

## **electionlineWeekly — April 2, 2009** **electionline.org**

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

#### **Voter registration, military and overseas voting concern Congress**

*Hearings on 2008 election highlight persistent problems*

By [Kat Zambon](#)

On Capitol Hill, members of two House committees that deal with elections met recently to discuss the 2008 presidential election. The testimony frequently focused on issues related to voter registration and military and overseas voting.

The [House Administration Committee – Subcommittee on Elections](#) met March 26 and heard testimony from a diverse group of panelists (including [Doug Chapin](#), election initiatives director at the Pew Center on the States).

“We have much to learn from the November 2008 election and need to applaud and thank the election officials who made the process more successful than expected,” Rep. Zoe Lofgren, D-Calif., subcommittee chair said in her [opening statement](#). “However, we cannot sit back and say the system is fixed because the election was without major incident.”

Voter registration was one of the big issues at the hearings.

“If voting is a right, then registration is an accompanying responsibility,” Keith Cunningham, Allen County (Ohio) board of elections director said. “If voters are to be served well, then we need to know about how many of them to expect.”

Lofgren introduced [H.R. 1719](#), the Voter Registration Modernization Act March 25 to allow eligible citizens to register to vote over the Internet up to 15 days before any federal election beginning in 2014. It would also give registered voters the opportunity to update their voter registrations over the Internet at any time, including at the polls on election day.

While North Carolina saw a 23 percent increase in registered voters from 2004 to 2008, the number of provisional ballots cast decreased, largely because of same-day voter registration and early voting, George Gilbert, Guilford County (N.C.) board of elections director said.

“Same-day early voting registration or election-day registration can provide an important safety net for those missed in pre-registration but these will work far better if their need is minimized,” Gilbert said. “I think the solution is for us to have the most complete database going into election day.”

Rep. Charles Gonzalez, D-Texas, said that he supports election-day registration because experience has taught him that “the greatest effort and the greatest expenditure to engage that voter is within the last thirty days” of a campaign.

Gracia Hillman, EAC vice chair said “confusing voter registration and voter identification requirements” may have disenfranchised some voters.

With somewhere around half a million provisional ballots cast in 2008 mostly due to registration problems, at a March 19 [hearing](#) of the [House Judiciary Committee – Subcommittee on Constitution, Civil Rights, and Civil Liberties](#), Barbara Arnwine, [Lawyers’ Committee for Civil Rights Under Law](#) executive director said that problems with the voter registration system made provisional ballots necessary and they were too often either overused or kept out of the hands of voters who needed them.

“The intent of the Congress is not being carried out” regarding provisional ballots, Hilary Shelton, [National Association for the Advancement of Colored People](#) (NAACP) Washington bureau director said.

Glenn Magpantay, [Asian American Legal Defense and Education Fund](#) (AALDEF) staff attorney recommended using provisional ballots to register those whose names do not appear on the list, pointing out that many Asian American voters were denied provisional ballots.

In addition to concerns about actually getting people on the voting rolls, for James Tucker, [Native American Rights Fund](#) consulting attorney the problem was more with what happens when someone is removed from a voter roll. Frequently American Indians have no way of knowing that they have been purged because there’s little information about purges available in native languages.

The hearing also discussed third party voter registration groups, specifically the Association of Community Organizers for Reform Now (ACORN), which was mentioned so frequently that Rep. John Conyers, D-Mich., House Judiciary Committee chair encouraged Rep. Jerrold Nadler, D-N.Y., subcommittee chair to hold a separate hearing on it.

Election officials and advocates also expressed concerns about serving voters covered by the Uniformed and Overseas Citizen Absentee Voter Act (UOCAVA). Rep. Kevin McCarthy, R-Calif., subcommittee ranking member said election administration still fails to accommodate the unique needs of military personnel serving overseas. Previously McCarthy introduced [H.R. 5673](#), the Military Voting Protection Act to make it easier for military voters to receive and return ballots.

