

## **I. In Focus This Week**

### **Director's Note: Heather Gerken's *The Democracy Index***

By [Doug Chapin](#)

Someday – hopefully in the not-too-distant future –scholars and practitioners alike will look back and marvel at how quickly the formal field and professional discipline of election administration has grown.

When they do, I am confident that Heather Gerken's new book [The Democracy Index](#) (Princeton University Press) will be widely viewed as one of the most influential works in the history of election administration.

Gerken, the [J. Skelly Wright Professor of Law](#) at Yale Law School, has long been interested in the nuts and bolts of elections. I first met her in 2004 at Harvard Law School where she was advising a group of law students who had launched an organization called Just Democracy, which aimed to prevent problems at the polls by recruiting law students to work as poll workers.

Even then, Gerken was an energetic advocate for taking elections seriously as a discipline.

That energy is well-evident in *The Democracy Index*. The book, which expands upon a series of blog posts in 2007 entitled "[Setting the Agenda for Scholarship on Election Reform](#)," aims to address what Gerken calls the "here to there" problem of reform stemming from the frequent disconnect between reformers and the policymakers they seek to influence.

As a consequence, many reform proposals take on what Gerken calls a "just add water" quality: enact the reform, and the world will be a better place. The problem is that policymakers are facing institutional challenges (partisan pressures, inertia, budget constraints, etc.) that make enacting reforms far more complex than simply stating their value.

Rather than view these institutional challenges as an insurmountable obstacle, Gerken's approach is to harness them in service of reform. Thus, she advocates collecting data on how well jurisdictions do (or don't) run their elections and then publishing them in a Democracy Index which ranks states and localities on how they stack up on different aspects of election administration.

This cross-jurisdictional comparison, she suggests, will encourage competition between states and localities to be seen as conducting good elections and avoiding the bottom portion of the rankings. This competition, in turn, will force policymakers to internalize the need to improve performance as a benchmark of success in political contests or budget fights. She uses examples from the field of education and environmental policy to demonstrate the power of rankings in driving change in a policy field.

Here at the Pew Center on States, Gerken had us at the word "data".

We have long been committed to the need for evidence-based election administration, as demonstrated by our Data for Democracy conference in 2008, and our work with states and the federal government to improve data collection for the national Election Day Survey. *The Democracy Index* is an incredibly powerful work because it shows the way forward for using data in the service of reform. The concept has already drawn Congressional interest and is likely to be a hot topic in reform for quite some time.

If the field of election administration is to mature as a serious discipline – which we here at the Pew Center on the States believe it can and should, and are doing what we can to help the process – it must be more solidly based on empirical evidence and not just anecdote.

Heather Gerken's *The Democracy Index* is a powerful call for a new approach to election administration. Anyone with even a tangential interest in improving our nation's election system should take some time to read the book; there is enough here to begin many interesting conversations for years to come.

## II. Election Reform News This Week

- Former New Mexico Secretary of State [Rebecca Vigil-Giron is blaming politics for a recently released audit that found severe mismanagement](#) of federal Help America Vote Act (HAVA) funds by her administration — an audit she says is severely flawed. Because of that, she is requesting that the firm that completed the audit retract, correct and reissue the audit. “I hope that this information and request does not fall on deaf ears and that my Detractors cease in their conspiracy to destroy me and all the good service that I have given to the state of New Mexico,” Vigil-Giron wrote in a letter she mailed to the company. In the eight-page letter, obtained by *The New Mexico Independent*, Vigil-Giron alleges that the company was “set up to assist in destroying my reputation.” She also writes that state Auditor Hector Balderas has sensationalized the firm’s audit report “for political gain,” possibly because he has a desire to run for higher office. Vigil-Giron’s [letter](#) includes a lengthy response to each of the findings in the [audit](#) of the secretary of state’s office for the 2006-07 fiscal year.
- Following a public hearing this week, Premier Election Solutions (formerly Diebold), California Secretary of State Debra Bowen is [considering withdrawing the state’s approval of software](#) used in three counties. However, following testimony from a Premier representative that one of the key “deficiencies” identified in Bowen’s report has not been addressed in any subsequent versions of the elections software, Bowen’s office said she is interested in investigating the matter further. The “deficiency” in question is one that allows operators to delete ballots from the central vote-counting system without those deletions showing up on the system’s audit logs. “The secretary is interested in examining the more recent versions of GEMS to see if the audit log problem persists there,” Bowen’s spokeswoman Kate Folmar in an e-mail to the *Times-Standard*, before declining to say exactly what Bowen might do if she finds that the problem persists in later versions of the software. “Secretary Bowen always gathers the facts before deciding what the next steps would be. Should she discover the audit log problems in subsequent versions of GEMS, then she would decide what steps, if any, to take.”
- President Barack Obama has tapped Maryland’s secretary of labor, [Tom Perez, to head up the Civil Rights Division of the Department of Justice](#). From 2002 until 2006, he served on the Montgomery County Council. Perez, 47, also has worked as a federal prosecutor for the Civil Rights Division of the Justice Department. He also served as deputy assistant attorney general for civil rights under former Attorney General Janet Reno. Perez worked as the director of the Office for Civil Rights at the U.S. Department of Health and Human Services in the last two years of the former President Bill Clinton’s administration. Perez also has worked as a law professor for six years at the University of Maryland School of Law. He works now as a part-time professor at the George Washington School of Public Health. According to *The Baltimore Sun*, the president was [sharply criticized by some in the Hispanic civil rights community](#). The controversy has become a flash point for some Latinos, a key voting bloc, amid questions about the timing of an Obama push for immigration reform. The criticism isn’t directed at Perez, or his qualifications. Instead, it revolves around a belief that the administration passed over another Latino attorney for the job as head of the Justice Department’s civil rights division, possibly out of a desire to avoid a messy fight over immigration.
- And in the seventh week, they rested. The [Minnesota Senate recount trial came to an end](#) and now the decision of who will be next Senator from the North Star State is now in the hands of the

