

## CHAPTER 9

### RECOMMENDATIONS FOR NINE AREAS OF ELECTION ADMINISTRATION

HAVING SET FORTH general observations in the preceding chapter, we now turn to policy recommendations for the nine areas of election administration around which this study is structured. To some extent, these nine divisions are artificial. As we have emphasized, election administration in any state should be understood as an ecosystem, consisting of numerous interdependent components. Changing one part of a state's ecosystem – whether it is the equipment used for voting, the way in which registration lists are kept, or the institution with oversight authority – will necessarily affect others. Thus, our recommendations in each subject-matter area will have implications for the entire state ecosystem. We also emphasize that these recommendations are not meant to be a comprehensive recipe for national election reform, something that would require a broader inquiry than the geographically limited one presented here. Still, the experience of the states we have studied suggests some key improvements that can be made in how elections are conducted across the country.

#### INSTITUTIONAL ARRANGEMENTS

##### **1. State election authorities must establish clear lines of communication with local officials.**

The five states we have examined all run their elections differently. At the state level, an elected secretary of state has authority over elections in Michigan, Minnesota, and Ohio. In Wisconsin and Illinois, on the other hand, oversight responsibility is entrusted to bipartisan or nonpartisan state boards. There are also consid-

erable differences in how local authority is distributed. In Ohio, for example, local authority rests primarily with county officials; in Michigan and Wisconsin, by contrast, municipal officials have primary responsibility over elections.

We do not believe that our study provides a clear basis for preferring either a particular state administrative structure or a particular allocation of authority among local entities. There are clearly some disadvantages inherent in electing a state's chief election official on a partisan basis, foremost among them the danger of real or perceived bias in favor of that official's party. Ohio's former Secretary of State Ken Blackwell served as the poster child for such concerns in the 2004 and 2006 election seasons. Although many recent allegations of partisanship have surrounded Republican officials, the new Democratic secretaries of state in Ohio and Minnesota are already facing criticism for partisan decisionmaking. How these two states move forward will likely provide some useful information, given the partisan tensions that exist within them.

While elected chief election officials present some inescapable problems, there can also be serious problems of accountability with appointed boards like Illinois' and Wisconsin's. The inertia built into a multi-member policy-making body can make it difficult to take decisive action when it is needed. When those bodies are split along ideological or partisan lines, it can also lead to gridlock.

One alternative to both of these predominant models would be to move to an appointed chief

election officer with professional experience administering elections, selected through a mechanism that ensures bipartisan consensus. We discuss this idea further in Chapter 10 in connection with our recommendations for Ohio, where the problems of an elected chief election officer have been greatest, and our recommendations for Illinois, where the problems of an appointed state board are most apparent.

As is the case with state election authorities, there is no obvious answer to the question of how best to allocate authority among local entities. There are advantages and disadvantages to allocating authority to municipal officials rather than county officials, as Wisconsin and Michigan do, and as Minnesota also does to a lesser extent. The relatively small size of municipalities may make them easier to manage. On the other hand, smaller towns are likely to have very limited staffs and budgets, making it hard to perform the tasks essential to running twenty-first century elections. In addition, entrusting authority to municipalities rather than counties multiplies the number of local authorities running elections, thereby increasing the difficulty of managing a state election system in a manner that ensures equal treatment to all voters throughout the state. Wisconsin exemplifies the tradeoffs of municipal election administration. While the small size of most municipalities makes it easier for the local clerk to keep track of individual voters, it is difficult to ensure consistency across the 1,851 municipalities in the state – particularly when many of their clerks do not even have email access.

Despite their variations, there is one important feature that well-run election systems share:

strong lines of communication exist between the state election authority and the localities with direct responsibility for running elections. It is vitally important that state officials be ready and willing to answer questions from local officials promptly and consistently. This has been an attribute of Wisconsin's and Michigan's election systems for many years, probably because of the long tenure and professionalism of the appointed state officials with responsibility for election administration in both states. By contrast, Ohio and Minnesota have both experienced serious problems in this area in recent years, though their newly elected secretaries of state have expressed a commitment to making improvements. Illinois probably has the furthest to go of the five states in making sure that there is consistency in the administration of elections across the state.

