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Provisional Ballots: An Imperfect Solution

Introduction

“Provisional ballots” are used when a person’s eligibility to vote is in question for various reasons, including when a person is not on a voter registration list, or when he or she does not have the correct state-required identification.

According to new research by the Pew Center on the States, more than two million provisional ballots were submitted nationwide during the 2008 presidential election. Of these, more than 1.4 million, or approximately 70 percent of all provisional ballots, were counted.¹ Nearly 600,000 were rejected.

These national numbers, however, tell only part of the story. State-by-state data indicate the rates at which states and local jurisdictions issued and counted provisional ballots varied greatly, as did the reasons why these same ballots were rejected.

The Pew Center on the States collected provisional ballot data for the 2008 general election from the District of Columbia and 43 of the 46 states that issue provisional ballots. Four states do not use provisional ballots: Idaho, Minnesota and New Hampshire, because they allow Election Day registration, and North Dakota, because the state does not have voter registration.²

Our efforts to collect and analyze these data are part of a larger initiative by Pew, working with election officials, policy makers and advocacy groups, to improve both the quality and quantity of data available to evaluate how well our election system is working.

This brief also serves as an introduction to a larger discussion regarding the role of provisional ballots as a partial solution to underlying problems in our election system. To launch such a discussion, we invited several election scholars, including Heather Gerken, Yale Law professor and author of *The Democracy Index*, Ned Foley, professor of law at The Ohio State University and Charles Stewart, political science professor at the Massachusetts Institute of Technology, to write a series of essays providing more in-depth analyses of the data we collected. The essays will be available online at www.pewcenteronthestates.org/elections.

WHY PROVISIONAL BALLOTS ARE REJECTED

Reasons and percentages represent data for 464,647 rejected ballots. See state notes for further details.

REASONS WHY PROVISIONAL BALLOTS WERE REJECTED NATIONWIDE

Voter not registered in state

45.3%

Other/miscellaneous

31.3%

Ballot cast in wrong precinct

11.3%

Problems with provisional ballot administration

6.0%

Ballot cast in wrong jurisdiction

3.4%

Insufficient identification

1.2%

Already voted

1.2%

NOTES: Percentages do not add to 100 percent because not all categories of reasons why provisional ballots were rejected are included. Problems with provisional ballot administration include (but are not limited to) no signature on the provisional ballot application or envelope, a non-matching signature, incorrect or incomplete forms, no ballot in the envelope or more than one ballot in the envelope.

SOURCE: Pew Center on the States, 2009.

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A Brief History

The 2000 presidential election marked a turning point for U.S. election administration. It went from a topic that was rarely discussed to a story on the front pages of newspapers across the globe. And while many remember the hanging, dangling and dimpled chad of Florida’s punch-card ballots, the Sunshine State also saw hundreds if not thousands of legitimate voters turned away from the polls because they had been incorrectly removed from the voter rolls.³

In approximately half of the states that year, individuals not on the rolls would have been offered some form of a provisional ballot that would allow a voter’s eligibility to be verified post-election.⁴ Florida, however, was not one of these states.

Responding to the troubled election and public outcry, Congress passed the Help America Vote Act (HAVA) in 2002 in an attempt to address this and many other issues.

Specifically, HAVA mandated that a voter whose eligibility is in question at the polls may cast a provisional ballot that can be examined after the election.⁵

In 2004, the first year provisional ballots were required by HAVA, approximately 1.9 million ballots were submitted nationwide, of which 65 percent were deemed eligible to be counted. In 2006, nearly 800,000 provisional ballots were submitted and almost 80 percent were counted.⁶

