

National Network on State Election Reform



Dear Mister/Madame Secretary:

The National Network on State Election Reform is a newly-formed collective of civil rights, voting rights, civic participation and legal organizations dedicated to advancing meaningful election reform. We represent a diverse group of organizations with longstanding experience in analyzing and advocating for electoral practices that expand voter participation. Our collective experience is the foundation for the National Network's activities.

Over the next several months, the National Network will be reaching out to state policymakers and activists to offer ourselves as resources for advancing far-reaching electoral reforms. The following materials summarize many of the policies that we are advancing. In the upcoming months, the National Network will add to these resources both by updating those that are included and by adding summaries of other issue areas that we are working on. We will expand our partnership to other organizations that have an interest in these issues. We hope that you share our enthusiasm for expanding democratic participation, and will partner with us in improving our democracy. The National Network stands ready to offer our assistance.

Thank you for your interest in the National Network on State Election Reform.

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National Network on State Election Reform Statement of Principles - Summary

In order to fulfill the promise of American democracy, states across the nation must rethink the way they conduct their elections. Our organizations' mutual commitment to ensuring that all eligible voters have the opportunity to cast a meaningful ballot that is accurately counted forms the foundation of this coalition. We resolve to work with state and local advocates, policy makers and election administrators to strengthen our democratic system's administrative infrastructure, eliminate disenfranchisement, and encourage participation.

Each of our organizations is committed to using the resources at its disposal to accomplish this goal. Together, we will offer legal, analytical, and organizational guidance to communities and campaigns to reform elections.

As voting rights advocates, we understand that each state administers its elections in a unique manner. Moreover, we recognize that local advocates and officials are experts on their state's systems and know the most effective process for implementing change at a state and local level. The goal of this network is to augment state and local expertise with the experience, guidance and resources of national organizations. This network will also facilitate dialogue and coordination across the states. We will work with advocates to educate voters and policy makers about the nuances and elements of the Election Reform Movement. Finally, we will provide legal expertise to established and emerging state and local election reform coalitions.

Association of Community Organizations for Reform Now – www.acorn.org

Brennan Center for Justice – www.brennancenter.org

Center for Nonprofits and Voting – www.massvote.org

Common Cause – www.commoncause.org

Dēmos – A Network for Ideas & Action – www.demos-usa.org

Lawyers Committee for Civil Rights Under Law – www.lawyerscomm.org

National Disability Rights Network – www.ndrn.org

National Voting Rights Institute – www.nvri.org

People For the American Way – www.pfaw.org

Project Vote – www.projectvote.org

Rock the Vote – www.rockthevote.org

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ADVANTAGES OF ELECTION DAY REGISTRATION

Election Day Registration (EDR), also known as “same-day voter registration,” permits eligible citizens to register and vote on Election Day. Currently, six states have EDR. They boast higher-than-average voter turnout; report few problems with fraud, costs, or administrative complexity; and enhance the American people’s ability to participate in our democracy.

Why Do We Need EDR?

- **To help Americans vote.** Election Day Registration makes voting accessible and convenient by removing barriers to participation. With EDR, all eligible citizens who arrive at the polls have an opportunity to vote, even if their names have been incorrectly removed from voting lists or were not added in time for the election. In the 2004 presidential election, more than one million voters cast provisional ballots that often went uncounted. If EDR had been available, most of these voters could have registered and cast regular ballots. More than one million other registered voters across the country had registration problems that prevented them from voting altogether—problems that could have been overcome had EDR been available.¹
- **Registration deadlines limit voter participation.** Thirty-seven states cut off voter registration 20 to 30 days before Election Day, well before polls indicate that most voters focus on election campaigns.
- **States with EDR have higher voter participation.** According to the U.S. Census Bureau, on average 75 percent of voting-age citizens voted in EDR states (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming) in the 2004 election -- about 12 percentage points higher than the national average.

Who Benefits from EDR?

- **Everyone.** Sixty-one percent of eligible voters cast a ballot in the 2004 presidential election. Another 27 percent -- 55 million American citizens -- were not registered to vote.² Experts predict that EDR could bring millions of new voters into the system.
- **Young people. Recent movers. Historically disenfranchised.** More than 40 million Americans, or 14 percent of the population, moved between March 2002 and March 2003.³ The young, people of color, and low-income populations are most mobile. Many of these individuals fail to register at their new addresses before registration deadlines pass, or experience other registration problems. EDR offers a ready remedy. New residents can simply re-register at their new voting precinct on Election Day and vote.
- **Polling data shows that non-voters favor EDR to help them vote.** According to a May 2001 poll, nearly two-thirds (64%) of all non-voters said that allowing people to register and vote on Election Day would make them more likely to vote.⁴

¹ U.S. Census Bureau, “Voting and Registration in Election 2004,” May 2005.

² U.S. Census Bureau, “Voting and Registration in Election 2004,” May 2005.

³ U.S. Census Bureau, “Geographic Mobility: Population Characteristics, 2002 to 2003,” June 2005.

⁴ Medill School of Journalism, Northwestern University, “America’s No-Shows,” www.yvoteonline.org/noshows2000.shtml.

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EARLY VOTING

“Government of the people, by the people, and for the people” is a fundamental principle of the United States. However, many citizens who are registered and want to vote find it difficult or impossible to wait in line at their polling place on Election Day. Expanding voters’ options by allowing early voting will enable more citizens to participate in the political decision-making process, letting them fulfill the important civic responsibility of voting and strengthening our democracy.

Why is early voting needed to increase voter participation?

- **Voters are busy.** Over 1/3 of registered voters who do not vote attribute their inaction to being out of town, away from home, too busy, or having conflicting obligations on Election Day. Others complain of transportation problems or inconvenient polling place locations. More of our citizens will vote when we allow them to choose on which of several days, and in which of several satellite locations, they will vote.
- **Employment, child care, or other obligations prevent voters from waiting in long lines on Election Day.** The distressing scenes of people waiting hours to vote in the 2004 general elections are infamous. Adding an early voting period will spread out voting over a longer period of time, leading to shorter lines for everyone.