No democratic value is more important than a state's obligation to treat its citizens equally. Consistency in the administration of elections is essential to achieve this value, yet every state has some room for improvement in this area. However authority is allocated among the components of state and local government, it is critical that the state's chief election authority provide clear guidance to local authorities on how election laws are to be administered.

## **2. State legislatures must give their election officials the tools to enforce consistency in the application of state law across counties and municipalities.**

While communication is important, it is not sufficient to ensure equality among a state's electoral jurisdictions and their voters. State law must also ensure that state authorities have the means to enforce consistency in the appli-

cation of election laws across the state. There is little use in having policies on how elections are to be run, however clear they may be, if those policies are not followed.

There are different ways of enforcing localities' compliance with state policies, involving both carrots and sticks. Perhaps the most obvious method is to entrust state officials with authority to grant or withhold funds based on local authorities' compliance with state rules. Another alternative is to give the state's chief election authority power to commence litigation against noncompliant localities. A more drastic approach still is to vest the state's chief election authority with the power to discharge local election officials who fail to discharge their duties, as Ohio's Secretary of State recently did with the Cuyahoga County Board of Elections. While giving the state's chief election official this power has the value of allowing this official to ensure local jurisdictions comply with state policies, it is a blunt tool with a significant downside. Especially if the state's chief election official is a secretary of state elected on a partisan basis, firing local officials can have a polarizing effect, casting doubt on whether the law is being administered in an evenhanded fashion.

While this example demonstrates a need for caution, it does not detract from the pressing need for state legislatures to give the state's chief election officials the means by which to enforce compliance with state policies. If state officials do not have this authority – or fail to exercise it appropriately – they run the risk of lawsuits alleging unequal treatment under *Bush v. Gore* and other voting rights cases, like those which have already been filed in Ohio.

### **3. States should regularly audit their laws and consult with officials from peer states to keep pace with a rapidly changing election environment.**

One of the most noteworthy aspects of election administration in all five states is the degree of change that has occurred in the past several years. Much of this is attributable to HAVA, which imposed new requirements with respect to voting technology, provisional ballots, registration databases, and voter identification. Implementation of these new federal requirements presented a major challenge to states, given that the new rules did not always fit neatly with the preexisting election ecosystems. An example is provisional ballots, which were and remain seldom used in Michigan, Minnesota, and Wisconsin because those states have other ways of dealing with the problems that HAVA's provisional voting requirement was designed to remedy.

It is unlikely that the period of dynamism in the administration of elections will end anytime soon. There will instead be continuing change, as technology and other factors continue to alter the way in which democracy functions.

After reviewing the five states' election laws, it became clear that state legislatures have not entirely kept pace with the changing election environment. Some aspects of state election laws seem designed for an era in which hand-marked ballots were counted at a central location, something that no longer predominates in any of our states. Another area in which state laws need updating involves the disconnect between state post-election processes and the federal timetable for presidential elections. As discussed below in our recommendations

for post-election processes, this is particularly difficult to understand given that Florida's 2000 experience provided states clear notice of this problem. To solve this problem, we encourage state legislatures to work with state election administrators to engage in top-to-bottom audits of state election statutes on a regular basis.

We also believe that the states have much to learn from one another. There is great value in state election officials communicating with each other about what has worked in their states, from Michigan's statewide registration database to Wisconsin's and Minnesota's Election Day Registration systems. Accordingly, we suggest that election officials have periodic meetings organized on a regional basis, as a means by which to exchange information. This already happens at the national level, through such organizations as the National Association of State Elections Directors, and the National Association of Secretaries of State, as well as with the U.S. Election Assistance Commission's standards board. We believe that there are common characteristics to Midwestern states (and perhaps characteristics common to states in other parts of the country) that would make regional meetings – for example, an annual summit of Midwest state election officials – particularly useful.

