

# VOTING IN 2010

## Ten Swing States

Demos



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## ABOUT DĒMOS

Dēmos is a non-partisan public policy research and advocacy organization. Headquartered in New York City, Dēmos works with advocates and policymakers around the country in pursuit of four overarching goals: a more equitable economy; a vibrant and inclusive democracy; an empowered public sector that works for the common good; and responsible U.S. engagement in an interdependent world.

## ABOUT COMMON CAUSE

Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest, and accountable government that works for the public interest, and empowering ordinary people to make their voices heard.

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# EXECUTIVE SUMMARY AND OVERVIEW

Many of the elections for governor, the U.S. Senate and House of Representatives will be close in 2010. Potentially, party control of the Senate and House hangs in the balance; gubernatorial races will also be critical, with redistricting to begin shortly after the elections. These dynamics set the stage for election time mischief and attempts at suppression and manipulation of registration and voting rules, especially in close contests where a handful of votes could tip the balance. In other words, the laws and policies governing voting have the potential to be game changing.

In this report, we review a number of election laws and policies in 10 states chosen because they are expected to have close elections. In each state, there are problems with election laws, policies and practices which could impact enough voters to determine election outcomes.

The stakes are high.

The tenor of the political debate and the mood of the country around government make our election system particularly susceptible to challenges this year. The negative tone started with town hall meetings in the Summer and Fall of 2009 around the issue of health care, in which members of Congress and other citizens were shouted down and intimidated. It continued through the winter with the burgeoning of the “tea parties,” particularly their more extreme elements. In the spring, it devolved into a situation in which racial and homophobic epithets were directed at members of Congress and threats made against their lives. And in the last several months the issue of immigration – and more importantly the role of immigrants and ethnic minorities in our society – has been debated in a way that makes clear that we are going through a period of great suspicion and anger toward some minority groups. This dangerous cocktail has the potential to set up a particularly toxic environment for hotly contested elections, often between candidates with significant ideological differences. How elections are administered, and how the activities of partisan activists are managed, will be crucial in determining whether our elections are fair.

The tenor of the political debate and the mood of the country around government make our election system particularly susceptible to challenges this year.

As in previous election cycles, including in our 2008 Swing State Report, we examine the following critical election issues in key states, provide a summary chart evaluating each state’s practices, and offer recommendations for improvement of these voting procedures.

- **Voter Registration Issues.** Surveys and voter hotlines identified problems with the voter registration process as the top factor causing eligible votes to go uncounted in 2008 and up to 3 million eligible voters were disenfranchised as a result.<sup>1</sup> There are numerous ways inadequate voter registration processes impede citizens from registering to vote and staying on the rolls; such problems are ongoing.
  - » In most states, registration deadlines fall nearly a month before elections. This means just as the media and much of the public are focusing attention on the races, voters who have not registered are barred from doing so. Every state we reviewed except North Carolina has unreasonably limited voter registration deadlines.
  - » There are inadequate provisions to allow voters to update their addresses or party affiliations once they are registered.
  - » Voter registration drives can be so restricted by state law that they become too cumbersome and expensive to conduct.
  - » Failure to implement the National Voter Registration Act (NVRA), which requires state-based public assistance and disability agencies to conduct voter registration, can block a major avenue for voter registration, especially among lower income Americans. Kentucky for instance has seen a 74 percent decline in registrations from public assistance agencies between the 1996 and 2008 election cycles, while Louisiana saw an 88 percent decline.

- » State law can create barriers to voting for formerly incarcerated citizens who have completed their sentences. Kentucky, for example, requires a pardon from the governor to have voting rights restored, effectively blocking some 186,000 people from voting.
  - » Flawed processes in compiling and verifying voter registration databases can lead to rejection of valid registrations due to typos, poor handwriting, or other clerical errors.
  - » State law can unreasonably require an exact match between data on voter registration forms and data in existing state databases such as the Department of Motor Vehicles. In these cases, simply including or not including a middle name or transposing of a number can cause a voter's registration to be flagged. Nevada, for instance, requires an exact match of every character of a person's name and birthday with their drivers' license, state ID, or last four digits of their Social Security number.
- **Voter Identification.** While all states have means by which voters identify themselves at polling sites, some states require very specific forms of ID that are not universally available. That distorts election results by preventing eligible voters from casting ballots. Arizona has one of the more restrictive laws in the nation, requiring voters to bring proof of citizenship to register to vote; the state also accepts only fairly limited forms of ID at polling places. From 2004 to 2008, more than 38,000 registrations were rejected in Arizona despite court documents indicating 90 percent of these were from people born in the United States.

Moreover, even though some states allow for a wide range of types of identification, and others permit voters to cast ballots if they forget to bring their ID but sign an affidavit as to their identity, election workers do not always know these laws are on the books and will require certain types of ID anyway.

- **Provisional Ballots.** All states are now required to offer voters provisional ballots when problems arise with registration or voter identification, but use of these ballots varies widely by state. Depending on how they are administered, these ballots can either help voters or mislead them; the rules in some states are so restrictive that a ballot the voter believes was valid will in fact be discarded. Missourians who come to vote without requisite identification will not even be provided with a provisional ballot. In a majority of these states, provisional ballots cast in the wrong precinct – even through no fault of the voter -- will be disregarded.
- **Voter Suppression/Deception.** In every election, there are still efforts to intimidate and deceive voters to suppress turnout. States have not done enough to prohibit these practices, whether they occur via the Internet, flyers, letters, or robocalls. Very few of the states under review here, or anywhere in the country, have measures in place directly prohibiting deceptive practices or prescribing actions to be taken by officials if deceptive practices are perpetrated. In the last election cycle, robocalls to voters' homes gave voters incorrect polling location information and e-mails were blasted around the country with misinformation about the voting date. In 2004, deceptive practices were widespread, with flyers distributed in some low income and ethnic minority neighborhoods claiming that voters who had not paid child support or parking tickets would be arrested if they tried to vote.
- **Caging and Challenge Laws.** Most of our states have laws that allow political operatives and ordinary voters to block other eligible voters from casting ballots through "caging" and "challenge" techniques with few evidentiary requirements and little accountability. In Ohio in 2004, partisan operatives challenged 35,000 voter registrations based only on returned non-forwardable mailings; challenges again were threatened in 2008 in other states.
- **Challenges for New Citizens and Ethnic Minorities.** States need better policies to help new citizens and limited English proficient voters overcome barriers to the voting process. Election administrators also need to be more proactive in their outreach to these communities. New citizens, as well as ethnic minorities born in the U.S., register and vote at lower rates than the general population. In 2008, naturalized citizens voted at a rate more than 10 percentage points lower than that of native born citizens. In most of the states under review the gap was also in the double digits, sometimes high double digits.
- **Overseas and Military Voters.** Overseas voters, particularly our servicemen and women, also face special circumstances in voting. Congress recently passed the Military and Overseas Voter Empowerment Act (MOVE) to require mailing of absentee ballots 45 days prior to an election. The 2010 election will be the first major election in which states have implemented it. It is far from clear that all will meet this requirement and some states, including Colorado, are requesting a waiver. The voices of overseas and military voters need to be heard in our country, and state election officials must take extra measures to ensure that these votes are counted. Regrettably, some states have adopted policies which allow voters to cast ballots via the Internet. These ballots are vulnerable to tampering and to computer glitches. Additionally, voters who send ballots by e-mail and fax must often waive their rights to a secret ballot – an unacceptable practice.

# OVERVIEW OF MAJOR OBSTACLES IN EACH STATE

## ARIZONA

**Political Outlook.** The race for *governor* in Arizona is competitive, with State Attorney General Terry Goddard (D) challenging current Governor Jan Brewer (R). At least four races for the *House of Representatives* are also close.

**Obstacles to Voting:** Arizona is the only state which requires proof of citizenship in order to register to vote. This law has, and was written to have, a disproportionate impact on naturalized citizens seeking to vote; it has already prevented thousands of Arizonans from registering, and acts as a deterrent to the registration of other eligible voters. Arizona has also historically had inadequate outreach to certain language minority communities covered by Section 203 of the Voting Rights Act, and gaps in coverage for qualified and trained bilingual poll workers. Lack of funding and basic administrative support continues to make the jobs of voting rights outreach workers difficult. There is a continued need for federal observers to ensure compliance with the Voting Rights Act in some Arizona counties.

Arizona permanently disenfranchises individuals with more than one felony conviction, but permits those with one felony conviction to vote (though only after completing probation and parole), a distinction which confuses even many elections officials. Arizona's laws regarding challengers at the polling site are lax, and voters are vulnerable to confusion and disenfranchisement due to dissemination of misinformation about the electoral process; Arizona lacks specific laws targeting such deceptive practices. Also in Arizona, provisional ballots cast in the wrong precinct will not be counted, probably disenfranchising a great number of voters. Finally, Arizona's voter registration deadline falls 29 days before the election – a policy which unnecessarily bars many voters from registering.

**Exemplary Voting Laws/Procedures:** The State of Arizona has an excellent website for limited English proficient voters.

## COLORADO

**Political outlook:** Both the *gubernatorial* and *senatorial* elections in Colorado are considered toss-ups and could be seriously impacted by the Latino vote. The race for governor is a three-way contest, featuring former Denver Mayor John Hickenlooper (D), businessman Dan Maes (R) and former U.S. Rep. Tom Tancredo, a Republican-turned-independent. The Senate race pits incumbent Michael Bennet (D) against Ken Buck (R). Two races for the *House of Representatives* are also looking close in Colorado.

**Obstacles to Voting:** There are more than 404,000 eligible Hispanic voters in Colorado. Colorado has more than 150,000 immigrant citizens, and Latinos make up 12.2 percent of the electorate.<sup>2</sup> Yet Colorado elections officials do not conduct any formal outreach for immigrant or language minority voters. Colorado also lacks any law directly banning dissemination of deceptive information, leaving the state open to the use of phony flyers as well as online dissemination of misinformation meant to disenfranchise voters. Colorado needs to change the law so that citizens who have completed their prison sentences can vote and needs to strengthen its procedures notifying ex-felons of their voting rights.

Also, the voter registration deadline in Colorado falls 29 days before the election, unnecessarily barring some eligible citizens from registering to vote. Although Colorado allows “emergency registration” for some voters who miss the deadline, the policy is not comprehensive.

Finally, voting in Colorado may be especially difficult for military and overseas voters. Colorado has requested a waiver of the recently passed federal requirement that absentee ballots be sent out 45 days in advance to overseas voters who have requested them prior to that time.

**Exemplary Voting Laws/Procedures:** When voters' names in the Colorado statewide voter database don't exactly match data in other databases, and minor errors occur or nicknames are used, officials are authorized to use good judgment and keep the voter registered. Additionally, when voters are given a provisional ballot, the onus is on election workers to check voter databases and the voter's history to determine eligibility.

In 2008, Common Cause, Mi Familia Vota, and SEIU sued the Colorado Secretary of State for unlawfully purging close to 20,000 voters from the voting rolls in violation of the National Voter Registration Act. As a result of the suit, in 2010, there are new policies in place which govern maintenance of the voter lists and establish reasonable matching criteria when adding voters to the statewide registration database. Furthermore, Colorado's legislature passed a law in May 2010 that specifies that no elector's registration may be cancelled solely for failure to vote. These policies should be helpful for voters.

## ILLINOIS

**Political Outlook:** The U.S. *Senate* race for President Barack Obama's former Senate seat is very competitive, as polling shows either a dead heat or a gap of single digits in the contest between U.S. Rep. Mark Kirk (R) and State Treasurer Alexi Giannoulias (D). The *gubernatorial* race may also be tight, as State Senator Bill Brady (R) will be facing Gov. Pat Quinn (D), who replaced disgraced former governor Rod Blagojevich. At least 3 *House* districts also have competitive campaigns.

**Obstacles to Voting:** Illinois voters who are "challenged" at the polls must show two forms of identification or have another voter testify to their eligibility in order to vote. Elections officials are not provided with clear standards on when to allow a challenged individual to vote a regular ballot. This problem is exacerbated by the fact that any registered voter in the state may act as a designated challenger. In Illinois, provisional ballots cast in the wrong precinct – even if cast in the correct polling site or county – will not be counted for any race, potentially disenfranchising a great number of eligible voters.

**Exemplary Voting Laws/Procedures:** In Illinois, voting rights are automatically restored to citizens when they are released from prison; citizens on parole or probation are eligible to vote. Illinois also has exemplary voter ID laws, which require only that first time voters who registered by mail provide identification, as mandated by the 2002 Help America Vote Act (HAVA). Illinois does not jeopardize the privacy and security of overseas and military voters by accepting ballots cast by fax, e-mail, or over the Internet. Cook County, Illinois also has an exemplary program for reaching out to new citizens and limited English proficient voters.

## KENTUCKY

**Political Outlook:** The U.S. *Senate* race in Kentucky is competitive, with Tea Party activist Rand Paul (R) ahead of Jack Conway (D), the state's Attorney General.

**Obstacles to Voting:** In Kentucky, elections will once again be marred by the state's extremely restrictive felon disenfranchisement rules. Nearly six percent of Kentucky's population, and roughly 24 percent of its African American population, is disenfranchised under this law.<sup>3</sup> While felons may regain the franchise through a petition to the Governor, that process is clearly inadequate to give ex-felons real access to voting rights. Kentucky is another state that does not have a direct law regarding dissemination of misinformation about the electoral process. This makes it vulnerable to both traditional and online vote suppression mischief. Also, like many other states, Kentucky does not count provisional ballots cast in the wrong precinct, potentially taking the vote away from many eligible voters.

**Exemplary Voting Laws/Procedures:** Kentucky has the most exemplary voter "challenge" law among the states under review. Only designated challengers and election officials who undergo specific training can challenge other voters' right to vote. Also, Kentucky does not jeopardize the privacy and security of overseas and military voters by accepting ballots cast by fax, e-mail, or over the Internet.

## LOUISIANA

**Political Outlook:** In the U.S. *Senate* race, embattled U.S. Sen. David Vitter (R) is running for reelection and is facing a challenge from U.S. Rep. Charlie Melancon (D). Two *House* seats are also up for grabs.

**Obstacles to Voting:** Louisiana has experienced an 88 percent decline in the number of registrations from public assistance agencies since such registration programs were required – from 74,636 registrations in 1995-1996 to only 8,688 registrations in 2007-2008 – one of the steepest drops in the nation.<sup>4</sup> Moreover, laws in Louisiana regarding voter challenges are troublingly unclear. Any voter registered in the state may make a challenge, and once challenged, an individual's right to vote is left entirely to the discretion of the majority of the election commissioners at the polling place, with little guidance provided to the commissioners regarding how to make such a determination. In addition, many in Louisiana are likely to miss the state's very early, 30-day registration deadline. Finally, Hurricanes Katrina and Rita could continue to present challenges to election administration in Louisiana. A 2007 purge program removed 21,000 names from the statewide voter registration list when officials compared the names of Louisiana voters with lists from other states. Although the Secretary of State's office eventually restored many names in the vicinity of New Orleans that they originally struck, list maintenance programs in Louisiana should continue to be monitored.

**Exemplary Voting Laws/Procedures:** None among those studied.

## MICHIGAN

**Political Outlook:** The race for *governor* was considered close, slightly leaning Republican; however, in recent weeks Republican businessman Rick Snyder now has a substantial lead in the polls over Democrat Virg Bernero, the mayor of Lansing. Two *House* seats currently held by Democrats are considered toss-ups.

**Obstacles to Voting:** Michigan was until recently involved in a lawsuit over purges to its voter registration databases in which the state agreed to settle and reform its past practices.<sup>5</sup> During the 2008 election, Michigan was the epicenter of controversy over possible plans to challenge voters whose homes had been foreclosed.<sup>6</sup> Challenges and caging lists remain a potential problem.

In addition, the number of voter registration applications reported to have come from Michigan's public assistance agencies declined 87 percent between 1995-1996 and 2007-2008 – from 79,538 to only 10,542.<sup>7</sup> The state's Department of Human Resources (DHR) worked cooperatively with advocates to make some improvements in their NVRA procedures in late 2007 and early 2008. Data on voter registration reported since then however, suggest those improvements may not have been uniformly implemented throughout the state or that accountability mechanisms may not have been utilized by the state agency after initial implementation of the reforms.

Michigan also lacks a law specifically prohibiting deceptive practices, leaving voters vulnerable to Election Day dirty tricks and misinformation campaigns. Additionally, in Michigan provisional ballots cast in the wrong precinct – even if cast in the correct polling site or county – will not be counted, potentially disenfranchising a great number of eligible voters. Finally, Michigan's voter registration deadline falls a full 30 days prior to the election, effectively barring some interested citizens from being able to register to vote in time to cast ballots.

**Exemplary Voting Laws/Procedures:** Citizens' voting rights are restored as soon as they are released from prison. Michigan does not jeopardize the privacy and security of overseas and military voters by accepting ballots cast by fax, e-mail, or over the Internet. The Secretary of State also makes a serious effort to conduct voter registration at citizenship naturalization ceremonies, a practice others should emulate

## MISSOURI

**Political Outlook:** In Missouri a U.S. *Senate* race is in play. Secretary of State Robin Carnahan (D) and U.S. Rep. Roy Blunt (R) are very close in the polls. Missouri's 4<sup>th</sup> *Congressional District* may also be competitive.

**Obstacles to Voting:** In Missouri, voters who do not bring the right ID to the polls on Election Day are barred from voting and not permitted to receive a provisional ballot. Also in Missouri, there may be difficulties caused by challenge laws, which permit any voter to challenge any other voter on Election Day and leave the final determi-

nation of whether the voter may vote by a regular ballot up to the majority of election judges at the polling place. When Missouri voters cast provisional ballots in the wrong precinct, those ballots are completely disregarded. Missouri's voter registration deadline falls 27 days prior to the election, effectively barring some interested citizens from registering and voting. Missouri also does not permit individuals who are on probation or parole for a felony to vote.

**Exemplary Voting Laws/Procedures:** Missouri is the only state that has a law very directly addressing deceptive practices. Also, after a federal judge found the state's Department of Social Services to be in violation of the National Voter Registration Act, the Department of Social Services dramatically increased voter registration services.

## NEVADA

**Political Outlook:** In Nevada, the U.S. *Senate* race involving Senate Majority Leader Harry Reid is expected to be close. The *gubernatorial race* is a toss-up, with former district judge Brian Sandoval (R) running against Rory Reid (D), a Clark County commissioner. Nevada's 3<sup>rd</sup> *Congressional District* also is considered a toss-up.

**Obstacles to Voting:** Nevada uses an "exact match" standard on voter registration databases, which may make it more difficult for some voters to cast a ballot. Nevada is another state where issues could arise around immigrant and Latino voters. There are 192,000 eligible Hispanic voters in Nevada. The Secretary of State has not taken any particularly proactive steps to reach out to these voters. Moreover, even in a state with such large numbers of Latinos, Spanish language voter registration forms are not available on the Secretary of State's website.

In addition, Nevada has had experiences with deceptive practices causing confusion and impeding the vote, and its deceptive practices law is not as specific as it should be to combat these concerns. Nevada's challenge law is also inadequate.

**Exemplary Voting Laws/Procedures:** Nevada has excellent voter identification laws, with requirements that go no further than the HAVA mandate that first time voters who registered by mail must show certain types of ID prior to voting.

## NORTH CAROLINA

**Political Outlook:** North Carolina has emerged in recent years as a potential swing state. President Obama narrowly won there, but it is unclear if other Democrats will be able to follow suit. Early polls showed the race for *senate* to be competitive, though more recent numbers have shown GOP Senator Richard Burr pulling away from the challenger, Democrat Elaine Marshall. At least three House races are very competitive.

**Obstacles to Voting:** While North Carolina has by far the strongest voter protection laws and policies of the states we studied, there is still room for improvement. The challenge law in North Carolina is too expansive; any registered voter in a county may challenge a voter before the 25<sup>th</sup> day before an election,<sup>8</sup> and any individual registered to vote in a precinct may challenge any voter at his or her precinct on Election Day.<sup>9</sup> North Carolina does not appear to require that challenges made on Election Day be made in written form or be recorded. Also, voting rights for citizens who have finished a prison sentence are not restored until that individual has completed parole or probation.

**Exemplary Voting Laws:** In general, North Carolina is a good place to be a voter. First, voters are permitted to register to vote right up until the end of the early voting period, which stops the Saturday before the election. The state agencies are working effectively under an implementation plan developed by the State Board of Elections in cooperation with advocates in 2007<sup>10</sup> to increase voter registration at state agencies. There are no state imposed voter ID laws – North Carolina voters are governed by the federal statute covering first time voters only. North Carolina also has a very strong law prohibiting misinformation campaigns designed to confuse voters and suppress the vote. It is a felony in North Carolina "for any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communications where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote."<sup>11</sup> Finally, provisional ballots cast in the correct county but wrong precinct will be counted for relevant races.

# OHIO

**Political Outlook:** Ohio is a swing state as both the *senatorial* and *gubernatorial* races are hotly contested. Gov. Ted Strickland (D), who won 60.5 percent of the vote in 2006, is running for re-election, with a challenge from former Congressman John Kasich (R). Former Congressman Rob Portman (R) and Lt. Gov. Lee Fisher (D) will have a competitive battle for the Senate seat. At least four *House* races will also be close.

**Obstacles to Voting:** While leaders in Ohio have taken great strides to improve the voting system, there is still room for improvement. Ohio's very early voter registration deadline – a full 30 days prior to the election – may prevent many interested citizens from participating. Ohio also has ongoing issues regarding database matching, though the Secretary of State has taken major strides to resolve them. Ohio has had problems with deceptive robo-calls and other attempts to prevent individuals from voting by spreading misinformation; Ohio law is not as specific as it should be to combat such practices. Ohio lacks any anti-spam statutes which apply to non-commercial e-mails, which is worrisome because e-mail is a common and rapid method of spreading disinformation. Finally, Ohio continues to toss away provisional ballots that are mistakenly cast in the wrong precinct by otherwise eligible voters.

**Exemplary Voting Laws/Procedures:** The state is improving its registration practices at state agencies. The state's Department of Job and Family Services entered into a settlement agreement to effectively implement and monitor the NVRA in November 2009.<sup>12</sup> The first several months of data reporting under the agreement are encouraging.<sup>13</sup> Ohio also allows citizens who have finished their prison sentences to vote. Ohio's implementation of the MOVE Act is exemplary. The state also has exemplary practices with regard to voter registration outreach to newly naturalized citizens.

## ENDNOTES

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# VOTING IN 2010

## Ten Swing States

Demos





# REGISTRATION

## VOTER REGISTRATION DEADLINES

Democracy functions best when voter turnout is maximized and when the voting electorate is representative of the nation at large. Unfortunately, turnout in the U.S. often lags behind that of other industrialized democracies,<sup>1</sup> and those who do turn out are not fully representative of the eligible population because of persistent differentials in turnout rates related to income, age and ethnicity, among other factors.<sup>2</sup> The requirement in most states that voters register before a prescribed deadline is one factor that depresses turnout in the U.S.<sup>3</sup> Experts estimate that up to 3 million individuals were denied the opportunity to vote in the 2000 presidential election because of voter registration problems and flawed voter lists.<sup>4</sup> Eight years later, it was again estimated that 2 to 3 million voters were disenfranchised because of problems with registration and authentication.<sup>5</sup>

Allowing citizens to register and vote on the same day has repeatedly been shown to increase turnout, especially among historically disenfranchised groups, without significantly increasing the burden on election administrators. As *Demos* has documented, states that allow Same Day Registration boast turnout rates that are generally 7 to 12 percentage points higher than states without SDR.<sup>6</sup> Academic studies have concluded that a sizeable portion of the gains, 3 to 6 percentage points, is directly attributable to SDR.<sup>7</sup> Additional research has shown that SDR has an even greater impact among groups that typically have lower turnout rates such as young voters, low-income voters, African Americans, Latinos, and mobile citizens.<sup>8</sup> Finally, academic research and surveys of election administrators in SDR states have concluded that fraud is virtually non-existent and administrators are able to handle registration on Election Day without significant problems.<sup>9</sup>

Even having a shorter registration deadline that is closer to Election Day has been shown to be conducive to higher turnout and a more representative electorate.<sup>10</sup>

The states examined in this report vary considerably in the length of their registration deadlines and the ability of citizens to register and vote on the same day.

**North Carolina** adopted Same Day Registration in 2007. Eligible citizens who miss the regular 25-day registration deadline may register and vote at “one-stop” early voting sites at any time between 18 days before the election and 1:00 pm on the Saturday before the election.<sup>11</sup> One-stop voting sites include such traditional registration locations as local boards of elections as well as more convenient sites such as community centers, community colleges, public libraries, a shopping center, and a fitness club.<sup>12</sup>

North Carolina’s new SDR law proved a huge success in the 2008 election. Over a quarter million North Carolinians used SDR in the November 2008 election, almost 125,000 of whom were first-time voters in their counties.<sup>13</sup> Partially due to SDR, North Carolina saw the largest increase of any state in voter turnout over the 2004 presidential election.<sup>14</sup> Additionally, SDR dramatically reduced the number of provisional ballots cast, saving election administrators the time, money, and frustration of verifying large numbers of provisional ballots.<sup>15</sup>

**Illinois** and **Ohio**, while they do not have Election Day Registration, allow an eligible voter to register and cast a ballot on the same day during certain periods leading up to an election. In **Illinois**, regular registration closes 27 days prior to an election.<sup>16</sup> Illinois law provides for two procedures that allow a voter to register and vote on the same day: grace period voting and overlap voting. Grace period registration, permitted in all jurisdictions throughout the state, allows an eligible citizen to register and vote at the same time between the close of regular registration and the 7<sup>th</sup> day prior to an election.<sup>17</sup> Indeed, voters using grace period registration *must* register and vote on the same day. They are not allowed to register during the grace period and then vote in person on Election Day. Grace period voting must be done “either in person in the office of the election authority or at the location specifically designated for this purpose by the election authority, or by mail, at the discretion of the election authority.”<sup>18</sup>

.....  
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In addition, voters may register to vote during a period of up to 13 days after absentee ballots become available but before the traditional voter registration deadline—so-called “overlap voting.”<sup>19</sup> Overlap voting effectively extends the period in which a person can register and cast a ballot on the same day for up to 13 days prior to the beginning of grace period voting.

A significant limitation of overlap voting in Illinois is that it does not seem to be made uniformly available throughout the state. Indeed, the length of the overlap period and even its availability vary dramatically throughout the state based on local jurisdictional rules concerning the length of the absentee balloting period and whether jurisdictions allow in-person absentee voting. In Chicago the availability of Same Day Registration in the overlap period may even vary from election to election.<sup>20</sup>

In the City of Peoria and the County of Peoria, a resident may register to vote and request, receive, and vote an absentee ballot in one trip between the time when absentee ballots were ready (40 days prior to the election) and the end of the voter registration period.<sup>21</sup> In contrast, in some, but not all, elections, the City of Chicago only allows “in-person absentee” voting during the last five or six days prior to the election, after the deadline for applying to receive a mail-in absentee ballot has already passed. Thus, in those elections absentee voting is only allowed after the state’s 27-day registration deadline has already passed, effectively eliminating the overlap period and limiting in-person absentee balloting to those already registered.<sup>22</sup> The availability and the deadlines for in-person absentee balloting vary from election to election, thus allowing same-day registration and voting in some elections but not others.<sup>23</sup>

Similarly, according to a representative of the Cook County Clerk’s Office (which governs elections in all areas of Cook County outside of Chicago), the earliest a person can vote in-person is during the “early voting period” that begins 22 days before the election.<sup>24</sup> Thus, in Cook County the registration deadline has already passed before voters are able to vote in person.

Such disparate policies that advantage some voters over others within a single state violate general principles of equal protection.<sup>25</sup> The differential treatment in this instance is particularly troubling since the state’s largest city, Chicago, is among those areas disadvantaged.

There has been a lot of activity in support of Same Day Registration in Illinois although prospects for passage in the near future are unclear. Both the 95<sup>th</sup> (2007-2008) and 96<sup>th</sup> (2009-2010) General Assemblies saw the introduction of bills that would permit variations on Same Day Registration. In the 96<sup>th</sup> General Assembly, HB 87 would require election authorities to allow voter registration at the precinct on Election Day, effective immediately. HB 1111 would allow, but not require, election authorities to accept voter registrations on the day of a consolidated primary or general election. The specific rules for registering on Election Day would be determined by the local election authorities. HB 1111 is inferior to HB 87 in that it would lead to the differential treatment of voters based solely on the city or county in which they reside. HB 890 would establish a pilot project allowing one county to allow registration up to and including on the day of an election. HB 5921, referred to committee in March, would extend grace period voting through the day of the election (grace period voting currently runs until the seventh day prior to the election). Finally, a bill was introduced in 2010 that would require county clerks to conduct early voting, grace period registration, and grace period voting on state college and university campuses.<sup>26</sup> Grace period registration and voting is currently only available at the office of the election authority or at another location designated by the election authority.<sup>27</sup> The Illinois State Legislature adjourned without passing any of these measures.

Similar bills were introduced, but did not pass, during the 95<sup>th</sup> General Assembly in 2007-2008.<sup>28</sup> Also introduced but not passed in the 2007-2008 session was SB 410, a bill that would have eliminated the ability of voters to register and vote (in those counties that allow it) during the absentee balloting period. In 2007, the Illinois legislature passed HB 1753, creating a commission to study and draft a report on the implementation of Election Day Registration in Illinois.

**Ohio** law currently establishes a 35-day no-excuse in-person absentee voting period<sup>29</sup> and imposes a 30-day voter registration cut-off.<sup>30</sup> This creates an “overlap period” in which an individual may both register and cast an in-person absentee ballot at the board of elections. Ohio’s five-day overlap period was the cause of a great deal of controversy in advance of the 2008 election. Following Secretary of State Jennifer Brunner’s August 2008 issuance of a directive clarifying the appropriate procedures to be used during this period, prosecuting attorneys in three counties advised their county boards of elections to disregard the directive as not supported by Ohio law. The wrangling continued when two Ohio voters took Brunner to court to force her to issue a directive voiding the registrations

from the overlap period and instructing the local boards that 30 days must elapse after a voter registers before that voter can apply for an absentee ballot, an absurd argument that, as the judge noted in upholding the state's overlap period, would result in shifting registration deadlines depending on when the 30-day clock starts ticking.<sup>31</sup> A federal district court also ruled against that argument in a similar case, decided on the same day.<sup>32</sup>

Another lawsuit, filed by the Ohio Republican Party around the same time, sought to prevent eligible citizens from registering to vote during this five-day period by arguing the procedures were in violation of the Help America Vote Act. That suit made its way all the way to the Supreme Court in the weeks preceding the election, with that Court ultimately ruling in Brunner's favor on a technical point without reaching the merits of the case.<sup>33</sup>

Ohio's five-day overlap period remains a source of contention as the 2010 election approaches. State legislators from both parties have introduced or backed legislation that would adjust the period of absentee balloting, effectively repealing the so-called "magic window." H.B. 260, an omnibus election bill, would, among many other provisions, reduce the early voting period to 21 days, effectively eliminating the overlap period. The bill passed the House in November but remains in committee in the Senate.<sup>34</sup> Another House bill that would eliminate the overlap period, H.B. 92, was introduced and referred to committee.<sup>35</sup> On the Senate side, SB 8, another omnibus election bill that would eliminate the overlap period, passed the Senate and remains in committee in the House.<sup>36</sup> Immediately following the 2008 election, both houses approved legislation eliminating the overlap period in SB 380 (2008), but the bill was ultimately vetoed by Governor Ted Strickland.<sup>37</sup>

Also in 2008, HJR6, a resolution to allow for EDR was introduced but ultimately failed.<sup>38</sup>

While **Colorado** has a registration deadline of 29 days prior to the election,<sup>39</sup> state law also provides for "emergency registration" after the close of regular registration up to and including on Election Day for voters meeting certain conditions and whose qualification to vote can be immediately established. Emergency registration is available to (1) an elector who applied to register to vote prior to the close of registration by federal postcard application or mail registration application; (2) an elector who applied to register to vote at a DMV or voter registration agency prior to the deadline, and can provide the name of the agency/office and the approximate time of registration; (3) an elector who was an absent uniformed services elector who was discharged from active duty or service within 29 days prior to the election, moved to another county within the state, and has not and will not cast a ballot in any other county or state.<sup>40</sup> In order to demonstrate her qualification to vote a regular ballot, an emergency registrant who attempted to register through a drive or agency must provide a receipt for the registration or sign an affirmation stating the approximate date and location of her attempted registration. If she attempted to register by mail, she must sign an affirmation legally attesting to her attempt to register.<sup>41</sup> The elector will then be provided a regular ballot.

If an elector does not meet the above qualifications or declines to provide the requested information, she must vote by provisional ballot. The provisional ballot will be counted if the elector's eligibility to vote can be established by using information contained in the provisional ballot affidavit, the statewide voter registration database, the DMV Motor Voter database, and information provided by law enforcement agencies.<sup>42</sup>

Many of the other states in our study have some of the earliest registration deadlines in the country. As mentioned earlier, academic research indicates that earlier registration deadlines depress voter turnout and can have an especially negative effect on turnout among lower-income voters.<sup>43</sup> **Michigan** and **Louisiana** both require citizens to register 30 days prior to the election.<sup>44</sup> **Arizona** has a registration deadline of 29 days prior to an election;<sup>45</sup> **Kentucky** requires its voters to register 29 days before an election;<sup>46</sup> and **Missouri** requires voters to register by the fourth Wednesday, or 27 days, prior to the election.<sup>47</sup>

.....  
**Many of the other states in our study have some of the earliest registration deadlines in the country.**  
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**Nevada** is unique among the states examined here in that it has different registration deadlines for citizens registering by mail and those registering in person. Nevada citizens may register to vote in person at an office of the county clerk or other site designated by the county clerk up to 21 days before an election.<sup>48</sup> Registration by mail, however, ends 30 days prior to the election.<sup>49</sup> The earlier deadline is problematic in that Nevada treats applications produced through voter registration drives and public assistance agencies, two mediums shown to be effective in registering low-income citizens,<sup>50</sup> as mail-in registrations subject to the earlier deadline. This distinction could have a negative impact on low income individuals as well as those whose work and family schedules make impractical the extra trip to the registrar's office to register in person.<sup>51</sup> In order to register on-line, one must enter his or her

name and driver's license number or last four digits of his or her social security number before being taken to a PDF of the registration form, making it more difficult for some people to access.

Several states have introduced bills related to registration deadlines. Legislation introduced in **Arizona** (H 2710) would require county recorders to set up one or more satellite voting locations and would require that voters be able to register and vote at the polls during the early voting period and on Election Day. Another bill in Arizona (H 2275) would require that EDR be available on Election Day for federal, state, and county offices, excluding partisan primary elections. Both bills have been referred to committee. A bill to permit Election Day Registration was introduced but failed in the 2009 legislative session.<sup>52</sup>

**Missouri** also saw the introduction of a bill (HB 771) in 2009 that would have established one-stop sites for registration and voting any time after the registration deadline, up to and including Election Day. The bill was referred to committee and ultimately failed. Another bill would have moved Missouri's registration deadline up to the second Wednesday before an election, from the current deadline of 27 days prior to the election.<sup>53</sup> A 2008 bill, which also failed, would have allowed one-stop registration and voting.<sup>54</sup>

Two bills involving Same Day Registration were introduced in **Louisiana** in 2010. HB 1115 would allow for SDR during early voting and on Election Day while HCR 54 would request that the Secretary of State develop a plan to change registration and voting procedures to allow for SDR and produce a written report on the topic. At the time of this writing, both bills had been introduced and referred to committee. While not going as far as to permit Same Day Registration, a bill introduced in Louisiana in 2008 (HB 908) would have moved the deadline for voter registration from 30 days prior to the election to 10 days prior. The bill was "involuntarily deferred in House and Government Affairs."<sup>55</sup> A similar bill was introduced during the 2006 legislative session (HB 489) that would have reduced the registration deadline to seven days failed.