How does early voting affect election administration?

- **Local election officials like early voting.** Early voting “helps take the pressure off the polls on Election Day,” according to a deputy elections administrator in Florida.
- **Less strain on Election Day resources.** With an early voting period, fewer voters will wait until Election Day to vote. The administrative work will be spread out over a period of time.
- **Earlier resolution of problems.** If a significant number of people vote early, many problems can be detected and resolved before Election Day.
- **Better resolution of problems.** Problems and questions will be identified prior to Election Day, when permanent election workers can address them thoughtfully, rather than leaving them to the temporary volunteer election workers struggling with throngs of Election Day voters.

What is the popularity of early voting?

- **Many states allow it.** The number of states allowing early voting has increased from 2 in 1963 to 25 in 2005.
- **Many people took advantage of early voting in the 2004 general elections.** In some counties in Georgia, more than 1/3 of the voters used early voting. In Texas, more people voted early than voted on Election Day. 40% of Nevada voters voted early. Almost 1/5 of those voting in Florida used early voting.

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IMPORTANCE OF UNIVERSAL ABSENTEE VOTING

Why does universal absentee voting increase voter registration?

- **Voters are busy.** Over 1/3 of registered voters who do not vote attribute their inaction to being out of town, away from home, too busy, or having a conflicting schedule. If states adopt universal absentee voting, more eligible citizens will be able to vote.
- **Many voters cannot wait in hours long lines.** The distressing scenes of people waiting hours to vote in 2004 are infamous. If states adopt universal absentee voting, fewer people will be deterred by long waits to vote. The people who vote absentee won't need to stand in line at all, and more people voting early will mean shorter Election Day lines for those choosing to vote in person on Election Day.

How would universal absentee voting improve election administration?

- **Less strain on Election Day resources.** If states expand absentee voting, fewer voters will wait until Election Day to vote.
- **Better resolution of problems.** Problems and questions will be identified prior to Election Day, when permanent election workers can address them thoughtfully, rather than leaving them to the temporary election workers struggling with throngs of Election Day voters.

How popular is universal absentee voting?

- **Voters are enthusiastic.** In the 2000 election, almost 1/4 of California voters used absentee voting.
- **Many states use it.** In the 2004 general election, 25 states permitted universal absentee voting.
- **Ohio's Secretary of State supports it.** "No-fault absentee balloting is a major step forward in sustaining Ohio's record voter turnout," Mr. Blackwell said. "Providing Ohioans with an expanded menu of more convenient voting options will further encourage voter participation and help eliminate needless delays at our polling places."

How safe are absentee votes?

- **States already protect absentee voters.** Many state statutes governing election offenses include a provision specifically protecting absentee ballots and criminalizing tampering with the absentee ballot system.

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ELECTION FRAUD AND MISCONDUCT

All Americans are concerned about the veracity of our democratic results. Fraud and misconduct undermine that confidence and must be avoided. To do that, fraud and misconduct in the electoral system must be properly defined and responded to. Unnecessary barriers to the ballot box frustrate our national goal of an open and responsive electoral process. Any administrative procedure that will prevent eligible voters from participating in the political process should be scrutinized closely and permitted only when the proposed measure would solve a demonstrated problem and will not unduly burden the democratic process.

What is election fraud?

- **Fraud takes many forms.** In order to appropriately analyze the causes of and appropriate reactions to fraud, it is helpful to start with a useful definition. Fraud takes many forms. It includes actions of election officials removing eligible voters from the registration rolls and it includes ineligible voters showing up to the polling place. It includes private individuals and organizations providing false information to voters to prevent them from voting and it includes deliberately intimidating and deceiving voters to keep them away from the ballot box. Fraud is perpetrated when voter registration cards are destroyed or tampered. Any definition that is not this broad prevents decision makers from coming up with appropriate solutions.

Does evidence of ineligible voters at the polling place exist?

- **A disenfranchising solution in search of a problem.** Many who are concerned with “fraud” in the electoral process limit the definition to ineligible voters casting ballots. In addition to a lack of evidence of a problem, limiting the definition leads to problematic solutions that don’t solve any problems with the electoral system but lead to massive disenfranchisement.
- **Uncorroborated allegations.** The vast majority of allegations claiming that ineligible voters are influencing election outcomes following elections later prove false or unverifiable. Broad claims of increasing rates of ineligible voters casting ballots are only rationalized by anecdotes of isolated activities or no evidence at all.⁵
- **The reality of ineligible voters.** There is very little evidence that ineligible voters affect the outcome of elections. For instance in Wisconsin, the Milwaukee Police, District Attorney’s Office, FBI and US Attorney’s Office formed a joint task force to investigate voting irregularity allegations of the 2004 presidential election. According to its preliminary findings, of over 700,000 votes investigated, only approximately 100 instances of suspected double or ineligible voting were alleged. Many of these instances will undoubtedly be false leads or the result of an under funded, unresponsive electoral system. At the same time, widespread administrative errors were much more prevalent which undermined confidence in the electoral outcome.⁶

⁵ Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, *Republican Ballot Security Programs*, 99 (Sept. 2004), available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

⁶ Preliminary Findings of Joint Task Force Investigating Possible Election Fraud (May 10, 2005), available at <http://www.wispolitics.com/1006/electionfraud.pdf>.

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Why are typical responses to election fraud inappropriate?

