaining states require some form of photo ID (Florida, Indiana and Michigan), or even photo ID with a signature.

But it is deceiving to focus only on the form of ID required without considering the consequences for failing to produce one of those forms of ID. We found that although most states require at least some form of ID, some of them have written their laws in a way that mitigates the effect of failure to present such ID. This mitigation occurs in two ways.

**Consequences of failure to present ID.** The first way is to give voters who cannot present ID a way to nevertheless avoid having to cast a provisional ballot. For instance, New Hampshire, Michigan and Virginia permit the voter without ID to cast a regular ballot after signing a sworn statement confirming registration and eligibility, while Iowa, Minnesota and New Hampshire permit voters to vote a regular ballot using election day registration (EDR requires ID as well, but in Minnesota and New Hampshire it is sufficient to have another voter sign a statement confirming registration and eligibility). **Follow-up required of voter.** The rest of the states require the voter to cast a provisional ballot, but at that point another set of laws begin to apply and mitigate the effect of not having ID. These laws govern the standards for provisional ballot counting and, in most states, require officials to count the provisional ballots of those who failed to present ID at the polls even when those voters never return later with the required identification. For instance, in Ohio officials will count the provisional ballot as long as, at the poll, the voter provided his or her social security number on the provisional ballot paperwork. In Florida, Pennsylvania and Washington, the ballot will count as long as the voter’s signature matches the one contained in registration records. Only Colorado, Indiana and Missouri require physical ID of all voters, force voters without ID to cast a provisional ballot, and refuse to count provisional ballots unless the voter returns with some form of ID or affidavit. Missouri requires voters to return with ID on election day itself, while Colorado and Indiana permit voters to return later.
**Emergency Preparedness**

*Natural disasters.* Eight of the 17 states we have researched (Colorado, Michigan, Nevada, New Hampshire, New Mexico, Ohio, Wisconsin and Washington) do not have any statutes or administrative regulations describing what to do in case of severe weather, fire, or violence. The states that do have such provisions offer various remedies, such as extending the time for voting (Oregon), postponing the election (Florida, Indiana, Iowa, Missouri, North Carolina, Pennsylvania, and Virginia), or asking a court to use its judgment to mitigate the disaster (Minnesota). Most states require approval of such measures by the state’s chief election official or by the courts. Florida and Iowa have the most developed regulations in this area but, in general, the rules in other states are pretty thin. Policy recommendation: Every state should have a written, binding policy in case of natural disaster or other emergency. This policy would not only help administrators deal with logistical changes necessitated by emergency, but also would help guide courts in the event of contest over an election that was affected by an emergency. The details of these rules should be determined only after extensive consultation with elections officials and other experts.

*Ballot shortages.* Seven of the 17 states we researched (Colorado, Florida, Iowa, New Hampshire, Ohio, Pennsylvania, and Wisconsin) have statutes requiring poll workers to contact LEOs for more ballots in the event of a shortage. Indiana, Minnesota and Virginia, on the other hand, instruct poll workers to create photocopied or makeshift ballots in the event of a shortage (Virginia requires permission from the local election officials to do this). Five states—Michigan, Missouri, New Mexico, North Carolina, and Washington—have no statutes, administrative regulations, or publicly available administrative materials addressing the issue of ballot shortages. Nevada and Oregon do not use polling place paper ballots. Policy recommendation: Poll workers should be empowered to create makeshift ballots where necessary. Access to photocopiers is readily available in most areas and there is no reason that voters should have to wait for LEOs to deliver ballots. Phone lines are often jammed during election day and it is difficult for poll workers to get through to let LEOs know that they need more ballots. Also, delivery times increase the time that voters must wait to vote when a reasonable alternative ballot could be more efficient.

*Touchscreen breakdown.* We found a variety of approaches to touchscreen failure across the 17 states we researched. Ohio probably has the best approach by requiring all touchscreen polling places to have a number of paper ballots on hand that can be used in case of touchscreen failure. The most common approach permits poll workers to create makeshift
ballots in the polling place out of whatever materials are on hand to allow voting to continue (see Colorado, Indiana, Missouri and Pennsylvania). New Mexico and Virginia require poll workers to contact local election officials for a solution, while Nevada permits a new election in the precinct if voting is prevented (it is unclear how much voting must be prevented in order for this remedy to apply-- probably a short interruption would not be enough). North Carolina, Washington and Wisconsin do not have any written, publicly available policy, though many local administrators probably have at least a basic plan for when voting machines malfunction. The remainder of the states-- Florida, Iowa, Michigan, Minnesota, New Hampshire, and Oregon-- do not use touchscreen voting. Policy recommendation: Although it is expensive and time-consuming, it is probably best to require that all touchscreen polling places have at least some paper ballots on hand so that voting never has to stop. One creative option would be to have an official all write-in ballot that would be standardized across all precincts in the state, removing the burden of dealing with multiple ballot styles and reducing printing costs by creating economies of scale.