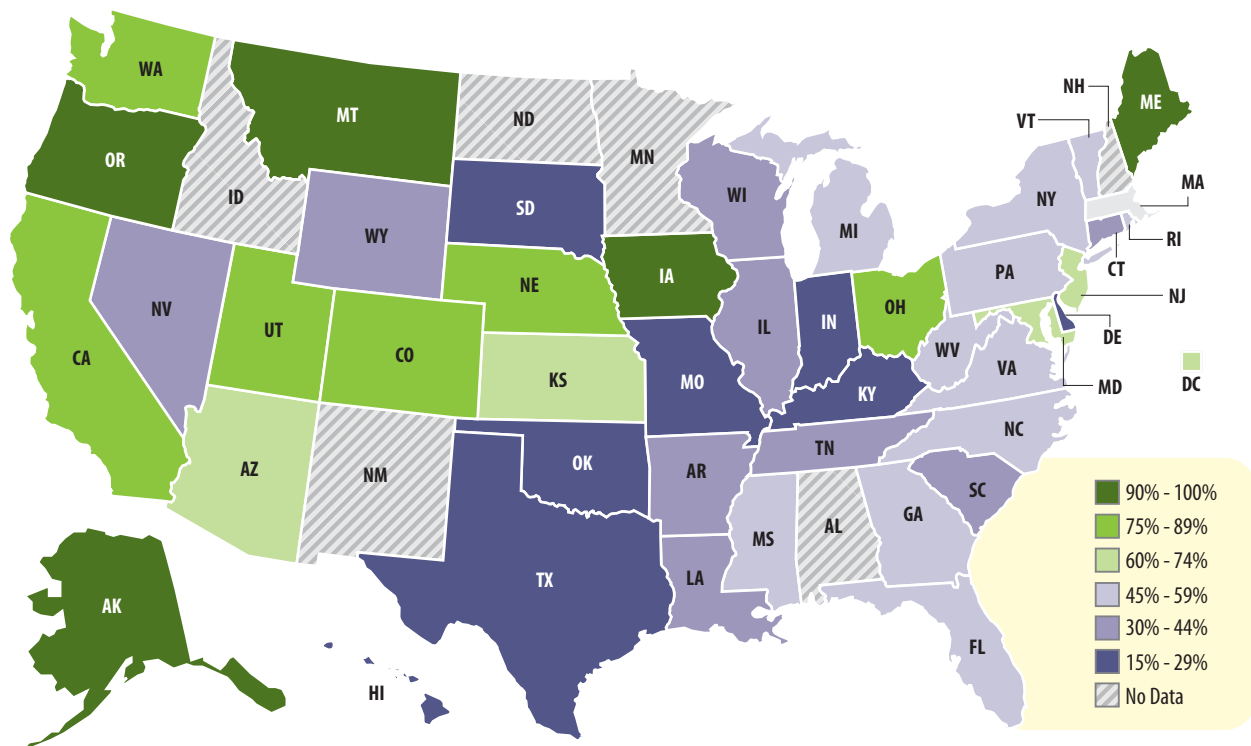
State Variation

HAVA left states with a great deal of latitude in creating and managing their provisional voting process, which has led to continued variation in how these ballots are issued and counted.

Depending on state laws and local rules, provisional ballots are issued for a variety of reasons, including the following: a voter’s name is not on the registration list; a voter does not have proper identification; a voter has

PERCENTAGE OF PROVISIONAL BALLOTS COUNTED

Map shows percentage of provisional ballots counted by state in the November 2008 election.



SOURCE: Pew Center on the States, 2009.

moved within a county; a vote is recorded as having already been cast; or polling place hours are extended beyond regular hours.

Ohio, for example, issues provisional ballots for 13 reasons—including change of address within a county. In 2008, the state issued more than 200,000 provisional ballots, more than 3.6 percent of those cast for president.⁷ Kentucky, on the other hand, allows registered voters who have moved within a county but have not updated their address before the close of voter registration to sign an affirmation at the polling place and cast a regular ballot.⁸ In November 2008, Kentucky voters submitted 856 provisional ballots, .05 percent of those cast for president.

The variation in issuance is such that four states account for two-thirds of all provisional ballots submitted nationwide—Arizona, California, New York and Ohio. (See table on page 6.)

Once provisional ballots are cast by voters, their chances of being counted vary considerably. Ten states counted more than 75 percent of their provisional ballots, while 17 states counted less than 45 percent.

Local Variation

Variation occurs not only among states, but in some cases within states. In Florida, slightly more than 35,000 provisional ballots were submitted and about half of them were counted. However, some of the state’s most populous counties saw significantly different counting rates.

For example, more than 80 percent of provisional ballots were counted in Duval County while fewer than 60 percent were counted in Hillsborough County. In south Florida, approximately one third were counted in Miami-Dade and just over six percent were counted in Broward County.

The precise causes of these variations within Florida are unclear, but the reasons why these ballots were rejected provide a slightly more detailed picture. In Broward County, 100 percent of rejected provisional ballots were not counted because they were cast by voters not

PROVISIONAL BALLOT SUBMISSION RATES

Figures represent provisional ballots submitted as a percentage of total ballots cast for president in the November 2008 election.