- **Most legislative responses to the fiction of ineligible voters at the polls will disenfranchise thousands.** Unsubstantiated concerns that ineligible voters are influencing election outcomes are alleged as the justification for more restrictive voting requirements, such as photo ID and proof of citizenship requirements, and opposing important reforms that will make registration and voting more accessible, such as early voting, universal absentee balloting and Election Day Registration. Twenty-five voter ID bills were filed this year. Restrictive voter ID legislation was passed in Georgia, Arizona, and Indiana.⁷
- **“Anti-fraud” responses are inappropriate and damaging.** Restrictive election reform bills do not proffer evidence of fraud that they purport to solve; in fact, these bills will lead to massive disenfranchisement of poor, minority and elderly voters and will not even solve the problems they purport to address.
- **Administrative problems remain uncorrected.** These reforms do not address the systemic administrative failures caused by under-trained, under-resourced poll workers and election officials that disenfranchise countless eligible citizens.
- **There are better alternative solutions.** Instead of restrictive reforms, states should build statewide, centralized voter registration databases that are dynamic, effective and interactive, as mandated by Help America Vote Act. This reform alone would address both concerns of access and ineligible voting.

How do restrictive voting requirements disenfranchise eligible voters?

- Clear evidence exists that restrictive voting requirements impose a severe burden on voters and are likely to disenfranchise poor, minority, elderly, disabled, and young voters, who are less likely to have photo identification and to move more frequently.
 - Approximately 6 to 10% of the American electorate does not have any form of state identification.⁸
 - African Americans are four to five times less likely than whites to have photo identification.⁹
 - Young adults (age 20-29) move almost 6 times more frequently than adults over 55, and minorities move 50% more frequently than whites.¹⁰
 - In Georgia, it is estimated that nearly 40% of seniors lack photo identification.
- Restrictive voting measures are enforced in discriminatory ways against poor, disabled, and minority voters to intimidate, misinform, stigmatize, and ultimately suppress the vote.

⁷ Patrik Jonsson, “Struggle over voter IDs evokes a bitter past,” Christian Science Monitor (May 9, 2005) available at <http://www.csmonitor.com/2005/0509/p02s01-uspo.html>.

⁸ Task Force on the Federal Election System (July 2001), available at http://www.tcf.org/Publications/ElectionReform/full_tf_report.pdf.

⁹ Alan Elsner, “Millions Blocked from Voting in U.S. Election,” Reuters, 9/27/04 (Cited in *Run-up to Election Exposes Widespread Barriers to Voting*, Lawyers' Committee, http://www.house.gov/judiciary_democrats/widebarriersrpt.pdf).

¹⁰ Norman Robbins, Greater Cleveland Voter Coalition, “Election Reform: Three Upcoming Legislative Issues and Debates,” www.lwvohio.org/members/Norman's%20presentation.ppt.

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DECEPTIVE PRACTICES AND INTIMIDATION

Representative democracy is undermined by lies and tricks aimed at preventing citizens from casting a ballot. Unfortunately, voters in poor and minority communities have historically faced nefarious tactics aimed at preventing them from exercising their democratic voice. Forty years after the passage of the Voting Rights Act, voters across the country continue to be targets of deceptive practices and intimidation aimed at preventing them from voting. Although the days of Bull Conner may be over, those who wish to intimidate voters have turned to more sophisticated and nuanced devices to prevent turnout. Deceptive practices that purposely mislead voters regarding election procedures or voter eligibility and voter intimidation tactics intended to suppress or coerce votes pose a serious threat to our democratic goals.

What types of deceptive practices were reported leading up to the 2004 presidential election?

- **Fraudulently changing party-registrations and addresses.** Over 4,000 potential voters including students at the University of Florida, Florida State and Florida A&M universities discovered their party registrations switched and their addresses changed. Changed addresses could have barred them from voting because they would have shown up at the wrong polling place.¹¹
- **Fliers advertising a wrong election date.** In Pittsburgh, fliers printed on county letterhead stated that “due to immense voter turnout expected on Tuesday,” the election had been extended: Republicans vote on November 2, and Democrats vote on November 3.¹² Across the country, voters received similar fliers.
- **Bogus election regulation fliers.** In Milwaukee, Wisconsin, fliers purportedly from the “Milwaukee Black Voters League” were distributed in minority neighborhoods claiming “If you’ve already voted in any election this year, you can’t vote in the presidential election; If anybody in your family has every been found guilty of anything, you can’t vote in the presidential election; If you violate any of these laws, you can get ten years in prison and your children will get taken away from you.”¹³
- **Fake letters threatening arrests.** In Charleston County, South Carolina, some voters received a fake letter claiming to be from the NAACP, which threatened voters with arrest if they went to the polls and had outstanding parking tickets had not paid child support.¹⁴
- **Memos claiming invalidity of certain registrations.** In Lake County, Ohio, a memo on a bogus Board of Elections letterhead was sent to county residents informing them that

¹¹ Jo Becker and David Finkel, *Now They're Registered, Now They're Not: Election Officials Express Dismay at Extent of Misinformation, Variety of Tricks Targeting Voters*, Washington Post, A22 (Oct. 31, 2004).

¹² Id.

¹³ Id. Steve Schultze, *Campaigns condemn political flier*, Milwaukee Journal Sentinel, JS Online, (Oct. 29, 2004) at <http://www.jsonline.com/news/metro/oct04/270837.asp>.

¹⁴ Id.

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registrations obtained through Democratic Party and NAACP registration drives were invalid.¹⁵

- **Phone calls and visitors with false information.** In the Cleveland area, some voters received phone calls incorrectly informing them that their polling place had changed; Some also had unknown visitors who illegally offered to deliver completed absentee ballots to the election office.¹⁶

What are some deceptive practices used in past elections?