“We have come a long way since 2000 but there is still a lot to be done,” especially for UOCAVA voters, Gineen Beach, [U.S. Election Assistance Commission](#) (EAC) chair said, commending McCarthy and Rep.Carolynn Maloney, D-N.Y. for working together to help overseas and military voters. Maloney co-chairs the [Americans Abroad Caucus](#) and has introduced [H.R. 1659](#), the Fixing the Federal Voting Assistance Program Act and [H.R. 1739](#), the Overseas Voting Practical Amendments Act.

Eric Eversole, formerly an attorney in the U.S. Justice Department civil rights division, suggested that Congress require that ballots are sent to military voters at least 45 days before an election, reconsider H.R. 5673, designate military pay and personnel offices as voter registration agencies and conduct a hearing about the Justice Department’s failure to enforce UOCAVA.

The participants in the March 19 hearing also talked about the Justice Department. “One of the most critical things coming up before the Congress is the funding for the Department of Justice,” Arnwine said. “It is very important that there be a great increase in that funding.” Magpantay said that the Justice Department needs to focus more attention on enforcing the Voting Rights Act while Tova Wang, [Common Cause](#) vice president for research, said they should focus on decreasing voter intimidation and suppression.

## II. Election Reform News This Week

- California Secretary of State Debra Bowen announced this week that she is [withdrawing state approval of the flawed version of Premier Elections Solutions](#) voting system that caused almost 200 votes to be dropped from Humboldt County's November election results. The company's Global Election Management System version 1.18.19 was found to contain a “Deck Zero” software error that sometimes results in the first batch of ballots scanned through optical vote-counting machines to disappear without a trace, according to a report from Bowen's office. According to the Times-Standard, once a system's approval is withdrawn, counties have six months to remove the system from use, meaning Humboldt, San Luis Obispo and Santa Barbara counties -- the only California counties using this version of Premier's software -- have until Sept. 30 to change to a new system.

- It's baaaack....the [Minnesota Senate recount](#) has returned to *electionlineWeekly* with news that the three-judge panel reviewing the case ordered no more than 400 new absentee ballots opened and counted, far fewer than what Republican Norm Coleman had sought to overcome the lead held by DFLer Al Franken. The ballots include many that Franken had identified as wrongly rejected as well as ballots that Coleman wanted opened in his quest to overcome the 225-vote lead that Franken gained after a recount in Minnesota's U.S. Senate race. "We are very pleased," Franken lead lawyer Marc Elias told the Minneapolis Star Tribune. Coleman legal spokesman Ben Ginsberg acknowledged that the Republican may have lost the seven-week trial and was prepared to appeal to the Minnesota Supreme Court. "It is pretty much of a long shot with that few ballots being put in play," Ginsberg told the paper, comparing the Republican's odds of winning the trial to someone betting on the winning team in the NCAA basketball tournament. "We are disappointed. But we feel the court is wrong and we will appeal."
- Palm Beach, Fla. voter Sean Heyniger admits that he's a casual voter, at best. In fact Heyniger didn't even vote in the February 3 race for mayor. But when the race went to a runoff two weeks later, Heyniger did cast his ballot and now he's [spent almost \\$40,000 of his own money to fight to get that vote counted](#). Workers at the polling place made him cast a provisional ballot because he was not listed as eligible. This ended up being significant, because the result of the runoff was that McDonald beat Goldsmith by a single vote. And Heyniger's provisional ballot was the only one among 14 cast that didn't count. Heyniger said he voted for Goldsmith, and because of that, the mayor's race still should be ongoing. "I would be doing this anyway," Heyniger told the *Palm Beach Post*. "Even if it wasn't one vote." He hired lawyer Eric Christu, who last week blamed the county Supervisor of Elections Office for repeated paperwork foul-ups and asked Palm Beach County Circuit Judge David Crow to allow Heyniger's vote. The judge has yet to rule. The elections office takes the view that unless Heyniger can prove "misconduct, fraud or corruption," he can't overturn the eligibility ruling.
- This week, *The Baltimore Sun* profiled [Tom Perez and the difficulties he may face along the way in his attempt to be confirmed to head the Civil Rights Division of the Dept. of Justice](#). Senate sources predict that the state's labor secretary will be confirmed for the federal post, but history suggests that it won't be without a fight. "This is arguably the most difficult position to fill in the federal government when it comes to Senate confirmation," Roger Clegg, a former official in the civil rights division told the paper. "Both sides feel so strongly about the issues that the division handles, and in particular, the party bases on each side feel so strongly about the issues," said Clegg, a conservative veteran of Clinton-era confirmation fights. The choice of Perez to be the nation's leading civil rights enforcer came as a surprise. Some Latino civil rights advocates reacted angrily, viewing Perez as a replacement for a highly regarded Mexican-American civil rights lawyer in Los Angeles who had been expected to get the nomination. Immigration is a minor responsibility for the division's lawyers, but the topic is likely to be a focus in the confirmation of Perez, a Dominican-American who would be the second Hispanic to lead the office. For seven years, he was a director of CASA of Maryland, an immigrant rights group, and served as its president in 2002. Perez "is going to get hit by the individuals who don't like pro-immigration policies," said Alan Clayton, director of equal employment opportunity for the Los Angeles County Chicano Employees Association. The first big challenge for Perez, who began his career in the office he's been picked to lead, would be to boost morale, said Hilary Shelton, director of the Washington office of the NAACP. "Tom is somebody that I'm convinced knows how to repair that department," said Shelton, referring to Perez's background there, his years as an aide to Democratic Sen. Edward M. Kennedy and his work as the leader of Obama's transition team at the Justice Department.