## **VOTER REGISTRATION**

### **4. States should work to improve both access and accuracy by relaxing barriers to registration and complying with existing federal laws governing registration.**

State registration requirements can sometimes serve as a barrier registration. To be sure, there are good reasons for having a voter reg-

istration requirement – as all states in the country except North Dakota do – including the prevention of double-voting and voting by those who are ineligible. Onerous registration requirements, however, can impede participation. By contrast, making it easier to register is one of the few reforms that has been demonstrated to increase voter turnout.<sup>1</sup>

Congress recognized the link between registration and turnout fourteen years ago when it enacted the National Voter Registration Act (“NVRA”), requiring that states provide an opportunity to register at state motor vehicle and welfare offices. More recently, HAVA required that states implement statewide registration databases, partly as a way of improving access by increasing the accuracy of voter registration lists. Unfortunately, there is reason to believe that many states are not fully complying with these laws. Several states, including some of those studied in this report, are not yet in full compliance with HAVA's statewide registration database requirement.<sup>2</sup> Particularly troubling is evidence that states are not complying with the NVRA's requirements that states provide voter registration opportunities at public assistance agencies, such as state offices that provide services to people with disabilities.<sup>3</sup> Thirty-one states reported a decrease in registered voters between 2004 and 2006.<sup>4</sup> It is important that the federal government enforce these requirements and that states follow them, in order to ensure that voters are allowed to register and that their names will be on the rolls when they come to vote.

Complying with federal law, while a necessary precondition to improving voter registration, is not sufficient. States should also work to find other ways by which to make registration easier

for the voter. One of the best ways of doing this is Election Day Registration (“EDR”), a reform that has achieved great success in increasing participation 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. Eligible citizens whose names do not appear on the list when they come to the polls need no longer vote provisionally, but can instead register on the spot. While opponents of EDR sometimes argue that it leads to greater voting fraud, our five-state analysis shows no evidence that this is the case. Consistent with other research on the topic, we find no reason to believe that voter fraud is more common in EDR states than in other states.<sup>5</sup>

For states that remain wary of moving to EDR, Michigan provides an intriguing example of a half-step that may achieve some of the same goals. Michigan allows voters to cast an affidavit ballot if they swear under oath that they registered before the deadline, despite the fact that their names do not appear on the list. This eliminates the problem created when a mistake is made by a third party, such as groups conducting registration drives, NVRA agencies that fail to transfer registration forms to election authorities, or election officials who make a data entry error. While Michigan’s affidavit ballots are technically a form of provisional ballot, they are presumptively counted, absent subsequent proof that the voter is ineligible. This eliminates the need for additional verification, which exists in states like Illinois and Ohio that do not have a comparable procedure. Of course, Michigan’s process does not do anything for voters who develop an interest in politics late in the campaign season, after the deadline for

registration has passed, and therefore cannot sign the required affidavit. Still, it does avoid the risk that voters will have their votes denied due to an administrative error. And one option to serve voters who did not attempt to pre-register would be a form of “provisional” EDR, permitting new registrants at the polls to cast provisional ballots that would count upon subsequent verification of their registration information.

Other possibilities include expanding online registration, as in Arizona and Washington. John Anderson and Ray Martinez have urged “automatic voter registration” for all high school seniors, and Minnesota Secretary of State Mark Ritchie supported a bill (vetoed by the governor) that would automatically register eligible citizens applying for a driver’s license unless they declined.<sup>6</sup> In keeping with the notion of states as laboratories for democracy, this seems a worthwhile experiment for Minnesota and other states.

Finally, states should continue working to improve their statewide registration databases. One uniformly desirable feature would be the ability to correct and update the database from each precinct on Election Day. However, in addition to the technological obstacle of having sufficient electronic equipment, such a system would pose difficult security problems, as it would entail providing thousands of volunteer poll workers with access to the official database. But short of such real-time updating of their voter databases, states still could employ electronic poll books, rather than paper ones, that could share information with each other across precincts about who has voted, even if they did not allow changes to the registration information

itself. Working with one such master state list, and following consistent statewide standards of voter identification in the process, would reduce problems and make it even more difficult to engage in Election Day fraud.

## CHALLENGES TO VOTER ELIGIBILITY

### **5. If states allow challenges, they should implement procedures that protect individual voters and prevent bottlenecks at the polls.**

Of the nine areas of election administration we have considered, challenges to voter eligibility is the area that has yielded the least information. Procedures for challenging the eligibility of voters vary from state to state, but the two basic types are 1) registration challenges brought before Election Day, and 2) Election Day challenges, brought once the voter enters the polls.