judges. During closing arguments at the end of last week, Republican Norm Coleman and his lawyers urged the judges to bend their rules, which have hampered his case, and rely more on "common sense" in deciding which disputed ballots deserve to be counted. According to the *Minneapolis Star Tribune*, lawyers for DFLer Al Franken said Coleman failed to meet requirements to prove that election problems deprived him of enough valid ballots to have tipped the balance. "The law requires proof that an error did, in fact, change the outcome," Franken lawyer Kevin Hamilton told the three-judge panel. "That is exactly what is missing from the record." Defending a 225-vote Franken lead, Hamilton argued that very few ballots were wrongly rejected and that the Minnesota election system was "a model for the nation. Minnesota's electoral system works, and it works well."

- A woman who some considered a town matriarch was remembered Tuesday for her strength, knowledge and integrity. [Irma Bowles, 93](#), died Monday night after a recent illness, close friend and caregiver Jackie Dion said. Bowles served as Livermore, Maine registrar of voters for 34 years until December. She was appointed by selectmen in 1967 at the age of 52 to keep track of voter lists. She took some time off during that time to run for Legislature and when her late husband was selectman. She kept the voter list by hand until it was computerized, she said during an interview in 2007. At 92, Bowles received the state Lorraine M. Fleury Award, which honors a person who exemplifies fairness, experience, knowledge and service. The town office staff recognized her in their nomination for the award for her record keeping and procedures that followed the letter of the law.

### III. Research and Report Summaries

*electionline* provides brief summaries of recent research and reports in the field of election administration. Please e-mail links to research to [sgreene@pewtrusts.org](mailto:sgreene@pewtrusts.org).

[New York State Board of Elections: Absentee Voting](#) - Office of the New York State Comptroller, Division of State Government Accountability, March 6, 2009

A state audit of New York State's absentee voting found that after on-site examinations of seven county boards the administration of the absentee voting process was not always adequate. Controls over the timeliness, completeness and accuracy of absentee ballots were found to need strengthening. Additionally the audit found the State Board's oversight and guidance to the counties was in need of improvement. Recommendations to both state and county boards are made.

[Voter Registration Databases: Initial Discussion on Reviewing HAVA Mandated Guidance](#) – The Election Assistance Commission, March 17, 2009 meeting and hearing

The federal Election Assistance Commission heard testimony on statewide voter registration databases from five witnesses: Dr. Herbert Lin, Chief Scientist at the Computer Science and Telecommunications Board, National Research Council of the Academies; Wendy Weiser, Deputy Director of the Democracy Program, Brennan Center for Justice at NYU School of Law; Karen Long, Adams County Clerk and Recorder, Adams County, Colorado; Dave Franks, HAVA and Oregon Centralized Voter Registration Manager; and Donald Palmer, Director of the Division of Elections, Florida Department of State.

### IV. Opinion

National: [Voter registration](#); [Voting system](#)

Voting Rights Act: [I](#), [II](#), [III](#), [IV](#), [V](#), [VI](#)

California: [Vote-by-mail](#)

Colorado: [Voting machines, II](#); [Voting technology](#); [Electoral College](#)

District of Columbia: [Voting rights, II](#)

Florida: [Voting glitches](#)

Iowa: [Electoral College](#); [Instant-runoff voting](#)

Maryland: [Paper ballots](#)  
Minnesota: [Early voting](#)  
Mississippi: [Voter ID, II](#)  
Ohio: [Election safeguards](#)  
Oklahoma: [Overseas voters](#)  
Tennessee: [Early voting](#)  
Texas: [Voter ID](#)  
Utah: [Voting rights, II](#)  
Virginia: [Voting glitches](#)  
Washington: [Election reform, II](#); [Voter information](#)

*\*\*some sites require registration*

## **V. Job Opportunities**

*All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to [mmoretti@electionline.org](mailto:mmoretti@electionline.org)*