A 2009 bill (HB 4539) introduced in **Michigan** would allow citizens to register to vote electronically via the Internet up to 4:00pm on the day before an election (as opposed to the current 30-day deadline for all types of registration). While reducing the registration deadline is an admirable end, the current bill is problematic in that it only allows those with an official state ID card or driver's license to utilize electronic registration. Research has repeatedly shown that low-income voters, senior citizens, young people and voters of color are less likely to possess such ID.<sup>56</sup> Furthermore, to the extent that electronic voter registration requires Internet access, those on the other side of the digital divide – disproportionately low-income and minority – may be prevented from taking advantage of the shortened registration deadlines.<sup>57</sup> A House bill to permit Election Day registration (HB 5736) was also filed in 2010 and has been referred to committee.

Finally, **federal** legislation (HR 3957) was also introduced in 2009 by Representative Keith Ellison (DFL-MN) that would allow for Election Day Registration as well as Same Day Registration during early voting in states that allow it. Ellison's bill, which currently has 18 co-sponsors, has been referred to the House Committee on House Administration. A companion bill (S 1986) has been introduced in the Senate by Senator Russ Feingold (D-WI) and has been referred to the Committee on Rules and Administration.

## ADDRESS CHANGES

The U.S. is a highly mobile society. Almost 26.4 million voting-age residents, over one in eight, moved between 2007 and 2008.<sup>58</sup> Low-income individuals and persons of color were even more likely to move.<sup>59</sup> In the 2004 election, over 1.7 million citizens cited changes in residency as their reason for not being registered.<sup>60</sup> Although final data is not yet available, assuming residency barriers have the same effect in 2008, it is estimated that over 2 million citizens were not registered to vote because of changes in their addresses.<sup>61</sup>

Federal and state laws seek to facilitate registration and voting among mobile citizens by allowing certain categories of people who were registered to vote but have since moved and not re-registered to update their addresses and cast a ballot on Election Day.

### Federal law

Under the 1970 amendments to the landmark Voting Rights Act, voters moving to a new state within 30 days of a presidential election must be permitted to vote for President and Vice President in their *former state*, either in person or by absentee ballot. While this is an improvement over the pre-VRA disenfranchisement, voters protected by

this law are only able to cast ballots for President and Vice President and may have to navigate the difficulties inherent in requesting an absentee ballot or traveling to their former state of residence.<sup>62</sup>

The 1993 passage of the National Voter Registration Act (NVRA) provided mobile voters with an additional protection. Under the NVRA voters who move within a registrar's jurisdiction (generally a county) but fail to notify the registrar of the address change must still be given an opportunity to vote. If the voter moves to an address covered by the same polling place, she must be allowed to affirm her change of address at the polling place and cast a ballot.<sup>63</sup> If the voter moves to an address that is within the same jurisdiction and congressional district but is covered by a different polling place, the voter must be allowed to update her address and vote at her old polling place or a central location or, if state law permits, at her new polling place.<sup>64</sup>

While all states discussed in this report are covered by the NVRA's fail-safe voting provision, several states have unique requirements for voters exercising their rights under this provision that may undermine the intent of the NVRA. For example, **Arizona**, while allowing an intra-jurisdiction mover to update her address and vote at her new polling place, also specifies that a voter in this situation be provided with a provisional ballot.<sup>65</sup> **Ohio** also requires the voter to cast a provisional ballot.<sup>66</sup> Several studies have shown that significant numbers of provisional ballots regularly go uncounted in each election.<sup>67</sup> In **Illinois**, a voter moving within a jurisdiction more than 30 days prior to the election is limited to only casting a ballot for federal offices in her old polling place.<sup>68</sup> **Kentucky** permits a voter moving within the same county to affirm her current address, sign an affidavit, and cast a ballot at the precinct for her new address.<sup>69</sup> However, that voter's ballot is considered "challenged" and must be subsequently investigated under the procedures used when a voter's right to vote has been challenged.<sup>70</sup>

## State Law

In addition to the NVRA's protection for voters who move within a registrar's jurisdiction, eight of the states covered in this report have state laws that allow previously registered voters who move outside of the registrar's jurisdiction (e.g., to a new county within the state) but do not update their registrations to vote, although usually only if the move occurred after the close of registration. While all 10 of the states covered in this report allow for this, it is not as common nationwide. A recent study found that only 18 states allow protections for voters who have moved outside of their jurisdictions and have not updated their addresses.<sup>71</sup>

**Arizona, Illinois, Kentucky, Nevada and North Carolina** permit a voter moving to a new jurisdiction after the states' respective registration cutoffs to vote a regular full ballot in her old county of residence within a limited time period.<sup>72</sup> **Illinois** requires a voter in this situation to sign an affidavit supported by two forms of identification showing her new residential address.<sup>73</sup>

In **Colorado**, if a registered voter moves within the state at least 30 days before an election, but does not change her registration prior to the deadline, she may register during the 28 days before the election or on Election Day, by going to the office of the clerk and recorder of the county in which she is registered and completing a change of address form.<sup>74</sup> She may then vote either at the time the change of address request is verified or at the polling place for her new address, using a certificate of registration issued by the clerk.<sup>75</sup>

Under **Louisiana's** law, a voter moving between jurisdictions may remain registered to vote on any issue upon which she was previously entitled to vote, until she registers in her new parish or until three months have passed.<sup>76</sup> The "issues" upon which the citizen may vote include candidates for office.<sup>77</sup>

**Michigan** provides a longer grace period as well, allowing a voter moving between jurisdictions within 60 days of an election to vote at her last place of registration upon signing an affidavit stating that the move has taken place. Such a voter may vote absentee or in-person.<sup>78</sup>

In **Missouri**, a voter moving to a new jurisdiction after the registration deadline may vote by absentee ballot for federal and statewide offices and ballot questions after registering to vote in the new jurisdiction. The voter must apply for the absentee ballot in person at the office of the new clerk before 7:00pm on Election Day.<sup>79</sup> Furthermore, Missouri allows a voter moving into the state after the registration deadline to vote by absentee ballot for President and Vice President after registering to vote in her new jurisdiction.<sup>80</sup>

Finally, in **Ohio** a voter moving to a new county can vote by provisional ballot at the Board of Elections in her new county after completing and signing a notice of change of address.<sup>81</sup> However, as mentioned earlier, provisional ballots often go uncounted for reasons unrelated to the voter's eligibility.<sup>82</sup>

## PRE-REGISTRATION

Another promising avenue for increasing registration and voting rates especially young people is "pre-registration. This reform would essentially mean that persons sixteen and seventeen years old would be able to register to vote, even though actual eligibility to vote would continue to be triggered at age eighteen. Doing so allows a young person to register vote while getting their driver's license for the first time and allows high schools to play a very active role in registering students and educating them about the process. Five states – Florida, Hawaii, Maryland, North Carolina, Rhode Island -- and the District of Columbia currently offer some form of preregistration.

Preliminary research by Michael McDonald at George Mason University shows that when implemented effectively pre-registration has a positive impact on participation rates, especially when the state plays a proactive role in establishing programs to engage teens in the process. For example, in Florida, there were nearly 78,000 preregistrations in 2008.<sup>83</sup> Based on data from that state, young people who preregister are also more likely to vote. The 2009 voter file shows that persons who pre-registered had a registration turnout rate in the 2008 election 4.7 percentage points higher than that of those who registered after they turned 18.<sup>84</sup> Interestingly, McDonald also finds that preregistration has a great effect on voting among African Americans. African-Americans who preregistered were 5.2 percentage points more likely to vote in the 2008 election than those who registered after they turned 18.<sup>85</sup>

Of our 10 states, only **North Carolina** allows for preregistration. According to its statute, "A person who is at least 16 years of age but will not be 18 years of age by the date of the next election and who is otherwise qualified to register may preregister to vote and shall be automatically registered upon reaching the age of eligibility following verification of the person's qualifications and address."<sup>86</sup>

## AGENCY COMPLIANCE WITH NVRA

The National Voter Registration Act (NVRA) was passed by Congress and signed into law by President Clinton in 1993 for the purpose of "establish[ing] procedures that will increase the number of eligible citizens who register to vote in elections for Federal office."<sup>87</sup> While the NVRA may be best known for its provision requiring voter registration at state departments of motor vehicles, Section 7 of the law requires that state public assistance agencies – those offices that administer benefits such as SNAP (formerly Food Stamps), TANF, Medicaid, WIC and SCHIP – provide voter registration services to clients and applicants. The NVRA requires that the opportunity to register to vote must be provided to each and every individual who applies for, recertifies or renews public assistance benefits, and to each and every individual changing his or her address relating to the receipt of benefits. Section 7 was a recognition by Congress that low-income Americans were less likely to own cars and, therefore, less likely to interact with a motor vehicle office.

Unfortunately, research by Dēmos and others has uncovered widespread non-compliance with the NVRA in public assistance agencies in states around the country.

Unfortunately, research by Dēmos and others has uncovered widespread non-compliance with the NVRA in public assistance agencies in states around the country.<sup>88</sup> Nationally, since initial implementation of the law, the number of voter registration applications coming from public assistance agencies has declined by 62 percent since the law was implemented – from over 2.6 million registrations in 1995-1996 to only 978,000 in 2007-2008.<sup>89</sup> Investigations by Dēmos and others, as well as documents produced in the course of litigation, have revealed violations in states across the country including agency offices not having any voter registration applications on-site, a lack of state oversight, untrained agency employees, and failure to transmit completed registrations to election officials. Fifteen years after initial implementation of the NVRA, a significant gap in registration rates between high and low-income citizen remains: in 2008, only 65 percent of citizens in households making less than \$25,000 per year were registered to vote, compared to 85 percent of those in households making \$100,000 or more.<sup>90</sup>

Over the past several years, a campaign by Dēmos, the Lawyers' Committee for Civil Rights Under Law, Project Vote and others to improve state compliance has demonstrated that, when properly implemented, the NVRA can help draw significant numbers of low-income citizens into the political process. Of the states surveyed in this report, litigation has been brought against and settlement agreements subsequently entered into with state officials in **Missouri** and **Ohio**. After largely ignoring its responsibility to enforce the law during most of the Bush Administration, in 2008 the U.S. Department of Justice entered into settlement agreements with public assistance agencies in **Arizona** and **Illinois**. Over the past several years, voting rights advocates have worked cooperatively with officials in **North Carolina**, **Michigan**, and **Nevada**, and **Colorado** to improve those states' compliance with the law. Less is known about **Kentucky** and **Louisiana** as those states have thus far been investigated to a much lesser extent.

**Missouri** experienced an 89 percent decline in the number of voter registration applications from public assistance agencies between 1995-1996 and 2005-2006, one of the steepest declines in the nation.<sup>91</sup> Following the state agency's refusal to take corrective action to remedy the widespread non-compliance discovered through investigations and data analysis, Dēmos and its partners filed a lawsuit in federal court on behalf of a community organization and a public assistance client in April 2008.<sup>92</sup> In July 2008 a federal judge in Kansas City ruled the state's Department of Social Services was in violation of the NVRA and ordered it to comply immediately. Among the judge's findings was that the department's own records indicated it was approximately one million forms short of the number necessary to have been in compliance with the law.<sup>93</sup> A settlement agreement between plaintiffs and state DSS officials was reached in June 2009.<sup>94</sup>

The number of voter registrations spiked dramatically following the ruling and subsequent settlement agreement. Since DSS began reporting data under its new system in mid-August 2008, it has collected over 246,000 voter registration applications, an average of almost 11,000 per month.<sup>95</sup> This is compared to an average of only 649 per month in the years preceding the agreement.<sup>96</sup> Since entering into the settlement agreement, Missouri has become a national leader in NVRA implementation.

Despite past problems with NVRA compliance, **Ohio** is also now demonstrating significant improvement since state officials entered into a settlement agreement resolving a lawsuit filed by Dēmos and its partners. The lawsuit was filed in federal district court in 2006 on behalf of two public assistance recipients and a community organization following findings of extensive non-compliance.<sup>97</sup> In response to the pre-litigation notice letter, then-Secretary of State Kenneth Blackwell and the Director of ODJFS both claimed neither was responsible for ensuring compliance in the local county offices. Secretary Blackwell's office went so far as to imply that Ohio already had enough registered voters.<sup>98</sup>

After three years of litigation - including a ruling by the Sixth Circuit Court of Appeals establishing that state-level officials, rather than the individual counties, had the authority and responsibility to enforce the NVRA<sup>99</sup> - the state agreed to a settlement requiring a comprehensive NVRA implementation plan in November 2009. The agreement requires the state to adopt numerous procedures necessary for ensuring compliance such as assigning NVRA Coordinators in each local office, integrating the voter registration application into the agency's application and recertification forms, regular training, and comprehensive data collection and evaluation.<sup>100</sup>

Based on the first six months of data provided under the agreement, it is clear the changes are having a significant impact in enfranchising low-income voters. From January 2010 to June 2010, ODJFS offices reported transmitting 101,604 voter registration applications to election officials.<sup>101</sup> This represents an 854 percent increase over the average number of registrations submitted by Ohio's public assistance agencies in 2005-2006, the last reporting period prior to the filing of the lawsuit.<sup>102</sup>

**North Carolina** became a national leader in NVRA implementation even without the need for litigation. After being presented in summer 2006 with statistical data and evidence from field investigations indicating non-compliance, the North Carolina State Board of Elections, under the leadership of Executive Director Gary Bartlett, acted quickly to develop and roll out an effective re-implementation plan. The SBOE's implementation plan included such necessary elements of compliance as regular data collection and reporting, ongoing monitoring including "secret shopper" visits to local DSS offices, and regular training for relevant staff members.<sup>103</sup>

As a result, the number of registrations from North Carolina's public assistance offices has increased over six-fold and has remained consistently high for the three years since re-implementation. Since enhanced data reporting began in February 2007, over 104,500 voter registration applications have been submitted from North Carolina public

assistance offices, an average of 2,986 applications per month. This is compared to an average of only 484 registrations per month in the two years preceding the renewed implementation effort.<sup>104</sup>

The number of voter registration applications from public assistance offices in **Illinois** declined 74 percent between 1995-1996 and 2007-2008, from 33,837 to 8,948.<sup>105</sup> Following an investigation by the U.S. Department of Justice that uncovered “evidence of DHS’ substantial non-compliance” with the NVRA, the Illinois Department of Human Services entered into a settlement agreement with the Justice Department in December 2008.<sup>106</sup>

The Memorandum of Agreement contains many core elements of an effective NVRA compliance plan, including regular mandatory training, distribution of voter registration applications when a client interacts with agencies by mail, and ongoing auditing procedures and data tracking. While Illinois’ initial report to the Justice Department under the Memorandum revealed several shortcomings in how data collection and office evaluations were carried out, many of the problems were corrected shortly thereafter. For example, while jurisdictions were initially only required to report data every six months – far too infrequently to adequately monitor compliance – the reporting requirement has since been changed to monthly. The state’s second report to DOJ in December 2009 showed a significant increase in registrations. From July through November 2009, the DHS reported 41,275 voter registrations at its offices, an average of 8,255 per month.<sup>107</sup> In the reporting period prior to entering into the Memorandum with the Justice Department, all public assistance agencies in Illinois reported an average of only 446 registrations per month.<sup>108</sup>

**Arizona’s** Department of Economic Security entered into a settlement agreement with the Department of Justice in April 2008, following a 70 percent decline in public assistance registrations and evidence of “substantial non-compliance” uncovered during the Department’s investigation.<sup>109</sup> Advocates had also sent a pre-litigation notice letter to state officials in January 2008.<sup>110</sup> As in Illinois, the Justice Department’s agreement with Arizona requires, among other things, regular training on voter registration procedures, a comprehensive system of data tracking and monitoring, ensuring that a voter registration application is included with all application and recertification materials mailed to clients, and ongoing compliance evaluations conducted by the state’s Office of Program Management and Evaluation.

While DES has indeed improved its procedures under the settlement agreement and many jurisdictions have seen an increase in registrations, the state’s reports to the Justice Department suggest that several offices are still not in compliance and that ongoing attention to the issue is needed.<sup>111</sup>

The number of voter registration applications reported to have come from **Michigan’s** public assistance agencies has declined 87 percent between 1995-1996 and 2007-2008, from 79,538 to only 10,542.<sup>112</sup> The state’s Department of Human Resources (DHR) worked cooperatively with advocates to make some improvements in their NVRA procedures in late 2007 and early 2008. Data on voter registration reported since then, however, suggest those improvements may not have been uniformly implemented throughout the state.

The number of voter registration applications coming from **Colorado’s** public assistance agencies has been low since initial implementation of the law. In 1995-1996, the state reported only 12,255 registrations. By 2005-2006 that number had declined to 10,222 and by the historic 2008 election cycle, there were only 12,930 voter registration applications reported as coming from Colorado’s public assistance agencies.

Concerned by the low numbers in the 2005-2006 reporting period and the fact that several sizeable counties reported not having registered a single client over the two-year period, advocates reached out to the Colorado Secretary of State and officials from the Department of Human Services in 2007. Advocates sent a pre-litigation notice letter to Colorado officials in 2008. Election officials have been working cooperatively with the advocates and the agency over the past three years to implement effective practices, including a web-based data reporting system and inclusion of voter registration materials in the benefits renewal packets that are mailed to approximately 25,000 clients each month.<sup>113</sup> While some counties are still having difficulties, there has been a significant overall improvement in the number of registrations coming from the agencies: In 2009, over 20,000 citizens registered at Colorado’s public assistance agencies, up 76% from the previous year and more than 277% since 2007.<sup>114</sup>

Public assistance voter registrations in **Nevada** declined 67 percent after initial implementation of the NVRA in 1995-1996.<sup>115</sup> In the 2006 election, Nevada had the third highest rate of unregistered low-income citizens in the nation - 53 percent of adult citizens in households making less than \$25,000 a year were not registered to vote in 2006.<sup>116</sup>

Upon being approached by advocates with evidence of compliance problems in the state, Secretary of State Ross Miller's office responded favorably and has been involved in ongoing efforts to improve compliance. An initial memo was distributed to agency employees in December 2009 and regular training and data reporting has begun. While significant improvements have yet to be documented, the state officials' willingness to work to improve their procedures is an encouraging step.

Since initial implementation of the NVRA, the number of registrations coming from public assistance agencies in **Kentucky** has declined by 74 percent, from 63,477 registrations in 1995-1996 to only 16,673 in 2007-2008.<sup>117</sup> Kentucky's Cabinet for Health and Family Services has a unique technological infrastructure with the potential to facilitate agency registration. However, at least one aspect of its voter registration procedures may not be in compliance with the law and is likely preventing the state from effectively registering its public assistance recipients.

Kentucky is unique in that its Cabinet for Health and Family Services uses computer software to pre-populate the fields on a client's voter registration application. In other words, information such as name, Social Security number, date of birth, sex, and address is automatically transferred from the agency's application for benefits to a voter registration application which can then be printed and signed by the client. This procedure is common in state departments of motor vehicles and has the potential to save the client and caseworker time while also reducing illegible and incomplete registrations.

While Kentucky's agency has this unique infrastructure, another aspect of its procedures may be preventing the state from maximizing its public assistance registration program. For example, in order to take advantage of the pre-populated voter registration application, a client must first orally indicate to her caseworker that she is not currently registered to vote and then read and complete the first section of the state's Voter Registration Rights and Declination form.<sup>118</sup> Kentucky's implementing legislation only provides for a voter registration opportunity when a public assistance applicant or recipient is "not registered to vote or not registered to vote at his current address" and requires that a "voter registration rights and declination shall be utilized to document a food stamp program applicant or recipient's choice to: a) register to vote; or (b) not register to vote," after which a voter registration application shall be completed if the applicant or recipient wants to register to vote or update his or her voter registration.<sup>119</sup> Following from this legislation, the state's public assistance operation manual describes a procedure in which a caseworker enters the code into the computer system that generates the pre-populated form only after the client affirms that she is not already registered and does in fact want to register. This multi-step process is at odds with the NVRA's requirement that a voter registration application be provided "with each" application, recertification, and change of address.<sup>120</sup>

Kentucky has the technological infrastructure in place to be a national leader in NVRA implementation if state officials were to bring their registration procedures into full compliance with the requirements of the law.

**Louisiana** experienced an 88 percent decline in the number of registrations from public assistance agencies, from 74,636 registrations in 1995-1996 to only 8,688 registrations in 2007-2008, the seventh steepest decline in the nation.<sup>121</sup>

Louisiana's implementing legislation goes beyond the requirements of the NVRA in at least one meaningful way: an address change reported to the agency "shall serve as a notification of change of address or change of name for voter registration unless the registrant states at the time of submitting the change that the change is not for voter registration purposes."<sup>122</sup> In other words, the voter registration address for a client will automatically be updated when she reports an address change to the public assistance agency, unless she affirmatively says that the address change is not for voter registration purposes.

However, the low numbers of registrations being reported by the state cast doubt on how effectively this procedure is being implemented. Moreover, a review of the implementation manual distributed by the Secretary of State suggests that the procedures prescribed for address changes may not conform to the requirements of Louisiana state law.<sup>123</sup>

## VOTER REGISTRATION DRIVES

Under our current voter registration system, voter registration drives (VRDs) are critical to expanding democratic participation in this country, as they often register members of historically disenfranchised or underrepresented

communities. In the 2008 election cycle VRDs likely contributed to the record turnout, especially among first-time voters. Until we develop a system of automatic and universal voter registration, where the government assumes the responsibility of registering all Americans to vote, we must rely on VRDs to assist in the registration process of populations often underrepresented on voter rolls. Unfortunately, the success and proliferation of third party registration groups has led to exaggerated claims of voter registration fraud, resulting in bills that have put undue restrictions on VRDs. Some regulation of such groups is reasonable, but becomes problematic when it is so restrictive that it becomes prohibitive.

Of the states we surveyed, only **Michigan, North Carolina and Kentucky** do not place any statutory burdens on third party registration groups. The simplicity of **Michigan's** VRD laws is reflected in the language on the Secretary of State's website. Under a FAQs section the question "Is there a way I can help register voters?" is posed and the answer plainly states, "Yes. Most voter registration drives use this mail-in voter registration form. Voters simply need to complete this form and send it to the appropriate city or township clerk."<sup>124</sup> Applications do not need to be obtained solely from election authorities and there is no registration or deputization process as a barrier to VRDs. In short, the law allows for an organic, simple process.

### Compensation

Compensation rules that prohibit payment based on the number of registration forms submitted or according to a daily quota are reasonable to prevent incentives for falsifying forms. In 2008, serious charges were filed against voter registration workers for allegedly falsifying voter registration forms so that they could either meet their daily quota or increase their pay.<sup>125</sup> Laws exist in **Colorado,**<sup>126</sup> **Kentucky,**<sup>127</sup> **Missouri,**<sup>128</sup> and **Nevada,**<sup>129</sup> that prevent VRD workers from being compensated based upon the number of completed voter registration forms that they collect. **Ohio** had a law prohibiting per signature and volume voter registration compensation, but it was struck down in *Citizens for Tax Reform v. Deters*.<sup>130</sup> No such laws exist on the books in **Arizona, Illinois, Louisiana, Michigan** or **North Carolina**. In **Missouri** anyone who receives standard compensation for working on a VRD, such as an hourly wage, must individually register with the state.<sup>131</sup>

### Turnaround Time

Perhaps the most restrictive policies are those that provide unreasonably short timelines for third party groups to submit completed voter registration forms to election authorities. Short turnaround times give voter registration groups with little time to effectively review the forms they have gathered and check for irregularities before they submit them to registrars. None of the states that we have surveyed has an unreasonably short transmittal period, such as that of New Mexico, with a 48 hour transmittal period required throughout year and is currently the subject of litigation.<sup>132</sup> The NVRA provides for 10 days for state agencies, except for applications collected within 5 days of the close of registration, in which case the transmittal period is 5 days.<sup>133</sup>

**Nevada** has a ten day deadline for voter registration groups to submit registration forms after they have been filled out. Field registrars, who, unlike voter registration groups, are deputized by the elections clerk, must submit forms whenever they have collected five or more, or within ten days, whichever is sooner.<sup>134</sup> In **Illinois** and **Missouri** voter registration forms must be submitted within seven days of their completion.<sup>135</sup> However, in **Illinois** completed registration forms must be returned to election authorities within 48 hours during the week prior to book-closing.<sup>136</sup> If completed forms are not mailed back in the allocated time period of a week, then the voter registration groups face serious penalties. In both **Illinois** and **Missouri**, completed voter registration forms turned in more than a week after completion result in a misdemeanor coupled with up to \$2,500 in fines and upwards of a year in jail.<sup>137</sup> In **Louisiana**, the turnaround time is 30 days.<sup>138</sup>

In order to be a paid voter registration canvasser in **Missouri**, soliciting more than 10 voter registration forms,<sup>139</sup> you must be individually registered with the state by filling out a "Voter Registration Solicitor Form," and must register for every two-year election cycle.<sup>140</sup> However, according to an instate contact, the forms do not need to be approved and anyone becomes registered as a "Voter Registration Solicitor" simply upon returning the form.<sup>141</sup> Anyone who fails to register and receives compensation for circulating applications will be guilty of a class three election offense.<sup>142</sup> According to a recent Brennan Center report, "failure to register carries the same criminal penalties as missing the deadline, but anyone convicted is also permanently disenfranchised in Missouri."<sup>143</sup>

### Deputization And Training

Several states also require voter registration groups to register with the state and undergo training in order to perform their registration activities. While some training may be beneficial to the voter registration group, some trainings and the way in which they are instituted, can be burdensome.

While **Colorado** may have more laws than some states when it comes to VRDs, advocates say the system works well for both voter registration groups and the state. In Colorado a VRD is defined as “the distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder.”<sup>144</sup> VRDs must register with the state by completing a “Statement of Intent” form and renew their registration annually; registration expires December 31<sup>st</sup> of each year.<sup>145</sup> In addition, the group’s organizer must complete a mandatory training session sponsored by the Secretary of State.<sup>146</sup> These training sessions can be conveniently completed over the phone,<sup>147</sup> and as of recently, the state provides online training and renewal.<sup>148</sup> Every volunteer then must be trained by their respective VRD organizer, who in turn must be previously trained by the state.<sup>149</sup> The Secretary of State states the purpose of these trainings is to “ensure that VRD organizers and circulators understand the importance and proper methods of handling citizen applications.”<sup>150</sup>

The Colorado Secretary of State’s website provides one of the most informative and comprehensive sections on VRDs of all the states we have surveyed. This section of the website includes a “Voter Registration Drive Statement of Intent,” which is to be filled out in order to be registered with the Secretary of State as a VRD; a “VRD Complaint Form”; a list of “Secretary of State Approved Voter Registration Drives”; links to VRD training webinars for VRD organizers; statutes related to VRDs; Secretary of State rules; and VRD FAQs.<sup>151</sup>

Previously in **Ohio**, any individual who was compensated for voter registration work had to complete an online training program.<sup>152</sup> This statute was recently ruled unconstitutional in *Project Vote v. Blackwell*.<sup>153</sup> According to the Director of the Voting Rights Institute at the Ohio Secretary of State’s office, “A federal court ruled that the training requirements of R.C. 3503.29 violate the First and Fourteenth Amendments of the U.S. Constitution and NVRA. The court permanently enjoined the implementation or enforcement of these training requirements.... Consequently, no rules have been promulgated or training programs developed. Nevertheless, the Secretary of State has provided guidance to organizations seeking to conduct voter registration activities in Ohio.”<sup>154</sup> Currently, there is no required training for individuals or groups participating in VRDs or individually assisting Ohio citizens with voter registration forms.<sup>155</sup>

**Illinois** has a complicated deputy registrar process. To qualify to become a volunteer deputy registrar an individual must be a U.S. citizen, 18 years of age, and a resident of the jurisdiction that deputizes him or her for at least 30 days.<sup>156</sup> If these requirements are met then the individuals wishing to register voters using the mail-in voter registration form must submit a letter to the local County Election Authority within 90 days of the election.<sup>157</sup> Once the group or individual is approved they must go through a one-hour training; training classes are scheduled on a regular basis.<sup>158</sup> In addition, the person must sign a deputy registrar oath once they have become a deputy registrar.<sup>159</sup> Those who are deputized can register voters across the state, unlike other deputization programs that only allow for voter registration in specific counties.

What makes this process somewhat complicated and arduous is that a deputy registrar must be sponsored by a “qualified organization or agency.”<sup>160</sup> The term “qualified organization or agency” refers to a list that the Illinois Board of Election maintains, known as a “list of bonafide state civic organizations.”<sup>161</sup> These sponsors include: libraries, principals of high schools, presidents of universities or colleges, labor organizations, certain state agencies, or presidents of corporations. A group may join this list by obtaining an application from the state board, and the state board “usually approves and adds the organization to the list and notifies the applicant as well as the election jurisdiction.”<sup>162</sup> There are further complicating caveats: for instance, deputy registrars sponsored by a school may only carry out their VRDs within the school.<sup>163</sup> According to the Elections Division of the Cook County Clerk, deputy registrars who are sponsored by a “governmental agency,” such as a school or municipality, are only allowed to conduct their voter registration drives “on the grounds of the school, municipality, etc.”<sup>164</sup> Deputy registrars not sponsored by a governmental agency are free to conduct their voter registrations drives where they wish, except for at “taverns, pubs, etc.”<sup>165</sup>

The Manger of Community Services at the Election Division of the Office of the Cook County Clerk reports that “Groups interested in voter registration often like the deputy registrar process because the deputy registrar forms provide carbon copies that constitute a paper trail for both the individual voter and the deputy registrar. It also helps us because deputy registrars are trained to verify the voter’s identity before the registration is taken.”<sup>166</sup>

Deputy registrars may also pass out mail-in voter registration forms to people who do not have proper identification on them.<sup>167</sup>

Other states such as **Arizona** have deputization statutes on the books but no longer require deputization for VRDs.<sup>168</sup> **Louisiana** has a “non exclusive” deputy registrar system and forms can be collected by VRDs without deputization.<sup>169</sup> While **Missouri** has stringent rules applied to VRDs, there is not a mandatory training that VRDs or their employees need to complete; however registrars still must register with the state.<sup>170</sup> Similarly, **Nevada** does not require training or deputization for VRDs, but the groups must complete a distribution plan (see below).<sup>171</sup>

### Other Rules

Voter registration groups in **Nevada** also face hurdles in order to conduct large-scale registration drives. If a group wants to obtain 50 or more registration forms it must submit a “Mail-In Application Distribution Plan.” This plan “requires the name and contact information of the person distributing the forms; the area of Nevada where the forms will be distributed; and, the quantity and control numbers of the applications issued.”<sup>172</sup> Nevada also requires that all incomplete registration forms be returned to the state, which would imply that the voter registration groups would be held responsible if an incomplete or blank form were not returned.<sup>173</sup>

In the states examined here, at the time of this writing no bills had been introduced regarding third party registration drives.

# DISENFRANCHISEMENT OF PERSONS WITH PRIOR FELONY CONVICTIONS

An estimated 5.3 million people are unable to vote in the United States due to felon disenfranchisement laws.<sup>174</sup> The 10 states that we have surveyed for this report constitute a little less than a million people with criminal records who are ineligible to vote. While there has been much progress among the states in recent years to reform their felon disenfranchisement laws so that once an American has served his time he regains the right to vote, there is still a lot of progress to be made.

On July 24, 2009 legislation was introduced by Senator Russell Feingold (D-WI) and Representative John Conyers (D-MI) as H.R 3335 and S. 1516, more commonly known as the Democracy Restoration Act. It would give ex-felons, released from incarceration, the right to vote in federal elections. The bill would also require states to notify ex-felons of their restored rights. This bill would enfranchise about 4 million Americans who currently have lost their vote due to state laws.<sup>175</sup> Unless and until this bill passes, persons convicted of a felony will be subject to the patchwork of state laws; felony disenfranchisement policies, like many election laws, vary throughout the states. For the purposes of this report we have broken down into five categories the re-enfranchisement policies for persons with prior felony convictions.

The 10 states that we have surveyed for this report constitute a little less than a million people with criminal records who are ineligible to vote.

## COMPARING RESTRICTIVENESS OF POLICIES ON RE-ENFRANCHISEMENT

Of our 10 states, **Illinois**,<sup>176</sup> **Michigan**<sup>177</sup> and **Ohio**<sup>178</sup> have the least restrictive laws. In all three states voting rights are restored upon release from prison, meaning that persons on parole or probation are eligible to vote. According to the **Ohio** Secretary of State's Office and as a part of a settlement agreement entered into in 2009,<sup>179</sup> upon release from prison, an individual is routinely given the opportunity to register to vote as part of a program it has initiated to educate ex-offenders, the Department of Corrections, including the Adult Parole Authority, and community and faith organizations that work with these populations.<sup>180</sup> In **Colorado**, persons are not eligible to vote until they have been discharged from parole, yet they automatically regain this right the day they conclude parole.<sup>181</sup> Unfortunately, little is done to notify ex-felons of their returned right to vote. According to the Colorado Secretary of State's website, "no one will tell you when you are eligible to vote" and ex-offenders receive no notification of their restored right.<sup>182</sup>

**Louisiana, Missouri and North Carolina's** re-enfranchisement policies fall somewhat in the middle of the spectrum. In these three states voting rights are restored upon completion of the sentence, including parole and probation, which could be a very lengthy period for some ex-offenders.<sup>183</sup> In 2008 **North Carolina** had over 113,000 people on either probation or parole,<sup>184</sup> while **Louisiana** had 64,661 and **Missouri** had 78,043.<sup>185</sup>

**Louisiana and Missouri** have taken action to better inform individuals who have completed their sentence of their voting rights. In June 2008 Louisiana Governor Bobby Jindal signed into law Act No. 604, which requires the Department of Public Safety and Corrections to inform individuals leaving its supervision of how they can restore their voting rights, in addition to providing these individuals with voter registration applications.<sup>186</sup> Missouri has a similar law, which was passed in 2003, mandating that persons discharged from prison be notified in writing of the process and procedure to register to vote.<sup>187</sup>

Among the states we have looked at in this report, **Arizona and Nevada** have the most restrictive disenfranchisement laws, outside of Kentucky. In Arizona and Nevada the restoration process is only applicable to certain criminal convictions. For instance, anyone with two or more felonies in Arizona is permanently disqualified from voting unless he or she is pardoned by a judge and he or she must wait two years until even applying for restoration.<sup>188</sup> Yet those with a single-count felony will see their rights restored upon completion of their sentence, including probation and parole.<sup>189</sup> Nevada has similar laws, where those with more than one felony, or those convicted of Class A or Class B felonies under Nevada law are not restored the right to vote automatically, even if pardoned by a judge.<sup>190</sup> Between Arizona, Kentucky and Nevada a little over 227,000 people remained disenfranchised post-sentence in 2004.<sup>191</sup>

**Kentucky's** law is by far the most restrictive. Any person with a prior felony conviction in Kentucky can only regain their right to vote by way of an executive pardon issued by the Governor.<sup>192</sup> These executive pardons are issued on an individual basis and a convicted felon can never vote in Kentucky without such pardon. This restrictive, almost archaic disenfranchisement law has a tremendous impact on the size and composition of the electorate. In Kentucky 6 percent of the population, or roughly 186,000 Kentuckians,<sup>193</sup> are disenfranchised due to laws prohibiting persons with criminal records from voting. Even more alarming is that roughly 24 percent of African-Americans in Kentucky<sup>194</sup> are prohibited from voting due to the same restrictive laws, the highest African-American disenfranchisement rate in the country.<sup>195</sup> Roughly 69 percent of those in Kentucky who have lost their right to vote due to a criminal conviction have completed their sentence. These citizens are out of prison, no longer serving parole or probation, and are asked to perform all other civic duties, but nonetheless have been unjustly stripped of their right to vote.<sup>196</sup>

.....  
**Kentucky's law is by far the most restrictive. Any person with a prior felony conviction in Kentucky can only regain their right to vote by way of an executive pardon issued by the Governor.**  
 .....

While Kentucky has the most restrictive laws amongst the states that we have surveyed, the state is inching, through ebb and flow, towards some progress. The way in which restoration of voting rights is administered is entirely up to the Governor's office,<sup>197</sup> so with each new administration procedures and criteria for enfranchisement vary. Kentucky's restoration process was simplified in 2001 and again, although minimally, in 2008.