STATES WITH TEN HIGHEST RATES		STATES WITH TEN LOWEST RATES	
1. Arizona	6.61%	1. Wisconsin	0.01%
2. Alaska	6.27	2. Vermont	0.01
3. California	5.89	3. Wyoming	0.02
4. DC	5.53	4. Maine	0.04
5. Utah	4.45	5. Connecticut	0.04
6. Ohio	3.63	6. Kentucky	0.05
7. Kansas	3.25	7. Michigan	0.08
8. New York	2.66	8. South Dakota	0.09
9. Colorado	2.17	9. Delaware	0.10
10. Maryland	1.94	10. Hawaii	0.11

NOTE: Wisconsin, Wyoming and Maine allow Election Day registration.
SOURCE: Pew Center on the States, 2009.

registered in the state. In Hillsborough County, more than 40 percent of rejected provisional ballots were rejected for being cast in the wrong precinct. Both Duval and Miami-Dade counties saw substantial numbers of rejected provisional ballots because voters’ eligibility could not be established.⁹ (See table on page 4.)

Generally, variation within states, whatever its causes, has led some observers to express concern about the potentially different treatment of voters who should be subject to the same rules within the same state.

“[It is] important 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,” wrote election law experts in the book, *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*.¹⁰

Imperfect Solution, Imperfect System

What do all these data tell us? First, they tell us that more than two million voters who showed up at the polls on November 4, 2008, did not cast regular ballots for various reasons. Second, more than 600,000 of these voters’ provisional ballots did not count. Furthermore, more

FLORIDA: A CASE STUDY

Variations in provisional ballots counted in the November 2008 election are shown for the ten counties with the most registered voters.

COUNTY	REGISTERED VOTERS	TOTAL BALLOTS CAST FOR PRESIDENT	PROVISIONAL BALLOTS SUBMITTED	PROVISIONAL BALLOTS COUNTED	PERCENTAGE COUNTED
Miami-Dade	1,243,315	872,260	3,696	1,255	33.96%
Broward	1,008,656	739,873	4,222	264	6.25%
Palm Beach	831,423	594,854	2,113	1,026	48.56%
Hillsborough	701,464	515,983	4,659	2,764	59.33%
Pinellas	643,423	468,700	1,065	495	46.48%
Orange	604,243	466,002	1,590	503	31.64%
Duval	536,588	417,666	2,910	2,371	81.48%
Brevard	351,488	289,931	576	291	50.52%
Polk	332,015	246,538	1,272	402	31.60%
Volusia	326,854	245,842	468	262	55.98%

SOURCE: Florida Department of State, 2009.

than 1.4 million voters (1.2 percent of all ballots cast for president) were able to have all or part of their votes counted through provisional ballots.

For some people whose eligibility to vote is in question, provisional ballots represent a last chance opportunity to cast a ballot that can be verified after an election. For others, provisional ballots represent a breakdown in the voting process.

While the data tell us how many people were able to vote due to the availability of provisional ballots, the findings also reveal that underlying challenges remain in the elections process for both voters and election officials.

Voter Registration

Pew was able to collect data on why 460,000 provisional ballots were rejected. More than 200,000 of these were rejected because the person was not registered in the state. While some likely never registered, it is probable that at some point between registering to vote and casting a ballot, many experienced a voter or administrative error due to an outdated, inefficient registration system.

For example, some voters may have inadvertently registered after their state's registration deadline; others may have registered at the department of motor vehicles, another state agency or with a third party that didn't submit their registration form in a

timely manner (or at all). Additionally, their information may have been incorrectly entered or dropped from the voter registration database.

Voting Information

In more than 30 states and the District of Columbia, provisional ballots are not eligible to be counted if they are cast in the wrong precinct.¹¹ Nationally, more than 50,000 provisional ballots were rejected for being cast in the wrong precinct. These statistics imply that voters possibly lacked the information they needed to verify their registration and precinct, and locate their polling place prior to Election Day. Additionally, voters may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration system.