- **Threats of imprisonment.** In 1998, state representative Son Knon’s office in South Carolina mailed over 3,000 brochures to black voters, which incorrectly informed that “SLED [State Law Enforcement Division] agents, FBI agents, people from the Justice Department and undercover agents will be in Dillon County working this election. . . . THIS ELECTION IS NOT WORTH GOING TO JAIL!!!!!!”¹⁷
- **Door-to-door campaigning to “vote at home.”** In 1993, campaign workers visited homes in Latino neighborhoods of Philadelphia to convince voters to cast absentee ballots while misleading voters about the documents they were signing and the state’s absentee voting laws telling voters that they could vote at home as a “new way of voting.”¹⁸
- **Postcards encouraging voters to discard absentee ballots.** In 1990, elderly voters in Texas, received postcards that urged them to “throw the mail ballot in the trash” and “walk proudly into the voting place . . . in honor of the many who fought and died for your right to walk into the polls,” even though those who have requested an absentee ballot in Texas could not vote in person without going through a complicated procedure to cancel the absentee ballot.¹⁹

How is voter intimidation an obstacle for minority voters?

- **Men in official attire asking voters for identification.** In 2003, men with clipboards bearing official-looking insignias and 300 cars with decals resembling those of federal agencies were dispatched in black neighborhoods in Philadelphia, to ask prospective voters for identification. In a post-election poll of 1000 African-American voters, seven percent had encountered such efforts.²⁰
- **Immigrants subject to intimidation and insult.** In 2000, immigrant voters in Florida were intimidated. Many were prevented from voting or insulted at polling places.²¹

¹⁵ Becker and Finkel, Washington Post.

¹⁶ Id.

¹⁷ John Monk, *In Dillon County, GOP effort on black vote backfires*, The State, (Nov. 20, 1998) (Cited in PFAW).

¹⁸ U.S. Department of Justice, *The Civil Rights Division at Thirty-five, A Retrospective*, Overview of organization and activities, available at <http://www.usdoj.gov/crt/overview.html> (Cited in PFAW).

¹⁹ Jill Lawrence, *Democrats Accuse GOP of Intimidating Minority Voters in Texas, North Carolina*, Associated Press, (Nov. 2, 1990) (Cited in PFAW).

²⁰ Franke-Ruta and Meyerson, *The American Prospect* (Cited in PFAW); Neil Mackay, *New investigation uncovers more racism, voter intimidation and faulty poll machines*, Sunday Herald Online, (Oct. 3, 2004) at <http://www.sundayherald.com/45159>.

²¹ NAACP voting irregularities public hearing, *Summary of testimony*, Miami, FL (Nov. 11, 2000) at

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- **Videotaping voters at polling places.** In 1998, Republican officials in North Carolina counties planned to videotape voters in some heavily Democratic precincts purportedly to prevent fraud.²²
- **FBI investigation of voters.** In 1994, purportedly linked to an investigation for church arsons in Alabama, the FBI questioned 1000 voters about possible fraud, asking many to submit handwriting samples. The resulting convictions were few, but the voter turnout was down.²³

What solutions can be found in targeted legislation?

- **Deceptive conduct as an offense.** Lawmakers may categorically proscribe deceptive practices, for instance, by imposing penalties of fine and imprisonment for knowingly deceiving any person regarding the qualifications or restrictions of voter or of the time and place an election will be held.

http://www.naacp.org/news/archives/2000/florida_irregularities.shtml (Cited in PFAW).

²² Jim Abrams, *Videotaping Voters Won't be Allowed*, Associated Press, (Nov. 3, 1998) (Cited in PFAW).

²³ Leadership Conference on Civil Rights, *Letter to Ashcroft re: "Voting Integrity,"* (Oct. 25, 2002) available at <http://www.commoncause.org/publications/oct02/102502.htm>.

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INCREASED ACCESSIBILITY FOR VOTERS WITH DISABILITIES

Passage of HAVA was a landmark event for the disability community. For the first time, federal legislation guaranteed voters with disabilities a private and independent vote. This achievement, however, is a reminder that the promise of past legislation to secure voting rights for voters with disabilities remains, in many ways, unfulfilled. Basic barriers remain. It is necessary that election reform efforts seek to ensure that these guarantees, old and new, are honored.

What are some common barriers for individuals with disabilities?

- **Inaccessible voting equipment.** Each polling place must have accessible voting equipment. Under HAVA, this means equipment that allows voters with disabilities to vote privately and independently. Selection of voting equipment should be done with input from the local disability community and should be accessible to as many voters with different types of disabilities as possible. Paper trails or other verification methods used to increase voter confidence should also be accessible. Accessibility and voting confidence are not mutually exclusive goals. Voters with disabilities are as entitled as other voters to know that the vote counted reflects the vote they cast.
- **Inaccessible polling places.** Each polling place should be accessible to voters with disabilities.²⁴ Beyond avoiding obvious barriers like stairs, election officials should ensure that polling places have an accessible, clearly-marked path from the parking area to an accessible entrance that allows voters with disabilities to enter the polling place safely and independently. Unpaved parking lots or paths, especially gravel surfaces, pose a hardship for many individuals who use wheelchairs, walkers and other mobility devices. Election officials should also provide a voting station with voting equipment that can be reached by a voter in a wheelchair, and election workers should know how to activate the accessible features of the equipment.
- **Time limits.** Various jurisdictions across the country have policies limiting the amount of time a person has to mark a ballot. The Americans with Disabilities Act (ADA) entitles voters with disabilities who are unable to vote within the time provided to a reasonable accommodation enabling them to participate effectively in the voting process.²⁵ Wherever there is notice of time limits there should be notice of the availability of accommodations.
- **Assistance of choice denial.** The Voting Rights Act guarantees voters with disabilities who need assistance reading a ballot or going through the voting process assistance from persons of the voters' choice.²⁶ Often, however, election workers prohibit assistance

²⁴ Department of Justice's *ADA Checklist for Accessible Polling Places* at <http://www.ada.gov/votingck.htm>.

²⁵ 28 C.F.R. § 35.130(b)(7) (requiring public entities to make reasonable modifications to policies and procedures to avoid discrimination on the basis of disability.)