When Governor Steve Beshear assumed office in 2007 he streamlined the restoration process. Governor Beshear did away with the burdensome requirement that ex-felons write a formal essay, pay an application fee, and send in three letters of recommendation to petition for the restoration of voting rights. The process was simplified so that ex-felons could fill out a simplified application.<sup>198</sup> In addition, according to the State Board of Elections, the Board provides mail-in voter registration cards to the Governor's office, which are in-

cluded with the restoration of rights certificates that are mailed to newly re-enfranchised voters.<sup>199</sup> According to the Governor's office Governor Beshear re-enfranchised 1,777 ex-felons in 2008 and 1,529 ex-felons in 2009.<sup>200</sup> Despite the evident improvement, there are still thousands of ex-felons who are struggling to regain their right to vote in the state of Kentucky.

There has been an ongoing effort in Kentucky to amend Section 145 of the state constitution to provide for automatic restoration of voting rights upon the completion of a sentence. Much of this effort has been led by State Rep. Jesse Crenshaw (D-Lex.), who believes that the restoration of voting rights should not be left solely to the discretion of the state's Governor.<sup>201</sup> For the fourth time Rep.Crenshaw has introduced a bill that would amend the constitution and allow for automatic restoration of voting rights for felons who have fulfilled their sentence, with the exception of felons convicted of intentional murder, sodomy, rape or sexual contact with a minor.<sup>202</sup> Each legislative session, Rep. Crenshaw's bill gains more support in the House, but has gained little traction in the Senate.<sup>203</sup> The bill, HB 70, passed the House by a vote of 83-16 this year.<sup>204</sup> If it passes the Senate next year (the 2010 legislative session has ended), the bill, because it would amend the state constitution, then would be put on the ballot and voted on by the residents of Kentucky in 2012. According to a 2006 study by the University of Kentucky's Survey Research Center, "a significant majority" of Kentuckians support this amendment.<sup>205</sup>

# NOTIFICATION PROCESS AND POTENTIAL DE FACTO DISENFRANCHISEMENT

Even when states have less restrictive disenfranchisement laws, sometimes they still disenfranchise a number of ex-offenders, although not necessarily intentionally, due to a lack of clear procedures or education for both ex-offenders and elections officials. The mechanisms by which ex-offenders reclaim their right to vote are often confusing and obscure. When the re-enfranchisement process is ambiguous ex-offenders, unsure of their rights, will often opt to not register, in fear of being harshly penalized for not complying with state law.<sup>206</sup> The fact that local elections officials are unclear about the rights of voters convicted of felonies or misdemeanors, as evidenced below, can lead to unintentional or “de facto” disenfranchisement.

For example, in **Arizona**, the discrepancy in treatment between those with one felony and those with multiple felonies can be confusing and is likely to disenfranchise single-count felons. Interviews conducted by the Brennan Center and the ACLU support the likelihood of this confusion that can lead to disenfranchisement. Their findings reveal that over half the election officials interviewed were uncertain about the distinction between these two classes of felons concerning voting rights.<sup>207</sup> In addition, only one county official was aware of the waiting period, whereas all other county officials either said they didn’t know if there was a waiting period or were under the impression that there was no waiting period.<sup>208</sup>

In this same study by the Brennan Center and the ACLU, interviews with **Colorado** elections officials revealed that half of the local officials were unaware that people who were serving probation were eligible to vote.<sup>209</sup> In **Ohio**, 30 percent of election officials “responded incorrectly or expressed uncertainty” about whether those with misdemeanor convictions could vote (Ohio permits those convicted of misdemeanors to vote).<sup>210</sup> **Kentucky** also allows people with misdemeanor convictions to vote, however in that state 53 percent of county clerks responded incorrectly to the question of whether these people are eligible to vote.<sup>211</sup>

In **Louisiana**, if a voter with a felony conviction wishes to continue voting under an existing registration record when he or she becomes eligible (rather than submitting a new voter registration form) she or he must appear in person and show proof that she or he is no longer under an order of imprisonment.<sup>212</sup> This is an extra step that the voter might not necessarily know he has to take. It should be noted that, as referenced earlier, in 2008 Governor Bobby Jindal signed a new law requiring the Department of Corrections to notify people about how to regain their voting rights.<sup>213</sup>

Also on the positive side of the ledger, the **North Carolina** State Board of Elections has worked with the North Carolina Department of Corrections to design information on voter registration that is given out along with a registration form to every discharged felon at the time of discharge.<sup>214</sup>

## Registration Forms

According to a 2008 ACLU report, “twenty-two states’ and the District of Columbia’s registration forms provide inaccurate, incomplete or misleading explanation of who is not eligible to vote and for how long.”<sup>215</sup> This includes some of the states under review.

For example, **Nevada’s** voter registration form is misleading and vague in its use of language and details it chooses to include, stating “I swear or affirm...I am not laboring under any felony conviction or other loss of civil rights that would make it unlawful for me to vote.”<sup>216</sup> As the ACLU points out, “[i]t is unlikely that individuals will know which ‘felony conviction[s] or other loss of civil rights...make it unlawful for [them] to vote,’ particularly given the state’s complicated disenfranchisement law.”<sup>217</sup> Illinois, one of the least restrictive states, where voting rights are restored automatically after release from prison, also has a voter registration form that may throw off the potential voter. Illinois’ form, as pointed out by the ACLU, is tricky in that it uses the narrow term “jail” rather than the broader term “incarceration,” which implies both jail and prison.<sup>218</sup>

Some states, such as **Colorado and Michigan**, provide no information on registering to vote with a criminal record on their voter registration forms, leaving an ex-offender without any guidance.<sup>219</sup> Though both states do provide such guidance on information sheets which accompany voter registration forms, many voters read only the form itself. The self-affirmation on the voter registration forms of both of these states does not include any information about felon disenfranchisement. In Colorado the voter must only affirm that they are a U.S. citizen, will be 18 years

old by the time of the election, is a resident of Colorado, and that the citizen's address is correct,<sup>220</sup> and in Michigan the voter need only affirm that they are a U.S. citizen, a resident of Michigan for at least a 30-day period before Election Day, will be 18 years old by the time of the election, and has not provided false information on the form, and that the voter authorizes cancellation of any previous registration.<sup>221</sup>

In **Louisiana**, the voter registration form is also unclear. It contains the following affirmation:

I do hereby solemnly swear or affirm that I am.... not currently under an order of imprisonment for conviction of a felony... If I have provided false information, I may be subject to a fine of not more than \$1,000 (\$2,500 for subsequent offense) or imprisonment for not more than 1 year (5 years for subsequent offense), or both. Any false statement may constitute perjury.<sup>222</sup>

Louisiana's law does not permit persons serving parole or probation to vote; rights are only restored after completion of sentence.<sup>223</sup> The term "imprisonment for conviction" could be misleading and confuse some people with felony convictions about their rights.<sup>224</sup>

According to the Brennan Center, combined with poor training and knowledge of the laws among local elections officials, lack of coordination between elections officials and the criminal justice system, complex laws and registration procedures, these kinds of omissions of information and faulty instruction lead "to the de facto disenfranchisement of untold hundreds of thousands of eligible would-be voters throughout the country."<sup>225</sup>

## ADDITIONAL REFORM EFFORTS

The **Colorado** State Legislature came close to passing a bill this year, SB 179, which would allow parolees to vote in the next election. The bill, which would need to be reintroduced in the next session, could have enfranchised nearly 7,000 additional Coloradoans in 2010.<sup>226</sup> In addition to granting parolees the right to vote, it also would require "jail administrators, sheriffs, probation and parole officers and others to inform persons of their voting rights and to make the necessary voting materials available to them."<sup>227</sup> Republicans have criticized the bill, citing it as a Democratic effort to boost votes in the hotly contested November elections.<sup>228</sup> Other Republicans, such as State Senator Kevin Lundberg, do not support the bill because they believe issues of residency will arise, as some parolees are assigned to half-way houses and "are not resident[s]" of the areas in which they reside.<sup>229</sup>

# VOTER REGISTRATION DATABASES

When a new applicant seeks to become a registered voter, the first step in the process is filling out a voter registration application. The form can be submitted in a number of ways – for example, directly to the elections office in person, or through the mail, or via a state department of motor vehicles office, a state assistance or disability agency, or other designated agency.

However, that is just the first stage of adding a voter to the rolls. Section 303 of the Help America Vote Act (HAVA) requires each state to implement a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level.”<sup>230</sup> Each state that we surveyed in this report now operates a statewide computerized voter registration database – which contains the information on the registration forms submitted by would-be voters.

The next step in the voter registration process is that, pursuant to HAVA, officials must match information on a voter’s registration form (including name, address, date of birth and an identification number, such as a driver’s license or Social Security number) with existing databases. HAVA delineates certain procedures that each state must follow in constructing its database.<sup>231</sup> Most importantly, state election officials and their corollary state motor vehicle authorities are required to enter into agreements to match information in the statewide voter registration database with that in motor vehicle databases.<sup>232</sup> Furthermore, HAVA requires that each state’s motor vehicle authority enter into an agreement with the Commissioner of Social Security.<sup>233</sup>

As we explained in our 2008 report, “if a match is found, the voter’s eligibility is verified and his or her name is placed on the registration roll. If a match is not found, then the state must notify the voter and give him or her the opportunity to present evidence of his or her identity. This sounds like a simple process, but in implementation it takes a wide variety of forms, some of which are substantially burdensome, and potentially disenfranchising, to eligible voters.”

The “matching” step could be the most problematic for new voters, because federal law is not clear as to what constitutes a “match,” and states have differing standards as to what constitutes a “match.” Depending on the database construction, typographical errors, transposed digits, hyphenated names, or other human mistakes in the process could fail to return a match. For example, an applicant filling out the form or a clerk inputting the information into the database could transpose a driver’s license number or birthday.

Some states may flag possible mismatches so that officials can intervene before an application is rejected. Most states permit applicants who fail to match the opportunity to verify their application in person or at the polls on Election Day so that they can remain registered and vote by regular ballot.

Given the technical nature of computer databases and inevitable human error, it is important that a matching standard allow for a means to ensure that an unintentional mistake will not lead to automatic rejection because of a failed match. Unfortunately, both federal law and the laws in most of the states that we surveyed remain vague and ambiguous as to a proper matching standard. HAVA itself leaves it up to each state to “determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with state law.”<sup>234</sup>

Compounding the problem is a dearth of state laws and regulations regarding voter database registration matching standards. Only one state that we surveyed, **Kentucky**, is completely exempt from HAVA compliance as to coordinating with motor vehicle or Social Security officials.<sup>235</sup> This is because Kentucky uses the entirety of the applicant’s Social Security number when verifying a voter’s eligibility with its statewide list (HAVA’s voter verification provisions otherwise use only the last four digits of an individual’s Social Security number).

.....  
**Given the technical nature of computer databases and inevitable human error, it is important that a matching standard allow for a means to ensure that an unintentional mistake will not lead to automatic rejection because of a failed match.**  
.....

Although **Nevada**'s statutes and regulations are silent, Election Law @ Moritz (based out of The University of Ohio's Moritz College of Law) found that Nevada uses an "exact match" standard to match identifying voter information with statewide databases.<sup>236</sup> In other words, if state officials cannot match, character-for-character the first and last name, date of birth, and driver's license, state ID or Social Security number, the prospective voter will not appear on the registration rolls. An exact-match standard leaves no room for inadvertent error. Though it does not make it impossible for a voter to then cast a ballot, it makes it much more difficult. **Nevada** law indicates that if a county clerk notices that a voter's registration is not complete, the clerk must mail a notice granting the applicant 15 days to provide information requested by the clerk. If the applicant does not provide the additional information within the prescribed period, the application is void.<sup>237</sup> However, local officials also have the discretion to term an application "pending" if they are not able to make a match.<sup>238</sup> Upon providing proof of residence and identity, the voter could cast a ballot.<sup>239</sup>

Other states use a "hybrid" system which requires an exact match for some of the identifying information (most often the driver's license or last four digits of the Social Security number) but grants election officials some discretion, at least under some circumstances, to approve a match once the official considers the totality of the circumstances that resulted in a flagged match. Of the states we surveyed, both **Arizona**<sup>240</sup> and **North Carolina**<sup>241</sup> use a hybrid match standard. In **Arizona**, while the identifying number (driver's license or last four digits of a Social Security number) must be an exact match, last names need only have five letters in common, and first names must have three letters in common.<sup>242</sup> This standard does not allow for mistakes in the identifying number but compensates for potential human errors when confirming an applicant's first and last names.

In the event that election officials in **Arizona** cannot verify a voter's identification number, officials will notify the applicant by nonforwardable first class mail.<sup>243</sup> The applicant will be given the opportunity to correct the disputed information up until the day before the election.<sup>244</sup> If the applicant provides identification at the polls, the individual will be permitted to vote.<sup>245</sup>

**North Carolina** is classified as a hybrid state because if a voter provides only the last four digits of his or her social security number as his or her identification and not a driver's license number, North Carolina uses an exact match standard for that number, as well as first and last names, month of birth, and year of birth.<sup>246</sup> This is because the Social Security Administration's matching system requires these exact matches as part of the system's design.<sup>247</sup> However, North Carolina uses a substantial match standard when an applicant applies with the driver's license as the unique identifying number. This grants local officials discretion to decide whether any possible matches could constitute a proper match.<sup>248</sup> Election Law @ Moritz reports that there is a 98.7 percent successful match rate with the motor vehicle database in North Carolina, while the Social Security database has a lower rate of successful matches.<sup>249</sup> A memorandum from the Social Security Administration indicates that 19 percent of submitted Social Security verification requests returned without a match.<sup>250</sup> North Carolina state law is clear as to the consequences for a match or non-match. If the county officials find a match and determine that the applicant is qualified to vote, the applicant receives a notice by nonforwardable mail.<sup>251</sup> If the postal service does not return the notice as undeliverable, the voter will be registered to vote.<sup>252</sup> On the other hand, without a match, the prospective voter must provide identification at the polls in the form of photo identification and a document to confirm the voter's address, such as a utility statement.<sup>253</sup> Once the voter provides this identification, they may vote. To be clear, the statute states that "the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted."<sup>254</sup> As such, the voter must provide identification at the polls. If the qualified voter chooses not to provide this identification, the individual may vote with a provisional ballot.<sup>255</sup>

Other states that we surveyed use a "substantial match" standard which accepts nicknames, common variants, and other minor errors including additions, omissions, and transpositions of digits or characters. **Colorado**, **Michigan** and **Missouri** are all states that follow a substantial match standard, although with varying flexibility.

In **Colorado**, the Secretary of State is charged with the responsibility of maintaining and updating the computerized voter registration list in order to keep it as current as possible.<sup>256</sup> Colorado did not roll out its new voter registration database until early 2008, far past the deadline under HAVA, and up until then much of the voter protection community's concern focused on the system's ability to deal with overcapacity.<sup>257</sup> However, in early October 2008, focus shifted from capacity issues to purging efforts. The *New York Times* reported that the Colorado Secretary of State's office purged approximately 37,000 voters from the voter rolls in apparent violation of NVRA's prohibition on removal from voter rolls within 90 days of a federal election.<sup>258</sup> NVRA requires that jurisdictions "complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of

which is to systematically remove the names of ineligible voters from the official list of eligible voters.”<sup>259</sup> A voter can only be removed during this period upon the voter’s request, disenfranchising criminal conviction, determination of incompetence, or death within that period.<sup>260</sup>

Common Cause of Colorado, Mi Familia Vota and the SEIU immediately filed suit to challenge the voter purge.<sup>261</sup> While the parties disagreed on the exact number of purged voters within the 90-day NVRA prohibition, the complaint cited a statement from the Secretary of State that 12,000 voters had been purged from the rolls for reasons not permitted by the NVRA.<sup>262</sup> The plaintiffs cited substantial evidence that the actual number was more than 20,000 voters.<sup>263</sup> Five days after filing the complaint, all parties agreed on a stipulation that allowed voters who had been removed from the rolls to vote by provisional ballot. In the event that a member of the list voted a provisional ballot, the stipulation required county election officials to promptly verify eligibility, with any contested ballots reviewed by the Secretary of State’s office.<sup>264</sup> Furthermore, the court maintained continuing jurisdiction over the purged voters, allowing the plaintiffs to go directly to the judge to resolve problems.<sup>265</sup> This settlement was particularly striking because it shifted the burden from the voter to the state to prove why a provisional ballot should not be counted.<sup>266</sup>

Litigation continued after the 2008 elections. On January 21, 2010, the parties agreed to settle almost all of their claims. The Secretary of State agreed to adopt rule changes “regarding matching criteria before duplicate registration records are cancelled, cancellation policies within 90 days of a federal election, and procedures for ensuring that voters who do not vote in every election are not stricken from the rolls simply because they are infrequent voters.”<sup>267</sup> The Secretary must also reinstate any improperly purged voters and provide public reports on current list maintenance processes, with advance notice required if the Secretary seeks to modify existing regulations.<sup>268</sup>

As they currently stand, Colorado’s new database rules grant election officials some discretion to evaluate matches and correct minor applicant errors.<sup>269</sup> For example, regarding the verification of identification, the rule states that “[v]erification shall include a match of name, date of birth and ID number on an existing state identification record. A match of only one or two of these items shall not be considered verification. During verification, names given which are similar common variants or nicknames of the name shall be acceptable.”<sup>270</sup> Similarly, the Clerk or Recorder “may use good judgment” and correct errors when identification numbers do not match.<sup>271</sup> Minor errors are defined to include, but are not limited to, “a transposition of two numbers, or accidentally adding or omitting a number.”<sup>272</sup> Colorado passed a new law in May 2010 that specifies that no elector’s registration record shall be cancelled solely for failure to vote.<sup>273</sup>

**Michigan**, a state which has used a computerized registration database known as its Qualified Voter File (QVF) since 1998,<sup>274</sup> follows a substantial match standard for driver’s licenses and an exact match standard for Social Security numbers.<sup>275</sup> Between 80 and 90 percent of all Michigan voter registrations take place as part of a driver’s license transaction.<sup>276</sup> If a voter uses their driver’s license number as their identification number on their voter application, the system will indicate both exact and possible matches.<sup>277</sup> Close matches are placed into an “error reconciliation file.”<sup>278</sup> State officials then reconcile the possible matches.<sup>279</sup> If a Social Security number is used as the identifying number, there must be an exact match of first and last names, date of birth, and the last four digits of the Social Security number itself.<sup>280</sup> If there is no match, voters must complete a verification process before they are able to cast a ballot.<sup>281</sup> Fortunately, if necessary, voters are able to correct their registration after the registration deadline.<sup>282</sup>

**Michigan** was until very recently involved in a lawsuit over purges to its voter registration databases.<sup>283</sup> While its matching standards were not directly at issue, plaintiffs challenged two procedures that the state uses to remove voters and prospective voters from the rolls. The first related to Michigan’s practice of canceling the voter registrations of individuals who apply for driver’s licenses in other states.<sup>284</sup> The Secretary of State cross-referenced the surrendered Michigan driver’s licenses against the voter registration list, and then, upon finding a match, a local clerk sent a card to an affected voter to affirm whether the individual intended to be out of state temporarily and therefore to remain on the rolls or not.<sup>285</sup> Under the second procedure, once a local clerk entered a prospective voter’s information onto a voter database, the clerk would mail the applicant a voter identification card.<sup>286</sup> If that voter card was returned as undeliverable, the registration was rejected.<sup>287</sup> The plaintiffs argued that this procedure violated Section 8(d) of the NVRA, which prohibits a state from removing a voter from the rolls unless certain conditions are met that include requesting confirmation that an individual has moved after a voter fails to respond to a notice mailed after failing to appear in two general federal elections.<sup>288</sup> In late June, 2010, Michigan entered into a settlement agreement with the plaintiffs and the organization representing them, The Advancement Project. The result of that settlement is that the state has agreed to abandon both practices.<sup>289</sup>

In **Missouri**, when an applicant submits their driver's license number, an exact match is not required.<sup>290</sup> Like **Michigan**, however, an exact match is required for Social Security numbers. This difference in treatment arises out of the Social Security Administration's system, known as HAVV.<sup>291</sup> The HAVV system searches for exact matches on the full first name, last name, and the month and date of birth.<sup>292</sup> Because HAVV "does not allow flexibility with matching the name and DoB to its records to compensate for typographical errors," there is a likelihood of a high number of no matches, "which may lead to applicants having difficulty while registering to vote."<sup>293</sup> Election Law @ Moritz also reports that Missouri follows a troubling practice where "administrators will not try different variations on a name (e.g., 'Bob' vs. 'Robert') in order to obtain a match."<sup>294</sup> However, a representative from Missouri's Secretary of State's office stated that "local election authorities are instructed to consider common nicknames and variations in the matching process."<sup>295</sup>

Unfortunately, the matching standards in **Illinois**, **Ohio**, and **Louisiana** are difficult to ascertain. Like most of the other states we surveyed (excluding **Colorado**), these states do not have clear laws, regulations or published guidelines about their matching procedures. In **Ohio** and **Louisiana**, confusion over matching standards spurred litigation.

The Brennan Center reported in 2006 that **Illinois** "intends to use a 'substantial match' standard."<sup>296</sup> While many jurisdictions may use a substantial match standard, our review confirms that the precise matching standard is left to individual jurisdictions to decide. Illinois law states that "the county clerk or board of election commissioners shall promulgate procedures for processing the voter registration form."<sup>297</sup> The Illinois Voter Registration System (IVRS) uses the identification number, first name, last name and date of birth to verify a voter's registration. Information entered onto the IVRS is matched against records kept in a database at the Secretary of State's office. If the Secretary of State runs a check and there is a problem matching, the information about the lack of a match is displayed and it is left to a local jurisdiction's official to decide how to proceed.<sup>298</sup> The Illinois State Board of Elections explained that "many times a missed key stroke can be found as the problem." Ultimately, however, it is left to the local administration official to decide how move forward in the event that a match is not definitive.<sup>299</sup>

**Louisiana** does not have any clearly ascertainable matching standards outside of the statutory guidelines that detail the procedures officials should follow if they cannot make a match.<sup>300</sup> If a match cannot be found, the registrar must notify the applicant in writing and grant 10 days to respond. If the registrar is satisfied with the response, the application is added to the rolls. If the applicant fails to respond, the applicant is notified in writing and the application is rejected. If the applicant responds but the registrar still cannot verify the application, the applicant has 10 days to verify his or her application in person. If the person fails to verify in person, the application is rejected. While this process sets out the procedures to follow in the event a match cannot be made, Louisiana law and regulations do not set out the standard for what actually constitutes a "match." The Secretary of State's office in Louisiana confirmed, however, that a verification is made through a match of either an applicant's Louisiana driver's license number, special identification number or the last four digits of the Social Security number, and not an exact match for the name.<sup>301</sup> Although Louisiana is not unlike the majority of states we surveyed in that we could not locate transparent matching practices in the state's laws or regulations, Hurricane Katrina's reverberations continue to disrupt the state's electoral practices.

Hurricanes Katrina and Rita displaced hundreds of thousands of Louisiana residents, predominantly from the vicinity of New Orleans.<sup>302</sup> The widespread chaos extended to Louisiana's voter registration rolls. In 2007, Louisiana Secretary of State Jay Dardenne announced that his office was "taking steps to ensure that Louisiana voters who have registered to vote in another state cannot vote in both states."<sup>303</sup> The purpose of this voter purge was to remove those that moved and then registered to vote out of state, including Hurricane Katrina and Rita evacuees. The Elections Division of Secretary Dardenne's office compared Louisiana's voter lists to those they obtained from Texas, Florida, Tennessee, Georgia, Colorado, as well as New York, New York, San Diego, California and Las Vegas, Nevada.<sup>304</sup> These jurisdictions constituted areas where Louisiana officials had the most requests for absentee ballots.<sup>305</sup> After using a match procedure comparing first names, last names, and dates of birth between Louisiana's lists and the out-of-state lists, over 53,000 people received notices granting each recipient 30 days to submit proof that they cancelled their out-of-state voter registration or that Louisiana officials made a mistake when they compared voter rolls.<sup>306</sup> If they submitted this proof, individuals remained registered and on the rolls in Louisiana – otherwise, they received a second (final) 21-day notice requesting proof of cancellation of out-of-state voter registration.<sup>307</sup> If an individual did not provide proof, the Secretary removed the individual from Louisiana's voter registration lists. Louisiana removed over 21,000 names from its rolls via this process.<sup>308</sup> The majority of those originally dropped registered in areas most affected by the 2005 hurricanes.<sup>309</sup> However, although an NAACP Legal Defense and

Education Fund lawsuit failed for want of standing,<sup>310</sup> eventually about 6,700 of the purged voters, mostly from New Orleans, were restored to the rolls.<sup>311</sup>

In conducting this voter purge, **Louisiana** required proof of cancellation of out-of-state voter registration, proof that could not be provided if the individual in question never registered out-of-state in the first place.<sup>312</sup> Most disturbingly, to justify its actions, the Secretary of State's office used a state statute that applies to individuals suspected of disqualification to vote for reasons *other* than a change of address, such as fraud.<sup>313</sup> Project Vote wrote a letter to the United States Department of Justice requesting the Department to open an investigation into this matter.<sup>314</sup>

**Ohio** has faced major problems with its voter registration databases. Ohio state law is silent on voter registration database matching, including the consequences for a non-match,<sup>315</sup> though recent directives from the Secretary of State's Office make an effort to address this.<sup>316</sup>

There is widespread agreement that a better database design and maintenance regimen is essential, even if this is among the "most labor intensive and costly tasks."<sup>317</sup> The narrow results in the 2004 presidential election, combined with the lack of transparency in the maintenance of Ohio's statewide voter registration database, served to undercut confidence in the integrity of Ohio's election procedures in more recent elections.<sup>318</sup>

Ohio's Secretary of State has herself described the database as "poorly constructed."<sup>319</sup> The database's shortcomings came to a critical point when the 2008 presidential election presented enormous challenges to voter registration in Ohio. Efforts to register over 250,000 new voters in 2007, along with 665,900 new active voters added to the rolls between January 2008 and that year's registration deadline, threatened to overwhelm the state voter registration database.<sup>320</sup>

Given the lack of explicit law regarding matching standards for voter registration databases, the Secretary of State complied with HAVA by promulgating procedures that required state election officials to match Social Security numbers or driver's license numbers with information on the voter's registration application.<sup>321</sup> If officials could not locate a match, they would list the individual as "unconfirmed," but a non-match alone did not prohibit registration.<sup>322</sup> Fraud was not the culprit in most mismatches – instead, as is the core problem with database matching, human errors and typographical errors were most often to blame.<sup>323</sup> For example, Ohio driver's licenses include a number directly above an individual's picture which is *not* the official driver's license number, making it quite easy for anyone filling out or processing the registration form to write the wrong driver's license number.<sup>324</sup>

At some point in the run-up to the 2008 elections, "the Secretary of State may have stopped notifying counties of registrations that could not be matched."<sup>325</sup> The Secretary of State's protocol was not transparent, the office's handbook unclear, and lists of non-matches were not sent to local election officials.<sup>326</sup> At the end of September 2008, the Republican Party of Ohio sued Ohio Secretary of State Jennifer Brunner, and won a Sixth Circuit Court of Appeals decision "requiring the disclosure of lists of voters whose names did not match those on government databases."<sup>327</sup> With the potential number of mismatches approaching 200,000, the Advancement Project reported that "[i]t appeared...that the Republican Party wanted the list of unmatched voters to facilitate pre-Election Day challenges."<sup>328</sup>

Voting rights experts were alarmed that the Republican Party framed their case upon using matching as a strict means of verifying eligibility in a way that completely ignored the possibility for computer and clerical error.<sup>329</sup> The Republican Party sought to expose what it claimed was the Secretary's violation of HAVA – the violation being that mismatches were not shared with local election officials.<sup>330</sup> However, if the Secretary of State made the lists public, the plaintiffs could also then challenge voters at the polls.<sup>331</sup> In the words of Secretary Brunner, this lawsuit was "a very orchestrated effort to suppress voting."<sup>332</sup> The Republican Party of Ohio lost, however, when the Supreme Court of the United States ruled that the Republican Party was unlikely to prevail on the question of whether private litigants could sue to enforce the part of HAVA which mandated statewide voter databases.<sup>333</sup> The Court did not rule on the underlying question of whether Ohio's implementation of HAVA was indeed proper.<sup>334</sup> Ultimately, because of Supreme Court intervention, Secretary Brunner was not required to supply the names of an estimated 200,000 new voters that failed to match with the motor vehicle or social security databases.<sup>335</sup>

Meanwhile, separate litigation brought by Dēmos and the Lawyer's Committee for Civil Rights Under Law on behalf of the League of Women Voters of Ohio stemmed from the 2004 elections and dealt with voting machine irregularities, extraordinary wait times, inadequate poll worker training, faulty provisional ballot distribution and similar issues.<sup>336</sup> Most of the claims settled in 2009; however, the plaintiffs' claims about faulty databases did not settle.<sup>337</sup> These claims are currently stayed and held in abeyance pending status reports by the Secretary of State's

office regarding steps it is taking to improve or change voter registration databases in Ohio.<sup>338</sup> The first status report, filed on the last day of 2009, describes efforts the Secretary of State's office is taking to improve county-level voter registration processing, verification of voter registration data and resolution of non-matching data, and the voter registration database as a whole.<sup>339</sup>

The status report recognizes that "improving the processing of voter registration data at the county level is an essential part of improving the SWVRD [Ohio Statewide Voter Registration Database]."<sup>340</sup> In addition to holding training sessions for local officials throughout the state, the Secretary's office is seeking to reduce "duplicate" voter registration records, and pledged that "great care is taken to ensure that records are actually duplicative" before a registration is cancelled.<sup>341</sup> The Secretary of State's office also pledged that it is working to engage with the state's Bureau of Motor Vehicles [BMV] to improve verification processing and is "renegotiating contracts with the three county registration system vendors for modifications to county-level voter registration systems to enable counties to more easily identify and resolve voter registration data discrepancies identified by the HAVA-required comparison with BMV and SSA databases."<sup>342</sup>

Most importantly, the Secretary is "currently negotiating with the voter registration system vendors the development of a process for 'flagging' voter registration records that contain non-matching data."<sup>343</sup> Accordingly, in July 2010 the Secretary issued a directive laying out the process for local county board of elections to resolve discrepancies evidenced by non-matching data.<sup>344</sup> Local county boards are instructed to follow a specific procedure to flag potential non-matches so that the records may be clarified or updated, and the directive specifies that a voter's registration shall not be cancelled solely on the basis of non-matching data.<sup>345</sup>

The Secretary is also working with members of the Ohio legislature on comprehensive election reform legislation (House Bill 260).<sup>346</sup> This legislation, if passed, would establish regulations to improve the voter registration database and "create legal definitions of the data to be matched and what constitutes a relevant non-match."<sup>347</sup> It would establish rules and procedures to coordinate non-match data between boards of elections while requiring local boards to process relevant non-matches.<sup>348</sup> More specifically, the legislation would eliminate confusion over proper Ohio driver's license numbers by requiring only the official license number to appear on a driver's license, rather than an additional administrative number appearing over a driver's photograph, which causes confusion in the matching process.<sup>349</sup> The House passed its bill in November 2009, and the Senate passed a similar bill (Senate Bill 8) in mid-December 2009. The Secretary states that she will continue to "work with legislative leaders as they seek to reconcile these legislative proposals."<sup>350</sup>

Unfortunately, it appears that Ohio's legislature will not be able to act soon enough for the reform legislation to improve the fall 2010 election.<sup>351</sup> Secretary of State Brunner stated that the legislation needed to pass by April 2010 so that local county officials could incorporate any major changes in time for November.<sup>352</sup> It is still important that the legislature use the current momentum to pass the reform legislation this year so that future elections are no longer affected by the uncertainty that has plagued Ohio over the past few election cycles.

# VOTER IDENTIFICATION

As we have described in our previous reports and elsewhere, strict voter identification laws have the potential to disenfranchise thousands of voters, and disproportionately take the vote away from minorities, young people, the elderly, poor people, and voters with disabilities, who are less likely to have the requisite identification. Anecdotal evidence and academic research continues to come out demonstrating that such laws have this disenfranchising effect and that the existence of polling place fraud—the only kind of fraud that voter identification can prevent—is virtually nil. Even since the 2008 election period, numerous studies have been published confirming some variant of these findings.<sup>353</sup>

In the states reviewed both in this report and the 2008 report, not much has changed, but in many cases it has not been for lack of trying by some lawmakers. Among the new states we are covering, the laws run the gamut.

Equally as troubling are laws, and potential laws, that require that every person seeking to register to vote provide documentary evidence that he or she is a United States citizen. This is currently the law in Arizona, and already has had harmful effects. The Arizona law continues to be the subject of litigation.

In 2004, the voters of **Arizona** passed a measure that requires, among other things, that anyone registering to vote provide documentary evidence of citizenship. On May 9, 2006, the Mexican American Legal Defense and Education Fund (MALDEF) filed suit in the U.S. District Court for the District of Arizona challenging the voter restrictions of Proposition 200. There were a series of interim rulings, including one by the United States Supreme Court on the eve of the 2006 election that allowed the measure to be implemented when it had been enjoined in a lower court. In August 2008, following a trial on the merits, the district court upheld Prop 200 and the case is currently on appeal to the Ninth Circuit Court of Appeals.

Although persons registering to vote have long been required to affirm their citizenship on their registration application under strict penalties for false registration, Arizona is currently the only state that requires proof of citizenship to register to vote.<sup>354</sup> Between 2004 and 2008 more than 38,000 voter registration applications were thrown out in Arizona because, according to elections officials, they did not include sufficient proof of citizenship.<sup>355</sup> According to court documents 90 percent of people trying to register to vote were born in United States, as they indicated on the forms, but did not provide sufficient documentation. According to an academic study in the first year the law went into effect,

[M]ore than 12,000 applications were rejected because of the new requirements in Pima and Maricopa Counties alone. In addition, in the period from April until August in Pima County, only 5,872 new voters even attempted to register (1,492 were denied), compared to 2004, when more than 30,000 voters were successfully registered. Had the laws been in effect in 2004, more than 10,000 of those new voters would have been rejected. Of the voter registration applications rejected in Pima County, none were because the applicant was a non-citizen. In Maricopa County, county officials identified and charged ten non-citizens attempting to register to vote, including three who had cast effective ballots in the 2004 election.

These individuals had been incorrectly advised by organizations that they could cast a legal ballot because they were in the process of becoming naturalized.<sup>356</sup>

In October, 2009 a federal appellate court panel heard oral arguments in the challenge to Prop 200 and the judges' questions suggested that they might have some disagreement with the district court. In part the dispute hinges on whether the law complies with the National Voter Registration Act which requires jurisdictions to accept the federal mail-in registration form for the purposes of voter registration. The question is whether a requirement that someone submit documentary proof of citizenship in addition to the form violates the NVRA's mandate that the federal form be accepted as-is. According to press reports, one of the judges, former United States Supreme Court Justice Sandra Day O'Connor was skeptical that it was allowed to so deviate.<sup>357</sup>

**Between 2004 and 2008 more than 38,000 voter registration applications were thrown out in Arizona because, according to elections officials, they did not include sufficient proof of citizenship.**

Given that Prop 200 was part of larger measure restricting noncitizen access to government services it seems to have been one component of an anti-immigrant agenda. This is also reflected in the voting provisions of the law itself: all documentary evidence of citizenship may be photocopied and mailed into the registrar – EXCEPT naturalization papers, which must be presented in person in its original form to the board of elections.<sup>358</sup>

This law, and bills around the country that seek to replicate it, are just as disenfranchising if not more so than voter identification laws. In the same way that many eligible voters will not have the identification necessary to comply with highly restrictive voter identification laws, they will not have access to documentation that proves they are a citizen. The only acceptable proof would really be a birth certificate, passport, or naturalization papers. This is a much more restrictive set of options than most voter identification laws provide.

**If the voter does not have those documents on hand, he or she will have to pay to acquire them, amounting to a poll tax.**

The Brennan Center has found that approximately 13 million Americans do not have ready access to such documents.<sup>359</sup> If the voter does not have those documents on hand, he or she will have to pay to acquire them, amounting to a poll tax. Indeed, naturalization documents cost \$220 to replace if they have been lost or damaged in some way.<sup>360</sup> And it is unnecessary: voter registration forms already require an applicant to take an oath that he is a citizen, under penalty of criminal sanctions. Why would a non-citizen take that chance, intentionally?