Finally, more than 27,000, or 6 percent, of rejected ballots were disallowed because of various errors, including incomplete provisional ballot envelopes, missing or non-matching signatures on the provisional ballot applications, incomplete applications, and envelopes that contained no provisional ballots. While a number of these errors were likely committed by voters themselves, some were the result of administrative problems at the polls. Several jurisdictions have developed new poll worker training and polling place procedures to improve the administration of the provisional ballot process.¹²

Data Collection

Our data, while informative, are incomplete, partially because a number of states do not collect consistent information and could not provide complete county-level information. For example, precinct-level data on why provisional ballots are issued and why they are rejected, could offer more insight into the differences in the ways poll workers interpret and actually administer provisional ballot rules in the polling place. Data collected at the precinct level by five states under a Congressional pilot program, released by the Election Assistance Commission in July 2009 provided more clarity, as well.¹³

Conclusion

Provisional ballots provide a partial, but imperfect solution to underlying problems in our election system. Several state election officials have expressed interest in reducing their use.¹⁴ States and counties that rely heavily on provisional ballots face the perennial risk of having a close election turn on whether provisional voters have their votes counted.

Some advocates have called for simplifying the provisional ballot process by standardizing it across the country. Many want more states to allow Election Day registration. Others want to go further and preclude the need for most provisional ballots by modernizing the voter registration system and automatically registering all eligible voters.¹⁵

Whatever the future of provisional ballots, today they represent both a solution and a problem. They have successfully allowed millions of voters who otherwise would be unable to cast ballots to have their voices heard. Each provisional ballot submitted, however, also represents a citizen who, for whatever reason, has encountered some sort of problem in the voting process. Over time, more complete data could provide opportunities to rigorously assess specific problems and identify the means to building an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

Methodology

State data were collected via a survey of state election officials from March to May 2009. Survey responses were received from 40 states and the District of Columbia. Statewide data for Arizona, Indiana and Virginia were provided by the Research Triangle Institute. Three states were unable to provide data or did not respond to the survey—Alabama, Massachusetts and New Mexico. Four states do not issue provisional ballots—Idaho, Minnesota, New Hampshire and North Dakota.

Registered voter data and total ballots cast for president are from the United States Election Project (elections.gmu.edu/index.html). Provisional ballot data from 2004 and 2006 are from the U.S. Election Assistance Commission (EAC) Election Day Surveys (www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results).

About Election Initiatives

The Pew Center on the States Election Initiatives aim to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security by supporting research that examines the most pressing election problems and undertaking an array of pilot projects to address issues identified during elections. Pew's research and experiments inform our approach to identifying efficient, cost-effective solutions—policies, practices and technologies—that address the key challenges facing the election process.

Acknowledgments

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Provisional Ballots Submitted and Counted by State, November 2008