**Post-election processes**

**Post-election deadlines.** In 2000, one problem was that Florida election officials had trouble obtaining a definitive count of the votes in time to meet the federal safeharbor deadline of six days before the meeting of the presidential electors (federal law guarantees that the electors chosen by states that meet this deadline must be respected). The meeting of the 2008 presidential electors will occur on December 15, making December 9 the relevant date for this election cycle. Florida amended the laws governing post-election deadlines to help ensure that the state can meet future safeharbors, but the laws in some states do not require the same timeliness. **State certification deadlines.** Colorado and Missouri do not require certification until the actual safeharbor deadline, while New Mexico, Oregon and Washington do not require certification until just a few days before the deadline. Michigan does not require certification until 40 days after the election, which is well after the deadline. Wisconsin does not require certification until one day after the deadline.

However, it would be rash to think that officials will actually wait until the last minute and risk missing the safeharbor, just because state law does not require officials...
to certify official results until the last minute. In fact, barring extreme circumstances of the kind seen in 2000, states should have no trouble at all meeting the safeharbor. The real danger comes not from the certification deadlines themselves, but from the possibility of other post-election deadlines that are determined using the certification deadline as the base. For instance, assuming final certification of statewide results occurs near to the state certification deadline (but not on it), under state law individuals wishing to file lawsuits to contest the results of a presidential election would not have to file their lawsuits until well after the safeharbor in Colorado, Missouri, New Mexico, Oregon, Washington, and other states (presidential election contests are probably not authorized to occur at all in Indiana, Minnesota, and Ohio).

**Election contest filing deadlines.** It is also possible that the deadlines for filing recounts could fall after the safeharbor, which is particularly troubling since election contest deadlines are often pushed back even further in the event of a recount. **Recount filing deadlines.** Delays in obtaining counts at the local level could also impair states’ ability to meet other counting deadlines and potentially risk pushing up against the safeharbor. **Local count deadlines.**

**Post-election audits.** The laws of all 17 states in our survey authorize some type of post-election audit of voting machine accuracy, although the programs in Ohio and Virginia are not currently full audit programs, only pilots. Almost all of the states perform audits manually by “eyeballing” the marks cast on paper ballots or the votes recorded on the paper trails of touchscreen voting machines. However, a few states permit administrators to perform at least part of their audits by machine instead of by hand. For instance, in Washington, 25% of paper trails must be audited by hand, but the rest may be audited using machines (some paper trails can be audited using bar code scanners, for instance). Pennsylvania and Nevada permit audits to be performed entirely by machine.

Other information concerning audits: **Scope of audit sample size, by state.**

**Recounts-- candidate-requested.** Most states permit candidates to obtain a full recount of votes for their races upon request, no matter the margin of victory (Colorado, Indiana, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin). Florida does not have candidate-requested recounts at all. Iowa, Missouri and Virginia entitle candidates to recounts only when the margin of victory falls under 1% of total votes.
cast. North Carolina entitles candidates to this type of recount when the margin of victory falls below 0.5% of total votes cast or 10,000 votes, whichever number is lower.

**Recounts-- administrative.** Most states permit election officials to unilaterally order a recount—but sometimes only a partial one—if they feel there has been an error. Six of the 17 states we researched—Florida, Iowa, Michigan, North Carolina, Pennsylvania and Washington—have statutes that explicitly authorize local election officials to order such recounts. Colorado and Oregon allow the state’s chief election official to order such recounts, while in Minnesota and Missouri administrators can conduct such recounts only if they first obtain court permission. Finally, in five states—Indiana, Nevada, New Mexico, Ohio and Virginia—there is no explicit authorization for such recounts. It is unclear, however, whether that means such recounts would not be permitted. Policy recommendation: All election officials should be empowered to order full or partial administrative recounts if they feel there has been a problem in the count.

**Recounts—automatic.** Ten of the 17 states we researched have automatic recounts. Colorado, Florida, Minnesota and Pennsylvania trigger recounts at a 0.5% margin of victory. Ohio triggers recounts at a 0.25% margin of victory. Oregon triggers them at 0.2%. Michigan and Washington trigger recounts when the margin of victory is less than 2,000 votes. However, in Washington the margin of victory must also be less than 0.5% of the total number of votes. Indiana, Iowa, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Virginia, and Wisconsin do not have automatic recounts.

**Recounts— definition of a vote.** Part of the cause behind the debacle of 2000 was that Florida law did not provide a clear definition of what constitutes a vote, but instead asked officials to interpret ballot markings in order to discern the elusive “voter intent.” Florida has remedied that defect in its law by providing detailed descriptions of marks that will and will not count as votes. Most other states (Colorado, Indiana, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Pennsylvania and Virginia) also provide concrete examples or rules of what constitutes a vote. Iowa law states only that marks will count as votes when they are consistent with the instructions on the applicable voting machine, and North Carolina, Oregon and Washington still rely on what is essentially a “voter intent” standard. Note that it is not usually possible to make nonstandard marks with touchscreen voting machines, so that particular barrier to discerning voter intent would be removed or mostly removed in touchscreen-heavy states like Nevada and Pennsylvania. Policy recommendation: Every state should have a clear written law defining what constitutes a vote that presents various examples of nonstandard marks and states whether each example should count as a valid vote. This recommendation applies to touchscreen heavy states as well, because paper ballots might be used for absentee, provisional or emergency voting.

Other information concerning post-election processes:

**Who performs presidential recounts?**

**What court would hear a presidential election contest?**

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