A commonplace in all five states is that these procedures are not frequently used and, when used, seldom successful at disqualifying any voters. The Republican Party did pursue pre-election challenges to voters in Ohio and Wisconsin in October 2004. In Wisconsin, the Milwaukee election board unanimously rejected the 5,619 challenges on a bipartisan vote, finding they lacked evidence.<sup>7</sup> In Ohio, a federal court enjoined the Republican Party's pre-election challenges to some 35,000 voters on due process grounds.<sup>8</sup>

Although there was considerable concern that state challenge processes would be abused on Election Day in 2004, that did not in fact happen. Of course, it may be that the litigation surrounding voter challenges – especially in Ohio, where four separate cases were brought regarding the Election Day challenge process

– is one reason that they did not become a significant problem in 2004. It is thus possible that overly aggressive challenges could still become a problem in future elections, exacerbating polling place lines or even being used to intimidate voters. Another concern is that challenges could be used for so-called “vote caging,” in which mass mailings are sent to registered voters and those returned as undeliverable are used as a basis for challenges. Our research has uncovered very little evidence of ineligible voters attempting to vote, as might justify broad-based challenges to voter eligibility. At the same time, the mere existence of a challenge process, even if seldom used, could be important in deterring voter fraud or other improper attempts to influence elections. Accordingly, there may be some justification for some form of challenge procedure.

If states permit challenges to voter eligibility, the challenge process needs several features if it is to serve its purposes while also protecting the rights of individual voters. First, the process should be designed to resolve as many cases as possible before Election Day. A large number of challenges on Election Day could easily prove disruptive, and make poll workers' already difficult job even more difficult. Second, any challenge procedure must provide adequate due process to voters, including an opportunity to present evidence demonstrating their eligibility to vote. Third, the process must deter an overly aggressive use of challenges. For example, poll workers might be empowered to limit the number of challenges that any one person could lodge on Election Day, or to report anyone who made several unwarranted challenges for some form of post-election punishment.

## PROVISIONAL VOTING

### **6. States should provide clear guidance to local officials and poll workers on the circumstances under which provisional ballots should be issued and counted.**

Enormous differences exist in how provisional ballots are used among the five states studied here. Ohio, for example, makes extensive use of provisional ballots – using them not only for voters whose names do not appear in the polling book at the precinct in which they claim to be registered, but also for some voters who have moved from one location to another. In other states, provisional ballots are seldom used. The EDR system in place in Minnesota and Wisconsin, for example, eliminates or sharply reduces the need for provisional ballots, since voters whose registration forms have been mishandled can simply show up at the polls on Election Day and re-register on the spot.

In general, we believe a system that reduces the need for provisional ballots is preferable to one that relies extensively on them. A large number of provisional ballots increases the risk that a close election will turn into a protracted post-election fight. Improving the registration process – both by easing registration and by increasing the accuracy of voter registration lists – is one way that states can reduce their reliance on provisional ballots.

Regardless of how extensively a state relies on provisional ballots, it is essential that the state set clear rules for both 1) who should receive a provisional ballot and 2) the circumstances under which provisional ballots will be counted. As part of the second set of rules, each state must clearly specify all the

procedural steps to be taken in determining whether a provisional voter was in fact registered as required by state law. For example, it should specify whether local election officials are to check with the state motor vehicle office or other registration locations. It should also set clear rules for when a provisional ballot should be counted, notwithstanding some registration mistake. Each state also should specify, for example, whether a provisional ballot should be counted when it is discovered that a third-party registration group (like the League of Women Voters or ACORN) made a mistake in processing the voter's form.

Equally important is that local authorities follow the rules for counting provisional ballots that the state has set. This is necessary to ensure that voters are treated consistently across jurisdictions within the state. Thus, local authorities should not be permitted to adopt their own standards or procedures for verifying provisional ballots, whether they are more generous or more stringent than those prescribed by the state. While local officials in Ohio and Illinois appear to have implemented their own processes, in some cases out of an understandable desire to make sure that all eligible voters have their votes counted, it is absolutely critical that voters be treated equally across counties. It is also critical that the process for verifying and counting provisional ballots be transparent, so that the public is assured that fair and equal processes are being followed across the state.