The truth is that non-citizens do not intentionally violate voting laws by registering and casting ballots. Doing so would be to risk deportation and maybe jail. As the Brennan Center has detailed,<sup>361</sup>

We are not aware of any documented cases in which individual noncitizens have either intentionally registered to vote or voted while knowing that they were ineligible. Given that the penalty (not only criminal prosecution, but deportation) is so severe, and the payoff (one incremental vote) is so minimal for any individual voter, it makes sense that extremely few noncitizens would attempt to vote, knowing that doing so is illegal.

Although there are a few recorded examples in which noncitizens have apparently registered or voted, investigators have concluded that they were likely not aware that doing so was improper... Far more common than these incidents of noncitizen voting are allegations of noncitizen voting that prove wholly unfounded. These claims are often premised on matching lists of voters from one place to another, but as with each of the examples above, upon closer inspection, the match process shows error. The interpretation may be flawed, as when two list entries under the same name indicate different individuals. Or the lists themselves may be flawed, with an individual marked due to a clerical error as voting when she did not in fact cast a ballot.

Government citizenship records — as the government itself acknowledges — are also replete with errors or incomplete information. Naturalization documentation may find its way into the government files slowly, or not at all, leaving outdated or inaccurate information for investigators looking for fraud. And this, in turn, leads to flawed accusations that noncitizens have been voting, when the voters in question have in fact become fully naturalized American citizens.

Proof of citizenship requirements also block the ability of civic organizations to conduct voter registration drives that, given the current voter registration system, are so essential to the participation of marginalized communities. How many people walk around with their passports, birth certificates or naturalization papers?

**Arizona** also has an onerous identification law. All voters must present either one form of photo ID or two forms of non-photo ID that bear the name and address of the voter. If the voter does not have the requisite identification as the poll worker sees it, he is forced to cast a provisional ballot. That provisional ballot *will not be counted* unless the voter returns to the office of the County Recorder by 5:00 p.m. on the fifth business day after a federal election or by 5:00 p.m. on the third business day after any other election.<sup>362</sup> In the 2006 primary, it was reported that many Navajo in particular had problems complying with the voter ID requirement.<sup>363</sup>

**Louisiana's** voter identification law<sup>364</sup> as written is fairly restrictive among our new states. It is one of only six states to require photo ID from all voters. This means a driver's license, a Louisiana Special ID, or some "other generally recognized picture ID," a rather vaguely defined requirement open to individual poll worker interpretation. However, if the voter has only a non-photo ID, the voter can sign an affidavit to cast a ballot. According to

the letter of the law, he or she will also have to provide further identification by presenting his current registration certificate, giving his date of birth or “providing other information stated in the precinct register that is requested by the commissioners.” It is unclear in the language of the statute what that “other information” might be; the Secretary of State reports that polling place commissioners are trained to identify voters “by asking questions, such as the voter’s maiden name, date of birth, or other identifying information that is contained in the precinct register.” In any case, though the law is troubling, in practice the fail-safe affidavit option seems to have resulted in few voters having problems with the voter identification requirement in Louisiana.

It should be noted that technically a voter who is allowed to vote without the picture identification is subject to challenge as provided in R.S. 18:565 – meaning any voter or poll worker automatically is authorized to challenge that voter’s right to vote.<sup>365</sup> Under that provision, “the commissioners present shall determine the validity of the challenge. If they determine by majority vote that the challenge is valid, the applicant shall not be permitted to vote.” This means that without photo identification a voter can be completely denied the right to vote by the officials in that polling place.

In addition, if the voter does not sign the affirmation or cannot provide the “other information,” which is ill-defined, she will be able to cast only a provisional ballot in a federal election; in a non-federal election, she will not be able to cast a ballot at all. The provisional ballot will be counted if the parish board of election supervisors determines that the voter was registered and eligible to vote.<sup>366</sup>

In short, though it has not been a problem of note to date, the law itself leaves open the possibility of abuse. That Louisiana has a stricter than average identification requirement is particularly troubling given that elected officials and others knew about the biases in voter identification requirements well before the issue became such a controversial one. Back in 1994, the U.S. Department of Justice found that African-Americans in Louisiana were four to five times less likely than white residents to have government-sanctioned photo identification.<sup>367</sup>

Recently there was a new wrinkle added to the Louisiana voter identification requirements. In 2009, the Louisiana legislature passed a unique bill requiring persons who help another voter vote at the polls in accordance with Section 208 of the Voting Rights Act present identification and sign a registration form. RS 18:564(b) was changed to say that, “Except for a commissioner, the person assisting the voter shall present to the commissioners his Louisiana driver’s license, his Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card that contains the name and signature of the person assisting the voter.”

In contravention to Section 208’s provision that a voter who needs assistance can choose anyone he wants to provide that assistance with a couple of exceptions, these new ID requirements clearly would have made it more difficult for a voter to have the assistance of the person of his choice, and thus might have the result of disenfranchisement.

Fortunately, Louisiana is a state covered by the Voting Rights Act, meaning it has to submit any changes to its election procedures to the Department of Justice prior to implementing them. After the Department of Justice received letters objecting to the change from the voting rights community and Louisiana in turn got a request for more information about the policy from the DOJ, the state withdrew the legislation from preclearance review in February 2010. This meant the law would not be implemented for the time being. However, voting rights advocates expect it to come up again.<sup>368</sup>

**Kentucky’s** voter identification law as written is rather vague, though voting rights workers in the state say it has not proved problematic to the voting process. Under the law, poll workers are required to confirm the identity of each voter either by personal acquaintance or by a document, such as a driver’s license, Social Security card, credit card, other ID card with a picture and a signature or any additional documents approved by the State Board of Elections. Voters unable to produce acceptable ID are required to vote provisionally.<sup>369</sup>

While this sounds like it could be a system that lends itself to abuse – poll workers having a great deal of discretion as to who they know personally or not, and what identification from any particular voter is acceptable – in practice to date it has seemed to work adequately. Although the process is not particularly well defined or systematic, the list of ID permitted is broad and in some places in Kentucky it is not uncommon for poll workers to indeed know the voters.<sup>370</sup> However, the fact that if the voter does not have ID or ID acceptable to the poll worker must return with ID within a certain time period is problematic. It seems that the local election administrator should take steps to determine whether the voter was eligible and count the provisional ballot accordingly.

The other new states under review – **Illinois, Nevada and North Carolina** -- all have a more reasonable identification requirement and do not require more identification than mandated by the federal Help America Vote Act. First-time voters who register by mail and do not provide ID verification with their registration application must present one of many different forms of photo or non-photo ID, including a copy of a current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

However, in **Illinois**, for voters wishing to vote early, a government-issued photo ID is required. And despite Illinois' otherwise more acceptable identification laws, there have been problems with implementation of voter identification requirements in Illinois in the past. The Election Protection 2004 report details a fair number of voter ID issues. According to their report, "The major issues were voters not having a current address on their driver's license and poll workers asking all voters to present two forms of ID. In several cases, when voters could not produce the ID, they were not allowed to vote."<sup>371</sup> This type of problem goes squarely to the issue of making sure not only that the laws on the books are fair but that poll workers are uniformly and well trained on what those laws are. Poll workers creating their own rules about whether and what type of ID is to be demanded is a common problem in many states<sup>372</sup> that must be vigilantly and repeatedly addressed by election administrators as they work with poll workers.

Bills that would require government issued photo identification at the polls and proof of citizenship in order to vote are introduced annually in Illinois, but none have succeeded yet. Bills on these matters were again introduced in 2010 and at the time of this writing were still pending in the state senate (SB 2079, SB 2083).

Similarly in **Nevada**, although only HAVA ID is required, in 2004 voters filed complaints to Election Protection about uniformed and armed police officers stationed outside polling places. One voter reported witnessing poll workers in Clark County only asking minorities to show identification. Then, people without ID were sent to another table, where they were told they were in the wrong precinct and turned away.<sup>373</sup> A proof of citizenship bill was introduced in 2007 (AB 451), but failed, and there do not seem to have been any similar efforts undertaken since then.

In states we studied in 2008, the identification laws have, for better and worse remained the same. In **Michigan**, we continue to believe that it is unfortunate that voters are "required" to present photo ID, though at least if a voter fails to do so he may sign an affidavit and then be allowed to cast a regular ballot. Not surprisingly, Election Protection found that in the 2008 election, "poll workers were often unaware that voters in Michigan who did not have a government-issued photo ID could vote after signing an affidavit."<sup>374</sup> This is attributable both to the unfortunate nature of the law and again, the need for extra vigilance with respect to poll worker training and oversight on this important procedure. At the same time, it should be noted that according to the office of Secretary of State Terri Lynn Land, it did not receive any complaints by a voter turned away for failure to presented required identification.<sup>375</sup> A bill to roll back the photo ID requirement was introduced in 2007 in the Senate, but to no avail (SB 758). That same year a proof of citizenship bill that was introduced in 2007 was carried over but it did not go through either (HB 5337).

In **Missouri** it is still the case that some form of identification is required of all voters. As was reported previously Missouri tried to require photo ID, but that requirement was struck down as unconstitutional in *Weinschenk v. State*.<sup>376</sup> The identification can be one of a wide range of photo and non-photo ID.<sup>377</sup> However, according to the office of the Secretary of State, in accordance with *Weinschenk* voters who do not have proper ID may *not* cast a provisional ballot. They will not be offered one. According to the Secretary's office, the only way such a voter may vote is if he comes back and tries to vote again with proper identification.<sup>378</sup> Given the difficulty many voters have getting to the polling place, standing on line and voting on a work day, it seems rather unlikely that a voter who does not have or forgets the requisite ID would be able to return within such a short amount of time with the identification demanded. Moreover, this is arguably contrary to the mandate of the Help America Vote Act that requires a voter be given a provisional ballot if his or her name does not appear on the voter registration list, in the case of some first-time voters, if they do not have the requisite ID and in the case of other voters if the poll worker believes the voter is not eligible to vote.<sup>379</sup>

Now that the requirement of a photo ID law has been deemed unconstitutional, some have called for passage of a constitutional amendment in Missouri. Rep. Stanley Cox, R-Sedalia, introduced a constitutional amendment (HJR 64) this year that would allow the Legislature to enact a Voter ID measure. If the measure passes the legislature, it would go to the voters. According to the St. Louis Post-Dispatch, “Cox’s proposal set off the usual partisan bickering, with allegations of voter registration fraud by ACORN, taking center stage. State Rep. Chris Kelly, D-Columbia, pushed Cox to provide details of alleged cases of actual voter fraud that would be fixed by the ID proposal. Cox pointed to allegations of registration fraud in Missouri and other states, but said he didn’t have examples of how this law would fix any existing problems.”<sup>380</sup> On April 15, 2010 the House passed HB 1166 calling for a constitutional amendment that would appear on November’s ballot authorizing a law requiring government-issued photo identification. Representatives also passed a separate bill that would implement the law if the constitutional amendment passes. Both measures need a second House vote before moving to the Senate.<sup>381</sup>

In addition, in 2008 legislators tried to pass a constitutional amendment that would have allowed the legislature to pass requirements that voters provide proof of citizenship in order to vote as well as a voter identification requirement at the polls. Representative Cox was the sponsor behind that effort as well, which ultimately died with the Senate’s legislative session.

**Ohio** also requires all voters to present some form of identification. There was, during earlier election periods, much confusion and debate over what constituted acceptable identification and what information had to be contained in that ID for it to be accepted.

The confusion continued in 2008. According to Election Protection, in “some cases, poll workers insisted on more stringent forms of ID than necessary in Ohio, where the law does not require that the address on a voter’s license match their registration address.” Some poll workers also incorrectly forced voters whose photo ID address did not match the registration address to vote provisionally.<sup>382</sup> Hopefully this will not be the case in 2010; a legal settlement entered into in 2009 required Ohio to implement uniform training and instruction on Ohio’s ID requirement.<sup>383</sup>

An omnibus election reform bill (HB 260) that has been the subject of ongoing negotiations in the Ohio state legislature with the input of the Secretary of State, would eliminate a requirement that a voter’s identification show the voter’s address.<sup>384</sup> It would also expand the types of ID a voter could present at the polling place. Moreover, the bill would allow a voter to affirm her identity by affidavit if she didn’t have the correct ID, although certain identifying information must be given to the election workers.<sup>385</sup>

In **Colorado**, it continues to be the case since our 2008 report that all voters must present one of a wide range of types of ID that are specified in the law, which includes such items as a utility bill or student identification.<sup>386</sup> If the voter does not have ID, according to the law, the voter must cast a provisional ballot and that ballot will be counted if the voter was registered and eligible to vote.<sup>387</sup> To make this determination, officials will look at records of convicted felons, state voter registration databases, and the state department of motor vehicles database.<sup>388</sup> Although there is nothing in the law that requires the voter to return at any time with ID, a local administrator told researchers at the election law center at the Moritz College of Law at the Ohio State University that Colorado officials do indeed require provisional voters to return with acceptable ID.<sup>389</sup>

In Colorado, proof of citizenship bills have been introduced repeatedly.<sup>390</sup> They have not yet had much traction. Voter identification laws have also been introduced perennially, and yet another one was introduced in 2010, HB 1091, that “eliminates as permissible forms of identification for such purposes a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector,” essentially requiring a government issued photo ID. The bill was postponed indefinitely in the first committee.

In a perverse way, all of this is the good news. From 2008-2010 in these states, the status quo was preserved and some already onerous requirements did not get worse, and states that had fair laws did not enact discriminatory ones. However, that may be temporary. Virtually every one of these states has had a bill on proof of citizenship, strict identification requirements or both in some stage of the legislative process.

Now that the requirement of a photo ID law has been deemed unconstitutional, some have called for passage of a constitutional amendment in Missouri.

# PROVISIONAL BALLOTS

The Help America Vote Act required states to let voters cast “provisional ballots” if their names were not listed on the rolls when the voters went to cast their ballots.<sup>391</sup> HAVA allowed states discretion in creating the standards for casting and counting of provisional ballots.<sup>392</sup> As a result standards vary from state to state – and some states have expanded their use. At their best, provisional ballots allow voters to cast a ballot and have their vote counted when they might otherwise be disenfranchised. At their worst, provisional ballots lure voters into the false sense of security that they are actually voting – when their vote will not be counted.

In our 2008 report, we noted that there was a wide disparity in how and when provisional ballots were offered to voters and counted. A review of the data available from the 2008 Election Administration and Voting Survey prepared by the Elections Assistance Commission reveals these differences. This wide disparity in the distribution of provisional ballots and how states have counted them raises serious questions about whether all voters have substantially equal opportunities to have their votes count in federal elections. Below are the data.

Because the laws governing provisional ballot use have not changed significantly since 2008, we do not expect to see very different numbers in 2010.

## **Provisional Ballots Cast and their Disposition**<sup>393</sup>

(Exhibited as percent of Total Ballots Cast, then percent of Provisional Ballots Cast)

	AZ	CO	IL	KY	LA	MI	MO	NC	NV	OH
<b>Provisional Ballots Cast</b>	4.6	1.9	0.7	0.0001	0.1	0.1	0.1	0.6	0.3	3.0
<b>Fully Counted Ballots</b>	70.7	71.2	35.8	20.8	41.6	48.0	25.1	41.1	42.1	77.9
<b>Partially Counted Ballots</b>	0.0	12.9	0.0	0.0	0.0	0.0	0.0	8.0	0.0	0.1
<b>Rejected Ballots</b>	29.3	15.9	64.3	79.2	58.4	52.0	74.4	50.9	57.9	19.2

As these figures show, the implementation of provisional voting requirements is still very state specific, with some state laws and rules allowing provisional ballots to be given to more voters and some states restricting how and when a voter’s provisional ballot can be counted.

## REASONS FOR DISTRIBUTION OF PROVISIONAL BALLOTS

Most states, in outlining when a provisional ballot should be given to a voter, appear to hew closely to the requirements set forth in HAVA:

- when an individual claims to be eligible and registered to vote in the jurisdiction, but the individual’s name does not appear on the list of eligible voters;
- when an election official challenges the voter’s eligibility to vote;
- or, when an individual votes after the polls close as the result of a state or federal court order extending polling hours.<sup>394</sup>

Despite the seemingly standard language, however, each state reviewed in this report seems to have implemented these guidelines differently. As the above chart shows, **Arizona** and **Ohio** distributed the most provisional ballots – with 4.6 percent of **Arizona** voters casting provisional ballots as a percentage of ballots cast and 3 percent of **Ohio** voters casting provisional ballots. The rest of the states we reviewed distributed much lower numbers of provisional ballots as a percentage of ballots cast – between .0001 and 1.9 percent. Unfortunately, we do not have the

At their best, provisional ballots allow voters to cast a ballot and have their vote counted when they might otherwise be disenfranchised. At their worst, provisional ballots lure voters into the false sense of security that they are actually voting – when their vote will not be counted.

data to account for these disparities. The EAC survey did not require election administrators to state the reason voters were given provisional ballots.

Interestingly, the two states that distributed the most provisional ballots, **Arizona** and **Ohio**, were also the states that counted the most provisional ballots as a percentage of provisional votes cast with **Arizona** at 70.7 percent and **Ohio** at 77.9 percent. In both states, the survey showed that provisional ballots were rejected mostly due to the voter ultimately not being shown to be registered in the state or casting a ballot in the wrong precinct.<sup>395</sup>

Of the states surveyed, **Kentucky** had the lowest distribution of provisional ballots, with only 855 voters in Kentucky receiving provisional ballots – or .0001 of votes cast.<sup>396</sup> But only 20.8 percent of those were fully counted. The vast majority of the provisional ballots were rejected because the voter was found not to be registered or attempting to cast a ballot in the wrong jurisdiction.<sup>397</sup>

Because HAVA allows for discretion beyond certain requirements in creating the standards for distribution of provisional ballots, we find that some states have adopted additional circumstances when provisional ballots should be used.

Additional reasons states may allow a voter to receive a provisional ballot or require one to be distributed include:

- voter did not have adequate identification documentation
- voter requested an absentee ballot but is appearing in person at polls
- voters identification documents do not exactly match how voter appears in rolls

**Arizona**<sup>398</sup>, **Colorado**<sup>399</sup>, **Kentucky**<sup>400</sup>, **Louisiana**<sup>401</sup>, and **Ohio**<sup>402</sup> all require voters to vote a provisional ballot if they are unable to show an accepted form of identification as laid out by their individual state laws.

In **Illinois**,<sup>403</sup> **Nevada**,<sup>404</sup> and **North Carolina**,<sup>405</sup> voters may be given provisional ballots if they are first time voters who have registered by mail and do not have one of the forms of ID required by HAVA.

Another reason some states make voters use provisional ballots is if they have requested or received, or are noted as having requested or received, an absentee or early ballot. **Arizona**<sup>406</sup>, **Colorado**<sup>407</sup>, and **Ohio**<sup>408</sup> have requirements in this vein.

**Arizona** requires voters who have moved to a new precinct within the county, or have changed their names without having re-registered, to vote a provisional ballot.<sup>409</sup>

## REASONS FOR NOT COUNTING PROVISIONAL BALLOTS

Just as state laws vary as to when provisional ballots are distributed, they also vary in why and under what conditions they are counted, partially counted, or rejected. A review of the data available from the 2008 Election Administration and Voting Survey prepared by the Elections Assistance Commission reveals these differences.

Common Reasons Why Provisional Ballots Were Rejected<sup>410</sup>  
(Exhibited as percent of Provisional Ballots Rejected)

	AZ	CO	IL	KY	LA	MI	MO	NC	NV	OH
<b>Voter Not Registered in State</b>	32.7	58.4	46.1	35.7	56.3	0.0	75.9	79.6	85.0	46.4
<b>Voter in Wrong Jurisdiction</b>	0.1	19.6	1.7	50.1	12.0	0.0	4.2	0.4	0.3	1.6
<b>Voter in Wrong Precinct</b>	33.5	0.0	19.9	4.0	3.3	26.1	7.7	0.0	11.7	25.9
<b>Failure to Provide Sufficient ID</b>	5.7	3.9	0.2	0.9	0.5	13.5	0.0	1.8	1.4	5.0

Common Reasons Why Provisional Ballots Were Rejected<sup>411</sup>  
(Exhibited as percent of Total Ballots Cast of All Types)

	AZ	CO	IL	KY	LA	MI	MO	NC	NV	OH
<b>Voter Not Registered in State</b>	0.6266	0.1982	0.2196	0.0130	0.1338	0.0000	0.1309	0.5039	0.3347	0.3220
<b>Wrong Jurisdiction</b>	0.0019	0.0664	0.0082	0.0182	0.0285	0.0000	0.0073	0.0024	0.0012	0.0109
<b>Wrong Precinct</b>	0.6414	0.0000	0.0948	0.0015	0.0079	0.0102	0.0133	0.0000	0.0461	0.1796
<b>Insufficient ID</b>	0.1097	0.0131	0.0010	0.0003	0.0011	0.0053	0.0001	0.0111	0.0054	0.0346

Note: In each state, there were less consequential reasons for not counting the ballot. They include that the ballot was incomplete or illegible, the ballot was missing from the envelope, there was no signature on the ballot or the signature was non-matching, or the voter already voted. We did not include the statistics here as the numbers were much smaller.

As the data above show, the variance can be striking. The variance is perhaps the most troubling as the data clearly show that voters have unequal opportunities to have their votes counted depending on the state in which they live. The reason ballots are counted unequally across the states is that the laws governing whether a ballot is accepted or partially accepted vary across states.

### Voter Not Registered

It is difficult to ascertain the exact combinations of factors which contribute to a voter being improperly registered to vote or not registered at all, despite the voter's firm belief that he or she is registered to vote. If voter registration laws are too arcane and burdensome, a voter may not show up as registered if she or he fails to complete or submit a form correctly. Overly-broad or incorrectly administered purges are sometimes at fault. In addition, voters often have registered to vote properly only to find that due to an administrative error their names do not appear on the list. Many studies have found the registration system to be the biggest problem voters have in casting an effective ballot.<sup>412</sup> We would expect that is the case in these 10 states as well.

### Wrong Precinct or Wrong Jurisdiction

The greatest disparity in the counting/rejecting of provisional ballots appears to stem from laws which dictate whether a voter's ballot can be counted even the voter casts it in the wrong precinct. Some states allow ballots cast in the wrong precinct to be partially counted. Most do not.

**In seven of the states that we reviewed, if a voter shows up at the wrong precinct and fills out a provisional ballot because he is not on the rolls, that entire ballot will ultimately not be counted. This is why provisional ballots have been derisively nicknamed "placebo" ballots.**

It is not uncommon for voters to show up at the wrong precinct. Voter hot-lines show that this confusion is common either due to deliberate misinformation, or because the voter was not properly notified of their precinct location, or simply because the voter got in the wrong line at a voting center where multiple precincts are served at the same location.

In seven of the states that we reviewed, if a voter shows up at the wrong precinct and fills out a provisional ballot because he is not on the rolls, that entire ballot will ultimately not be counted. This is why provisional ballots have been derisively nicknamed "placebo" ballots. **Arizona**,<sup>413</sup> **Illinois**,<sup>414</sup> **Kentucky**,<sup>415</sup> **Michigan**,<sup>416</sup> **Missouri**,<sup>417</sup> and **Ohio**<sup>418</sup> all will not count provisional ballots cast in the wrong precinct. The voter may assume that filling out a provisional ballot will help her vote be counted, but she is sorely mistaken. She would be better off trying to find the right polling place. Several states including **Michigan** and **Missouri** have statutes or rules explicitly requiring workers to send a voter who has arrived at the wrong precinct to the correct precinct to vote before allowing the voter to cast a provisional ballot, and to advise the voter that if he votes in the wrong precinct his provisional ballot will not count.<sup>419</sup>

However, **Colorado**, **Louisiana**, **Nevada** and **North Carolina** take a more expansive approach. Ballots are partially counted if they are cast in the wrong precinct. In **Colorado**, if a registered voter casts a provisional ballot in the wrong precinct but within the voter's county of residence, the ballot will be counted for the elections in which

the voter is eligible to vote.<sup>420</sup> In **Louisiana**, voters in the wrong precinct can vote by provisional ballot and have the ballot counted if they are registered to vote in the parish in which they voted and they are eligible to vote.<sup>421</sup> In **Nevada** the state will count a provisional ballot cast in the wrong precinct if it was cast in the correct congressional district.<sup>422</sup> **North Carolina** law states that provisional ballots cast within the correct county can be counted if the voter is eligible to vote.<sup>423</sup> The data show that this has an impact on how many voters are disenfranchised. In North Carolina and Colorado, no ballots were rejected because the ballot was cast in the wrong precinct.

## Failure to Provide Sufficient ID

If a voter attempts to cast a ballot without adequate identification, some state laws require those voters to cast a provisional ballot. Whether or not these ballots are ultimately counted depends on the requirements of state law and how unreasonable or burdensome they are to voters. Ideally, elections officials would research the eligibility and registration of the voter without automatically requiring the voter to return on a different day, which may cause a new set of problems for the voter. However, if the voter does have to return with identification in order for the provisional ballot to count, the voter should be given fair opportunity to do so. If the voter can choose between a wide variety of documents and has ample time and opportunity to bring the proper ID to the election officials, there is a higher likelihood those ballots will be counted. Unfortunately, in most states the process is cumbersome and burdensome, and the provisional ballots will ultimately not be counted.

**Arizona**,<sup>424</sup> **Colorado**,<sup>425</sup> **Nevada**,<sup>426</sup> **North Carolina**,<sup>427</sup> and **Ohio**<sup>428</sup> all give a range of time for voters to submit to their local election officials or county clerks an acceptable form of identification, as does **Michigan**,<sup>429</sup> which requires identification in its verification process when a valid voter registration record cannot be located. In **Arizona** it can be as little as three days (depending on whether the election is federal or municipal),<sup>430</sup> while **Ohio** allows ten days.<sup>431</sup> In **Colorado** for individuals who did not present proper identification but have voted in previous elections, elections administrators will verify the ballot after the close of polls based on approved databases.<sup>432</sup> A first-time voter who did not provide ID will be mailed a letter within three days, and will be required to bring ID to the county election office within eight days in order for their vote to be counted.<sup>433</sup> **Missouri** is particularly strict, in that voters without ID will not even be given a provisional ballot. They must instead return with a proper ID during uniform polling hours.<sup>434</sup> In **Illinois**, a provisional voter may submit additional information to the county clerk or board of election commissioners within two calendar days after the election.<sup>435</sup> However, she or he is not categorically required to do so in order for the ballot to be counted—the county clerk or board of election commissioners is required to investigate information available from other sources. In **Kentucky**, a voter may cast a provisional ballot per HAVA if he or she doesn't bring adequate identification to the polls, but according to elections administrators, it will not be counted.<sup>436</sup>

Because the laws have not changed for 2010 we will likely see similar levels of provisional ballots being discarded because voters failed to find the right kind of identification needed to present to election officials and to bring it to either the polling place or to election administrators in the days following the election.

## Administrative/Usability

The bulk of the other reasons provisional ballots are not counted is due to clerical and administrative rather than structural problems. These include that the ballot was incomplete or illegible, the ballot was missing from the envelope, there was no signature on the ballot or the signature was non-matching, or the voter already voted. Better ballot design and poll worker instructions can help alleviate these problems.

## VERIFICATION

The purpose of verification is to determine that the voter was registered and eligible to vote. It might also be to verify that the voter has not already voted in the election by some other means, such as by early or absentee ballot. While the core processes of verification are similar in each state, differences arise in part because of the different reasons for which states use provisional ballots as mentioned above. Whether or not a ballot is counted goes directly to how thorough the process is for trying to verify that the voter was indeed eligible and registered.

Generally, in each state, when a voter casts a provisional ballot, it is accompanied by an attestation that the voter is eligible to vote, and identifying information that can be used to verify the voter's identity and registration status. This voter information is typically checked against the statewide voter registration database, though election

authorities can also have other resources available such as state department of motor vehicles databases or information from law enforcement and the state regarding felons.<sup>437</sup> Local election authorities conduct the verification process.

Some states have verification policies that are unique among the surveyed states. In **Colorado**, if a voter does not sign the provisional ballot affidavit, the election official is required to contact the voter within two days to notify the voter of the omission and give the voter until eight days after the election to go to the office of the county clerk and recorder to sign the affidavit.<sup>438</sup> If the voter does not sign the affidavit after receiving notice, the ballot will not be counted.<sup>439</sup> And while **Louisiana** does its verification completely internally with the information it has,<sup>440</sup> **Michigan** provides provisional voters six days to submit supporting documentation.<sup>441</sup>

What follows is a closer examination of state specific verification requirements and practices.

## **ARIZONA**

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In Arizona, voters who cast conditional provisional ballots because of a failure to present proper identification at the polls must provide proper identification to the county recorder within 5 business days for general federal elections or 3 business days for other elections in order for the ballot to be counted.<sup>442</sup> The poll worker will provide instructions.<sup>443</sup> All other provisional ballots will be processed by the county recorder and counted when verified.<sup>444</sup>

Provisional ballots are verified “within ten calendar days after a general election that includes an election for a federal office and within five business days after any other election.”<sup>445</sup> Provisional ballots shall be counted “if the voter’s signature does not appear on any other signature roster for that election and there is no record that the voter voted early for that election.”<sup>446</sup> “The ballot shall remain unopened and shall not be counted if the voter is not registered to vote, or the voter is in the wrong precinct/voting area, or the voter has not produced sufficient identification, or the voter’s signature does not match the signature on his/her voter registration form.”<sup>447</sup>

## **COLORADO**

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Local election officials must verify the eligibility of voters who cast provisional ballots to vote and count the ballots within 10 days of a primary and 14 days of a general election.<sup>448</sup> For individuals who did not present proper identification but have voted in previous elections, elections administrators will verify the ballot after the close of polls based on approved databases.<sup>449</sup> A first-time voter who did not provide ID will be mailed a letter within three days, and will be required to bring ID to the county election office with within eight days in order for their vote to be counted.<sup>450</sup>

Additionally, if the voter signs but does not fill in all the information requested on the provisional ballot affidavit, the ballot is only counted “if the designated election official is able to determine that the elector was eligible to vote in the precinct and county.”<sup>451</sup>

If the voter did not sign the provisional ballot affidavit, a designated election official must contact the voter within two days and notify him/her of the omission, giving him/her the opportunity to come to the office of the county clerk and recorder to sign the affidavit.<sup>452</sup>

A provisional ballot can be rejected where a first-time voter who registered by mail or through a voter registration drive did not supply identification upon registration or within eight days of Election Day.<sup>453</sup>

## **ILLINOIS**

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Election officials must first check that the ballot was cast in the correct precinct based on the address the voter gave in his/her affidavit.<sup>454</sup> Then, the election official checks the affidavit to see that the voter provided adequate information.<sup>455</sup> Finally, the election official verifies that the voter is a registered voter, based on information provided by or obtained from the provisional voter, an election judge, the statewide voter registration database, the records of the county clerk, and the records of the Secretary of State.<sup>456</sup> Provisional ballots are validated and counted within 14 days of the election by election officials.<sup>457</sup> No additional forms or information are generally required from the voter, though the voter may submit additional information to election officials within two calendar days of the election.<sup>458</sup>

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## KENTUCKY

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The county board of electors shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with state regulations.<sup>459</sup> If an individual has arrived at the polls without proper identification and cast a provisional ballot, that ballot will not be counted.<sup>460</sup> If the county board of elections determines that the individual casting a provisional ballot is an eligible voter in the precinct where the ballot was cast, the ballot will be counted.<sup>461</sup> Eligibility is determined by county electors who review the voter lists, supplemental voter lists, voter lists containing inactive voters, and the statewide voter database.<sup>462</sup> If the county board of elections determines, conversely, that the individual is ineligible to vote in the precinct, the individual's vote must not be counted.<sup>463</sup>

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## LOUISIANA

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Provisional ballots are counted on the third or fourth day after the election.<sup>464</sup> The parish board of election supervisors will determine whether the voter casting a provisional ballot is a registered voter and eligible to vote in the election.<sup>465</sup> "On or before the date prescribed for the date of tabulation and counting of provisional ballots [...], the registrar of voters, secretary of state, and other state and local agencies shall compile and provide available registration documentation to the parish board of election supervisors for the purposes of determining whether the individual casting a provisional ballot is a registered voter and eligible to vote in the election."<sup>466</sup>

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## MICHIGAN

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The ballot is counted if the voter's valid registration can be located or if the identity of the voter is established through identification documents such as a government issued photo ID card.<sup>467</sup> If the voter cast a provisional ballot and was unable to present identification at the polling place, he/she may submit, via fax, mail, or in person, an acceptable form of identification and document confirming his/her residence within 6 days of the election.<sup>468</sup>

For voters given provisional ballots because their names do not show up on the voter registration list, if the election inspector is able to contact the city/township clerk and verifies that the voter is registered in the jurisdiction and there is nothing contrary to the voter's signed statement, and the voter can present a form of identification, the provisional ballot will be processed as a challenged ballot and tabulated on Election Day.<sup>469</sup> If the election inspector is unable to contact the city/township clerk, the provisional ballot given to voter will not be tabulated on Election Day, but secured for verification after the election.<sup>470</sup>

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## MISSOURI

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Provisional ballots are counted if the voter's eligibility is verified later.<sup>471</sup> Provisional votes will be counted when the election authority determines the ballot was cast in the proper precinct or central voting place, the voter was registered to vote, "the voter did not otherwise vote in the same election" (for example, by absentee ballot), and "[the] information on the provisional ballot envelope is found to be correct [...]"<sup>472</sup>

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## NEVADA

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The county or city clerk will verify eligibility to vote. Provisional ballots will be counted if the "county or city clerk determines that the person who cast the provisional ballot was registered to vote in the election, [was] eligible to vote in the election[,] and [was] issued the appropriate ballot for the address at which the voter resides."<sup>473</sup> Voters who fail to provide identification at the polls or with their mailed ballot must provide "the required identification to the county or city clerk not later than 5 p.m. on the Friday following Election Day."<sup>474</sup>

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## NORTH CAROLINA

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"The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that [he/she] was eligible under state or federal law to vote."<sup>475</sup> Where a voter cast a provisional ballot due to an incomplete voter registration, the voter has until the day before the county canvass of the election (7 or 10 days after the election depending on the year)<sup>476</sup> to provide such missing information.<sup>477</sup>

Given that North Carolina saw strong participation in its early voting program, which offered Same Day Registration, we would expect a lower number of provisional ballots being cast as voters who appeared to vote early would have had opportunities to re-register or correct registrations while they were at the polls. The fact that more than 50 percent of North Carolina's provisional ballots were not counted, and that by far the largest reason for rejecting

them (nearly 80 percent) was that the voter was not registered on Election Day<sup>478</sup> suggests that extending the same day registration process to Election Day could dramatically reduce the number of provisional ballots cast in the first place.

## OHIO

Provisional ballots are counted if a local election authority determines that the voter who cast the ballot is eligible to vote in that precinct.<sup>479</sup> If the voter did not bring proper identification to the polls, the voter must present identification to the board of elections within 10 days of the election.<sup>480</sup> “To determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election.”<sup>481</sup>

## PREPARATION

How states prepare for elections, and for provisional voting in particular, is very state specific, and very vague. In most of the states surveyed, no specific mention is made as to how many provisional ballots should be prepared.<sup>482</sup> For regular ballots, some states will specify that ballots be printed in an amount directly related to the number of registered voters, or that an adequate number of ballots be printed. These statutes are vague enough when it comes to preparing generally for elections, and make no mention of preparing provisional ballots. This can lead to jurisdictions running out of provisional ballots, or to using provisional ballots for non provisional voting purposes, such as emergency voting.

Only three of the states surveyed actually provide guidance on preparation for provisional ballots. These are **Colorado**, **Kentucky**, and **Illinois**. As the survey shows, however, even a direct accounting for provisional ballots leaves a lot up in the air.