²⁶ 42 U.S.C. §§1973aa-6 (“Any voter who requires assistance to vote by reason of blindness, disability . . . may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.”). While this provision of the VRA may apply only to federal elections, many

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from persons of choice, insisting that only election workers can assist the voters, assistance which oftentimes proves inadequate.

- **Denied/inadequate accommodations.** Voters with disabilities who need assistance voting but who do not bring an assistant need assistance from election workers. Accommodations such as these are sometimes denied or given in a rushed or otherwise ineffective manner. Additionally, election workers should be prepared to provide other accommodations, such as providing chairs for voters with disabilities waiting in long lines, or exchanging written communication with voters with communication disabilities.
- **Refused signatures.** Some voters with disabilities have been turned away or challenged since they can only print their names or have a nontraditional signature, such as an “X” or a stamp. Signatures should not have to meet an election worker or other individual’s concept of what a signature should look like, but only match the signature on file.
- **Inaccessible language.** For many voters with mental disabilities, the use of complex language and concepts can make the voting process inaccessible. Voting literature and ballot language, therefore, should use plain language and clear wording. Also, icons and pictures should accompany text whenever possible.
- **Written instructions.** To facilitate communication with voters with hearing disabilities, each polling place should have the general instructions given orally to all voters (i.e., request for name, identification, etc.) typed and available. The instructions should be posted with other voting information and should be placed at a height that can be read easily by a voter sitting in a wheelchair. The instructions should also be written in large print (18 pt. font) so that it is accessible to individuals with vision disabilities.
- **Inaccessible information and materials.** HAVA requires election officials to make certain types of voter information available to voters.²⁷ This information should be made available in alternative formats, such as Braille, large print, or audio.²⁸ Also, election department websites should be accessible to screen readers and have text to accompany graphics.

What are some tips for making voting more accessible?

- **Talk to individuals with disabilities.** The best way to make elections accessible to individuals with disabilities is to confer and consult directly with these individuals, and with disability advocates. Representatives from a cross-section of the disability community should be consulted in order to ensure that voting is accessible to the entire disability community, not just one subset of individuals.
- **Training.** Jurisdictions need to provide election workers and other election officials training regarding the rights of voters with disabilities under state and federal law.

state laws provide a similar guarantee for state and local elections. The ADA also ensures the right to assistance of choice as a reasonable accommodation.

²⁷ 42 USC 15482

²⁸ ADA, 28 C.F.R. § 35.160(a) (requiring public entities to take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others.)

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Training on providing accommodations and general etiquette in working with individuals with disabilities is also essential.

- **Respect for the voter.** Some individuals with disabilities may have another person accompany them to the polling place, such as a sign-language interpreter or a person to assist them with the voting process. Voters should be addressed directly, not their assistant or interpreter. Also, election workers should ask voters what assistance they need. While it is appropriate to offer help, election workers should not automatically assume the individuals want or need it.

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PROVISIONAL BALLOTS

The Help America Vote Act of 2002 (HAVA) mandated provisional balloting as a “fail-safe” method to ensure that voters are not sent home empty-handed if their names did not appear on the voter rolls on Election Day, or they could not show the ID required of some first-time voters. They would instead cast a provisional ballot that will be counted if their eligibility was later verified. However, HAVA left it to the states to determine precisely how provisional balloting would be implemented. In a number of instances, state legislatures and election officials adopted rules and procedures that resulted in hundreds of thousands of provisional ballots going uncounted in the 2004 election.

Why do we need Provisional Ballots?

- **Registration problems are common.** Over one million registered voters experienced registration problems that prevented them from voting in the 2004 election.²⁹ Reasons may include tardy transmittal or processing of voter registration applications, clerical errors by election workers, or improper purging of eligible voters from the voter rolls.
- **Many Americans do not carry adequate identification.** The Help America Vote Act requires that new voters who register by mail prove their identity at some stage before voting. Many such voters may fail to bring adequate identification with them to the polls. Others may not possess the right document.³⁰

What are common Provisional Ballot problems?

- **Invalidating ballots cast in the wrong jurisdiction, polling place, or electoral district.** Voter advocates expected states to interpret provisional balloting in a voter-protective manner, and count a provisional voter’s choices even if she accidentally voted at the wrong polling place. Most states have instead elected to disqualify provisional ballot cast at the wrong location – even those votes cast for statewide or national office.
- **Invalidating ballots when provisional voters fail to show ID.** Some states automatically invalidate all provisional ballots cast by people who failed to meet HAVA’s identification requirement.³¹ These individuals likely leave the polls with the false impression that they have cast a valid ballot, or are otherwise forestalled from returning to the polls later with the requisite ID. Twenty-three states instruct election workers to verify a provisional voters’ eligibility without action by the voter.³² Fifteen

²⁹ U.S. Census Bureau, “Voting and Registration in Election 2004,” May 2005.

³⁰ Seniors, persons with disabilities, the poor, and urban residents are over-represented in this group. A study by the Task Force on the Federal Election System showed that 6 percent to 10 percent of the American electorate lacked any form of state ID. AARP’s Georgia chapter recently estimated that about 36 percent of state residents over age 75 there had no driver’s license. A 1994 Justice Department study found that blacks in Louisiana were four to five times less likely than whites to have photo IDs. In 2004, South Dakota voters in predominantly Native American counties were two to eight times more likely to fail to bring ID to the polls than other voters.

³¹ HAVA requires that mail registrants show a form of identification before they vote for -- if they did not submit some identification with their registration applications, or if election officials could not verify their eligibility in advance of Election Day.