## EARLY & ABSENTEE VOTING

### **7. States seeking to promote voter convenience should consider in-person early voting instead of no-excuse mail-in absentee voting.**

In recent decades, states have increasingly liberalized their early and absentee voting rules. Allowing some form of pre-election voting can both make the process more convenient for voters and take the pressure off the polls on Election Day. Mail-in absentee voting, in particular, has become increasingly popular in recent decades. Ohio is among the states that have moved to “no excuse” absentee voting.

While there are undoubtedly some advantages to pre-election voting, some words of caution are in order. The most commonly recognized risk is the greater potential for voter fraud, given that the individual voter need not appear at the polls in order to cast an absentee ballot. There is, accordingly, no way of being sure that the registered voter is in fact the one who cast the ballot, or that the voter was not intimidated or coerced into voting a particular way. Also significant, although less commonly recognized, are the mistakes that voters can make when voting by mail. When voting from home, voters do not have the advantage of notice technology now available at polling places that can alert them that they have overvoted (and thus spoiled) their ballot. In addition, voters can make mistakes such as failing to sign forms, omitting necessary identifying information, returning their ballots late, or using insufficient postage, all of which may result in absentee ballots not being counted.<sup>9</sup>

Notwithstanding these risks, some form of pre-election voting has some undeniable advantages. Although there is little evidence that

expanded early or absentee voting will substantially increase turnout,<sup>10</sup> these practices do enhance voters’ convenience. In addition, they can take the pressure off the polls on Election Day, thus minimizing both the lines that other voters face and the difficulties that poll workers face.

Accordingly, we suggest that jurisdictions interested in promoting voter convenience consider in-person early voting. Because in-person early voters have the advantage of notice technology, there is less risk of their inadvertently overvoting or undervoting. It also reduces the risk of fraud. Finally, early voters avoid some of the things that can go wrong with mail voting – like failing to include enough postage or returning the ballots too close to the deadline, resulting in their exclusion from the tallies.

## VOTING TECHNOLOGY

### **8. States must ensure that localities provide an adequate number of ballots or machines, that equipment is thoroughly tested before Election Day, and that poll workers are properly trained.**

The years since the 2000 election have seen a massive transformation in the equipment used for voting. Like most other states, the five states we have examined now use either direct record electronic (“DRE”) or precinct-count optical scan equipment for polling place voting. Nationwide, jurisdictions moving to DRE equipment saw the sharpest decline in the number of uncounted votes (combined overvotes and undervotes), although both types of equipment considerably improve accuracy.<sup>11</sup> There have of course been well-publicized problems with the implementation of DRE equipment in some

places. Most notable among the states we have studied are problems in Cuyahoga County, Ohio, which implemented a DRE system with a voter verifiable paper trail.

Optical-scan systems have arguably been easier to implement, particularly in those jurisdictions (like Ohio and Wisconsin) that require a voter verifiable paper record. They are not, however, without limitations. They are difficult to use for in-person early voting and vote centers, in comparison to DREs, which can more readily accommodate multiple ballot styles at a single location. DREs also are more easily adapted to last-minute changes in the ballot – for example, court orders requiring that a certain candidate’s name be added to or omitted from the ballot. DREs can also accommodate multilingual and disabled populations more easily than optical scan systems. Relatedly, DREs can accommodate an unexpected increase in the number of voters at a particular location without the need for printing additional ballots – something that is of special concern in EDR states, given the difficulty of predicting how many people will show up to vote at each precinct. With optical scan or other paper ballots, by contrast, it is necessary to print an excess of ballots in advance of the election, some of which will ultimately go to waste, although when turnout is unexpectedly heavy, voters waiting to use DRE equipment may suffer longer lines than those voting on optical scan ballots. Finally, DREs eliminate the problem of ambiguously marked ballots (which can still arise with optical scan systems), and with it one potential source of post-election litigation.