In **Colorado**, the law provides that electronic devices may be used to cast provisional ballots if the secretary of state has certified them for that purpose. It leaves to the local election official to determine whether provisional ballots should be cast with a certified electronic device, or by paper ballot.<sup>483</sup> Where paper ballots are to be used, the statute only says that a “sufficient number” of provisional ballots must be kept on hand.<sup>484</sup>

**Kentucky** specifically states that for general and special elections, each precinct must have a minimum of 20 provisional ballots.<sup>485</sup> How the state or precincts might determine that they need more than 20 is not described. For primaries, each county must provide 20 provisional ballots per precinct per political party.<sup>486</sup>

Finally, **Illinois** also has a law about electronic voting systems. Electronic voting systems must allow for accepting provisional ballots, and for separating such provisional ballots from precinct totals until authorized by the election authority.<sup>487</sup>

The vague nature of ballot preparation laws, particularly as they pertain to provisional ballots, has also sometimes led to confusion at the polls when regular voting mechanisms fail. Some states allow voters to mark paper ballots to vote when electronic voting systems fail to boot up or crash. In the best case these are “emergency ballots” that are automatically counted, as a regularly cast ballot would be, as the voter’s eligibility is not in question. Occasionally provisional ballots are used for this purpose. In this case, states should have clear protocols in place that ensure such provisional ballots are considered regular ballots so that they are not subject to the same scrutiny as provisional ballots used for other purposes are.

Problems occur in jurisdictions that do not have distinct emergency ballots. In fact, most jurisdictions only conduct one print run of paper ballots which are used for multiple purposes including provisional voting, emergency voting, and absentee voting.<sup>488</sup>

Of the states we review here, only **Michigan**, **Arizona**, and **Missouri** do not need to have “emergency ballots” on hand because voters mark and cast paper ballots as a means of voting.<sup>489</sup> Therefore, no “emergency ballots” are stored at the polling place and there is no concern that provisional ballots will be misused as emergency ballots. However, in some counties in **Colorado**, **Illinois**, **Kentucky**, **Louisiana**, **North Carolina**, **Nevada**, and **Ohio**, electronic voting systems are the primary means of casting a ballot.<sup>490</sup> In these counties, Election Day machine failure would mandate the need for some sort of paper ballot. In Ohio, as part of a settlement agreement between the League of Women Voters and the Secretary of State based on a 2005 lawsuit, the State of Ohio must issue instructions to all county Boards of Election for the distribution of paper ballots in the event of long lines.<sup>491</sup> These ballots are not to be provisional ballots, but regular paper ballots.

# VOTER SUPPRESSION

## DECEPTIVE PRACTICES

Deceptive practices, the intentional dissemination of misinformation about the election process, strike at the core of democratic integrity. Deceptive practices exploit confusion over the voting process.<sup>492</sup> In the past, deceptive practices have targeted communities of color and other underrepresented populations in order to suppress turnout and confuse the electorate. Remedying the effects of deceptive practices is especially difficult in an age of viral and splintered media. While voter deception has usually taken the form of flyers and mailers disseminated in primarily minority neighborhoods, the sharing of information – and misinformation -- now spreads like wildfire through email, text messages, robocalls and websites such as Facebook and Twitter, making it difficult to simultaneously set the record straight.

Some of the most egregious examples of deceptive practices occurred in 2004, when Election Protection reported over 1,000 complaints of voter suppression and deceptive practices.<sup>493</sup> An oft-repeated complaint included community flyers and phone calls that falsely declared the wrong day to vote.<sup>494</sup> Some of the fliers in 2004 stated erroneously that “if you already voted in any election this year, you can’t vote in the Presidential Election.”<sup>495</sup> Other flyers stated that “if anybody in your family has ever been found guilty of anything you can’t vote in the Presidential Election,” and “if you violate any of these laws, you can get 10 years in prison and your children will be taken away from you.”<sup>496</sup> Perpetrators have repeated these sets of deceptive practices in subsequent elections. Of course, once misinformation is disseminated, it is difficult to put the genie back into the bottle. Corrected information might not reach all of the recipients of the incorrect information in time.

In the 2008 report, we discussed the absence in many states of laws that confront deceptive practices directly. At the federal level, Rep. John Conyers (D-MI) has introduced a bill in the current 111<sup>th</sup> Congress (H.R. 97) that would make it a federal crime to engage in deceptive practices. This bill is similar to other deceptive practices legislation introduced in the past by then-Senator Barack Obama. The bill is laudable because it mandates that if the Attorney General determines that there is a reasonable basis to find that deceptive practices occurred, the Attorney General must “undertake all effective measures necessary to provide correct information to voters affected by the false information.”<sup>497</sup> The federal bill requires the Attorney General to refer credible allegations of deceptive practices to the Civil Rights Division of the Department of Justice and to other federal and state authorities for criminal prosecution or civil action after the election. Of particular importance is the bill’s requirement that the Attorney General consult with voting rights groups, local election officials, voter protection groups, and civil rights organizations when promulgating regulations to govern the dissemination of correct information to voters.<sup>498</sup> Many such organizations have worked to battle deceptive practices in many election cycles. Cooperation between the Department of Justice and these voting experts groups is commendable because it will encourage development of effective procedures based on the shared expertise of various voting rights groups.

The absence of explicit federal law referencing deceptive practices does not mean that no tools exist to address deceptive practices. As the nature of deceptive practices changes and evolves to encompass online misinformation campaigns via internet social networking outlets, officials must consider using the broad general laws already in place in many states to combat this odious form of voter suppression. Most of the states that we surveyed for this report have laws on the books prohibiting interference with the election process. Many have laws that apply to deception generally via electronic devices. These laws are potentially sweeping enough to cover many of the tactics used to confuse voters and corrupt the electoral process if there is the will among elections officials and law enforcement to utilize them.

There is room for state legislators to sharpen their tools, however. States should provide clarity to officials charged with enforcing these laws by amending them where appropriate if there is any question about whether the laws

**While voter deception has usually taken the form of flyers and mailers disseminated in primarily minority neighborhoods, the sharing of information — and misinformation — now spreads like wildfire through email, text messages, robocalls and websites such as Facebook and Twitter.**



**Kentucky** law is similar to **Arizona, Colorado** and **Illinois** in so far as its statutes are likely sweeping enough that they could encompass prohibitions on deceptive practices. **Kentucky** law makes it a felony to prevent or attempt to prevent any voter from casting a ballot or from intimidating or attempting to intimidate voters.<sup>509</sup> The intentional dissemination of misinformation could arguably fit within these categories of prohibited activities, but a more specific deceptive practices statute is far more preferable.

The law in **Louisiana** is also broad and sweeping. It is unlawful in Louisiana to knowingly, willfully, or intentionally intimidate, *deceive*, or *misinform*, directly or indirectly, any voter or prospective voter “in matters concerning voting.”<sup>510</sup> Deception and misinformation are explicitly prohibited actions in the Louisiana law and provide ample authority for aggressive actions against deceptive practices. Louisiana’s Secretary of State’s office has an Election Compliance Unit to investigate complaints.

**Nevada** law renders it unlawful to “impede or prevent, by...fraudulent contrivance, the free exercise of the franchise by any voter.”<sup>511</sup> Officials in Nevada should use this statute aggressively in the face of deceptive practices like the robo calls that arose in the run-up to the general election in the fall of 2008. Reports surfaced in late October 2008 that Latino voters in Southern Nevada were “receiving misleading calls from ‘authorities’ inviting them to cast ballots over the phone.”<sup>512</sup> These robo calls were squarely aimed at impeding or preventing the right to vote by tricking voters into thinking they properly voted by telephone. A more narrowly tailored statute is not necessary to immediately counteract these sorts of deceptive practices, although it could provide more specific remedies and authority for officials to more widely dispel these sorts of rumors in the future. Fortunately, the Nevada Secretary of State’s office has created an Election Integrity Task Force, comprised of the Secretary of State, Nevada Attorney General’s Office, the United States Attorney’s Office, and the FBI.<sup>513</sup> Voters are encouraged to report complaints for investigation online, and upon review, the Secretary of State’s office may use its website to disseminate correct information depending on the severity of the deceptive practices.<sup>514</sup>

**North Carolina** law provides ample authority for action against the intentional dissemination of misinformation. The statute renders it a felony “for any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communications where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.”<sup>515</sup> In an age where deceptive practices are perpetrated online, it is important that other state statutes share North Carolina’s widespread scope as to the means of communications that the law covers. Though it explicitly lists mass mailings, North Carolina’s law includes a catch-all provision so that it effectively covers all forms of communication whereby misinformation is disseminated. According to the State Board of Elections, North Carolina officials use the media to counteract deceptive practices and disseminate correct information; they found in their experience that the media provided the quickest means to counter wrong information. Complaints and possible criminal election law violations are referred to two investigators.<sup>516</sup>

**Ohio** voters have experienced their own share of deceptive practices. On the eve of Election Day 2008, reports surfaced of robo calls informing people that Republicans would vote on November 4 (Election Day) while Democrats would vote the day afterwards.<sup>517</sup> Other problems included automated calls giving voters the wrong location of their polling places.<sup>518</sup> Although Ohio law is general enough that it could be construed to cover these sorts of deceptive practices if there was the will and capacity to pursue them, the legislature should, as is the case in most other states, strengthen the law with a more specific deceptive practices statute.

Under one Ohio law it is unlawful to send communications purporting to be a communication from a board of elections when it is not in fact from the board of elections.<sup>519</sup> Ohio law also includes a catch-all provision, akin to those we examined in other states, which makes it a felony to “attempt by intimidation, coercion, or other unlawful means to induce” an elector to register or refrain from registering or to vote or refrain from voting.<sup>520</sup>

## On-line Deceptive Practices

In an environment of constant communication via the Internet and mobile devices, online deceptive practices may be the biggest threat to the electoral process. Deceptive practices in the form of emails, instant messages and text messages present enormous challenges to election officials who should work to correct the record as rapidly as possible. Online deceptive practices are particularly dangerous because of the potential to falsify information and make it appear as though information is from an official source, such as an election official. Online deceptive practices can be particularly invasive and are vulnerable to identity theft and other means of exploiting holes in computer system security.

In a report entitled “Deceptive Practices 2.0,” the authors detailed how,<sup>521</sup>

E-mails that appear to come from legitimate sources, such as a campaign, an elections office, a party or a nonprofit organization could be sent in a targeted fashion that contain false or misinformation about the voting time, place or process, or claiming that a poll site has been moved. ... Making matters worse, spyware could be used to collect information on a voter and their online behavior to better target deceptive emails. Partisan mischief-makers with a bit of technological knowledge could spoof the official sites of secretaries of state, voting rights organizations or local election boards and advertise completely wrong information about anything from poll locations to voter identification requirements. Someone could also appropriate website names that are one letter off from the official site name – a typo domain or “cousin domain” – that appear to be an official site, and post phony information. Pharming – hacking into domain name system servers and changing Internet addresses – could be used to redirect users from an official site to a bogus one with bad information on it. As more and more people move from traditional phone lines to Internet based calling platforms (known as VOIP or Voice Over Internet Protocol), deceptive robocalls might become even more pervasive as they will be virtually untraceable.

In addition to the state laws outlined in this section that broadly address traditional deceptive practices, there are a number of laws that apply specifically to the context of online deceptive practices, and could be used with respect to voting.<sup>522</sup> Given the nature of online practices and their use of computers, the Internet and security vulnerabilities, the authors of “Deceptive Practices 2.0,” identified that “most states broadly prohibit any unauthorized access

**There are a number of laws that apply specifically to the context of online deceptive practices, and could be used with respect to voting.**

to a computer, for any purpose. Almost without exception, these laws could be creatively applied to hacking or to any use of spyware that would redirect search queries or deny voters access to legitimate websites. There are many ways in which these laws could be expanded, from proscribing harsher penalties to covering different types of electronic devices and deceptive behaviors.”<sup>523</sup> The difference in tactics used in traditional deceptive practices that are targeted at specific neighborhoods or populations and the murkier world of the Internet and online misinformation campaigns counsels for robust use of existing laws that combat computer crimes.

For example, anti-spam (unsolicited email) laws in a number of states might apply to coordinated misinformation campaigns that use email as the primary mode of communication. More broadly, at the federal level, the wire fraud statute applies to schemes or artifices to defraud that travel over wires in interstate commerce.<sup>524</sup> These sorts of measures must be enforced within the context of deceptive practices that occur online. Fortunately, many states were proactive in amending their laws to cover a number of acts under the broad umbrella of computer crimes. Unfortunately, many of these rigorous computer crime and wire fraud laws lack mechanisms to streamline the dissemination of corrected information about the electoral process and must be amended to provide corrective procedures.

In **Michigan**, several state statutes could be invoked to combat online deceptive practices, but the scope of their application would depend on the nature of the mode of the misinformation’s dissemination. For example, Michigan’s “anti-hacking” statute prohibits a person from accessing a “computer program, computer, computer system, or computer network” to “devise or execute a scheme or artifice with the intent to defraud.”<sup>525</sup> This broadly worded statute is analogous to the federal wire fraud statute because it prohibits any intent to defraud. In the context of deceptive practices, application of Michigan’s anti-hacking statute would depend on proof that a perpetrator sought to defraud an elector of their right to vote. Fortunately, Michigan’s anti-hacking statute appears broad enough to cover the use of spyware that collects users’ information or directs users to false websites. An even broader Michigan statute prohibits use of a computer “to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.”<sup>526</sup> Because deterring an elector from giving his or her vote is already a felony in Michigan, this additional statute provides an additional sanction that would be applicable in the context of online deceptive practices.

As per unsolicited “spam” email, however, Michigan law could be strengthened. Right now, Michigan law governs unsolicited *commercial* email, but is silent as to election-related email.<sup>527</sup> Much of the misinformation during the 2008 election about the candidates spread like wildfire in forwarded emails. If used in the upcoming election to confuse voters about election procedures, a stronger anti-spam statute in Michigan that applies to non-commercial

entities would be most useful. Like many general state statutes, however, these computer-specific statutes lack the procedural mechanisms for election officials to counter the bogus information with corrected information.

The 2010 primary elections in **Ohio** already suffered the consequences of cyber attacks on the Board of Elections website in Butler County, Ohio.<sup>528</sup> The Director of the Board of Elections in that county described a deliberate attack on its website which led to a delay of reporting election results.<sup>529</sup> The cause of the intentional attack was two unidentified sites deliberately diverting traffic and crashing three of the county's servers.<sup>530</sup> These sorts of attacks on the election process in Ohio demonstrate the ease with which perpetrators can distort the process. Similar tactics could easily apply in the context of online deceptive practices. Like Michigan, specific state laws in Ohio regarding spam are restricted to commercial activity.<sup>531</sup> The scope of these specific statutes would not cover deceptive practices perpetrated over email, because the subject matter would be related to the election and not goods for sale. As for spyware, Ohio law does not have a statute on the books that squarely governs this tactic. However, like Michigan, Ohio's general computer crimes statutes should compensate for the lack of more narrowly targeted laws aimed at spyware or spam. Ohio's law is quite broad here: it prohibits computer hacking, altering, damaging, destroying, or modifying a computer.<sup>532</sup> More specifically, Ohio's general computer law prohibits a person from "introducing a contaminant into a computer."<sup>533</sup>

There is room for improvement in **Ohio** law to proactively tackle online deceptive practices. While the general anti-hacking laws could combat election-related spyware that ultimately misdirects voters about the election process, the spam laws could be strengthened to apply to election related email. As it reads now, the anti-spam statute prohibits an individual from using "commercial" electronic mail messages "with the intent to deceive or mislead recipients or any electronic mail service provider, as to the origin of those messages."<sup>534</sup> By broadening what types of emails are prohibited to include election-related emails, Ohio would strengthen its ability to undermine online deceptive practices that are perpetrated by mass e-mail campaigns.

Unlike both Michigan and Ohio, **Kentucky** does not have an anti-spam statute on the books, nor does it have an anti-spyware statute. However, Kentucky's more general computer crime anti-hacking statute could apply to online deceptive practices that employ spyware or other malicious software to intentionally direct users to fake websites or websites that intentionally provide voters with wrong information. Kentucky law prohibits a person from accessing a computer unlawfully to then devise or execute a scheme or artifice to defraud.<sup>535</sup> This law should apply to perpetrators who install spyware on unsuspecting users' computers that misdirects individuals to false information about the voting process if there is sufficient proof that the act was committed to defraud an elector of the right to vote. While this is a step in the right direction, there is ample room for improvement under Kentucky law to combat other forms of online deceptive practices that are not predicated upon unlawful access to another's computer. Online deceptive practices could take the form of false emails or false websites purporting to be from an official source all without unlawfully accessing another's computer. Kentucky law, as it currently stands, is inadequate to combat these forms of online deceptive practices.

In **Nevada**, the state's anti-spam statute applies only to advertisements for commercial activity, so like those in Michigan and Ohio it would not apply to online deceptive practices that use only spam email.<sup>536</sup> However, Nevada's broader computer crimes statutes could apply to online deceptive practices, depending on the method with which they are perpetrated. For example, if a person knowingly, willfully and without authorization interferes with an individual's lawful right to use a computer, the act is classified as a felony if this violation was part of a "scheme to defraud... or [c]aused an interruption or impairment of a public service."<sup>537</sup> This statute is broad enough to govern possible spyware attacks that involve the control of an individual's computer, or the installation of malicious software. Like most of the states we survey in this report, there is plenty of room for Nevada to strengthen its computer crime laws to correspond with threats to the state's elections.

**Illinois** has robust anti-spam, anti-spyware and general computer crime laws on its books. Most, if not all, of Illinois's computer crime statutes could apply to online deceptive practices depending on the scope of the acts. In the event that false information about the electoral process is contained in the subject line of unsolicited email advertisements or otherwise "misrepresents" any information in identifying the point of origin of the email, the Illinois anti-spam law kicks-in.<sup>538</sup> The anti-spam statute provides a private right of action and creates hefty monetary penalties.<sup>539</sup> Other Illinois statutes render it a felony to tamper with another's computer and to install spyware.<sup>540</sup> The broadest of the Illinois statutes that could apply to online deceptive practices is the state's computer fraud law.<sup>541</sup> This law renders it a felony to knowingly access a computer "for the purpose of devising or executing any scheme, artifice to defraud, or as part of a deception."<sup>542</sup> Deceptive practices that take place online, if construed as part of

the broadly worded “artifice to defraud” or “as part of a deception” by definition take place online by accessing a computer. Therefore, prosecutors could use this statute as an additional mechanism to combat deceptive practices when they take place over the internet. Of course, these laws should all be strengthened to apply to deceptive practices explicitly. Furthermore, like deceptive practice provisions more generally, Illinois law should create channels for election officials to disseminate corrected information to eliminate and counter any resulting confusion.

Like Michigan, Ohio, and Nevada, **Arizona**’s anti-spam statutes only govern commercial email and would not apply to online deceptive practices that are perpetrated via spam.<sup>543</sup> However, Arizona law prohibits a number of other computer crimes that could occur via spyware, or software that intentionally misdirects voters, interferes with control of a computer and tampers with internet browsers.<sup>544</sup> Like the other states we survey in this report, Arizona’s law could govern a narrow form of online deceptive practices but its statutes do not go far enough.

Like several other states surveyed above, **Colorado** law includes a broadly worded statute that prohibits a person from knowingly accessing any computer “for the purpose of devising or executing a scheme or artifice to defraud.”<sup>545</sup> The heart of online deceptive practices are schemes to defraud voters of their right to vote by trickery and misinformation. To resolve any misunderstanding about its applicability, however, there is abundant room for Colorado to refine its computer crime statute to apply to online deceptive practices. Colorado’s anti-spam law unfortunately only applies to commercial email messages, and is therefore inapplicable to online deceptive practices.<sup>546</sup>

**Louisiana** law, like Colorado’s, includes prohibitions against accessing a computer “with the intent to...defraud.”<sup>547</sup> Furthermore, Louisiana includes an anti-phishing act to prohibit the creation of a webpage or a domain page to the purpose of inducing, requesting, or soliciting an individual to provide identifying information for a purpose that an individual believes is legitimate.<sup>548</sup> This anti-phishing statute could apply to deceptive practices that actively solicit identification to mislead a voter about the electoral process. Consider, for example, an online deceptive practice that uses a website to solicit an individual’s name, address and birthdate, and then uses this information to intentionally misdirect a voter to incorrect information about where that voter should cast his or her ballot. An anti-phishing statute such as the one in Louisiana might be useful in deterring these sorts of deceptive practices. Louisiana law also includes prohibitions on computer spyware that could be used to penalize online deceptive practices.<sup>549</sup> Unfortunately, Louisiana’s anti-spam law applies only to commercial email.<sup>550</sup> As is the case with every state in this analysis, however, merely prohibiting or punishing conduct is insufficient when it comes to combating online deceptive practices. There must be mechanisms in place in states like Louisiana where election officials can distribute corrected information.

In **North Carolina**, it is unlawful to “willfully, directly or indirectly...access...any computer...for the purpose of...devising or executing any scheme or artifice to defraud.”<sup>551</sup> As indicated in previous state discussions above, this broadly worded computer crime statute should apply to online deceptive practices that involve defrauding an individual of the right to vote by deliberately confusing the voter about the election process. Unfortunately, North Carolina’s anti-spam statute, like most of the states that we surveyed, governs only commercial electronic mail.<sup>552</sup> However, North Carolina law is still otherwise broad enough that the existing prohibitions on using a computer to commit a scheme to defraud should govern online deceptive practices that use e-mail.<sup>553</sup>

There is ample room to improve **Missouri** law to apply to online deceptive practices. Currently, it is unlawful in Missouri to “tamper” with the computer equipment or data of another.<sup>554</sup> Further, Missouri’s anti-spam laws are of no avail with online deceptive practices, because like laws in most states in this report they apply to commercial email messages.<sup>555</sup> This leaves ample room to improve Missouri computer laws to govern online deceptive practices that distort the election process. Fortunately, however, Missouri’s broadly worded deceptive practices statute discussed above already covers many of the tactics that perpetrators could employ over the internet to unsuspecting voters.

## CAGING AND CHALLENGES

Challenging voters at the polls and “voter caging” are often abusive and suppressive practices. In voter caging operations, groups typically obtain registration lists, send mail to certain voters listed on it based on specific criteria, often geography, and compile a list based on mail returned as undeliverable. They then use this list to challenge registration eligibility before the election or at the polls on Election Day through poll watchers. For a number of reasons, this is in an incredibly inaccurate way to identify who is properly on the voter registration rolls. Moreover, it is usually not done in a spirit of performing a civic service, but rather in an obviously partisan or otherwise biased way. As a result it is almost never for the purpose of fraud prevention - it is known that it does not work well for such purposes - but is rather an attempt at vote suppression, a way of deterring voters from appearing at the polls even if they are perfectly legitimate voters.<sup>556</sup>

Minorities and to some extent students have been frequent targets of polling place challenges that were not necessarily based on a caging list. Many states, including those under review here, make it far too easy for even a random voter in the polling place to challenge the voting rights of another voter. This not only intimidates and could disenfranchise the person targeted; challenging people at the polls also slows down the process for everyone else at the polling place, leading to long lines that some people cannot remain in. That in itself is a form of vote suppression.

Two recent developments also provide a backdrop for the policies implemented by the states. First, in 2008 the Republican National Committee (RNC) unsuccessfully attempted to dissolve a consent decree which forbade the National Committee (though not other party committees acting independently from the RNC) from engaging in voter caging operations.<sup>557</sup> This decree was the result of a 1982 lawsuit brought by the Democratic National Committee (DNC), which alleged that the RNC was engaging in voter caging focused on predominantly African American and Latino neighborhoods.<sup>558</sup> The decree was extended in 1987,<sup>559</sup> and will remain in effect until 2017,<sup>560</sup> though the 2008 ruling declining to dissolve the decree did clarify that the RNC is not prohibited from engaging in “normal poll watch functions.”<sup>561</sup>

**Many states, including those under review here, make it far too easy for even a random voter in the polling place to challenge the voting rights of another voter.**

The second development is the introduction of federal legislation which would, if enacted, serve to combat voter caging operations. The Caging Prohibition Act of 2009, introduced by Senator Sheldon Whitehouse (D-RI) and Representative John Conyers (D-MI), would combat voter caging by forbidding election officials from refusing to allow an individual to register or vote on the basis of caging lists or other related information, and would also forbid challenges on those bases.<sup>562</sup> In addition, the bill would require that all challenges be made based on first-hand knowledge of the ineligibility of the voter in question, and that they be sworn to under penalty of perjury.<sup>563</sup> Similar bills were also introduced in 2008 and 2007.<sup>564</sup>

State laws vary significantly in the protections they afford against voter caging and voter challenges.

**Arizona** was home in 1958 to an early example of voter caging,<sup>565</sup> and its present laws are not sufficient to protect voters from caging operations. Voters in Arizona may be challenged by any qualified elector of the same county,<sup>566</sup> and Arizona law specifically provides for representatives of political parties to be present during early voting and on Election Day for the purposes of challenging voters.<sup>567</sup> Some states only allow other voters who are registered in the precinct to challenge. This is preferable if another voter is to be allowed to challenge another voter at all than to allow, as Arizona does, for any voter within the county, or any person designated as a challenger, to challenge voters. It expands the pool of possible challengers from outside, making it easier to implement a statewide, broad-based voter challenge operation.

Challenges must be based on one of two grounds—that the voter has already voted in that election, or that the voter does not meet the qualifications to vote under Arizona law,<sup>568</sup> including citizenship, age, and residency requirements, and lack of current disqualification due to felon status.<sup>569</sup> Voters’ registrations are presumed to be valid; and clear and convincing evidence is required to rebut that presumption,<sup>570</sup> and, at least with regard to early voting, a challenger bears the burden of proof to show why a voter’s ballot should not be counted.<sup>571</sup> However, Arizona law has several troubling provisions which potentially make its citizens vulnerable to vote caging operations.

First, while in early voting challengers are required to make their challenges in writing,<sup>572</sup> challengers at the polls on Election Day may make challenges orally,<sup>573</sup> and the record made of the challenge is not required to include the

name of the challenger.<sup>574</sup> The law thus provides few avenues for holding challengers accountable for challenges made in bad faith.

Second, the standards for initiating challenge procedures are fairly low. For example, the law provides that any returned mail addressed to the challenged voter—or *even addressed only to the challenged voter's spouse*—at the residence at which the voter is registered is considered sufficient evidence to initiate challenge procedures on Election Day.<sup>575</sup>

Easily initiated challenge procedures are notable because they are likely to be intimidating and time consuming, and Election Day challenges take up poll workers' time and can cause considerable delays in voting. A challenged voter must take an oath, and answer "questions material to the challenge," and is allowed to vote a regular ballot only if she or he does so and "a majority of the election board is satisfied that the challenge is not valid" after conducting an examination of the challenge.<sup>576</sup> The law does not appear to provide specific standards for the type of evidence which should be considered sufficient to refute a challenge, leaving the right of the challenged voter to vote a regular ballot largely up to the discretion of the three election officials who make up the election board.<sup>577</sup>

As discussed in the 2008 report, **Colorado** allows any registered voter to challenge the registration of another person, but requires that such challenges be made in writing, include the specific factual basis for the challenge, and be signed under penalty of perjury.<sup>578</sup> Bases for challenge include age, citizenship, and residency.<sup>579</sup> It is regrettable that any person registered to vote anywhere in the state may make a challenge but it is helpful that the law provides for some accountability for challengers. Challenges made to a voter's registration prior to Election Day must be filed at least 60 days prior to an election, and at hearings regarding such challenges the challenger bears the burden of proof of the allegations made.<sup>580</sup> It is helpful that the law provides a reasonable window of time for the resolution of pre-Election Day challenges, and crucial that the burden of proof is on the challenger, rather than the voter.

A voter challenged on Election Day is asked certain questions prescribed by law, depending on the reason for the challenge, and if the voter answers satisfactorily and signs an oath testifying to his or her eligibility to vote, he or she is to be permitted to vote a regular ballot.<sup>581</sup> While challenges on Election Day are always likely to be intimidating, slow down lines, and make the task of poll workers more difficult, it is helpful that the law is specific as to the questions to be asked of the voter, and that by answering questions under oath any eligible voter may cast a ballot which will be counted.

Colorado voters have been the target of partisan vote caging operations recently. In 2004 Colorado was allegedly among the states included in a large-scale voter caging program staged by state Republican parties.<sup>582</sup> In addition, in 2008 a Colorado state senator alleged that the County Clerk of Colorado's most populous county, El Paso, planned to challenge all new voters and all Colorado College students on Election Day.<sup>583</sup>

Any person lawfully at the polls in **Illinois** may challenge an individual's right to vote.<sup>584</sup> The law permits designated pollwatchers to be present on Election Day, in part for the purpose of challenging voters.<sup>585</sup> Challenges may be made either on Election Day or ahead of time, during business hours on the Monday and Tuesday of the second week prior to an election, which is a helpful limitation on the timeframe that challenges can be mounted.<sup>586</sup> Those who make challenges ahead of time are required to submit a written statement including the grounds for the challenge and a statement that the challenger has personal knowledge of the facts alleged.<sup>587</sup> While this requirement is helpful in providing some degree of accountability for challengers, no similar requirement is placed on challengers on Election Day—Election Day challenges need not be written, and no record is kept of the name of the challenger.<sup>588</sup> Illinois law specifies only that challenges must be "for cause,"<sup>589</sup> and there are no "bright line" standards regarding the source of the challengers knowledge, or the method by which poll workers are to determine the outcome.<sup>590</sup> This is especially problematic because challenges made in either manner put a substantial burden on challenged voters and may make it very difficult for them to cast a regular ballot.

An individual whose registration is challenged in advance of the election is summoned to a hearing and required to submit a written and signed affidavit attesting to his or her registration qualifications.<sup>591</sup> The determination as to whether the individual's name will be removed from the voter rolls is left entirely up to the board of elections commissioners, or the county clerk, depending on the jurisdiction,<sup>592</sup> though in some cases appeal to the circuit court is possible.<sup>593</sup>

A voter challenged on Election Day is required to subscribe to an oath that she or he meets the various eligibility standards for voting, and to provide two forms of identification showing the voter's current residential address or to

have a registered voter within the district or precinct swear to the voter's eligibility.<sup>594</sup> This is highly problematic, as it is likely to be very difficult for many people to meet these requirements on Election Day, and if a challenged voter cannot do so, she or he may only vote a provisional ballot.<sup>595</sup>

In **Kentucky**, only elections officers and individuals designated as challengers may challenge a voter.<sup>596</sup> Designated challengers are required to attend a training session which covers, among other things, the challenge process.<sup>597</sup> Challengers who violate election laws in spite of being warned may be required to leave the polling place and prohibited from serving as challengers for five years.<sup>598</sup> These are excellent rules, because they limit who can challenge, ensure that challengers know the rules and follow them, and create real accountability for those who act unreasonably or obstructively at the polls.

**In Kentucky, only elections officers and individuals designated as challengers may challenge a voter.**

A challenger can challenge the eligibility of a voter where the challenger has reason to believe that the voter 1) is not a duly registered voter in the precinct; 2) is not a resident of the precinct; 3) is a convicted felon whose civil rights have not been restored; or 4) is not the person the voter claims to be.<sup>599</sup> The challenged voter may still vote a regular ballot if she or he signs a written oath as to her or his qualifications.<sup>600</sup> The challenger is also required to sign and state the reason for the challenge.<sup>601</sup> The written oath is subsequently forwarded to the Commonwealth's attorney and county attorney, who follow up to determine whether any person has voted illegally.<sup>602</sup> Under this system, challenged voters are not denied their right to vote, and delays are probably not excessive relative to other challenge procedures, while the written record and subsequent investigation serve as a sufficient safeguard. These voter protections are an excellent response to the threat of vote caging.

During the 2003 gubernatorial election in Kentucky, the Kentucky Republican Party planned to place challengers in polling places in predominantly African American neighborhoods.<sup>603</sup> However, probably as a result of publicity around a suit filed by the Kentucky ACLU, the challenge effort in 2003 was substantially scaled back.<sup>604</sup> Efforts to recruit challengers and to place them in precincts with large Democratic and African American populations were repeated in 2004.<sup>605</sup>

In **Louisiana** any qualified voter is empowered to challenge a person attempting to vote in a primary or general election at the polls on Election Day.<sup>606</sup> The challenge must be made in writing and signed by the challenger.<sup>607</sup> A person may be challenged on the basis that she or he is not qualified to vote in the election, is not qualified to vote in the precinct, or is not the person whose name is shown on the precinct register.<sup>608</sup> The decision as to whether or not the challenged individual may vote a regular ballot is made by a majority of the elections commissioners.<sup>609</sup> While it is good that challenges are made in writing, it is unfortunate that any qualified voter may make such challenges, and that there do not appear to be clear statutory standards on which the elections commissioners are to evaluate any evidence presented for or against the challenged voter's eligibility. According to the Louisiana Secretary of State's office, polling place commissioners are trained on this, however. They are taught "that it is their decision based on the challenge and the evidence presented. If an applicant is challenged for one of the 3 grounds, the challenger would need to provide proof in order for the challenge to be valid. If no proof is provided" and the voter is on the registration list, the voter is allowed to vote.<sup>610</sup> Nonetheless, it would be preferable for this to be statutorily or otherwise clearly defined; moreover it is still not clear what kind of "proof" is necessary, making it somewhat of a judgment call.

In one of the most significant vote caging operations in history, in 1986 the Republican National Committee (RNC) engaged in a vote caging operation in Louisiana centered around a mass mailing sent to thousands of voters registered in predominantly black precincts.<sup>611</sup> As is typical in vote caging operations, mail returned was used to place the intended recipients on challenge lists.<sup>612</sup> Documents released reveal that RNC officials believed the operation would "eliminate at least 60- 80,000 folks from the rolls," and that the goal of the ballot security program was to "keep the black vote down considerably."<sup>613</sup> As a result of the 1986 voter caging operation, the 1982 consent decree between the RNC and the DNC was expanded to require "the RNC to obtain prior court approval for all efforts to allegedly combat 'voter fraud' other than standard poll watcher activities."<sup>614</sup>

In **Michigan** any registered voter of a precinct, or a designated challenger (who need only be a registered voter within the state<sup>615</sup>) may challenge another voter.<sup>616</sup> It is generally helpful when the right to challenge is restricted to registered voters within a precinct, as this creates fewer opportunities for large scale partisan challenge operations.

However, because Michigan allows individuals from outside of the precinct to be designated as challengers, that benefit is largely undercut.

Challenges may be made on the basis that the voter is not qualified to vote due to a failure to meet citizenship, age, or residency requirements.<sup>617</sup> In addition, on Election Day any election inspector or qualified challenger may challenge any person who applied for an absentee ballot, and who claims to have lost or destroyed, or not to have received the absentee ballot.<sup>618</sup>

Michigan law includes several provisions that forbid challengers from making challenges “indiscriminately and without good cause” and from interfering with or unduly delaying the work of election inspectors, and makes it a misdemeanor to challenge eligible voters “for the purpose of annoying or delaying voters.”<sup>619</sup> Combined with a requirement that the identity of all challengers be included in a written report of each challenge,<sup>620</sup> this provides at least some attempt to hold challengers acting in bad faith accountable.

Once challenged, a voter is asked questions under penalty of perjury regarding his or her eligibility to vote.<sup>621</sup> In the case of a challenge made prior to Election Day, the voter must appear and answer questions to the satisfaction of the clerk within 30 days of the challenge, or her or his registration will be removed from the voter rolls.<sup>622</sup> In the case of an Election Day challenge, if the voter’s answers indicate that he or she is eligible, he or she will be permitted to vote a regular ballot.<sup>623</sup>

In what is presumably an attempt to prevent voter challenges from creating long lines for all voters, Michigan’s election law requires that when a voter is challenged and “several persons” are waiting to vote, the challenged voter must step aside “until after unchallenged voters have had an opportunity to vote,” at which point her or his case is to be considered.<sup>624</sup> The disadvantage of this is of course that, depending on how many voters are allowed to go ahead, the challenged voter may face significant delays, and due to other obligations may be unable to wait to vindicate her or his right to vote.