State	Registered voters	Total ballots cast for president	Provisional ballots submitted	Provisional ballots as a percentage of total ballots	Provisional ballots counted	Percentage of provisional ballots counted
Alaska	495,731	326,197	20,441	6.27%	20,184	98.74%
Arizona	3,441,141	2,293,475	151,688	6.61%	107,288	70.73%
Arkansas	1,684,240	1,086,617	2,645	0.24%	840	31.76%
California	17,304,091	13,561,900	798,332	5.89%	657,053	82.30%
Colorado	3,210,258	2,401,361	52,113	2.17%	43,752	83.96%
Connecticut	2,091,980	1,646,792	715	0.04%	268	37.48%
District of Columbia	426,761	265,853	14,713	5.53%	10,544	71.66%
Delaware	601,348	412,398	397	0.10%	69	17.38%
Florida	11,247,634	8,390,744	35,635	0.42%	17,314	48.59%
Georgia	5,755,750	3,924,440	17,366	0.44%	8,371	48.20%
Hawaii	691,356	453,568	516	0.11%	119	23.06%
Illinois	7,732,908	5,523,051	41,707	0.76%	14,540	34.86%
Indiana	4,513,615	2,751,054	7,239	0.26%	2,045	28.25%
Iowa	2,190,158	1,537,123	4,309	0.28%	3,921	91.00%
Kansas	1,749,759	1,235,872	40,214	3.25%	27,808	69.15%
Kentucky	2,906,809	1,826,508	856	0.05%	178	20.79%
Louisiana	2,945,618	1,960,761	8,071	0.41%	3,359	41.62%
Maine	1,068,461	731,163	291	0.04%	291	100.00%
Maryland	3,432,645	2,631,596	51,163	1.94%	34,012	66.48%
Michigan	7,470,764	5,001,766	3,797	0.08%	1,823	48.01%
Mississippi	1,895,583	1,289,856	11,793	0.91%	6,510	55.20%
Missouri	4,205,774	2,925,205	6,934	0.24%	1,772	25.56%
Montana	668,085	491,960	3,762	0.76%	3,642	96.81%
Nebraska	1,157,034	801,281	15,490	1.93%	12,069	77.91%
Nevada	1,446,425	967,848	6,588	0.68%	2,785	42.27%
New Jersey	5,401,528	3,868,237	71,536	1.85%	53,504	74.79%
New York	12,031,312	7,640,640	203,257	2.66%	91,631	45.08%
North Carolina	6,233,330	4,310,789	53,976	1.25%	26,507	49.11%
Ohio	8,291,239	5,698,260	206,859	3.63%	166,870	80.67%
Oklahoma	2,184,092	1,462,661	2,817	0.19%	469	16.65%
Oregon	2,153,914	1,827,864	3,150	0.17%	2,863	90.89%
Pennsylvania	8,758,031	6,012,692	32,903	0.55%	18,348	55.76%
Rhode Island	701,307	469,767	918	0.20%	549	59.80%
South Carolina	2,553,923	1,920,969	8,752	0.46%	3,762	42.98%
South Dakota	575,632	381,975	325	0.09%	88	27.08%
Tennessee	3,946,481	2,599,749	4,392	0.17%	1,622	36.93%
Texas	13,575,062	8,077,795	41,196	0.51%	9,459	22.96%
Utah	1,432,525	952,370	42,390	4.45%	35,527	83.81%
Vermont	454,466	325,046	34	0.01%	17	50.00%
Virginia	5,034,660	3,723,260	4,575	0.12%	2,552	55.78%
Washington	3,630,118	3,036,878	54,047	1.78%	40,786	75.46%
West Virginia	1,212,117	713,362	9,718	1.36%	4,554	46.86%
Wisconsin	3,688,195	2,983,417	211	0.01%	94	44.55%
Wyoming	282,389	254,658	56	0.02%	20	35.71%
Totals	172,474,249	120,698,778	2,037,887	1.69%	1,439,779	70.65%

NOTE: Provisional ballots counted includes both fully and partially counted ballots. Alaska, California, Colorado, Florida, Kansas, Maryland, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island and Washington provided data that included partially counted provisional ballots. Nationwide partially counted ballots account for approximately eight percent of all provisional ballots counted. Alabama, Idaho, Massachusetts, Minnesota, New Hampshire, New Mexico and North Dakota did not provide data or do not issue provisional ballots.

SOURCE: Pew Center on the States, 2009.

Appendix A: State Data Notes

Alabama: No statewide data available.

Arizona: State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

Arkansas: State-provided data of total provisional ballots submitted statewide do not equal the sum of state-provided data for provisional ballots counted and rejected.

California: Total number of provisional ballots counted and rejected does not equal the total provisional ballots issued, because not all counties provided complete or correct data.

Connecticut: County-level data for reasons provisional ballots were rejected were not provided.

District of Columbia: City-provided data of total provisional ballots submitted citywide do not equal the sum of city-provided data for provisional ballots counted and rejected.

Georgia: County-level data for reasons provisional ballots were rejected were not provided.

Illinois: County-level data for reasons provisional ballots were rejected were not provided for most counties.

Indiana: State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

Iowa: State-provided data of total provisional ballots submitted statewide do not equal the sum of state-provided data provided for provisional ballots counted and rejected. Additionally, some counties included reasons absentee ballots were rejected in the reasons provisional ballots were rejected totals.

Kansas: State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

Maine: According to the state's survey response, provisional ballots, called challenged ballots in Maine, are counted at the close of polls on election night. If there is a recount, and the number of challenged ballots could change the outcome of the race, then voters casting provisional ballots would be required to provide proof of ID and residency for their ballots to be counted. To date, the state has not had a statewide election where the challenged ballots were not counted.

Massachusetts: State did not respond to Pew survey.

Mississippi: Incomplete data was provided—data not provided for the majority of counties.

Missouri: State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

New Mexico: State did not respond to Pew Survey.

New York: State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

Ohio: Among reasons provisional ballots were rejected, the wrong precinct category includes ballots cast in both the wrong precinct and the wrong jurisdiction categories. Data provided by the state do not differentiate between the two.

Oregon: Totals of provisional ballots counted and rejected do not equal the total number of provisional ballots issued, because not all counties provided complete data.

Pennsylvania: State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

Rhode Island: County-level data for reasons provisional ballots were rejected was not provided.