³² OR, CA, AZ, UT, CO, ND, SD, NE, OK, AR, LA, MS, TN, FL, VA, PA, NY, HI, CT, VT, NH, ME, DC

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others will at least allow voters to return to the local elections office after Election Day, show proper ID, and have the provisional ballot counted.³³

- **Offering provisional ballots only during federal elections or only for federal offices.** A few states have chosen to do what they understand as the bare minimum required by federal law. Oklahoma offers provisional ballots for all offices, but only during federal elections. Connecticut, Delaware, Kentucky, Louisiana, Nevada, Vermont, and Missouri offer only “federal ballots” that deliberately leave off state and local elections so that provisional voters cannot participate in these races.

When should Provisional Ballots be disqualified?

- **Only when they are cast by ineligible voters.** Only minors, non-citizens, people disfranchised by state law, or those who attempted to cast fraudulent votes should be disqualified from voting. Provisional voters should have their ballots counted in all elections for which they were eligible to register and vote. States should promulgate transparency and uniform statewide standards for the counting of provisional ballots.

What standards should govern Provisional Balloting?

- **Provisional ballots should be counted statewide.** A voter who inadvertently casts a provisional ballot in the wrong precinct should not have her entire ballot discounted. Instead, election officials should credit votes cast for races for which the voter was eligible to vote (e.g., statewide offices, U.S. Senate).
- **Thorough poll worker training is essential.** Poll workers must be prepared to inform provisional voters not only whether they need to provide ID for their ballot to count and whether they have additional time after election day to do so, but also whether they must vote at the correct polling place in order for their provisional ballot to be counted.
- **Each polling place should be supplied with sufficient provisional ballots.** Polling places must not be allowed to run out of provisional ballots on Election Day. Establish guidelines for statewide uniformity.
- **Require statewide collection of data.** States should collect data from every local jurisdiction after each election showing how many provisional ballots were used; how many counted; and how many rejected, categorized by reasons for rejection.

How should provisional ballots be designed?

- **Design provisional ballots that can function as voter registration applications.** The top reason for discounting provisional ballots is that election officials can find no record of prior voter registration. The optimal provisional ballot is designed to double as a voter registration application so that those individuals for whom no voter registration is found can be registered for future elections. This approach reduce staff time among election administrators, increases the accuracy of the voter rolls, and picks up a large number of people who are not on the voter rolls, but would like to be. California, Colorado and New Mexico have developed model practices.

³³ WA, NV, MT, WY, KS, IA, IL, WI, MI, AL, GA, NC, WV, MD, NJ

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REMOVING VOTING BARRIERS FOR CITIZENS WITH MENTAL DISABILITIES

Voting access is a problem all voters with disabilities face. Voters with mental disabilities, however, face a particularly insidious barrier to equal participation in the electoral process -- discriminatory rules and procedures applied only to them. These barriers take the form of state laws and election-day practices, the latter imposed by overzealous and ill-informed election workers, poll watchers, and service providers acting beyond the scope of election law. For example, urged on by poll watchers, election workers sometimes require voters with mental disabilities to prove they are well-informed about the election process, that they understand the issues raised in the election, and have good reasons for their choices. The rationale for these laws and practices is that voters with mental disabilities do not understand the process or issues well enough to cast legitimate votes and are particularly susceptible to manipulation. Of course, many voters without mental disabilities cast votes without being informed about the issues or process; these voters are free to exercise their franchise with little or no understanding of the issues or process.

What is a mental disability?

- **Mental Disabilities** affect cognitive and/or learning abilities and can affect understanding, communication, or behavior. The term mental disability is used generally to describe two different types of disabilities: cognitive disabilities and mental illness.
- **Cognitive or Intellectual Disabilities** are any disabilities that affect mental processes, such as genetic disorders (e.g., Down Syndrome), traumatic brain injuries (e.g., shaken baby syndrome), or neurological impairments (e.g., autism). Some, but not all, cognitive disabilities are also characterized by significant limitations in adaptive behavior.
- **Mental Illness or Psychiatric Disabilities** are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and/or impaired functioning. Those with mental illnesses are usually of normal intelligence; however, mental illness can profoundly disrupt a person's thinking, feeling, moods, ability to relate to others, and capacity for coping with the demands of life. Mental illnesses include, but are not limited to, schizophrenia, bipolar disorder, obsessive-compulsive disorder, severe anxiety disorders, and borderline personality disorder.

What are some common barriers to voting for people with mental disabilities?

- **Voting Exclusions.** State laws or local policies or practices that bar citizens with mental disabilities from voting, regardless of their ability to make a choice, may violate Title II of the Americans with Disabilities Act (ADA).³⁴ For example, about 25 states have a

³⁴ Bazelon Center for Mental Health Law, *Legal Strategies to Expand the Voting Rights of Citizens with Disabilities* (August 14, 2001) available at <http://www.bazelon.org/issues/voting/legalstrategies.htm>.

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blanket bar on voting by anyone under guardianship.³⁵ Advocates should look both at the language of statutory and constitutional exclusions and at how jurisdictions enforce that language in practice. Advocates have challenged some of these blanket prohibitions on voting for individuals with mental disabilities. For example, in 2001, a federal district court struck down constitutional and statutory provisions in Maine prohibiting voters under guardianship from voting, declaring the provisions to violate both the ADA and the Equal Protection Clause of the U.S. Constitution.³⁶