Given that both optical scan and DRE systems have advantages, we do not make any definitive recommendation on the type of equipment that should be adopted. In fact,

decisions about which equipment works best may well vary from jurisdiction to jurisdiction. In addition, the limited funds available for voting technology mean that most jurisdictions are likely to continue using the type of equipment currently in place, at least for now. It is quite possible that there will be a need to make further changes in voting technology – and that the technology itself will be vastly different – in the next five or ten years, a problem that requires more study than has been possible in this report.

Whatever type of equipment is used, election officials can and should take steps to minimize the risk of problems. One obvious step is for state and local officials to make sure that an adequate number of machines are in place to deal with the number of voters that can reasonably be expected to appear on Election Day. Some urban precincts experienced severe problems with lines in 2004 because there were not enough voting machines in place, and it is essential to avoid this in 2008. Second, there must be adequate pre-election testing of hardware and software. One possibility is the approach presently being taken in Ohio, with a testing process that has both bipartisan consensus on methodology and bipartisan oversight of how it will proceed, in the form of an advisory committee of county elections officials.<sup>12</sup> Third, poll workers must be trained in how the equipment is to be used and, importantly, in what to do if problems arise on Election Day.

One area for which training is essential is the accommodation of people with disabilities. HAVA requires that a disability-accessible voting machine be made available at every polling location. But if voters are not aware

that this equipment is available, or are unsure of how to use it, then it is likely to go unused. If HAVA's promise of independent voting is to be made a reality, poll workers also should receive specific instruction on how to use the accessible equipment, as well as training on how to use the regular voting equipment.

## POLLING PLACE OPERATIONS

### 9. State and local officials must experiment with ways of recruiting qualified poll workers and training them to perform the difficult tasks that we expect of them.

Among the greatest challenges facing all five states is the difficulty in staffing polling places

with an adequate number of sufficiently trained workers. This problem, exacerbated by changing technologies and procedures, creates the conditions in which any number of things could go wrong in the administration of the voting process: late openings of polling places, excessive machine failures, lost supplies, breaches in chain-of-custody procedures, and so forth. Larger, economically depressed urban areas like Chicago, Detroit, Milwaukee, and Cleveland are especially likely to have more difficulty in adequately staffing polling places, and at the same time more likely to be vulnerable to Election Day pressures and problems. One reflection of the added challenges facing urban precincts are

**TABLE 6A  
PROVISIONAL VOTING IN LARGE JURISDICTIONS  
OHIO, ILLINOIS, AND MICHIGAN**

November 2004

	Total Ballots Cast	Provisional Ballots Cast	% PB Cast Total Cast	PB Counted	% PB Counted	% PB Counted/ Total Cast
Ohio Jurisdiction						
Cuyahoga Cty (Cleveland)	687,255	25,309	3.68%	16,750	66.18%	2.437%
Franklin Cty (Columbus)	533,575	14,462	2.71%	12,124	83.83%	2.272%
Hamilton Cty (Cincinnati)	433,063	14,564	3.36%	11,035	75.77%	2.548%
<b>Ohio State Total</b>	<b>5,722,443</b>	<b>158,642</b>	<b>2.77%</b>	<b>123,548</b>	<b>77.88%</b>	<b>2.159%</b>
Illinois Jurisdiction	Total Ballots Cast	PB Cast	% PB Cast Total Cast	PB Counted	% PB Counted	% PB Counted/ Total Cast
Chicago	1,056,830	22,611	2.14%	13,838	61.20%	1.309%
Cook Cty	1,024,867	10,425	1.02%	5,425	52.04%	0.529%
<b>Illinois State Total</b>	<b>5,350,493</b>	<b>43,464</b>	<b>0.81%</b>	<b>22,238</b>	<b>51.16%</b>	<b>0.416%</b>
Michigan Jurisdiction	Total Ballots Cast	PB Cast	% PB Cast Total Cast	PB Counted	% PB Counted	% PB Counted/ Total Cast
Wayne Cty (Detroit)	874,861	2,244	0.26%	918	40.91%	0.105%
<b>Michigan State Total</b>	<b>4,875,692</b>	<b>5,610</b>	<b>0.12%</b>	<b>3,227</b>	<b>57.52%</b>	<b>0.066%</b>

Source: Ohio Secretary of State, Michigan Secretary of State, and Illinois State Board of Elections

the higher rates at which provisional ballots are often cast there, as shown in Table 6A and 6B.