## Michigan was the epicenter of controversy over possible plans to challenge voters whose homes had been foreclosed.

During the 2008 election, Michigan was the epicenter of controversy over possible plans to challenge voters whose homes had been foreclosed.<sup>625</sup> The chairman of the Republican Party of Macomb County, a Michigan County which was among the hardest hit by the foreclosure crisis,<sup>626</sup> was quoted stating that GOP election challengers would be at the polls with “a list of foreclosed homes and will make sure people are not voting from those addresses.”<sup>627</sup> In response, a group of leading Democratic senators wrote a letter to then Attorney General Michael Murkasey to highlight this threat.<sup>628</sup> The Democratic National Committee sought an injunction against the use of foreclosure lists to challenge a voter’s eligibility. The case was settled with an agreement that “the existence

of a person’s address on a foreclosure list does not provide a reasonable basis for challenging the person’s eligibility to vote[.]”<sup>629</sup> All parties to the suit (DNC, RNC, Michigan Democratic and Republican parties, and the Macomb County Democratic and Republican parties) agreed not to challenge voters due to a recent foreclosure.<sup>630</sup> However, the Michigan Republican Party reportedly planned to engage in traditional voter challenges based on returned direct mail.<sup>631</sup>

The 2008 election was not the first time Michigan has been the scene for coordinated vote caging operations. In 2004, Michigan Republicans reportedly planned to pay poll watchers \$100 for each shift in support of the Party’s voter challenge operation;<sup>632</sup> as far back as 1986, the RNC planned a mass mailing to identify for challenge voters in largely black and rural precincts.<sup>633</sup> In July 1987 the RNC settled a lawsuit concerning the program based on the 1982 consent decree.<sup>634</sup>

Two bills on the subject of voter challenges were considered by the Michigan state legislature during 2008. One, introduced by Rep. George Cushingberry, would have prohibited challenges by election officials and other electors to registration or voting based on a document that has been mailed to a voter and returned as un-deliverable.<sup>635</sup> The other, introduced by Rep. Robert Dean and passed 101 to 0 by the House, would prohibit election challenges based on the foreclosure status of a voter’s property.<sup>636</sup> Unfortunately neither bill was enacted.

**Missouri** permits challenges only on Election Day.<sup>637</sup> This is extremely useful as it prevents challenges during the pre-election registration period that may involve requiring voters to prove their eligibility ahead of the election, sometimes even at an in-person hearing. It also lessens the likelihood that challenges will be made prior to the elec-

tion in order to intimidate voters. In addition, challenges made on Election Day must be made individually (because they are made when each individual attempts to vote) while pre-Election Day challenges in states which permit them can often be made all at once.

On Election Day, any registered voter may challenge a voter's identity or qualifications to vote, which include citizenship, residency, age, incapacity, and certain categories of felony status.<sup>638</sup> Designated challengers may make challenges only when the challenger believes the state election laws have been or will be violated.<sup>639</sup> Unfortunately, Missouri does not appear to have any requirement that challenges be made in written form, and does not seem to provide any method of accountability for challenges made in bad faith, except that a challenger may be asked to leave the polling place if she or he "interferes with the orderly process of voting" or is otherwise guilty of misconduct.<sup>640</sup> The lack of accountability or deterrent for unfounded challenges is troubling, as such challenges can make it difficult for challenged voters to cast a ballot that will be counted, create headaches for election administrators, and slow the voting process for everyone.

After a voter has been challenged, the question of whether he or she will be permitted to vote a regular ballot is up to a majority of the election judges.<sup>641</sup> The election judges may require the challenged voter to execute an affidavit affirming her or his qualifications to vote, and false statements in this affidavit are punishable by a fine or imprisonment.<sup>642</sup> Unfortunately, Missouri law does not provide any specificity regarding the manner in which election judges are to determine whether a challenged voter should be allowed to vote.

In 2004, a Republican official challenged numerous voters in at least one predominantly black precinct in Boone County, which caused delays in voting for other voters at that precinct.<sup>643</sup>

Legislation was introduced in 2010 which would permit pre-Election Day challenges to voters' registration to be made by any registered voter.<sup>644</sup> That bill, which is still pending, would require that such a challenge be made in writing, and include a statement as to the qualification the voter is lacking, based on the personal knowledge of the challenger.<sup>645</sup>

In 2009 legislation was introduced which would have prohibited the use of voter caging lists. It would also have required that challengers be registered voters in the precinct in which the challenge is made, and that the challenges be written, made under oath, and supported by personal, first-hand knowledge of the grounds for ineligibility.<sup>646</sup>

In **Nevada**, a person's voter registration may be challenged by another voter registered in the same precinct as the person being challenged.<sup>647</sup> This requirement is very helpful for two reasons. First, because it requires that the people making challenges are from the same area as the challenged voter, it increases the likelihood that challenges will be made based on actual personal knowledge, rather than stereotypes or caging lists. Second, it makes a large-scale challenge effort more difficult by requiring its organizers to recruit challengers from each of the precincts being targeted.

Challenges made prior to Election Day must be filed between 25 and 30 days before the election.<sup>648</sup> Either during that period or on Election Day, a challenger must make a written affirmation stating the basis for the challenge and that the challenge is based on personal knowledge.<sup>649</sup> While it would be better if only elections officials were able to challenge voters, the time limits and the requirements that challenges be made by voters within the precinct, based on personal knowledge, and made in writing may to at least some extent discourage abuse of the challenge system.

Unfortunately, the procedure after a voter has been challenged is excessively burdensome and time consuming. The exact procedure by which she or he may vote varies based on the grounds on which the voter was challenged.<sup>650</sup> In all cases the challenged voter must execute an oath or affirmation of her or his eligibility to vote.<sup>651</sup> In addition, a person challenged on the grounds that she or he does not reside at the address listed on the voter registration must also show "satisfactory identification which contains proof of the address at which he actually resides."<sup>652</sup> A person challenged on the basis that she or he is not the person she or he claims to be must show official photo identification or have a person of at least 18 years of age and who has photo identification vouch for the challenged voter's identity.<sup>653</sup> This set of requirements is problematic, as many people will lack the necessary identification or not have it with them, and as a result will not be permitted to cast a ballot which will be counted. In addition, the lengthy procedures are like to result in longer wait times in precincts where challenges are taking place.

In Nevada, a battleground state with a significant minority populations living in urban communities, Republicans reportedly were planning to use vote caging in 2004.<sup>654</sup> A document developed in part by a lawyer for the Bush-

Cheney campaign and distributed for use by state GOP officials provided a template for vote caging; an email from the same lawyer noted that Nevada was one of the states where caging was possible, because they had a list which could be used for that purpose.<sup>655</sup> The effort to identify registered voters to challenge in states like Nevada was described by the Washington Post as “the most robust in recent history[.]”<sup>656</sup> Republican voters attempted to challenge 17,000 Democratic voters in Nevada prior to Election Day, but election administrators rejected the mass challenge.<sup>657</sup> A similar pre-Election Day mass challenge, made by the American Independent Party, was rejected by election administrators in 2006.<sup>658</sup>

**North Carolina** has some strong challenge provisions which reduce the field of potential challengers and provide important protections to challenged voters. Any registered voter in a county may challenge a voter before the 25<sup>th</sup> day before an election,<sup>659</sup> but only an individual registered to vote in a precinct may challenge any voter at his or her precinct on Election Day.<sup>660</sup> As discussed above, the requirement that challengers be registered voters of the precinct in which they are making a challenge is helpful, both because it increases the likelihood that challenges will be made based on actual personal knowledge, and because it makes a large-scale challenge effort more difficult by requiring its organizers to recruit challengers from each of the precincts being targeted.

Grounds for challenge include lack of residency, ineligibility due to a felony conviction, lack of citizenship, or, for challenges made on Election Day, that the voter has already voted in the election, or is not who she or he appears to be.<sup>661</sup> North Carolina law requires that challenges “shall not be made indiscriminately,” but rather that one may make a challenge only if one “knows, suspects or reasonably believes [the challenged individual] not to be qualified and entitled to vote.”<sup>662</sup> Since North Carolina does not appear to require that challenges made on Election Day be made in written form or recorded, it is not clear how this requirement is enforced, though once a challenge proceeding has begun, election officials are empowered to administer oaths to any person testifying as to the qualifications of the challenged voter, which could include the challenger at the discretion of the official.<sup>663</sup>

In all challenges, the presumption is that the voter is properly registered, and a challenge must be supported by affirmative proof for it to be sustained.<sup>664</sup> Mail returned as undeliverable is not affirmative proof and is not admissible as evidence in a challenge hearing on Election Day.<sup>665</sup> This is an important protection, as undeliverable mail is notoriously unreliable as evidence of lack of qualifications to vote, and has been used in many partisan and racially motivated voter caging operations in the past. A challenged voter must make an oath or affirmation regarding her or his eligibility to vote.<sup>666</sup> However, even once she or he has done so, elections officials may still refuse to allow the individual to vote a regular ballot “unless they are satisfied that the challenged registrant is a legal voter.”<sup>667</sup> While it is good that voters may be permitted to vote on the basis of their oath alone, it is troubling that the decision is left to the discretion of the election officials, without a specific standard based on which they are to make their determination.

North Carolina was the site of one of the most notorious incidents of vote caging, during the 1990 US Senate race between Jesse Helms and Harvey Gantt.<sup>668</sup> In response to a significant increase in black voter registration, and a poll showing Gantt in the lead,<sup>669</sup> Republicans adopted a multi-faceted ballot-security program in which minority voters were targeted.<sup>670</sup> “Voter registration bulletins” were mailed to 150,000 homes in minority, Democratic-leaning precincts.<sup>671</sup> One of the purposes of these mailings was to use returned postcards to challenge voters on Election Day.<sup>672</sup> The Democratic National Committee alleged that the Republican National Committee, in violation of the 1982 consent decree between the two parties, was involved in these voting caging efforts.<sup>673</sup> However, since the DNC was not able to prove that the RNC, as opposed to the state Republican Party, was directly involved, the court dismissed the case.<sup>674</sup>

The U.S. Justice Department was able to secure a pledge from the North Carolina Republican Party that information from the mailings would not be used to challenge voters at the polls.<sup>675</sup> After the election, the Justice Department sued the North Carolina Republican Party and the Helms for Senate Committee, and entered into a consent decree that enjoined the defendants from engaging in any ballot security program “directed at qualified voters in which the racial minority status of some or all of the voters is one of the factors in the decision to target those voters.”<sup>676</sup>

In 2004, the sheriff of Alamance County submitted a list of registered voters with Hispanic names to the Bureau of Immigration and Customs to determine the citizenship status of the individuals on the list, presumably for the purposes of challenging voters.<sup>677</sup> The Mexican American Legal Defense and Education Fund and the Department of Justice were able to force the sheriff to stop.<sup>678</sup>

In **Ohio**, any registered voter may challenge a voter prior to the 19<sup>th</sup> day before Election Day, but only an elections official may challenge on Election Day.<sup>679</sup> The prohibition on Election Day challenges by individuals other than election officials, which was established in 2006, is an important protection for Ohio voters.<sup>680</sup> Pre-Election Day challenges “must state the ground upon which the challenge is made, and must be signed by the challenger giving the challenger’s address and voting precinct.”<sup>681</sup> Grounds for a challenge include failure to meet age, citizenship, or residency requirements, or disqualification due to felony incarceration, adjudication as incompetent, failure to register by the deadline, or failure to respond sufficiently to a registration confirmation notice.<sup>682</sup> Although Ohio statutes would permit the Board of Elections to grant or deny a pre-Election Day challenge without holding a hearing, Ohio Secretary of State Jennifer Brunner issued a directive requiring that a hearing be held before a challenged voter’s registration may be cancelled, and strongly suggesting that such a hearing be held prior to Election Day.<sup>683</sup> At such a hearing, the challenger bears the burden of proof, and undelivered mail is not considered sufficient to meet the clear and convincing standard of proof required.<sup>684</sup> This is important because undelivered mail is a highly unreliable method for determining voter eligibility.

On Election Day, only an elections official may challenge a voter.<sup>685</sup> Again, this is important, because it prevents most partisan or other biased challenges, and avoids added confusion and delay at the polls. The official is to ask certain questions and make certain requests for identification, as provided by law, with the specific questions and documentation depending on the grounds for the challenge (age, citizenship, or residency requirements).<sup>686</sup> Only voters able to satisfy the elections officials of their eligibility are permitted to cast a regular ballots; others must vote by provisional ballot.<sup>687</sup> While the provision of specific questions to be asked by the official provides greater clarity than does the law of some states, which simply leave the issue up to the discretion of the official, the documentation required may potentially be difficult for challenged voters to provide, and thus could prevent individuals from being able to cast ballots which will be counted.

Ohio has had “a troubling history of voter caging.”<sup>688</sup> In 2004, partisan operatives challenged 35,000 voter registrations based only on returned non-forwardable mail.<sup>689</sup> This effort predominantly affected voters of color, and caused confusion and disruption in the election process.<sup>690</sup>

Voter caging was also a major concern during the run-up to the 2008 election. Ohio election officials, in accordance with then-existing state law, sent non-forwardable mailers to registered voters, and over 600,000 mailers were returned as undeliverable.<sup>691</sup> Five counties including those areas encompassing the cities of Cleveland, Columbus, and Cincinnati were the source of 573,444 returned notices.<sup>692</sup> The name of any individual whose mail was returned as undeliverable was kept on a list maintained by the state.<sup>693</sup>

Because these lists were publicly available, advocates were concerned that individuals on the lists would be singled out for challenges.<sup>694</sup> Secretary of State Brunner acknowledged that these statutorily required mailings, and voter caging more generally, affected poor and minority communities disproportionately,<sup>695</sup> and in a directive to elections officials clarified that a challenged registration will be canceled only if there is clear and convincing evidence of non-qualification and that the “return of [an] Election Day notice (the 60-day notice) as “undeliverable” by the post office is, by itself, insufficient to cancel a voter’s registration” under the clear and convincing evidentiary standard.<sup>696</sup>

Also, the Republican Party of Ohio brought a suit against Secretary Brunner, attempting to force her to disclose a list of database mismatches in the records of newly registered voters.<sup>697</sup> Such a list could be used by county elections officials and by partisan challengers to prevent individuals whose names were included on the list from casting regular ballots (for a discussion of problems with database matching, see the database matching section of this report). A federal district court sided with the GOP and ordered Secretary Brunner to disclose the list, but the Supreme Court overturned that ruling, and Secretary Brunner was not ultimately required to disclose the list.<sup>698</sup>

# LANGUAGE MINORITY VOTERS AND NATURALIZED CITIZENS

While the bulk of this section will examine administrative barriers that are erected to make voting more difficult for new Americans and Americans who do not speak English as their first language, it must be remembered that ethnic minorities are still targeted for blatant voter intimidation, including in states that are a part of this report. For example, in 2006 in **Arizona** an “anti-immigration activist, and a handful of supporters, staked out a South Tucson precinct and questioned Hispanic voters as they entered the polls to determine if they spoke English... Mr. Warden said he planned to photograph Hispanic voters entering polls at as many as 20 precincts in an effort to identify illegal immigrants and felons.”<sup>699</sup> In the 2004 primaries in Pima County, Arizona “two men dressed in black shirts with “U.S. Constitutional Enforcement” emblazoned on the back and armed with a video camera patrolled several polling places in Latino neighborhoods, ostensibly looking for illegal immigrants trying to vote.”<sup>700</sup> In 2004, in Alamance County, North Carolina the sheriff himself submitted a list of registered voters with Spanish surnames to the U.S. Bureau of Immigration and Customs Enforcement in an attempt to determine whether or not they were U.S. citizens.<sup>701</sup>

**Ethnic minorities are still targeted for blatant voter intimidation, including in states that are a part of this report.**

## LANGUAGE MINORITY VOTERS

### Language Provisions of the Voting Rights Act Generally

There are huge disparities in the voter participation of whites as compared to Latinos and Asians throughout the country and in the states under review.

State	Non-Hispanic Whites		Hispanic		Asian	
	Registered	Voted	Registered	Voted	Registered	Voted
Arizona	73.7%	67.0%	51.5%	36.6%	65.1%	59.9%
Colorado	75.0%	71.5%	59.1%	51.4%	68.5%	68.5%
Illinois	73.9%	65.2%	57.4%	46.8%	51.2%	36.7%
Kentucky	73.0%	63.2%	74.4%	74.4%	20.4%	0.0%
Louisiana	80.0%	72.4%	67.7%	55.2%	46.0%	46.0%
Michigan	77.6%	68.0%	58.2%	47.8%	80.9%	58.7%
Missouri	74.7%	65.3%	48.8%	39.2%	61.8%	53.5%
Nevada	69.5%	62.5%	57.2%	52.1%	38.5%	29.8%
North Carolina	84.6%	74.5%	70.3%	65.4%	66.4%	53.3%
Ohio	73.2%	65.4%	59.8%	52.4%	52.2%	46.9%

U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2008. Analysis by Dēmos.

Some members of these populations have limited English proficiency. The Voting Rights Act requires that certain states and jurisdictions with large populations of citizens who are “limited English proficient,” known as LEPs, provide language assistance in the voting process in the language of that population. The language provisions of the Voting Rights Act are extremely important for maximizing access to the vote. According to one study, voters who have access to voting materials in their own language are 5 percent more likely to have voted in the 1996 and 2000 elections.<sup>702</sup> The study finds, significantly, that the language provisions of the Act have their biggest impact by far on naturalized Americans.<sup>703</sup> In 1992 the numerical triggers of Section 203 were amended to cover more predominantly Asian communities and therefore after the 2000 Census, over 672,000 citizens of Asian descent in seven states were eligible to receive minority language assistance.<sup>704</sup> Census data from 1998 and 2004 shows a 61 percent growth

in registration rates and a 98 percent increase in turnout rates among self-identifying Asian American citizens between November 1998 and November 2004.<sup>705</sup>

Jurisdictions are selected for such language requirements under two different provisions of the Act.<sup>706</sup> Under Section 4(f)(4) of the Act, a jurisdiction is covered if three criteria were met as of November 1, 1972: (1) over 5 percent of voting age citizens were members of a single language minority group; (2) the jurisdiction used English-only election materials; and (3) less than 50 percent of voting age citizens were registered to vote or fewer than 50 voted in the 1972 presidential election.<sup>707</sup> A jurisdiction can end being subject to such requirements by showing it has eliminated voting discrimination for at least 10 years and has taken affirmative steps to increase minority voter participation.<sup>708</sup>

Under the formula in Section 203 of the Act, a jurisdiction is covered if the Director of the Census determines that two criteria are met. First, the limited-English proficient citizens of voting age in a single language group must: (a) number more than 10,000; (b) comprise more than 5 percent of all citizens of voting age; or (c) comprise more than 5 percent of all American Indians of a single language group residing on an Indian reservation.<sup>709</sup> Second, the illiteracy rate of the LEP language minority citizens must exceed the national illiteracy rate.<sup>710</sup> A person is LEP if he or she speaks English “less than very well” and would need assistance to participate in the political process effectively.<sup>711</sup>

Under Section 203, any materials or information related to voting that are provided in English must also be provided in the other language or languages equally.<sup>712</sup> This includes both written and oral voting assistance.

It is also important to take note of Section 208 of the Act which allows voters who are elderly, physically disabled, or who cannot read and write well in English to be assisted by the person of their choice at the polls. This typically includes LEP voters who have trouble understanding English well enough to be able to exercise their voting rights effectively on their own.<sup>713</sup> Section 208 applies nationally, so that is required in all of our states.

## Standards for compliance

The Attorney General’s Language Minority Guidelines<sup>714</sup> “establishe[s] two basic standards by which the Attorney General will measure compliance: (1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and (2) That an affected jurisdiction should take all reasonable steps to achieve that goal.”<sup>715</sup> However, the guidelines allow for state and local discretion, stating, “The determination of what is required for compliance with section 4(f)(4) and section 203(c) is the responsibility of the affected jurisdiction. These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.”<sup>716</sup> The regulations go on to say,<sup>717</sup>

The requirements of sections 4(f)(4) and 203(c) apply with regard to the provision of “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.” The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting connected activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.

In determining whether a jurisdiction has complied with this mandate, the Department of Justice says it will look primarily at “results,” and recommends working with minority civic organizations.<sup>718</sup>

Where the Department of Justice has taken action against a jurisdiction for failing to comply with the minority language provisions of the Act, frequently the Department and the jurisdiction end up entering into consent decrees. The activities the jurisdictions agree to undertake at the mandate of the Department further illuminate what the Justice Department expects from covered jurisdictions. Some of these jurisdictions that have been sued include ones in the states under review here, as will be discussed below.

## Covered Jurisdictions In The Swing States, And The Languages Covered

Of the states under review here, one state is covered in its entirety by the language provisions of the VRA: **Arizona**, for Spanish. There are jurisdictions in Arizona that also must provide language assistance for Native Americans. Among our states, **Louisiana, North Carolina, Colorado and Nevada** also have jurisdictions where the language requirements apply with respect to Native Americans. **Colorado** also must provide Spanish language assistance and **Illinois** has jurisdictions that require Spanish and Chinese language assistance. **Michigan** has two counties in which Spanish language assistance is mandated (one under Section 4(f)(4) of the Act, the other by Section 203).<sup>719</sup>

FIGURE 1: NUMBER OF POLITICAL SUBDIVISIONS OF SWING STATES REQUIRED TO PROVIDE LANGUAGE ASSISTANCE UNDER SECTION 203 OR SECTION 4(F)(4) OF THE VOTING RIGHTS ACT.	Spanish	American Indian	Alaska Native	Asian	Total Covered
Arizona	15 (6)*	9	0	0	15
Colorado	8	2	0	0	10
Illinois	2	0	0	1	2
Louisiana	0	1	0	0	1
North Carolina	0	1	0	0	
Nevada	1	5	0	0	6
Michigan	2	0	0	0	2

\*The whole state – all 15 counties – is covered for Spanish under Section 4(f)(4). 6 counties are separately covered for Spanish by Section 203.

According to advocates and academics, compliance with Section 203 is notoriously inconsistent nationwide. For example, Tucker and Espino surveyed 810 jurisdictions in 33 states covered by Section 203. They found that compliance with the provision is spotty at best.<sup>720</sup> The authors of the study find that one of the reasons for the gaps is election administrators often grossly underestimate the level of need in the community.<sup>721</sup>

According to advocates and academics, compliance with Section 203 is notoriously inconsistent nationwide.

## Studies On Compliance In The Swing States

### Academic Studies

Jones-Correa and Weismel-Manor undertook a study of compliance by conducting on-the-spot checks of the registration and voting materials and assistance provided by county registrars and clerks' offices in Section 203 covered jurisdictions. Data were collected for 91 counties: 63 counties across 15 states covered under Section 203 of the Voting Rights Act, and 28 non-covered counties in three states.<sup>722</sup>

The authors examined compliance with the requirement (among others) that jurisdictions provide minority language voter registration materials. Of the states covered in this report, only **Illinois and Nevada** had perfect compliance in terms of providing materials in the minority language. None of the covered jurisdictions in **Arizona or Colorado** had registration materials available in covered languages.<sup>723</sup>

### Compliance with Requirements on Voter Registration Materials

State	Counties In the Study	Compliance
Arizona	5	0.00
Colorado	7	0.00
Illinois	2	1.00
Nevada	1	1.00

In terms of personnel capacity, the states in our study were found to do better.

Compliance with the Provision of Personnel Capable of Providing Assistance in Section 203 Covered Language(s)<sup>724</sup>

State	Counties In the Study	Compliance
Arizona	5	1.00
Colorado	7	0.86
Illinois	2	1.00
Nevada	1	1.00

To some degree, **North Carolina** is in its own category because, as detailed below, it has its own state law that requires jurisdictions to provide Spanish language instructions in every county or municipality where the Hispanic population exceeds 6 percent. In accordance with that same law, the North Carolina State Board of Elections makes translated materials available to the counties. The problem is that not all of the counties avail themselves of this, even ones where providing the translated material is mandated by the state law. For example, Union County refused to provide Spanish materials in 2008 despite having a greater than 6 percent Hispanic population in that county as of the last census.<sup>725</sup>

*Department of Justice Litigation*

**Arizona** is one of just three states and the only state under review here to be covered in its entirety by the language minority provisions of the Voting Rights Act. In addition to statewide coverage under Section 4(f)(4) for Spanish, twelve of Arizona’s fifteen counties are separately covered by Section 203 of the Voting Rights Act. In all, six counties are covered for Spanish and nine counties are covered for Native American languages.<sup>726</sup> The need for language assistance in the Native American communities is particularly acute. For example, among Navajo voting-age citizens in Apache, Coconino, and Navajo Counties approximately one-third are LEP, among who the illiteracy rate is over 25 percent. “As recently as 2002, the Department of Justice identified substantial non-compliance with Section 203 by Apache County, denying thousands of American Indian voting-age citizens equal access to the election process.”<sup>727</sup> Apache County has been the site of voting rights litigation around Native American voter discrimination for many years.<sup>728</sup>

There is evidence to suggest that counties in Arizona have lagged in Section 203 compliance even more recently: in 2006, the Department of Justice took legal action against Cochise County, Arizona, alleging failure to provide Spanish translations of all election-related materials produced in English, “including, but not limited to, information about voter registration, voting absentee, voting early, voting machine instructions, and other election-related information;” “to recruit, appoint, train, and assign sufficient bilingual poll officials on election day;” to provide “information publicizing elections, registration deadlines, and early and absentee voting options;” and that “in the September 7, 2004 primary election and the November 2, 2004 general election,” the county “failed to post in each polling place all of the voting information required by HAVA, including but not limited to information regarding the date of the election, federal and state voting laws, and first-time voters who registered by mail.”<sup>729</sup> In the consent decree entered into the day after the complaint was filed, the county admitted to these failures, and agreed at the direction of the court to undertake a number of remedial activities. This included ensuring a certain number of bilingual poll workers per a certain number of Spanish speaking voters, the appointment of a Spanish language program coordinator, and the creation of an advisory committee.<sup>730</sup>

**There is evidence to suggest that counties in Arizona have lagged in Section 203 compliance**

The Department also entered into an agreement with Maricopa County in 2006. The agreement focuses particularly on the need for adequate numbers of bilingual poll workers and training them on the language requirements as well as the “requirement that poll officials be respectful and courteous to all voters regardless of race, ethnicity, color or language abilities and to avoid inappropriate comments.” Poll workers found to have been inappropriate toward Spanish speaking or Hispanic voters are to be removed. The agreement states that the county will employ a bilingual program coordinator and establish an advisory group. It also addresses the ongoing need for the county to provide translated election materials and information and disseminate it appropriately.<sup>731</sup>

Among our states, a county in **Illinois** has also been found to have run afoul of the language provisions of the Voting Rights Act. In 2007, the Department pursued Kane County, Illinois for failure to comply with both Sections

203 and 208. This complaint also alleged failures with respect to bilingual poll workers and providing election information in Spanish. The Kane case also confirms the applicability of Section 208 to language minority voters, as it accuses the county of violating that section because workers barred LEPs from being assisted by the person of their choice during the balloting process.<sup>732</sup>

In addition to mandating remedial action with respect to providing all election information in Spanish equally with English, including via the Internet, and bilingual poll workers, the Memorandum of Understanding entered by the District Court states that,

The County shall train all poll officials to ensure that Spanish-speaking voters are permitted assistance from persons of their choice, other than the voters' employer or agents of those employers or officers or agents of the voters' union, and that such assistance shall include assistance in the voting booth, including reading or interpreting the ballot and instructing voters on how to select the voters' preferred candidate. If a poll official interferes with the right of any voter to receive such assistance the County will, upon learning of such interference, promptly remove that poll official and bar such official from further service.

As in the Arizona agreement, the court also has the county pledging to provide a certain number of bilingual poll workers per number of voters, appointing a Spanish language coordinator, and forming an advisory group.<sup>733</sup>

Cook County, Illinois, ran into trouble back in 1995 for not providing oral in addition to written assistance with respect to voter registration.<sup>734</sup>

## Websites

In Section 203 jurisdictions, states and counties must have co-equal language translation on elections websites. Any jurisdiction covered by the Act that provides voter material in English on its elections website must provide also it in the languages covered. This is plainly the view of the Department of Justice. For example, the Department alleged in its complaint against the city of Boston that one of the ways in which it violated the Act was by "Failing to translate into Spanish all election-related announcements, instructions, and notices at election sites; and in particular, failing to translate into Spanish information available in English on the Election Department's website."<sup>735</sup> Part of the remedial action agreed to by Kane County, Illinois was to provide all election information in Spanish equally with English on the county's website.

### Even in places not covered by Section 203, it makes sense to provide alternative language information and material online.

Even in places not covered by Section 203, it makes sense to provide alternative language information and material online. Even though providing alternate language materials on the web might not be the most effective means of reaching all or even many language minority voters because of the persisting digital divide, it is probably the most cost-efficient and easiest thing jurisdictions could do. Also, most encouragingly, the differential between U.S. born and foreign born Latinos who use the Internet is shrinking rapidly. According to a recent Pew Hispanic Center Report, "While U.S.-born Latinos experienced a two percentage point increase in internet use from 75 percent in 2006 to 77 percent in 2008, foreign-born Latinos experienced a 12 percentage point

increase during the same period, from 40 percent to 52 percent."<sup>736</sup> This same study found that, "Among Latinos, English-reading ability was linked with internet use—81 percent of Latinos who read English very well were online, as compared with 63 percent of Latinos who read pretty well, 52 percent of Latinos who couldn't read English well, and 24 percent of Latinos who couldn't read English at all."<sup>737</sup> These latter numbers are disappointing, yet these percentages represent significant numbers of potential voters. Moreover, a different Pew study found that with respect to government information, "African Americans and Latinos are just as likely as whites to use tools such as blogs, social networking sites and online video to keep up with the workings of government," and that "Minority Americans are significantly more likely than whites to agree strongly with the statement that government outreach using tools such as blogs, social networking sites or text messaging "helps people be more informed about what the government is doing" and "makes government agencies and officials more accessible."<sup>738</sup>

Further, providing this service would make it much easier for organizations working to register LEP Americans – they could simply download and copy translated forms and materials according to their needs and the needs of the language minority community.

The Election Assistance Commission is now providing federal voter registration forms, “A Voter’s Guide to Federal Elections” and a “Glossary of Key Election Terminology” in Spanish, Chinese, Japanese, Korean, Tagalog and Vietnamese voter guides on its website and directly to election administrators.<sup>739</sup> Under the NVRA, elections officials in all states are required to accept the federal registration form (except in two states). In announcing the new Asian language registration forms the EAC stated, “The purpose of the Language Accessibility Program is to assist jurisdictions with limited resources in providing eligible voters increased access to the electoral process.”<sup>740</sup> The websites of every chief elections officer of every state should provide a link to the EAC’s materials.

Although we will focus on government websites here, the earlier referenced Pew study reports that “African Americans and Latinos are more likely to find social media platforms like Facebook and Twitter helpful and informative when viewing government information (31-33 percent for African Americans and Latinos, compared to 17 percent for whites)...These figures suggest that agencies and organizations offering election information and services online could appeal to broader demographic groups by supporting multiple platforms for online engagement.”<sup>741</sup>

### *County Websites*

As noted above, part of Kane County, Illinois’ settlement with the Department of Justice was to provide Spanish translations of all available English material on its website. Kane County has accomplished this by providing a “button” on the upper right-hand side of the homepage that says “En español.”<sup>742</sup> When the user clicks on this button every single aspect of the website is translated into Spanish. For this section we have surveyed nine other counties, speaking with the county clerks in the respective counties and analyzing their websites. The nine counties we have surveyed are: Maricopa County, Arizona; Pima County, Arizona; Denver County, Colorado; Cook County, Illinois; Kent County, Michigan; Wayne County, Michigan; Clark County, Nevada; Mecklenburg County, North Carolina; and Wake County, North Carolina. Of these counties, four are not covered by Section 203: Kent County, Michigan; Wayne County, Michigan; Mecklenburg County, North Carolina; Wake County, North Carolina. We chose to include these non-203 counties because they encompass major cities within their respective states, including Grand Rapids, Detroit, Charlotte and Raleigh; more importantly, these counties have significant immigrant populations.

Of the counties covered by 203, Pima<sup>743</sup>, Denver,<sup>744</sup> Cook<sup>745</sup> and Clark<sup>746</sup> counties have buttons that allow the entire website to be translated into Spanish, just as the Kane County website does. The Cook County website translates the entire website into Spanish, Polish, Chinese and Korean; Cook County is only required to provide Spanish language translation under the federal law. In addition, the Cook County website provides downloadable registration forms in all five languages on the homepage. Maricopa County, also covered by 203, does not have this translation feature. The website for the Maricopa County Recorder does have a scroll bar with several options for Spanish speakers and appears to provide sufficient translated information for Spanish speakers.<sup>747</sup>

For some of these websites, the ability to translate the entire website into another language is provided free of charge by Google Translate, as a Google Translate link appears when the user opts to translate the website’s language. However, providing such a service is not nearly sufficient since it in no way necessarily ensures accurate, understandable translations. Many non-English speaking voters have complained that the translations provided on these websites are sometimes difficult to comprehend, as they are often generated by a computer rather than a person fluent in that language. As Terry Ao from the Asian American Justice Center put it, “the problem is with that type of translation, it is a word-for-word translation – but the syntax may make utterly no sense in the native language. I run into that a lot when I try to speak Cantonese – it is as if only a bilingual person would understand me even though I may be speaking Cantonese because I am just transliterating English sentences, which make no sense in Cantonese.”<sup>748</sup> The best translations would be provided by a human, rather than a machine, and while this may require the employment of additional resources<sup>749</sup> it is likely that a number of nonprofit and community organizations would be happy to provide bilingual volunteers to assist.

The Denver County, Colorado elections website has a disclaimer when the user clicks on the translation button. While the entire website can be translated into dozens of languages from Albanian to Maltese, the translations are not necessarily accurate. Denver County uses Google Translate and when the user selects the language they wish to translate the website into, a box pops out that says, “The City of Denver offers translation in multiple languages by using Google’s free translation service.” Unfortunately, this disclaimer is only provided in English. However, Denver’s elections division reports that “a professional contractor translates and certifies about 90 percent of the material on the Denver Elections Division’s Spanish language website.”<sup>750</sup>

The website for Pima County, Arizona elections has a website translation feature that is provided by Systran, a supplier of language service software that instantly translates text.<sup>751</sup> Pima County has a link to a “translation disclaimer” on the homepage of its elections website that states the “benefits” and “issues” of the translation service. This link states that “The Pima County Elections website is being translated through ‘machine translation’ which means that it is translated dynamically (on-the-fly) through a third party service.”<sup>752</sup> The disclaimer goes on to state that one issue with the service is that “machine translation is not perfect and may create some poor translations.”<sup>753</sup>

Kent County, Michigan<sup>754</sup> and Mecklenburg County, North Carolina<sup>755</sup> provide no translation button on their homepages, nor do they provide any links for non-English speaking users. There is nothing on the homepage of either website that could direct a non-English speaking user to information in the native language. The Mecklenburg County website does provide Spanish voter registration forms, however it is unlikely that a Spanish-only speaker would be able to navigate to this as the link to this page is in English. If a website provides materials in a non-English language, then the user should be able to navigate to these materials by following non-English links. When this is not provided the translated materials become useless and hidden behind English-only pages. The other two non-203 counties we surveyed, Wayne County, Michigan<sup>756</sup> and Wake County, North Carolina<sup>757</sup> do in fact provide translations buttons, both of which are likely provided by Google Translate.

### *State Websites*

While county websites are promising in their ability to reach out to non-English speaking voters, the state websites are less promising. As stated earlier, Arizona is the only state amongst our 10 states in this report that is entirely covered by Section 203. Thus, Arizona is the only state that is required to provide translated materials on the website of the statewide chief elections officer. There are no requirements for the other states in our report and that clearly shows in an analysis of their state elections websites. This is disappointing, given that several of these states have jurisdictions that are covered by Section 203 of the Voting Rights Act and some people will seek election information from the state elections website rather than their county elections website. These state websites additionally have many more resources to provide the seamless translations.

Of the 10 states we have included in this study, only **Arizona and Kentucky** provide comprehensive translations on the homepage of their primary statewide elections websites. Kentucky is especially notable as there are no Section 203 jurisdictions in the state so far, though some may be coming closer to meeting the threshold. The Arizona Secretary of State website provides subtitles below the majority of the elections headings on its homepage<sup>758</sup>, while Kentucky has a translation button at the bottom of the page that allows for a complete translation.<sup>759</sup> All other SOS or BOE websites provide no translated links on their homepages, making it difficult for a non-English speaker to navigate the website and find important information or materials such as voter registration forms.