### 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).

[Protecting the Integrity of the Polling Place: A Constitutional Defense of Poll Watcher Statutes](#) - Heather S. Heidelbaugh, Logan S. Fisher, James D. Miller, *Harvard Journal on Legislation*, Winter 2009

The authors examine the constitutionality of state laws allowing poll watchers to be present at the polls and to challenge voters. First 2004 litigation in Ohio is discussed, which initially enjoined poll watching. This is followed by a discussion of the constitutional issues raised in the Ohio litigation and concludes that poll watchers do not place a severe burden on the right to vote, where poll watchers are placed is not subject to Equal Protection standards, and facial challenges to these laws lack adequate standing.

[Procurement and the Polls: How Sharing Responsibility for Acquiring Voting Machines Can Improve and Restore Confidence in American Voting Systems](#) - Philip J. Peisch, *The Georgetown Law Journal*, March 2009

The response to the 2000 election and the problems in Florida is examined, specifically how it affected voting technology. How five states – California, Florida, Maryland, Massachusetts and Ohio - have changed their voting system technology using various distributions of procurement power is detailed. The paper concludes that dividing procurement responsibilities between state and local officials is the best approach, with each level of government being responsible for the tasks it is best suited for.

## IV. Opinion

National: [Electoral College](#); [Voting Rights Act](#); [Tom Perez](#)

Alabama: [Overseas voting](#)

California: [Vote-by-mail](#); [Voting system](#)

Colorado: [Instant-runoff voting](#); [Voter registration](#)

Connecticut: [Early voting](#)

Florida: [Palm Beach County](#)

Georgia: [Voter registration](#)

Idaho: [Election reform](#)

Minnesota: [Recounts, II](#); [Voting system](#)

Missouri: [Early voting](#)

Montana: [Inactive voters](#)

Oklahoma: [Voter ID](#)

South Carolina: [Voter ID](#); [Voting rights](#)

Tennessee: [Voter ID, II](#); [Proof-of-citizenship](#)

Texas: [Voter ID, II, III](#)

Virginia: [Paper trail](#)

Washington: [Voting rights restoration](#); [Pierce County](#)

West Virginia: [Early voting](#)

Wisconsin: [Combining elections](#)

*\*\*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)*