Legislatures in each state have not done enough to address this critical need. Rather, they seem content to let local officials muddle through, election after election, in the face of increasing difficulty staffing the polls. In this regard state legislatures also seem to be relying instead on the election officials’ prayer of “God, let this not be a close election.” Unfortunately, absent greater leadership, states will resolve this problem only in response to the occurrence of some major failure, rather than preventing it in the first place.

One possibility is to move toward more aggressive reliance on high school students. Some of the election officials we interviewed report success in this regard. Another possibility is to consider making Election Day a school holiday. This would allow the recruitment of both teachers and students as poll workers. But resolving the poll worker crisis is also likely to require that more money be devoted to recruiting and paying poll workers. While the solutions to the poll worker crisis are not obvious, it is clear that this is a severe problem that demands innovation. Local entities should be encouraged – and funded – to experiment with new ways of attracting poll workers.

**TABLE 6B  
PROVISIONAL VOTING IN LARGE JURISDICTIONS  
OHIO, ILLINOIS, AND MICHIGAN**

November 2006

	Total Ballots Cast	Provisional Ballots Cast	% PB Cast Total Cast	PB Counted	% PB Counted	% PB Counted/ Total Cast
<b>Ohio Jurisdiction</b>						
Cuyahoga Cty (Cleveland)	469,930	17,656	3.76%	11,683	66.17%	2.486%
Franklin Cty (Columbus)	385,863	19,612	5.08%	16,973	86.54%	4.399%
Hamilton Cty (Cincinnati)	296,420	12,569	4.24%	10,331	82.19%	3.485%
<b>Ohio State Total</b>	<b>4,186,207</b>	<b>129,432</b>	<b>3.09%</b>	<b>104,581</b>	<b>80.80%</b>	<b>2.498%</b>
<b>Illinois Jurisdiction</b>						
Chicago	670,222	7,464	1.11%	1,308	17.52%	0.195%
Cook Cty	680,693	3,275	0.48%	1,381	42.17%	0.203%
<b>Illinois State Total</b>	<b>3,587,676</b>	<b>15,875</b>	<b>0.44%</b>	<b>5,874</b>	<b>37.00%</b>	<b>0.164%</b>
<b>Michigan Jurisdiction</b>						
Wayne Cty (Detroit)	650,109	1,361	0.21%	483	35.49%	0.074%
<b>Michigan State Total</b>	<b>3,852,008</b>	<b>2,426</b>	<b>0.06%</b>	<b>952</b>	<b>39.24%</b>	<b>0.025%</b>

Source: Ohio Secretary of State, Michigan Secretary of State, and Illinois State Board of Elections

## BALLOT SECURITY

### **10. State election integrity efforts should focus on “insider” fraud.**

One encouraging aspect of our study is that it found little contemporary evidence of voter cheating. While Illinois in particular has a sordid history of election fraud, those incidents appear to be diminishing. The statewide registration databases required by HAVA should further decrease the risk of voter fraud, by allowing detection of those attempting to register and vote in multiple jurisdictions.

That does not mean that corrupt election practices are entirely a thing of the past. Both Michigan and Illinois have experienced recent incidents of insider corruption. This decade, Illinois has prosecuted vote buying schemes, and Michigan and Illinois have each seen local elected officials run programs of improperly influencing absentee voters. There is a corresponding need to promote rigorous adherence to procedures designed to ensure ballot integrity. Foremost among those procedures are the investigation of cases in which a large number of absentee ballot requests come from a single address. States should also make sure to verify signatures on absentee ballots with those submitted on registration forms. Also important are chain-of-custody rules, both for electronic voting technology and for paper ballots.

States should be cautious, however, in instituting practices that might constitute barriers to participation in the name of preventing fraud. Rather, any new voting requirements should be tailored to documented instances in which ineligible people have voted. The identification requirements in Michigan and Ohio are particularly worth watching in 2008,

especially in terms of their impact on voter participation.