- **Voting Challenges.** Even where the laws themselves do not deny voting rights, the actions of election officials, poll watchers, or others often deprive individuals with mental disabilities their right to vote. Before the 2004 election, the head of the Republican Party in Cuyahoga County, Ohio, announced that they were prepared to challenge anyone with a mental disability that came to the polling place without a guardian.³⁷ Even though there was no legal merit to the threat -- most people with mental disabilities do not have guardians, and no law requires voters that do have guardians to have them present to exercise their franchise -- such challenges can have a chilling effect and poll workers often misapply election law to the disadvantage of voters with disabilities.
- **Voting Tests.** Nursing homes, hospitals, group homes, care providers, and poll workers, frequently bar people with mental disabilities from voting based on inappropriate criteria. For example, group home providers required 30 U.S. citizens with cognitive disabilities that were part of a community-based program in Arkansas to attend citizenship classes and pass the course's final exam in order to be allowed to register to vote.³⁸ Anecdotes like these and calls by various professionals for instituting voting tests to residents in nursing facilities mean that advocates must be vigilant to make certain that modern-day literacy tests are not a reality for any voters.³⁹
- **Denial of Effective Assistance.** Some voters with mental disabilities may need assistance reading a ballot or going through the voting process and are entitled to voting assistance from persons of their choice and to reasonable accommodations that make governmental programs accessible to them.⁴⁰ Often, however, poll workers or others deny individuals the right to get assistance from a person of their choice and insist that an election worker must assist the voter. Because some mental disabilities affect a voter's ability to deal with a new or stressful environment, some voters may require assistance from someone with whom they are familiar for the assistance to be effective.

³⁵ *State Laws Affecting the Voting Rights of People with Mental Disabilities* available at <http://www.napas.org/Voting/MD-StateVotingLaws%5BFinal%5D%5BNAPAS%5D.pdf>

³⁶ *Doe v. Rowe*, 156 F.Supp.2d 35 (D. ME. 2001). A copy of the court's order is available at http://www.med.uscourts.gov/opinions/Singal/2001/GZS_08092001_1-00cv206_DOE_v_ROWWE.pdf

³⁷ Michael Moss, *Big G.O.P. Bid to Challenge Voters at Polls in Key State*, New York Times, Oct. 23, 2004 at Section A, Page 1, Column 5.

³⁸ *2003 Annual Report of Protection & Advocacy Systems*, at 38-39 (2004) available at <http://www.napas.org/1-6/2004Report.pdf>.

³⁹ Jason H. Karlawish, MD, ET AL., *Addressing the Ethical Legal and Social Issues Raised by Voting by Persons with Dementia*, JAMA, Vol. 292, No. 11 at 1345-1350 (2004).

⁴⁰ Voting Rights Act, 42 U.S.C. §§1973aa-6 ("Any voter who requires assistance to vote by reason of blindness, disability . . . may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."); ADA, 28 C.F.R. § 35.130(b)(7) (requiring public entities to make reasonable modifications to policies and procedures to avoid discrimination on the basis of disability.)

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- **Inaccessible Language.** Many people with mental disabilities may have difficulty understanding complex language. The use of complex language and concepts can make the voting process inaccessible to these individuals. Voting literature and ballot language should use plain English and clear wording. Also, icons and pictures should accompany text whenever possible.

What are some solutions to these barriers?

- **Education.** Education and training of election officials are paramount in ensuring election access to voters with mental disabilities. Poll workers need to understand the rights of voters with mental disabilities and the limitations of excluding these individuals from the voting process. Election officials and state officials must also be encouraged to produce election materials and ballots with language that is accessible to people with mental disabilities and those with low literacy. Finally, it is also very important to make sure that voting rights education is provided to people with mental disabilities, as well as their families and service providers.
- **Legislative initiatives.** State legislative initiatives can reform statutes so that states do not exclude people with mental disabilities from voting merely because they have a disability.
- **Litigation.** Where legislative initiatives cannot be pursued, lawsuits can be brought to challenge overbroad state laws or local policies and practices that disenfranchise voters with mental disabilities.

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PUBLIC ACCESS PORTALS

Public Access Portals are web-based tools that citizens can use to determine whether they are on the voter registration rolls, where the correct polling location is for a specific address, and whether the polling location is handicapped accessible. This is a new and invaluable offering which is beginning to be adopted by states around the country.

Why would public access portals be useful now?

- **Right now, states are reviewing and updating their voter registration database systems.** States are currently reviewing and discussing Requests For Proposals (RFPs), writing systems, or discussing and signing contracts for voter registration databases. This offers an ideal opportunity to add several easy-to-design pieces that will exponentially open up access, ensure statewide uniformity, and resolve issues before they become problems.
- **Public access portals save money, resources, and time for state and local elections offices.** In 2004, the largest problem about which potential voters contacted elections offices was identification of correct polling places.
- **The number one reason for provisional ballots not counting in 2004 was because the person was not registered, either in the correct jurisdiction or at all.** A voter's ability to definitively determine, in a timely fashion, whether he or she is on the voter rolls electronically, and to be able to locate the correct polling place and determine accessibility, will reduce confusion as Election Day approaches and on Election Day.

How should the polling place locators operate?

- **Polling place locators should operate independently from the voter registration database search.** To launch the search to determine whether a person is on the voter rolls, systems are asking for name and birth date, and when necessary, subsequently asking for address information. A successful match on the voter rolls should not be a precondition for identifying proper polling place for a particular address. There are at least two reasons for this. First, registrations submitted close to the deadline may not appear on the database, but these voters still need to identify their polling location. And second, states with Election Day Registration need to offer polling place information to people who are not registered.

What states are using public access portals?

- **Kentucky.** Kentucky has had a statewide database in place since 1973. In order to use this database, a person must simply go to the state website and enter a name and birthdate. If the person's name is, in fact, in the database as registered, the system provides the voter's address, the polling place (listed as "precinct information"), and contact information to the person's state and federal legislators. You can view this

Not all organizations in the Network have a position on this issue.

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system at www.elect.ky.gov, through the “voter information center” link either directly or through the “voter information” link. This public access portal began in May of 2004, and leading up to the general election of 2004, there were more than 100,000 “hits”.