While the **Michigan** Secretary of State website does not provide a translation feature, it does provide a Spanish link to a Spanish voter registration form, a document on voting rights and responsibilities, information about voter identification requirements and an absentee ballot application. However, a voter would have to navigate the English language home page to get to this information.<sup>760</sup>

**Colorado’s** website, while far from efficient in terms of outreach to limited-English speaking voters, does have a button that says “Contáctenos” and provides numbers for Spanish speaking voters to call.<sup>761</sup> Like many of the websites, Colorado does provide voter registration forms in Spanish; however the user must first navigate the website in English in order to come across these forms. The user would first have to click on the button that says “verify/update my voter registration” in order to hit a translation button that translates the entire page into Spanish.<sup>762</sup>

**Illinois** provides Spanish voter registration forms in the same roundabout fashion as Colorado. If Spanish speakers wish to obtain a voter registration form in Spanish they must first go to the state elections website, then click a button that says, “voters,” then click a button that says, “If I Am Not a Registered Voter, How Do I Register?,” and then they will be directed to a link that says, “Illinois Voter Registration Application Form (Spanish)”<sup>763</sup> **North Carolina** is similar. There is no translation button or any links in non-English on the homepage of the website, but voter registration forms and instructions can be obtained in Spanish if the user first navigates through some English links.

At the time this was written no non-English voter registration forms could be found anywhere on the chief elections websites for **Louisiana, Missouri, Nevada and Ohio**. Not only does this make it difficult for non-English

voters to register to vote via the elections website, it also makes it difficult for voter registration groups to easily obtain non-English voter registration forms.

## States With Laws Going Beyond Section 203

**Colorado, North Carolina, and Ohio** all have laws that laudably provide coverage and assistance for language minorities greater than what federal law requires in certain respects. As will be recalled, under Section 203, a jurisdiction is covered if the limited-English proficient citizens of voting age in a single language group number more than 10,000; comprise more than 5 percent of all citizens of voting age; or comprise more than 5 percent of all American Indians of a single language group residing on an Indian reservation. In addition, the illiteracy rate of the LEP language minority citizens must exceed the national illiteracy rate.

**Colorado** Revised Statute at 1-2-202(4) (2006) requires that county clerks, where a precinct is composed of three percent or more non-English speaking eligible voters, recruit staff members that speak that language.<sup>764</sup> **North Carolina** General Statutes at 163-165.5A (2005) require that every county or municipality where, in accordance with the most recent decennial census, the Hispanic population exceeds six percent, all instructions to the voter be in both English and Spanish, and that the state board of elections prepare a Spanish translation of ballot instructions for local boards of election.<sup>765</sup> Finally, **Ohio** Revised Code Annotated 3501.221 allows the county board of elections to appoint persons who are fluent in a non-English language to serve as interpreters to assist voters in certain election precincts, but does not require it.

A bill in **Michigan** in the earlier part of the 2000s that was carried over for a few years would have provided, “If the board of election commissioners determined that the number of non-English-speaking electors in a precinct indicated the need for an interpreter, the board could appoint an individual who was fluent in that non-English language to assist electors,” (HB 4867) but even this very mild measure has never made much progress.

As noted, Section 208 provides that a person who needs assistance as a result of blindness, disability, or the inability to read or write is eligible to receive assistance from the person of his or her choice (provided it is not an agent or officer of the voter’s employer or labor union.) Almost all the states provide a guarantee of simple assistance similar to Section 208 of the VRA, though the form and substance of these provisions vary. Some states have the basic assistance guarantee codified with language that expressly refers to the right to receive language assistance. These include **Colorado, Illinois, Kentucky and Nevada**. Other states’ provisions guarantee the right to assistance, but are unclear as to whether it includes the right to language assistance.<sup>766</sup>

## Laws That Could be Used to Impede Voting by Language Minority Voters

Many of the states under review have “English-only” laws which have the potential to interfere with a state’s ability to assist language minority voters. In Iowa in 2008, a state court ruled that the state’s voluntary dissemination of Spanish language voting materials violated its English-only law and the Secretary of State was forced to pull all forms that had been translated into other languages from the office’s website.<sup>767</sup> This is obviously an affront to the goal of maximizing participation among all sectors of our communities and must be watched closely in other states, especially those not covered for languages under the Voting Rights Act.<sup>768</sup> This ruling indicates that any state not covered by Section 203 of the Voting Rights Act (which would trump state law) could attempt to use its English-only law to limit the availability of language translated materials produced by government or elections officials.

**Arizona**, which of course is course covered by Section 203 on a statewide basis has a detailed provision in its Constitution making English the official language of the state and requiring all government activity to be in English alone.<sup>769</sup> However, it would appear that Section 203 coverage would exempt transactions related to voting from that requirement. **Colorado** is only partially covered and it too has a provision making English the official language in its Constitution.<sup>770</sup> **Illinois** enacted official English legislation in 1969.<sup>771</sup> **Kentucky** enacted official English legislation in 1984.<sup>772</sup> **Louisiana** has had such a law on the books since 1811. In 1992, the Attorney General made the following statement: “It is the opinion of this office that English is the sole official language of Louisiana.”<sup>773</sup> **North Carolina** enacted official English legislation in 1987.<sup>774</sup> More worrisome, in 2007 a bill was introduced in that state (SB 1253 (2007)), that would have forbidden any voter registration applications or ballots to be printed in any language other than English, except to the extent required by federal law. **Missouri** enacted official English legislation in 1998. A bill to designate English as the official language was introduced in Nevada in 2008 (AB 70).

## OTHER OUTREACH TO NATURALIZED CITIZENS AND LANGUAGE MINORITIES

As of 2007, there were 16.2 million naturalized citizens in the United States.<sup>775</sup> As with the gap between Latinos and Asian Americans and white voters, unfortunately these new Americans have not been participating in elections on par with their native born counterparts. In 2004, 65 percent of native born Americans voted while only 54 percent of naturalized Americans cast a ballot.<sup>776</sup> In 2006, there was a 12 point disparity, 49 percent versus 37 percent. In 2008, a year of historic turnout among some constituencies and enormous interest in the election, the numbers barely improved relative to previous elections.<sup>777</sup> Nationwide, turnout among the native born was 64.4 percent, while among naturalized Americans it was 54 percent. The disparities in certain states were particularly stark, including in our 10 states.<sup>778</sup> In fact, in all of these states but one the gap was in double digits and in Louisiana the voting rate of naturalized Americans was half that of native born citizens.<sup>779</sup>

The major reason for this difference is that there are disparities in the number of naturalized Americans who are *registered* to vote. In 2004, 72.9 percent of native born Americans were registered, while only 61.2 percent of naturalized citizens were.<sup>780</sup> At the time of the 2006 general election, there were 13.94 million naturalized citizens 18 years or older. Of these non-native citizens just over half (54.3) were registered to vote by Election Day. Native citizens were registered at a rate of 68.8 percent during the 2006 election – a nearly 15 percentage point discrepancy.<sup>781</sup> In 2008, there was more of the same: 71.8 percent of native born Americans were registered, while just 60.5 percent of naturalized Americans were registered to vote.<sup>782</sup>

In a rapidly diversifying country, election administrators should, on their own and in collaboration with local groups, do more to ensure that new Americans and other ethnic minorities are registered and voting. As will be explained, at the very least election administrators, especially in areas with large numbers of new citizens, should be providing voter registration services at naturalization ceremonies. Based on a preliminary and limited review of election administrators and local advocates, it is evident that much more is done in reaching out to immigrant and language communities in some states than others and in some counties than others.

State	Naturalized Citizen	Native Citizen
Arizona	48.3	60.8
Colorado	48.6	69.3
Illinois	40.3	64.4
Indiana	52.0	60.6
Kentucky	53.4	63.2
Louisiana	35.4	70.8
Michigan	50.1	68.5
Missouri	51.7	66.0
Nevada	49.3	61.4
North Carolina	47.1	68.0

### ARIZONA:

It cannot go without note that Arizona politically has seen a great deal of heated controversy around immigrants and immigration. In 2010, Arizona passed anti-immigrant legislation widely considered the most stringent among the states. Under this new law, among other provisions, Arizona police would be authorized to arrest immigrants unable to show documents allowing them to be in the country.<sup>783</sup> As discussed at length above, Arizona is the only state in the country to implement a requirement that voters prove their citizenship in order to vote. In addition, for a variety of reasons, the state also does not have an established infrastructure of strong local immigrant rights groups that is engaged in electoral activity; other states with high levels of Latinos and/or immigrants have such an infrastructure.<sup>784</sup>

That said, elections officials in Maricopa County are given high marks for their efforts to reach out to immigrant communities, including trying to get more bilingual workers at the polls and providing a variety of Spanish language resources. The problem, according to one advocate, is that too few voters know these resources are available to them.<sup>785</sup> Maricopa County officials also conduct voter registration at naturalization ceremonies, and Phoenix, which is in Maricopa, is where most of the naturalization ceremonies take place in the state. According to Abigail Duarte at Mi Familia Vota in Arizona, voter registration forms are routinely included in the packets of materials that naturalization applicants receive at their naturalization ceremonies. However, she also reports that the federal immigration service has barred outside organizations from having a presence inside naturalization ceremonies in

the state, limiting them to conducting voter registration activities outside the ceremony room. (However, local officials do conduct voter registration at many naturalization ceremonies in Arizona.)<sup>786</sup>

Maricopa County also has a program in which it works with the community college system to recruit bilingual poll workers. The elections officials there also hold monthly outreach meetings with community groups and much of the discussion focuses on recruiting and training bilingual poll workers.<sup>787</sup>

According to the Clerk's office, the staff conducts extensive training with poll workers in Spanish and English on voting procedures. Additionally, voter registration workshops are offered in Spanish for community groups, political parties, and other groups that conduct voter registration drives within the Hispanic community. The county has a bilingual coordinator who is a regular presence in Spanish language media and is responsible for minority language outreach. There is also a community working group which at times deals with issues related to language minorities and new citizens eligible to vote.<sup>788</sup>

## **COLORADO**

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According to the Elections Division of the Department of State,

Our office does not currently conduct any formal outreach for immigrant or language minority electors, and we are not aware of whether county clerks have provided voter registration at naturalization ceremonies. Our office provides voter registration and mail-in ballot applications on the website in both English and Spanish, and have [sic] a Spanish language resource within the office.

Our office does not have a formal relationship with immigrant or language minority outreach organizations specifically. However, our office works closely with the Colorado Lawyers Committee Elections Task Force on all elections and voting issues. In addition, our office provides voter registration drive training to all organizations conducting voter registration efforts in the state.<sup>789</sup>

Discussions with elections and immigration advocates echo these responses – the state and most of the counties do not proactively reach out to these groups.

Denver, which is one of Colorado's eight counties subject to Spanish assistance requirements, does do a good deal in this regard. By city ordinance, it has a Spanish Language Voting Advisory Committee housed in the Elections Division of the County Clerk's office. According to its website, the Committee "assists the Denver Clerk and Recorder's Elections Division with elections outreach efforts to Denver's limited-English, Spanish-speaking citizens. Central goals include making voting materials more accessible, ensuring an adequate number of Spanish-speaking poll workers, and increasing voting participation."<sup>790</sup> According to the Denver Elections Division, it has also developed informal relationships with a wide range of community organizations including many in the Latino community.<sup>791</sup>

According to the elections division, it also conducts radio and print interviews in the local Spanish language media, and has a "bilingual community partnership specialist on staff who does radio and TV interviews in Spanish, and who also translates articles, news releases and other materials as needed." It also makes efforts to have bilingual poll workers in every polling site, and even tries to recruit poll workers fluent in languages that are commonly spoken in a jurisdiction but that are not required by federal law, including Russian, Chinese and Hmong. The staff also creates a variety of elections materials in Spanish. There is a staff person dedicated to community relations and language minority outreach.<sup>792</sup>

Very commendably, the county elections office says that it partners with organizations such as Mi Familia Vota and the Latina Initiative to do voter registration at naturalization ceremonies.<sup>793</sup>

## NEVADA

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The Secretary of State of Nevada who served from 1995 to 2006 and is now a member of Congress had been rather hostile to language minority voting rights.<sup>794</sup> The new Secretary of State, Ross Miller, certainly does not take that approach, but our research has not discovered significant steps by his office to advance language minority access and immigrant voter outreach.

The Clark County registrar, however, does send a registration team to each naturalization ceremony and has a Hispanic Liaison Officer. According to the clerk's office, he is responsible for coordinating and maintaining relationships with the Hispanic community in Clark County.<sup>795</sup>

Washoe County also did voter registration at naturalization ceremonies in 2008.<sup>796</sup> According to the Senior Deputy to the County Registrar, she attends "monthly naturalization ceremonies held at our local Federal Court... give[s] a speech on the importance of voting, and hand[s] out voter registration forms following the ceremony." She says she also has "a good relationship with our local immigration office," and that they distribute "voter registration forms at all the other ceremonies throughout the month."<sup>797</sup> This is an exemplary arrangement.

## LOUISIANA

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According to at least one advocate in the state, elections officials do not do anything substantial to reach out to immigrant or language minority voters. This is particularly striking in New Orleans, which for many years has had a very large Vietnamese community.<sup>798</sup> In response to the following question, "Is it correct that you do not do any registration or turnout outreach specifically directed at immigrant or language minority communities?" the Secretary of State's Office itself reported to us that, "We do not have any multi language registration material or ballots."<sup>799</sup> However, while the office does not do any work directly with new citizens, it does work with nonprofit organizations in those communities to conduct outreach.<sup>800</sup>

There were 61,952 naturalized citizens in Louisiana as of 2007 and probably a good deal more today. Only 37,084 of "New Americans" – naturalized citizens and their children -- were registered to vote in the state as of that year.<sup>801</sup>

## ILLINOIS<sup>802</sup>

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Illinois is one of the top states in the country in numbers of immigrants naturalizing. From 2007-2009 it was 6<sup>th</sup> among all states in number of naturalizations and the Chicago metro area was 5<sup>th</sup> among metropolitan areas nationally.<sup>803</sup> Chicago comes in behind only New York City and Los Angeles in its share of the population that is immigrant, 18 percent.<sup>804</sup>

According to immigrant advocacy organizations working in this field, because elections are so decentralized, the State Board of Elections does little in the way of outreach to either language minority voters or immigrant voters. They do not undertake any activities at naturalization ceremonies.

When asked about outreach to immigrant and language minority voters, a representative from the Secretary of State's office informed us that,<sup>805</sup>

The vast majority of registration activity is undertaken by the 110 Election Authorities within the state. The State Board of Elections (SBE) has Spanish speaking staff and provides registration forms and associated materials in Spanish. Some of the Election Authorities provide minority language support for additional languages (e.g. the Chicago Board of Election Commissioners also had staff who speak Polish and Chinese, and provide materials in those language). The SBE does not itself undertake voter registration activities, and we do not know the extent to which the 110 Election Authorities within the state are proactive in this regard.

The Board does not have a formal mechanism for regular liaison with immigrant or language minority organizations.<sup>806</sup>

There is some positive activity at the local level, especially in Cook County which has jurisdiction over suburban Chicago, and through the City of Chicago Board of Elections, which has jurisdiction over the city of Chicago, both of which are covered under Section 203 of the Voting Rights Act. Indeed, according to people working in these communities, the jurisdictions go beyond the mandate of Section 203 and provide translated materials in many languages other than Spanish, including Chinese and Polish. This does not include actual ballots, but does include mailings, and poll workers are provided language books with translations so that they are able to assist voters with various language needs. Remarkably, the Chicago Board of Elections website has materials posted in 14 different languages.<sup>807</sup>

The Clerk of Cook County, David Orr, is particularly pro-active with his outreach to immigrant and language minority communities. He actively works with groups working to enfranchise these groups at events, press conferences and in disseminating information. In addition, although Orr used to send staff to naturalization ceremonies, he has such a good working relationship with groups in the area that he works with them to provide voter registration services at naturalization ceremonies.<sup>808</sup>

According to the County Clerk's Office, "the Community Services Manager is responsible for voter registration and voter education, a primary focus of which is outreach to language minorities. Under the direction of our community services manager, we have a staff member who monitors our Chinese language telephone hotline. Also at election time, we have a staff member who monitors and responds to messages left on our Polish language telephone hotline."<sup>809</sup>

County Clerk Orr has also made a point of designating a Latino liaison to provide an interface with the large and growing Hispanic community in Cook County. According to his office,<sup>810</sup>

Our Latino liaison has made a special, successful effort to recruit high school students with 2<sup>nd</sup> language fluency to serve as poll workers on Election Day. We have a Latino Advisory Committee. During these meetings, we strategize with our advisory committee participants as to how to better provide information about voter registration and the voting process, as well as recruitment of Spanish speaking poll workers.

[The Clerk's office has] an ongoing relationship with the Korean American Resource Center. This relationship was forged in anticipation of the 2010 census resulting in the addition of Korean to our list of language minorities mandated by the Voting Rights Act. We have an ongoing relationship with the Illinois Coalition for Immigrant and Refugee Rights and US Hispanic Leadership Institute. Our Latino liaison regularly contacts legislators with largely Hispanic constituencies to provide information about registration and other services provide by the Cook County Clerk's office.

We have mounted multilingual radio and newspaper ad campaigns to promote voter registration, early voting and to publicize election dates. Some of these ads were geared specifically for Spanish oriented radio stations.

The city of Chicago also tries to make information available, but is not aggressive in its outreach; it does not undertake any serious initiatives on its own. The Board also does not make an effort to provide voter registrars at naturalization ceremonies. However, the Board does cooperate with groups seeking to engage immigrants and language minorities.<sup>811</sup>

Kane County in Illinois is also now covered by Section 203 of the Voting Rights Act due to its rapidly growing Latino population. As noted above, Kane has not performed well in implementing its mandates, and groups that work on elections in the community experienced a number of difficulties with election administrators there during the 2004 and 2006 elections in particular.<sup>812</sup>

Lake County, which is north of Chicago, is not yet covered by the Act but has a growing Latino population, with some 40-50 percent of the population in its central city Latino. According to the census, as of 2008 almost 20 percent of the county was Latino.<sup>813</sup> The clerk has not provided much in the way of assistance to the Latino community to date.

**The jurisdictions go beyond the mandate of Section 203 and provide translated materials in many languages other than Spanish, including Chinese and Polish.**

## KENTUCKY

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According to the State Board of Elections, it provides voter registration cards, Voter Information Guides, and posters to local League of Women Voters groups which then conduct voter registration drives at naturalization ceremonies, but does not do any of those activities itself.<sup>814</sup>

## MISSOURI:

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The Secretary of State's Office does not do a great deal to facilitate access for immigrant or language minority voters.<sup>815</sup> According to the office, it has made an effort to reach out to all major Missouri minority language newspapers to provide information on the registration and voting process.<sup>816</sup>

## NORTH CAROLINA

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According to the State Board of Elections, local county boards sometimes send representatives to naturalization ceremonies.<sup>817</sup> In Wake County, where Raleigh is located, the clerk's office reports that they have "a working relationship with the Wake County League of Women voters. Representatives from the League attend the swearing in ceremony after which the new American citizens are registered to vote." According to the Wake County clerk, the State Board also has two fluent Spanish language staff members who can offer assistance.<sup>818</sup>

Although North Carolina is not legally obliged to conduct outreach to language minorities by federal law (except in Jackson County for American Indian languages), there are many communities in the state that have very substantial Spanish speaking citizen populations that may be so required in the near future. Election administrators in these jurisdictions reportedly do not do much to reach out to these voters, relying on the State Board for whatever activity does occur. As a result, advocates in the state are trying to fill in the gaps, especially in Johnson, Wake, Alamance, and Mecklenburg by doing vigorous voter registration activity in these areas.<sup>819</sup> It should be noted that the Charlotte and Raleigh regions are the top two metropolitan areas in the country in rate of immigrant population growth,<sup>820</sup> making an increase in the level of outreach and assistance to these communities a growing and more urgent necessity.

## MICHIGAN

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Secretary of State Terri Lynn Land probably does more in this area than any other chief elections officer in our review. Secretary Land and her staff have been a regular presence at naturalization ceremonies, including Dearborn, Grand Rapids and Detroit.<sup>821</sup> She had done so both in short advance of elections and in "off years" when there were no major elections coming up, appearing herself at some of them. Her proactive approach in this area is a model for other chief elections officers.

**Secretary Land and her staff have been a regular presence at naturalization ceremonies, including Dearborn, Grand Rapids and Detroit.**

Clyde Township in Allegan County is covered by Section 203 of the Voting Rights Act. According to the clerk there, she provides bilingual documents, has a Spanish-speaking election worker, and does outreach to minority language voters at churches and in the Fennville Public Schools around election time.<sup>822</sup>

At the time of this writing several organizations were reaching out to city clerks to provide them with language translated materials that the groups themselves have developed and working to encourage the clerks to disseminate them to voters. The materials include voting guides, voting instructions, registration forms and registration instructions.<sup>823</sup>

## OHIO

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According to the Secretary of State's Office,<sup>824</sup>

The Voting Rights Institute division in the office launched an effort to supply all Federal District Court offices and jurisdictions with probate courts that work with new citizens with a letter from the Secretary for each new citizen, as well as, the "Pocketful of Democracy" voter education booklet. To date, we have supplied approx. 5,000 pieces total and are preparing another shipment within the month. Additionally, we have also provided Spanish "Pocketful of Democracy" guides to the regions and soon will be

offering this voter education piece in Somali (Central Ohio has one of the largest Somali populations in the country). The Secretary has encouraged the district courts and probate representatives to provide the booklet and letter to all new citizens.

We created the Spanish translated piece as referenced above and have sent this to over 225 organizations and groups throughout the state to offer to their constituents (groups serving the Latino/a communities). We also provide outreach at a variety of Latino/a events in the state and provide trainings to groups and agencies that serve the Hispanic and Latino/a communities. As stated above, we also have developed a voter education piece for the Somali community. The Secretary and staff regularly meet with and presented to Somali leaders and organizations throughout the region.

Finally, the Voting Rights Institute works with faith based institutions, non profits and organizations that provide services to many diverse communities, whether naturalized citizens, Spanish speaking, etc. We work closely with leadership of these groups for input and assistance in ensuring voter education information gets to the communities they serve.

According to the Secretary, the Voting Rights Institute also “provides voter registration and voter education materials at ceremonies in addition to the efforts listed in the above question. We regularly have our Regional Liaison staff attend these events. We also partner with organizations, such as the League of Women Voters and Kids Voting of Central Ohio that participate in many of these ceremonies. Most recently, the Secretary presented at a local naturalization ceremony.”<sup>825</sup>

# OVERSEAS AND MILITARY VOTERS

Americans on both sides of the aisle agree that it is important to ensure our military and overseas civilians get a fair opportunity to vote. Extending the means by which these men and women cast their ballots has garnered wide support.<sup>826</sup> Between 4 million and 6 million citizens live abroad, and some – especially those in combat zones – are in hard-to-reach areas.<sup>827</sup> Reaching these voters has proved challenging for states, but recent changes in the law offer new opportunities.

In response to the needs of voters abroad, Congress first passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in 1986.<sup>828</sup> The law entitles soldiers, their families, and civilians abroad to register and vote by absentee ballot.<sup>829</sup> To facilitate this, states must use an official post card called the Federal Post Card Application (the “FPCA”<sup>830</sup>), prescribed by the Department of Defense’s Secretary (a presidential designee with UOCAVA responsibilities), that contains applications for both an absentee voter registration and absentee ballot.<sup>831</sup> So long as the completed joint application is received by the proper election official not less than 30 days before a federal election, the state must accept and process it.<sup>832</sup>

The law established new procedures to make registering and voting easier for Americans in the service or abroad. Such procedures, however, are not useful if voters are not properly informed of their new rights. To that end, UOCAVA requires each state to designate a single office to provide information on registration and absentee ballot procedures for voters.<sup>833</sup> Additionally, the Secretary of Defense, through the Federal Voting Assistance Program (FVAP)<sup>834</sup>, must also provide information, material, and assistance to overseas voters – military and civilian alike. The law expanded the protections afforded by its predecessor, the Overseas Citizens Voting Rights Act of 1975.<sup>835</sup> Yet one glaring omission remained: the statute was silent as to how far in advance elections officials were required to mail out absentee ballots upon receiving requests.

This silence caused irreparable harm for many voters. As Pew discovered, half the states and the nation’s capital needed to improve their absentee voting process in 2006, despite the law’s having been in effect for two decades by that point.<sup>836</sup> Indeed, the Department of Justice’s Civil Rights Division, the entity tasked<sup>837</sup> with enforcing UOCAVA’s requirements, brought 35 actions against states, including Colorado, Illinois, Michigan, and North Carolina, in the two decades following enactment.<sup>838</sup> Most of the lawsuits alleged states simply were not sending out absentee ballots with enough time for voters to receive, complete, and return them by state deadlines.

## Last year, Congress heeded the call and enacted the Military and Overseas Voter Empowerment (MOVE).

As we have seen, UOCAVA was a step in the right direction, but it didn’t go far enough. In the elections following enactment, problems preexisting UOCAVA continued. States simply didn’t send out ballots to voters with enough time for receipt, completion, notarization, and return.<sup>839</sup> The federal law imposed no time constraints on the states’ transmission of blank ballots. As Pew found, in the 2004 presidential election, “30 percent [of military personnel] said they were not able to vote because their ballots never arrived or arrived too late.”<sup>840</sup> Additionally, “28 percent said they did not know how to get an absentee ballot, found the process too complicated or were unable to register.”<sup>841</sup> These prob-

lems, moreover, were not fixed in time for the most recent presidential election: in 2008, nearly a third of the one million ballots sent abroad were not returned for counting.<sup>842</sup>

Last year, Congress heeded the call and enacted the Military and Overseas Voter Empowerment (MOVE) Act, an amendment to UOCAVA.<sup>843</sup> As Pew and others had recommended, the new legislation addresses the problems of accessibility and timeliness. Under its provisions, states must designate an electronic means for voters to request registration and absentee ballot applications, for states to transmit the forms, and for posting of elections information.<sup>844</sup> Ballots must be sent according to the voter’s preference – by mail or “electronically,” (a term not defined by the statute but interpreted to mean both email and facsimile).<sup>845</sup> Unless a state applies for and receives a waiver, all must ensure that ballots are sent not later than 45 days before an election (but for requests received after that date, state law applies).<sup>846</sup> All such requirements, moreover, must be in place by this 2010 midterm general election.<sup>847</sup>

MOVE is vague on how completed ballots should be returned by voters. The Department of Defense (DOD), under UOCAVA's amendments, must provide military personnel with expedited mail delivery service for their return seven days before an election.<sup>848</sup> But this doesn't address the needs of civilians who may be working even in the same places. So far, a good majority of states have allowed citizens to cast ballots by fax or over the Internet. But as cybersecurity experts point out, such a system is rife with problems: emails can be intercepted, web sites can be hacked, and a ballot's secrecy can be compromised.<sup>849</sup> Indeed, MOVE requires that States, "to the extent practicable," take measures to protect the security and integrity of electronically sent blank ballots, and to also ensure the privacy of the voter's personal information.<sup>850</sup> We recommend taking it one step further: states should prohibit completed ballots from being returned online. All other transactions – for the sake of expediency – should be permitted by electronic means.

Because states are taking on these obligations for the first time, we sought to track how well each one under review is implementing MOVE's requirements. More information will emerge when the 2010 election's votes are counted. In this report, we track how states transmit ballots in accordance with the 45-day rule, protect the ballot's security and privacy in the electronic processes, and inform their voters on the new practices.

## ARIZONA

### Ballot Transmission/ Return

Under Arizona's new laws, military and overseas voters may request and receive registration forms and ballots over fax or Internet by 7 p.m. on the state's primary or Election Day.<sup>851</sup> Completed ballots must be submitted by those days, too. Thanks to electronic options, such transactions can now happen on the same day.

Some ambiguities remain concerning the required turn-around time for ballots. Under existing Arizona law, the election clerk (called the "recorder" in Arizona) is required to transmit a ballot within three days after receiving a request. This means that a request received on the 45<sup>th</sup> day before the election may not be acted on until the 42<sup>nd</sup> day before the election<sup>852</sup> which is not fully compliant with MOVE's requirement that local election officials transmit absentee ballots by the 45<sup>th</sup> day before an election for all requests received *by that day*.<sup>853</sup>

The new Arizona law liberalized procedures for unregistered UOCAVA applicants, providing that so long as such applicants submit a completed FPCA, the recorder must transmit a ballot within 24 hours of receipt, excluding weekends and holidays.<sup>854</sup> It would be odd for the state to provide a quicker turn-around for unregistered voters than for registered voters, but the statute's new wording is unclear. Assuming this day-long turnaround applies to all UOCAVA voters, registered or not, Arizona will not be contravening MOVE's 45-day mandate by much. Ballots received on day 45 need not be acted on until the next day; all other transactions, though, will be in keeping with MOVE.

### Security/Privacy

On the office's website, Secretary of State Ken Bennett allows military and overseas voters to register to vote, request an early ballot, and obtain information on upcoming elections – all online.<sup>855</sup> A voter in this category may also upload a completed ballot once he provides his user ID and password.<sup>856</sup> Allowing voters to email or fax back their completed ballots certainly saves time, but is it safe? The Government Accountability Office (GAO) noted that "[e]lectronic and Internet voting require safeguards to limit such vulnerabilities and prevent compromises to votes from intentional actions or inadvertent errors. However, available safeguards may not adequately reduce the risks of compromise."<sup>857</sup> According to the Secretary of State's Election Director, Arizona uses the same encryption technology used for banking and credit card transactions.<sup>858</sup>

### Voter Outreach

It is important for state officials – like the Secretary of State's office – to do proper outreach to voters on the new regulations found in MOVE. As of May 2010, the Arizona Secretary of State's office had done some, and intended to conduct more, outreach with in-state military bases to educate its voters.<sup>859</sup> Regarding outreach to those civilians temporarily living abroad, it has not done much, given how "scattered" they are.<sup>860</sup> According to the office, counties, rather than the Secretary of State, keep voters up to date and provide them with current information.<sup>861</sup> Regardless of who does it, states should work with nonprofits abroad and request help in locating their voters.<sup>862</sup>

## COLORADO

### Ballot Transmission/ Return

Colorado has requested a waiver under the act's "hardship exemption" provision.<sup>863</sup> Such requests are available only for the 45-day mandate. The presidential designee – here, the Secretary of Defense – grants the request only if (1) the state elections official has provided an adequate plan for how it will ensure overseas and military voters receive ballots with enough time to submit them, and (2) a hardship results from the state's primary coming too late in the calendar, an inability to generate a sufficient amount of ballots due to a legal contest, or state constitutional prohibitions.<sup>864</sup> An approved waiver applies only to the federal election for which the request was made.<sup>865</sup>

Due to a late primary,<sup>866</sup> Colorado officials intend to stick with the rule they already have on the books, and transmit ballots 30 days – not 45 – in advance of an election to all those who've submitted FPCAs (or their state equivalents) 35 days beforehand.<sup>867</sup> Ballot requests received after that date are acted on within 72 hours.<sup>868</sup> All mail-in ballot requests must be made by the close of business on either the 7<sup>th</sup> day before an election, if the voter wants to receive the ballot by mail, or the Friday before an election if he wants to receive it electronically.<sup>869</sup> The state's acceptance of overseas ballots eight days after Election Day brings the time citizens have for voting closer to MOVE's deadline, but it is still a full seven days shorter than the federal legislation's deadline.<sup>870</sup> Note that voters who transmit completed ballots online must do so by 7 p.m. (MST) on Election Day.<sup>871</sup>

Of course, overseas and military voters still have the option of submitting either a special write-in ballot or the UOCAVA-required Federal Write-in Absentee Ballot ("FWAB").<sup>872</sup> According to state law, there's no deadline by which the voter must request a special write-in ballot, but an election official must "immediately" send a ballot by the 57<sup>th</sup> day before an election for requests received by that time.<sup>873</sup> As required by federal law, too, a voter may submit a FWAB if, after having earlier made a request for a regular mail-in ballot, he doesn't think he'll be able to submit a completed ballot in time.<sup>874</sup> That is a lot to keep straight, and requires clear instructions, especially since military and overseas voters in Colorado get no exemption from the state's requirement to register 29 days in advance of an election.<sup>875</sup> The office has updated its UOCAVA guide, which can be found on the Secretary of State's website<sup>876</sup>, and this at least provides some helpful phone numbers for overseas voters.

### Security/ Privacy

Colorado already has technology in place for online registration and electronic ballot exchange. Colorado Elections Division Director Judd Choate has expressed concern, though, that the state doesn't have mechanisms in place to safeguard privacy.<sup>877</sup> The state's statutes specify that mail-in absentee ballots electronically uploaded are not confidential, and that officials must relay this fact in their instructions to voters.<sup>878</sup> Elections officials are, nonetheless, required by state law to "provide protection against abuse, including tampering, fraudulent use, and illegal manipulation by electors, election officials, or any other individual or group."<sup>879</sup>

### Voter Outreach

Seeking a waiver from MOVE's provisions deprives Coloradans of the time they need to vote from all corners of the world. Given this disadvantage, the Secretary of State's office must do its part in informing citizens of deadlines and ensuring that all UOCAVA voters know they can request and submit materials by electronic means. So far, the office has joined FVAP in trainings at in-state installations for military voters.<sup>880</sup> Although reaching civilian voters overseas has proved more difficult, the office has worked with the Overseas Vote Foundation.<sup>881</sup> And counties have also collected email addresses from UOCAVA voters in order to send them annual updates.<sup>882</sup>

## ILLINOIS

### Ballot Transmission/ Return

Under Illinois' newly amended laws, citizens abroad may simultaneously apply to register and request a ballot not less than 30 days before an election by fax, email, or regular mail.<sup>883</sup> If the election official receives the request *after* the 30-day deadline but 10 days before a federal election, the voter is entitled to a ballot for federal offices *only*, with registration waived for that election.<sup>884</sup> (Non-residents, too, may take advantage of a similar 10-day provision.<sup>885</sup>)

Service men and women, on the other hand, get a bit more time: they must request absentee ballots by the 10<sup>th</sup> day before an election, but they need not register first.<sup>886</sup> These ballots don't seem to be limited to federal offices.<sup>887</sup> As soon as the ballot is prepared, the official "immediately" delivers it.<sup>888</sup>

Absent from this legislation is the requirement that state election officials send out absentee ballots to UOCAVA voters no later than 45 days before Election Day for those who submitted their requests by that deadline. Rather, the law merely states that ballots "will be available for mailing 60 days prior to the date of the [general] election ...,"<sup>889</sup> with nothing more.<sup>890</sup> Although elections officials must "immediately" transmit ballots once they're ready, that falls short of an express requirement for meeting the MOVE Act's 45-day turnaround requirement.

And despite MOVE's requirement, the new legislation does not go into effect until January 1, 2011, months after this upcoming midterm election.<sup>891</sup> As of this writing, Illinois had not yet requested a waiver from MOVE's requirements.

## **Privacy/ Security**

Ballots may be transmitted to civilian and military voters by mail, fax, or email, depending on the voter's preference.<sup>892</sup> Note, though, that fax and email will only be used if "the election authority has the capability,"<sup>893</sup> an allowance for which MOVE does not provide. No matter how they're obtained, completed ballots must be returned by on-the-ground mail.<sup>894</sup> Illinois gets high marks for insisting that ballots be returned by this safer alternative. True, this requires a bit more time, but so long as the ballot is postmarked by midnight before Election Day and received by the close of the period for counting provisional ballots – the 14<sup>th</sup> day following Election Day – it will be counted.<sup>895</sup>

## **Voter Outreach**

The State Board of Elections intends to update its website to reflect MOVE's new requirements.<sup>896</sup> This is especially important since the Board has no way of knowing which civilians are abroad unless an individual takes the initiative to contact the state.<sup>897</sup> A more concentrated effort to do voter outreach abroad is in order. In any case, the counties will be updating their websites<sup>898</sup>, and Illinois citizens living abroad should visit these, if possible.