South Dakota: County-level data for reasons provisional ballots were rejected was not provided.

Tennessee: State-provided data of total provisional ballots rejected statewide do not equal the sum of state-provided data for county-by-county data for reasons provisional ballots were rejected.

Texas: County-level data for reasons provisional ballots were rejected were not provided for most counties.

Vermont: According to the state's survey response, state law allows voters at the polls who sign an affidavit swearing they submitted a registration before the state deadline will be allowed to cast a regular ballot.

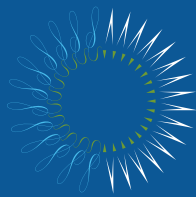
Virginia: State did not respond to Pew survey; statewide data were provided by the Research Triangle Institute.

Washington: Some counties did not differentiate between fully and partially counted ballots—these all have been included in the fully counted ballots category. Additionally, 1,714 provisional ballots were sent to other counties and are not included in counted or rejected totals. State-provided data of provisional ballots rejected statewide do not equal the sum of data provided for county-by-county data for reasons provisional ballots were rejected.

Wisconsin: County-level data for reasons provisional ballots were rejected were not provided.

Endnotes

- 1 Approximately 1.25 million provisional ballots were counted in their entirety. Another 165,000 were partially counted, meaning the votes for the races for which the voter was eligible to cast a ballot were counted.
- 2 Other states that allow Election Day registration—Iowa, Maine, Montana, Wisconsin and Wyoming—issue provisional ballots.
- 3 Robert E. Pierre, “Botched Name Purge Denied Some the Right to Vote,” *The Washington Post*, May 31, 2001.
- 4 Anne Gearan, “Backup voting system could cause problems,” *The Associated Press*, October 11, 2004.
- 5 HAVA P.L. 107-252, sec. 302.
- 6 For detailed provisional ballot data from 2004 and 2006, see the following U.S. Election Assistance Commission Reports: *The 2004 Election Day Survey and The 2006 Election Administration and Voting Survey*, which can be found at www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results.
- 7 *Election Enhancements for Ohio: A Report to the Governor and the General Assembly*, Office of the Ohio Secretary of State, April 22, 2009, www.sos.state.oh.us/sos/upload/news/20090422postconferencereport.pdf.
- 8 E-mail correspondence with Sarah Ball Johnson, executive director, Kentucky State Board of Elections, March 24, 2009.
- 9 Data provided via e-mail correspondence with Joyce A. Durbin, Florida Department of State, Division of Elections, HAVA Section, March 9, 2009.
- 10 Steven F. Huefner, Daniel P. Tokaji, and Edward B. Foley, with Nathan A. Cemenska, *From Registration to Recounts: The Election Ecosystems of Five Midwestern States* (Columbus: Ohio State University Moritz College of Law, 2007).
- 11 electionline.org. “Election Preview 2008: What If We Had an Election and Everyone Came?” October 2008, p. 13.
- 12 Some counties have changed their provisional ballot procedures in hopes of reducing poll worker error. After the November 2006 election Butler County, Ohio changed its poll worker recruitment and training. This included adding a double check of each provisional ballot envelope by a second poll worker before the voter is given a provisional ballot. Poll worker errors on provisional ballots decreased from 17 percent in November 2006 to 6 percent in November 2008. This data was provided by Jane A. Barnett, Manager, Poll Worker Department, Butler County Ohio Board of Elections via email correspondence, June 8, 2009.
- 13 Additionally the EAC plans to release its 2008 Election Day Survey, which will include provisional ballot data, in the next several months. These data will likely differ slightly from the data we have collected, because the EAC may receive more recent, updated and potentially complete data.
- 14 *Election Enhancements for Ohio*.
- 15 The Ohio Secretary of State’s office report, *Election Enhancements for Ohio: A Report to the Governor and the General Assembly*, issued earlier this year proposed several changes to streamline the state’s provisional ballot process. Demos and the League of Women Voters have cited the reduction of provisional ballot usage as a positive effect of allowing Election Day registration. Sen. Russ Feingold (D-Wisc.) has cited this reason as well in introducing legislation allowing Election Day registration. The Brennan Center for Justice at New York University of Law has cited the problems with provisional ballots as one reason to modernize the voter registration system (for more information, see “Voter Registration Policy Summary,” www.brennancenter.org/content/resource/universal_voter_registration_draft_summary/).



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