- **North Carolina.** North Carolina’s Voter Registration Search Program allows for an easy search on-line to determine if one’s name is on the voter rolls, and at what address. Once found in the database, the polling place locator links to information about the polling location including issues and photos of accessibility. View their system at www.sboe.state.nc.us. This system was developed in stages beginning in 2001-2002, under the leadership of Gary Bartlett, the Executive Director of the State Board of Elections. The only feature which poses a concern is that it is necessary to first locate yourself in the database before retrieving information about the polling location. However, the state plans to add an independent polling place locator to the system in the future.
- **Hawaii.** According to Dwayne Yoshina, Chief Election Officer, Hawaii first introduced its internet-based voter verification and polling place locator in 2002. The search is launched either with the last six digits of the Social Security number (full Social Security number required in Hawaii) or with a District-Precinct designation provided on voter notification cards. The search confirms the registration, as well as provides information on and maps to and photographs of the polling place.
- **Colorado.** Colorado is in the building stage for their database and is planning for a public access portal. As an additional component, because of the disability components of HAVA and the ADA, such a web location should include accessibility information about the polling place to assist voters with disabilities in planning and responding to challenges. Design details are being worked on right now to ensure security aspects. They are also looking into mapping capabilities to give directions on how to get to the polling place.
- **Wisconsin.** The Voter Public Access portal, which will be provided in the new State Voter Registration System, is expected to be up and running beginning January 1, 2006. The Voter Public Access portal allows the public to look up their registration information via the Internet, on a website provided by the State Election Board. The public access portal will show the following information about the voter:
 - The voter's address
 - Their registration status (such as active, inactive, pending, etc)
 - The jurisdictions they are part of (such as ward, school district, etc)
 - Their polling location
 - The hours of the polling location
 - The handicap accessibility of the polling location
 - A listing of the offices up for election
 - Ballot style (such as a sample ballot for the election)

The voter will be able to search for their information based on their name or their address. Since Wisconsin is an Election Day Registration state, many people need to determine their correct polling place even though they are not registered. Therefore, an

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address can be entered to determine the correct polling place without needing to connect to an actual registration confirmation.

Confidential voter information (e.g. social security number, date of birth, request for accommodation by a person with disability, and records of victims of domestic violence who receive a confidential listing) will not be available through the public access portal, in accordance with state statutes.

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VOTER ID REQUIREMENTS

Many state legislatures are currently considering passing voter ID bills. These bills would require all voters to present at least one form of acceptable identification at the polls on Election Day before they would be permitted to cast their votes. Although at first glance these bills seem harmless, they pose real barriers for real people at the polls. In fact, requiring voters to present identification before voting will impede many eligible voters from carrying out their right to vote as citizens of this country.

What is the anatomy of a typical voter ID bill introduced in the states?

- **Typical bills that we are seeing would require that every voter provide photo identification before casting a vote.** Commonly, bills require that one piece of government approved photo identification or at least two pieces of secondary identification be presented at the polls. Voters will either have to present a driver's license, birth certificate, or passport. Some states will allow voters who are unable to produce these items to present multiple items such as bank statements and pieces of official mail. While such a requirement is also unnecessarily burdensome, other states go further, refusing to allow voters who cannot produce a photo ID to cast a regular ballot.

Why are bills requiring voter ID at the polls being introduced in the states?

- **State legislators and officials claim they want to prevent voter fraud.** However, their claims that fraud is rampant on Election Day are unjustified and unfounded. Voter fraud is rare. Based on recent studies completed in several states such as Wisconsin, little evidence of voter fraud exists.

How would voter ID requirements disenfranchise eligible voters?

- **They discriminate against minorities, rural voters, the homeless, Native Americans, low-income people, the elderly, the disabled, and persons in large households.** First, identification is costly; therefore not all segments of the population can afford to purchase identification. Second, those citizens without current addresses on their forms of ID have a much higher chance of being turned away from the polls. Long lines at the polling place, created by the voter ID requirements, will also hinder many working citizens from having the chance to vote.
- **Requiring voter identification is equivalent to a poll tax.** By mandating that voters provide identification, states are in essence mandating that these voters pay for documents to verify their identities. IDs such as drivers' licenses, passports, and birth certificates cost money. At the same time, not all eligible voters in this country can afford to purchase such pieces of identification.
- **Voter ID proposals are often hidden in anti-immigrant legislation.** Because their real goal is to impede voting by minorities and low-income citizens, voter ID proposals are commonly imbedded in laws that restrict the rights of undocumented immigrants. In this

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way, the sponsors of voter ID proposals hope to capitalize on anti-Latino sentiment and gain support from nativist factions within their state legislatures. While legislation such as the Voting Rights Act of 1965 and the Help America Vote Act have sought to make it easier for all citizens to vote, and have resulted in increased voter participation by Latinos and other minorities, voter ID bills are an attempt to restrict minority voting by taking advantage of the current anti-immigrant sentiment across the country.

- **Eligible voters will be turned away.** The requirement will do much more to inhibit many eligible voters from voting than it will to prevent voter fraud. For example, if a piece of identification does not contain the voter's current address, he or she may be turned away from the polls. Thousands of people possess drivers' licenses that do not show their current address.

What are some of the ineffective arguments for voter ID requirements?

- **“You have to show an ID to rent a movie, so why not to vote?”** In contrast to this common argument, voting with ID requirements is not as easy as renting a movie. Renting a movie is a luxury, not a right. A large number of people in the United States cannot afford or obtain access to what others consider basic necessities such as running water, electricity, and gas services. How, then, is it acceptable to expect them to pay for an ID to exercise their right to vote? Also, ID requirements are administered in a discriminatory way. Recent experience shows that many minority voters and voters who don't speak English proficiently are singled out and asked for ID when other voters are not. This even happens where there is no ID requirement. Singling out traditionally disenfranchised voters is intimidating and disenfranchising.
- **“The voter ID requirement will be fair if states expand their lists of acceptable IDs.”** No matter how expansive a list of acceptable IDs is, this requirement will never allow all eligible voters to cast their votes on Election Day. Inevitably, people will be turned away from the polling place with this requirement in place.