## POST-ELECTION PROCESSES

### **11. States should re-examine their post-election procedures to ensure the evenhanded and prompt resolution of disputes.**

There is perhaps no more worrying area of election administration than the processes for resolving close and disputed elections. Each of the states we examined would benefit from a thorough analysis of their post-election procedures. This area can be broken down into three parts: 1) the procedures used for canvasses, recounts, and contests, 2) the institutional mechanism available for judicial review, 3) the timetable for resolving post-election disputes.

On the first point, it is of utmost importance that the process for counting votes and conducting recounts be above reproach. That means that it be conducted either by nonpartisan officials or by bipartisan teams. In either event, the transparency of the process should be paramount. That includes having procedures that will allow for the transparent resolution of post-election disputes over ballot security. A good example is Wisconsin, which recently enacted a law allowing for the disclosure of the electronic voting system's source code (subject to confidentiality requirements) in the event of a disputed election. This would avoid the ongoing controversy over the 2006 race for Florida's 13th Congressional District, in which the losing candidate has been denied access to the software code that could have shed light on the nature of the problem that caused over 18,000 undervotes in Sarasota County.

Second, states should consider restructuring the forum for judicial review of post-election disputes. Ideally, judges resolving election disputes should be above the partisan fray. But as explained above, it is doubtful whether the state judiciaries in any of our subject states could live up to this ideal in the event of a disputed statewide election. When a state's supreme court is dominated by members of one party, or has a reputation for voting on party lines, and especially when those judges are themselves subject to re-election or retention, there will always be questions about their impartiality. Although federal judges are appointed for life, it is not at all clear that the federal courts – including the current Supreme Court – will provide the sort of neutral arbiter that is needed either. One possibility is for states to consider creating specialized election courts to deal with post-election disputes. One of us has proposed that such an institution might consist of four sitting judges, designated to serve on the election tribunal at set intervals by the leaders of the state legislature's two largest parties in both chambers, with these four judges in turn unanimously selecting a fifth member of this special tribunal.<sup>13</sup> We offer further thoughts on this in Chapter 10, in discussing potential reforms in Ohio and Illinois.

Finally, states should attend to the timetable for resolving post-election disputes. This is especially important for presidential elections, given the safe harbor and Electoral College meeting dates detailed at the end of Chapter 6. Several states have failed to consider the “safe harbor” timing problem, something that is particularly difficult to excuse given that states have been on notice of this problem since 2000. Yet the contest

timetable is not exclusively a presidential election problem. In any race it is quite possible to imagine post-election disputes being left unresolved for months after those elected are supposed to be sworn in – as indeed has happened with respect to Florida's 13th Congressional District representative in 2006. Every state should have a procedure in place for resolving election disputes fairly and promptly. To be sure, these values will sometimes be in conflict. But finality, along with access and integrity, is an essential value in our democracy. Thus, state procedures must provide a means by which to conclusively resolve elections within a reasonable, prescribed time after Election Day.

## **12. Congress should revisit the federal law governing the resolution of presidential election disputes to allow states more time to complete their recount and contest processes.**

We have been wary of making new recommendations for federal election reform in this report. That is partly because we believe Congress should remain cautious about imposing new requirements on the states without considering particular elements of state ecosystems that may make a one-size-fits-all solution inappropriate. Relatedly, we believe that the results of HAVA must be comprehensively evaluated before a new set of systemic reforms is mandated.

Notwithstanding this caution, the timetable for resolving presidential elections is an issue to which Congress should attend. Under the present system, there is relatively little time for states to resolve post-election disputes before the “safe harbor” date (thirty-five days after the election), or even by the date on which the

presidential electors are to meet (forty-one days after the election). States that fail to reach a conclusive resolution of post-election disputes by the safe harbor date risk having the allocation of their electors decided by the House of Representatives. Accordingly, as one of us has previously suggested, Congress should move back the Electoral College timetable by several weeks, making the safe harbor date December 31 and having presidential electors cast their votes on January 3.<sup>14</sup> This reform would add from seventeen to twenty-three days (depending on the year) to the time available for resolving an election contest and could be accomplished without affecting the constitutionally established date for presidential transitions of January 20.

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