# **KENTUCKY**

## **Ballot Transmission/ Return**

Kentucky citizens must register before the fourth Tuesday preceding a general or primary election.<sup>899</sup> Requests for absentee ballots may be made – as in all other states – by use of the FPCA.<sup>900</sup> An application for an absentee ballot must be received by the election officer by close of business seven days before an election.<sup>901</sup> Even before MOVE's enactment, UOCAVA voters have been permitted to submit FPCAs by mail or fax.<sup>902</sup> New regulations were put in place in June allowing officials to accept completed FPCAs and transmit blank absentee ballots by fax<sup>903</sup>, and (for those clerks with online capabilities) to accept completed FPCAs and transmit blank ballots by email.<sup>904</sup>

To date, Kentucky has not amended its elections statutes in response to MOVE. The above provisions pre-dated the federal law's enactments. Thus, no new provision has been added regarding the federal legislation's requirement that, for those absentee ballot applications received 45 days or earlier before a primary or general election, election officials transmit the ballots by that 45<sup>th</sup> day. However, the Kentucky State Board of Elections has trained its clerks to be in full compliance with the MOVE Act. Additionally, Kentucky's previous stipulation remains on the books: absentee ballots requested before their printing – at 50 days before an election – must be mailed to the voter within three days of the official's receiving the printed ballots, and any ballot request received thereafter must be mailed within three days of receipt of the request.<sup>905</sup>

## **Security/ Privacy**

UOCAVA voters may receive ballots by mail or fax,<sup>906</sup> but they must return completed ballots by mail. Again, this is for the best, given security concerns. No ballots may be transmitted by email.

## Voter Outreach

According to the State Board of Elections, any additional changes for MOVE implementation will be made through regulation, not by statute.<sup>907</sup> The Board will address any outstanding matters in June 2010.<sup>908</sup> Kentucky has no plans to do outreach to UOCAVA voters, but it may consider doing so at a later point.<sup>909</sup> In the meantime, it should maintain clear information on its website.

# LOUISIANA

## Ballot Transmission/ Return

Under Louisiana's recent elections bill, UOCAVA citizens may now "electronically"<sup>910</sup> request and receive a voter registration form,<sup>911</sup> and any voter can register online at [www.GeauxVote.com](http://www.GeauxVote.com). As for the state's provisions on ballots, Louisiana's amended law doesn't specify that registrars must transmit absentee ballots 45 days before an election to UOCAVA voters requesting them by that date. Instead, it requires the Secretary of State to provide the registrars with these ballots by that deadline.<sup>912</sup> But there's no additional mandate that registrars must start transmitting them to voters by that day.

## Security/ Privacy

As MOVE requires, the new law allows blank ballots to be transmitted electronically to voters.<sup>913</sup> Such electronic transmission, rather than return, requires the recipient to sign a statement voluntarily waiving his right to a secret ballot.<sup>914</sup> Such waiver is necessary because the voter must send back his completed ballot in a regular envelope, instead of a security one mailed by the registrar.<sup>915</sup> This waiver aside, the elections official still "shall take the steps necessary to keep each voted ballot that was transmitted electronically as confidential as practicable."<sup>916</sup> Once the voter completes his ballot, he must return it by mail.<sup>917</sup>

Those citizens who don't have enough time to vote by mail may request and submit a ballot by fax – email is not an option – so long as they complete an affidavit stating that "by faxing my voted ballot I am voluntarily waiving my right to a secret ballot."<sup>918</sup> Voters, then, are made aware that receiving and submitting their completed ballots electronically isn't a secure method. Each weighs the risks as he will. For those who fax them back, the registrar must take necessary steps to keep the voted ballots as "confidential as practicable;" however, no details as to how this should be done are provided.<sup>919</sup>

## Voter Outreach

The Secretary of State's website<sup>920</sup> provides some helpful if minimal information on the logistics of absentee voting for military and overseas citizens. Users may register online or print applications for voter registration, ballot requests, and FWABs; they can also read a list of FAQs on this site.<sup>921</sup> The office plans to update this information well in advance of the 2010 midterm election.<sup>922</sup> It also plans to improve its free-access system, a MOVE-required means by which voters may determine whether the appropriate elections official has received their completed ballots.<sup>923</sup> In the future the Secretary of State may also conduct voter outreach through collecting email addresses of Louisiana citizens living abroad, but anything requiring extra expenses will not be done, given the state's budgetary concerns.<sup>924</sup>

# MICHIGAN

## Ballot Transmission/ Return

In the years following UOCAVA's enactment, the Department of Justice sued the state of Michigan not once, but four times,<sup>925</sup> for statutory violations. In its last filing<sup>926</sup>, 10 years ago, the United States alleged that Michigan failed to send out absentee ballots with enough time for voters to receive, complete, and return them for counting. On August 8, 2000, the same date of the court's filing, the federal court signed a consent decree in which the state extended its deadline by 10 days for accepting overseas ballots.<sup>927</sup> Since then, the Department has not filed any additional suits.

In response to the new federal legislation, Michigan's legislature passed three bills, all of which address the new requirements. Now, when a Michigan voter requests to register and vote, he'll be sent an absentee voter ballot

alongside the registration form.<sup>928</sup> This one-step process surely saves time. And it appears that the election official turns these forms around on the same day as getting the application, given the law's requirement for materials to be mailed out "upon receipt" of request<sup>929</sup>

Also, clerks must now transmit – electronically or by mail, according to the voter's preference – absentee ballots to each UOCAVA applicant "who applied for an absent voter ballot 45 days or more before the election."<sup>930</sup> This conforms with MOVE's requirement.<sup>931</sup> The amended law also provides that, upon a military or overseas voter's request, the clerk must electronically transmit a voter registration application and absentee ballot.<sup>932</sup> (If the voter simply requests a ballot, and is not already registered, the clerk is instructed to send a registration form alongside the ballot.<sup>933</sup>)

## Security/ Privacy

Ballots transmitted electronically must include a statement notifying the voter that the ballot's secrecy "may be compromised during the duplication process."<sup>934</sup> Some confusion, though, exists in how a voter should return a completed ballot. One provision states that voters may return both registration forms *and* ballots by electronic means<sup>935</sup>, yet another requires them to print and return the ballot by mail.<sup>936</sup> Perhaps both are required, but the Secretary of State – who is tasked with prescribing transmission methods<sup>937</sup> – should clarify this. In any case, the office has provided all elections officials with email accounts so that they may transmit forms and ballots to voters through the Internet, and will manage the website by which ballots are supplied to officials.<sup>938</sup>

## Voter Outreach

The legislature earlier delegated to the Department of State's Bureau of Elections the responsibility of disseminating information on the procedures for registering and voting to UOCAVA voters.<sup>939</sup> To date, the office's website has provided a brief overview of what MOVE covers and to whom it applies, plus some short instructions and links to the Federal Voting Assistance Program's website.<sup>940</sup>

# MISSOURI

## Ballot Transmission/ Return

Missouri passed legislation this spring to reflect some of the federal law's mandates. Under the new amendments, the Secretary of State is tasked with establishing procedures by which UOCAVA voters may request and receive registration forms and absentee ballots by at least one form of electronic communication.<sup>941</sup> Voters must submit completed voter registration forms 27 days (or by the fourth Wednesday) before an election.<sup>942</sup> And ballot requests must arrive at election authority offices by 5 p.m. on the Wednesday before an election.<sup>943</sup>

Also included in the new legislation is the sort of language we have seen in other states' new laws: "Not later than forty-five days before each general, primary, and special election for federal office, the election authority shall cause to have printed and made available a sufficient quantity of absentee ballots, ballot envelopes, and mailing envelopes for [UOCAVA] voters and shall begin transmitting such ballots to [UOCAVA] voters who have submitted an absentee ballot application"<sup>944</sup> Such language is helpful but could be clearer. Since clerks in Missouri typically transmit ballots within three working days of receiving requests (or within five working days after absentee ballots become available)<sup>944</sup>, it is important that they be notified that all requests for absentee ballots received 45 days before an election be acted on by that day, and not three days later.

## Security/ Privacy

Missouri voters should note that completed ballots must be mailed, not faxed or emailed, to election authorities by close of Election Day<sup>946</sup> (except in the case of "hostile fire areas."<sup>947</sup>) Such method, as noted earlier, is the safest way and Missouri gets high marks for that practice. Persons in "federal service," though, "when sent from a location determined by the secretary of state to be inaccessible" on Election Day, may return completed ballots by fax.<sup>948</sup>

## Voter Outreach

As for outreach to voters on the new procedures in place, Secretary Carnahan's office intends to update its UOCAVA portion of the website to reflect changes in the law.<sup>949</sup> Additionally, they will work with the National Guard to produce information that can be distributed to military voters.<sup>950</sup> Such efforts are laudable, but they beg the

question: what about the civilians? These people certainly are not contacted or kept up to date in the same way as military personnel. Perhaps greater efforts can be made toward this segment of the population in the future, as civilians may live in remote – perhaps, off-the-grid – areas. On the plus side, and as provided by MOVE, the new legislation requires the Secretary of State, in coordination with local election authorities, to develop a free access system by which UOCAVA voters may check to see that the clerks received their completed ballots.<sup>951</sup>

## NEVADA

### Ballot Transmission/ Return

A few months before MOVE was enacted, Nevada passed its own legislation to address UOCAVA voting by electronic means. The new provisions, for the most part, now allow a military or overseas voter to request and submit registration forms and ballots by either fax or email (in addition to regular mail).<sup>952</sup> They may also submit completed ballots in this manner, if doing so by mail doesn't afford them enough time.<sup>953</sup>

A UOCAVA voter who isn't registered to vote must complete a state registration application, FPCA, or a special absent ballot "used only for purposes of registering the person to vote" before he may receive an absent ballot.<sup>954</sup> As with other ballot requests, the FPCA may be mailed, faxed, or uploaded, and the voter will be deemed registered as of the date the form is postmarked, if sent by mail, or the electronic transmission initiated, if faxed or emailed.<sup>955</sup> Voters should note that registration closes on the third Tuesday before any primary or general election.<sup>956</sup>

Still absent from the new laws is MOVE's 45-day requirement. Since the Nevada legislature has biennial sessions, it has not had the opportunity to update the state law. Currently the state has a conflicting provision: county clerks must have absentee ballots ready and available for voters outside the state "not later than 40 days before a primary or general election, if possible."<sup>957</sup> The Nevada Secretary of State's office acknowledges that federal law trumps, and the state intends to follow the 45-day rule mandate.<sup>958</sup>

### Security/ Privacy

As for Nevada's security programs, the state gets pretty high marks. Last year, the Secretary of State adopted regulations to protect electronically exchanged ballots. Unique identification codes are given to each absent ballot sent electronically, and clerks keep a record of the voter's personal information plus the ballot's ID, so that they may later compare the received completed ballot with the information and original one on hand.<sup>959</sup> Clerks also send confirmation of receipt of a completed ballot returned electronically, if the voter so requests.<sup>960</sup>

A registered voter must state in a request for a ballot whether he wants the ballot sent by mail or electronically – fax or Internet – and how he'll return the completed form.<sup>961</sup> One who indicates he'll either fax or upload a completed ballot must sign an oath acknowledging that, by transmitting it electronically, he has waived his right to a secret ballot.<sup>962</sup> A clerk who transmits a ballot electronically must then, "insofar as is practicable, ensure the secrecy of [these] ballots."<sup>963</sup> Voters who return their ballots by mail must take pains to send them with plenty of time: all absent ballots must be received by county clerks by close of the polls on Election Day to be considered valid.<sup>964</sup>

### Voter Outreach

The Secretary has conducted a presentation for the National Guard in-state.<sup>965</sup> According to representatives of his office, Nevada has also worked in some capacity with the Federal Voting Assistance Program and the Overseas Voter Foundation to promote UOCAVA voting to overseas Nevada residents and has been in contact with bases of all armed services throughout Nevada emphasizing absentee overseas voting.<sup>966</sup> This is a good start, but more should be done to mobilize voters abroad.

## NORTH CAROLINA

Like a few other states in this report, North Carolina was sued by the Department of Justice for UOCAVA violations in 2006.<sup>967</sup> Due to a short window of time – four weeks – between North Carolina's primary and run-off elections, many military and overseas voters did not get the chance to submit their absentee ballots because of time constraints.<sup>968</sup> DOJ filed the lawsuit in the state's Northern District on March 16, 2006, and five days later the court entered a consent decree in which a temporary time extension was granted for that May's primary cycle.<sup>969</sup> On De-

ember 18, 2006, the court entered the parties' agreement of dismissal, as North Carolina had enacted legislation expanding the time between the primary and run-off from four to seven weeks, thereby providing UOCAVA voters with more time, and allowing for transmittal and submission by fax.<sup>970</sup>

### **Ballot Transmission/ Return**

Citizens in North Carolina may now submit registration forms by mail, fax, or transmission of a scanned document.<sup>971</sup> Less straightforward, though, is the requirement that forms submitted by fax or email "be received by the county board of elections by a time established by that board, but no earlier than 5:00 p.m. on the 25<sup>th</sup> day" before a primary or election.<sup>972</sup> Since there's no across-the-board deadline, counties will have to make their deadlines clear to UOCAVA voters.

Most UOCAVA voters will use the FPCA to both register and request absentee ballots. For military and overseas voters who submit ballot requests despite being unregistered, North Carolina requires elections officials to "make a reasonable investigation as to the applicant's residence," and if it is determined the voter lives in the precinct, is eligible to register and vote under the state's laws, and has submitted an otherwise complete application, the voter shall be registered.<sup>973</sup> Once the voter receives the absentee ballot – by fax, scan, or email<sup>974</sup> – he must complete it in the presence of one witness.<sup>975</sup> All completed ballots must be returned by mail.<sup>976</sup>

Also, the State Board of Elections must provide absentee ballots to local officials no later than 60 days before a general election or 50 days before a primary (or any other election).<sup>977</sup> Similar to most other states reviewed in this report, North Carolina has no law on the books echoing the 45-day rule. SBE, then, will need to take measures to ensure all counties are apprised of this new duty. Indeed, on April 1, 2010, county election directors and staff were trained on MOVE's mandates, and included in a PowerPoint presentation was the instruction to send out ballots 45 days before an election to all voters who had submitted requests by that day.<sup>978</sup> As SBE claims, "It is the practice of [the state's] county boards to send [ballots] out ASAP."<sup>979</sup>

### **Privacy/ Security**

Additional work needs to be done. As State Board of Elections Director Gary Bartlett noted in his letter to the EAC,<sup>980</sup> the State Board of Elections intends to improve its "free access tracking system" to enable military and overseas voters to go online to track requests and receipts. Its officials also intend to propose necessary legislative changes and prepare guidelines on ensuring the security and privacy of UOCAVA ballots.<sup>981</sup>

### **Voter Outreach**

As SBE's General Counsel Don Wright said, the Board doesn't do any outreach to UOCAVA voters, instead allowing the Overseas Vote Foundation and FVAP to take care of that.<sup>982</sup> It does, however, provide some rudimentary information for UOCAVA voters on how to obtain FPCA forms and absentee ballots, along with contact information for those with questions.<sup>983</sup>

## **OHIO**

### **Ballot Transmission/ Return**

Ohio has enacted legislation implementing many of MOVE's requirements. Military and overseas voters may now apply for, and return completed, voter registration forms by "electronic means."<sup>984</sup> Such procedures must permit a voter to state how he wants a voter registration form delivered – by mail or electronically.<sup>985</sup> Additionally, voters may apply for absent ballots electronically,<sup>986</sup> and specify whether they'd like to receive them by mail or electronically.<sup>987</sup> Ballot requests must be made no later than noon of the third day before an election (or by the day before an election if the voter delivers the request in person).<sup>988</sup>

Ohio added a clear-cut 45-day rule: absentee ballots for UOCAVA voters must be printed and available by the 45<sup>th</sup> day before an election.<sup>989</sup> More importantly, no later than the 45<sup>th</sup> day before an election, a board must mail, fax, or otherwise send (in keeping with electronic transmission requirements, most likely) absentee ballots to those voters whose requests have been received "prior to that time."<sup>990</sup> Afterward, the board shall "promptly" send out ballots in response to UOCAVA requests.<sup>991</sup> Those who'd like to receive their ballots by mail are in luck: boards are to use the "fastest mail service available," excepting certified mail.<sup>992</sup>

Once a voter has submitted his completed ballot, he may – as required by MOVE – access a website, to be created by the Secretary of State, to determine if his request for a ballot was received and processed, if the board received his completed ballot, and if it was counted.<sup>993</sup> Ohio military and overseas voters have a bit of leeway in having their votes counted: although ballots must be postmarked by the day before an election, those received by boards of election through the tenth day following the election will still be counted.<sup>994</sup>

### **Security/ Privacy**

Given these new electronic means of transmission, the Secretary of State must, “by rule, establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information” and, “to the extent practicable, the procedures shall protect the security and integrity of the electronic voter registration form request process ...”<sup>995</sup> Ohio voters should note that completed ballots must be *mailed* back; those returned by electronic means will not be accepted or counted.<sup>996</sup>

### **Voter Outreach**

The Secretary’s office is also doing quite a bit of outreach. They intend to “reach out to our various statewide agenc[ies], non-profits and other partners that serve ... UOCAVA citizens.”<sup>997</sup> Additionally, they will work with the Overseas Vote Foundation on updating the state’s UOCAVA site (licensed through OVF) to include information on the MOVE Act, along with on their own website.<sup>998</sup> Lastly, they are partnering with local election officials to educate local communities.<sup>999</sup>

# ENDNOTES

- 1 See International Foundation for Electoral Systems, "Election Guide," available at [http://www.electionguide.org/voter-turnout.php?&year=2008&\\_orderby=country\\_name&\\_dir=ASC](http://www.electionguide.org/voter-turnout.php?&year=2008&_orderby=country_name&_dir=ASC); Institute for Democracy and Electoral Administration, "Voter Turnout" available at <http://www.idea.int/vt/>.
- 2 Douglas R. Hess & Jody Herman, "Representational Bias in the 2008 Election," Project Vote, November 2009, available at <http://www.projectvote.org/images/publications/Reports%20on%20the%20Electorate/Representational%20Bias%20in%20the%202008%20Electorate/Representational%20Bias%20in%20the%202008%20Electorate.pdf>.
- 3 See, e.g., Raymond E. Wolfinger & Steven J. Rosenstone, *Who Votes?*, 1980, Yale University Press.
- 4 CalTech-MIT Voting Technology Project, "Voting: What Is, What Could Be," July 2001, available at [http://www.vote.caltech.edu/drupal/files/report/voting\\_what\\_is\\_what\\_could\\_be.pdf](http://www.vote.caltech.edu/drupal/files/report/voting_what_is_what_could_be.pdf).
- 5 Stephen Ansolabehere, "Testimony Before the Senate Rules Committee," March 11, 2009, available at [http://www.vote.caltech.edu/drupal/files/news/03112009Ansolabehere\\_Testimony.pdf](http://www.vote.caltech.edu/drupal/files/news/03112009Ansolabehere_Testimony.pdf).
- 6 Demos, "Voters Win with Same Day Registration," Updated January 2010, available at [http://www.demos.org/pubs/voterswin\\_feb032010.pdf](http://www.demos.org/pubs/voterswin_feb032010.pdf).
- 7 Stephen Knack, "Election-Day Registration: The Second Wave," *American Politics Quarterly*, January, 2001, 29(1), 65-78; Stephen Knack & James White, "Election-Day Registration and Turnout Inequality," *Political Behavior*, 2000, 22(1), 29-44; Craig L. Brians & Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly*, March 2001, 82(1), 170-183; Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960-1992," *American Politics Quarterly*, 1994, 22(1), 74-87.
- 8 See, e.g., R. Michael Alvarez & Jonathan Nagler, "Same Day Voter Registration in Maryland, Demos," Winter 2010, available at [http://www.demos.org/pubs/SDR\\_MD.pdf](http://www.demos.org/pubs/SDR_MD.pdf); R. Michael Alvarez & Jonathan Nagler, "Election Day Voter Registration in New Mexico," Demos, Winter 2010, available at [http://www.demos.org/pubs/SDR\\_new\\_mexico.pdf](http://www.demos.org/pubs/SDR_new_mexico.pdf); R. Michael Alvarez & Jonathan Nagler, "Election Day Voter Registration in Nebraska," Demos, Winter 2008, available at <http://www.demos.org/pubs/EDRnebraska.pdf>; R. Michael Alvarez & Jonathan Nagler, "Election Day Voter Registration in Massachusetts," Demos, January 2008, available at <http://www.demos.org/pubs/EDRmass.pdf>.
- 9 Lorraine Minnite, "Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security, A Preliminary Report," Demos, November 2007, available at [http://www.demos.org/pubs/edr\\_fraud.pdf](http://www.demos.org/pubs/edr_fraud.pdf); Demos, "Election Day Registration: A Ground-Level View," November 2007, available at [http://www.demos.org/pubs/EDR\\_Clerks.pdf](http://www.demos.org/pubs/EDR_Clerks.pdf).
- 10 See Robert A. Jackson, Robert D. Brown, & Gerald C. Wright, "Registration, Turnout, and the Electoral Representativeness of U.S. State Electorates," *American Politics Research*, 1998, 26, 259-287; Jan E. Leighley & Jonathan Nagler, "Electoral Laws and Turnout, 1972-2008," paper prepared for presentation at the Fourth Annual Conference on Empirical Legal Studies, November 2009, University of Southern California, on file with the authors.
- 11 N.C. GEN. STAT. §§ 163-82.6A; 163-227.2.
- 12 North Carolina State Board of Elections, "One-Stop Voting Sites For The May 4, 2010 Primary Election," provided by Don Wright, General Counsel, North Carolina State Board of Elections, email dated March 30, 2010.
- 13 North Carolina State Board of Elections, "Report on Same Day Registration," March 31, 2009, provided by Don Wright, General Counsel, North Carolina State Board of Elections, email dated March 30, 2010.
- 14 See United States Elections Project, "2004 General Election Turnout Rates" available at [http://elections.gmu.edu/Turnout\\_2004G.html](http://elections.gmu.edu/Turnout_2004G.html); United States Elections Project, "2008 General Election Turnout Rates," available at [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html).
- 15 North Carolina voters cast 23,000 fewer provisional ballots in 2008 than 2004 despite the significant increase in voter turnout. See U.S. Election Assistance Commission, "Election Day Survey," 2004, available at <http://www.eac.gov/assets/1/AssetManager/2004%20EAVS%20Chapter%20206.pdf>, p. 14 (77,469 provisional ballots cast in 2004); U.S. Election Assistance Commission, "Election Day Survey," 2008, available at <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>, p. 48 (53,976 provisional ballots in 2008).
- 16 10 ILL. COMP. STAT. §§ 5/4-6; 5/5-5; 5/6-29.
- 17 10 ILL. COMP. STAT. §§ 5/4-50; 5/5-50; 5/6-100. The 7 day period is effective as of January 1, 2010. Prior to January 1, 2010, the grace period was 14 days. See 2009 Ill. Legis. Serv., P.A. 96-441.
- 18 10 ILL. COMP. STAT. §§ 5/4-50; 5/5-50; 5/6-100.
- 19 Email from Ken Menzel, Legal Counsel, Illinois State Board of Elections, May 19, 2010; See also 10 ILL. COMP. STAT. §§ 5/19-4; 5/4-6; 5/5-5; 5/6-29 (establishing that there is a 13 day period between the beginning of absentee voting and the voter registration deadline).
- 20 Interview with Krystle Krol, Office of the Board of Elections Commissioners for the City of Chicago, May 19, 2010.
- 21 Interview with Elizabeth Gannon, Election Commission of Peoria City, May 19, 2010; Interview with Helen Burgess, Office of the Peoria County Clerk, May 19, 2010.
- 22 Interview with Krystle Krol, Office of the Board of Elections Commissioners for the City of Chicago, May 19, 2010.
- 23 *Id.*
- 24 Interview with Steve Winkler, Office of the Cook County Clerk, May 19, 2010.
- 25 *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6<sup>th</sup> Cir. 2008).

- 26 H.B. 87 (Ill. 2009).
- 27 10 ILL. COMP. STAT. §§ 5/4-50; 5/5-50; 5/6-100.
- 28 See H.B. 1025 (Ill. 2007-2008); H.B. 1027 (Ill. 2007-2008); H.B. 22 (Ill. 2007-2008).
- 29 OHIO REV. CODE. § 3509.01; § 3509.02.
- 30 OHIO REV. CODE. § 3503.06.
- 31 *State ex rel. Colvin v. Brunner*, 896 N.E.2d 979, 988-992 (Ohio 2008).
- 32 Project Vote, “Groups Win Legal Battle to Protect Ohio Five-Day Window: Voters Can Register and Vote on Same Day,” September 30, 2008, available at <http://www.projectvote.org/newsreleases/292-groups-win-legal-battle-to-protect-ohio-five-day-window-voters-can-register-and-vote-on-same-day.html>.
- 33 *Brunner v. Ohio Republican Party et al.*, 129 S.Ct. 5 (2008).
- 34 “Status Report of Legislation, HB 260,” available at <http://lsc.state.oh.us/coderev/hou128.nsf/House+Bill+Number/0260?OpenDocument>.
- 35 “Status Report of Legislation, HB 92,” available at <http://lsc.state.oh.us/coderev/hou128.nsf/House+Bill+Number/0092?OpenDocument>.
- 36 “Status Report of Legislation, SB 8,” available at <http://lsc.state.oh.us/coderev/sen128.nsf/Senate+Bill+Number/0008?OpenDocument>.
- 37 Ohio Legislative Service Commission, “Final Status Report of Legislation – 127<sup>th</sup> GA,” April 26, 2009, available at <http://www.lsc.state.oh.us/status127/srl127.pdf>.
- 38 H.R.J. 6 (Ohio 2008).
- 39 COLO. REV. STAT. § 1-2-201(3).
- 40 COLO. REV. STAT. § 1-2-217.5. Recently passed legislation amended the statutes to clarify that when an elector is registered and moves within the state, he or she may make an address change and does not need to re-register. See H.B. 09-1216 (Colo. 2009); H.B. 10-1116 (Colo. 2010).
- 41 Email correspondence with Judd Choate, Director of the Division of Elections, Colorado Department of State, March 29, 2010.
- 42 Email correspondence with from Judd Choate, Director of the Division of Elections, Colorado Department of State, March 29, 2010.
- 43 See, e.g., Robert A. Jackson, Robert D. Brown, & Gerald C. Wright, “Registration, Turnout, and the Electoral Representativeness of U.S. State Electorates,” *American Politics Research*, 1998, pp. 26, 259.
- 44 MICH. COMP. LAWS § 168.497(1); LA. REV. STAT. § 18:135(A)(1).
- 45 ARIZ. REV. STAT. § 16-120.
- 46 KY. REV. STAT. § 116.045(2).
- 47 MO. REV. STAT. § 115.135(1).
- 48 NEV. REV. STAT. § 293.560 (1).
- 49 NEV. REV. STAT. § 293.560 (5).
- 50 Project Vote, “Restricting Voter Registration Drives: Issues in Election Administration: Policy Brief Number 5,” January 9, 2006, available at [http://projectvote.org/images/publications/Policy%20Briefs/Project\\_Vote\\_Policy\\_Brief\\_5\\_Restricting\\_Voter\\_Registration\\_Drives.pdf](http://projectvote.org/images/publications/Policy%20Briefs/Project_Vote_Policy_Brief_5_Restricting_Voter_Registration_Drives.pdf).
- 51 The National Voter Registration Act, which establishes the mail-in voter registration form and requires states to “accept and use” it, requires states’ chief election officials to make the mail-in voter registration form available “for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” 42 U.S.C. § 1973gg-4(b). Mail-in voter registration forms are also to be distributed in public assistance offices under the requirements of the NVRA. 42 U.S.C. § 1973gg-5(a)(4)(A)(i).
- 52 H.B. 2383 (Ariz. 2009).
- 53 H.B. 551 (Mo. 2009).
- 54 H.B. 1822 (Mo. 2008).
- 55 HB908 – Regular Session” available at <http://www.legis.state.la.us/billdata/byinst.asp?sessionId=08rs&billtype=HB&billno=908>
- 56 See, e.g., Matt Barreto, Stephen Nuno, & Gabriel Sanchez, “Voter ID Requirements and the Disenfranchisements of Latino, Black, and Asian Voters,” paper presented at the annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago, IL, August 30, 2007, available at [http://www.allacademic.com/meta/p209601\\_index.html](http://www.allacademic.com/meta/p209601_index.html); The Brennan Center for Justice, “Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo ID,” November 2006, available at [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf); Brief of Rock The Vote, National Black Law Students Association, National Black Graduate Student Association, The Feminist Majority Foundation & The Student Association For Voter Empowerment as Amici Curiae Supporting Petitioners, *Crawford v. Marion County*, 553 U.S. 181 (2008); Brief of AARP & National Senior Citizens Law Center Supporting Petitioners, *Crawford v. Marion County*, 553 U.S. 181 (2008) (severe burden on older voters).
- 57 See Jody Herman & Doug Hess, “Internet Access and Voter Registration,” Project Vote, July 31, 2009, available at <http://projectvote.org/images/publications/Policy%20Reports%20and%20Guides/PV%20Internet%20access-VR%20MemoFINAL.pdf>.
- 58 Scott Novakowski, “Democracy In A Mobile America,” Dēmos, July 2009, available at <http://demos.org/publication.cfm?currentpublicationID=AD5C9B8D-3FF4-6C82-5D8506DD969F37AE>.
- 59 *Id.*

- 60 Stephen Ansolabehere, "Testimony Before the Senate Rules Committee," March 11, 2009, *available at* [http://www.vote.caltech.edu/drupal/files/news/03112009Ansolabehere\\_Testimony.pdf](http://www.vote.caltech.edu/drupal/files/news/03112009Ansolabehere_Testimony.pdf).
- 61 *Id.*
- 62 Myrna Perez, "When Voters Move," Brennan Center for Justice, 2009, *available at* <http://www.brennancenter.org/page/-/Democracy/When-VotersMove.pdf>.
- 63 42 U.S.C. § 1973gg-6(e)(1).
- 64 42 U.S.C. § 1973gg-6(e)(2). Technically, the NVRA requires a voter to be able to update her address at her new polling place, but voting at the new polling place is only permitted if allowed under state law. *Id.*
- 65 ARIZ. REV. STAT. § 16-135(B).
- 66 OHIO REV. CODE § 3503.16(C).
- 67 U.S. Election Assistance Commission, "Election Administration and Voting Surveys," *available at* [http://www.eac.gov/research/election\\_administration\\_and\\_voting\\_survey.aspx](http://www.eac.gov/research/election_administration_and_voting_survey.aspx).
- 68 "Ballot Entitlement for the General Primary Election – February 2, 2010," chart provided by Illinois State Board of Elections.
- 69 KY. REV. STAT. § 116.085(3); KY. REV. STAT. § 116.025(3).
- 70 *Id.*
- 71 Myrna Perez, "When Voters Move," Brennan Center for Justice, 2009, *available at* <http://www.brennancenter.org/page/-/Democracy/When-VotersMove.pdf>.
- 72 ARIZ. REV. STAT. § 16-125; 10 ILL. COMP. STAT. § 5/3-1; KY. REV. STAT. § 116.025 (5); NEV. REV. STAT. 293.490; N.C. GEN. STAT. § 163-55(a).
- 73 10 ILL. COMP. STAT. § 5/17-10(b).
- 74 COLO. REV. STAT. § 1-2-216(4).
- 75 COLO. REV. STAT. § 1-2-216(4).
- 76 LA. REV. STAT. § 18:110 (C).
- 77 Email correspondence with Angie Rogers LaPlace, March 29, 2010; *See also* Louisiana Secretary of State, "Informational Pamphlet for Election Day Voting," November 2009, p. 50, *available at* <http://www.sos.louisiana.gov/Portals/0/elections/pdf/IPElecDayPDFRev.11-09123009.pdf>; LA. REV. STAT. § 18:196(B)(4).
- 78 MICH. COMP. LAWS § 168.507a.
- 79 MO. REV. STAT. §§ 115.277(4); 115.275(3); 115.135(1); 115.279(8).
- 80 MO. REV. STAT. §§ 115.277(5); 115.275(4).
- 81 OHIO REV. CODE § 3503.16(c).
- 82 U.S. Election Assistance Commission, "Election Administration and Voting Surveys," *available at* [http://www.eac.gov/research/election\\_administration\\_and\\_voting\\_survey.aspx](http://www.eac.gov/research/election_administration_and_voting_survey.aspx).
- 83 Michael P. McDonald, "Voter Preregistration Programs," Pew Center on the States, January 2010, p. 21.
- 84 *Id.* at p. 24.
- 85 *Id.* at p. 26.
- 86 N.C. GEN. STAT. § 163-82.1(d).
- 87 42 U.S.C. § 1973gg (b)(1).
- 88 This study is limited to NVRA implementation in public assistance agencies. However, it should be noted that there are several other state agencies designated as voter registration agencies under the NVRA. The law may be best known for its requirement that state motor vehicle departments provide voter registration services. While many millions of citizens have taken advantage of "motor voter" registration, significant problems in implementation remain. Following the 2008 election, Dēmos and the Lawyers Committee for Civil Rights Under Law sent a letter to the U.S. Department of Justice documenting problems with DMV registration in several states across the country, including Louisiana. Similarly, in April 2010, the Brennan Center for Justice and the League of Women Voters sent letters election officials in four states, including Illinois and Nevada, notifying them that they were out of compliance with a provision of the law requiring that a change of address for a driver's license shall serve as a change of address for voter registration purposes unless the individual indicates otherwise. Letters on file with the authors.

While it has never been systematically studied, federal data suggest that offices that provide services to individuals with disabilities, also subject to the requirements of the NVRA, may be largely ignoring the law. For example, in the 2007-2008 reporting period disability services offices nationwide reported only 127,965 registrations, 49,320 of which were reported to have come from Texas (even the Texas figure is doubtful as that state only reported 2,200 disability services registrations in 2005-2006). Among the states covered in this report, Nevada and Michigan fared especially poorly, reporting only 33 and 256 registrations from disability services offices, respectively. U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008," June 30, 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20>

[Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf](#) The authors recommend additional study of compliance with the NVRA in disability services offices.

- 89 Scott Novakowski, "Fulfilling the Promise: Expanding Voter Registration of Low-Income Citizens Under the National Voter Registration Act," *Demos*, July 2010, *available at* [http://www.demos.org/pubs/Fulfilling\\_Promise.pdf](http://www.demos.org/pubs/Fulfilling_Promise.pdf); U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008," June 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>; U.S. Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996," *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf>. *See also* Douglas R. Hess & Scott Novakowski, "Unequal Access: Neglecting the National Voter Registration Act, 1995-2007," *Demos* and Project Vote, February 2008, *available at* <http://www.demos.org/pubs/UnequalAccessReport-web.pdf>.
- 90 U.S. Census Bureau, "Current Population Survey, Voting and Registration in the Election of November 2008," analysis by *Demos*.
- 91 *See* Douglas R. Hess & Scott Novakowski, "Unequal Access: Neglecting the National Voter Registration Act, 1995-2007," *Demos* and Project Vote, February 2008, *available at* <http://www.demos.org/pubs/UnequalAccessReport-web.pdf>.
- 92 Complaint, *Association of Community Organizations for Reform Now v. Scott*, No. 08-cv-04084 (W.D. Mo., April 23, 2008), *available at* <http://www.demos.org/pubs/Complaint%204.23.08.pdf>.
- 93 *Association of Community Organizations for Reform Now v. Scott*, No. 08-cv-04084, 2008 WL 2787931, at \*4 (W.D. Mo., July 15, 2008), *available at* <http://www.demos.org/pubs/MO%20PI%20Order%207.15.08.pdf>.
- 94 Settlement Agreement, *Association of Community Organizations for Reform Now v. Scott*, No. 08-cv-04084 (W.D. Mo., June 24, 2009), *available at* [http://www.demos.org/pubs/Settlement\\_MONVRA.pdf](http://www.demos.org/pubs/Settlement_MONVRA.pdf).
- 95 Data provided by Missouri Department of Social Services pursuant to compliance plan in *ACORN v. Scott*, No. 2:08-cv-04084 (W.D. Mo. 2009).
- 96 U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005-2006," June 2007, *available at* <http://www.eac.gov/assets/1/Page/NVRA%20Reports%20and%20Data%20Sets%202006-2005.pdf>.
- 97 Lisa J. Danetz, "Expanding Voter Registration for Low Income Ohioans: The Impact of the National Voter Registration Act," *Demos*, July 22, 2010, *available at* <http://www.demos.org/publication.cfm?currentpublicationID=FB9A8098-3FF4-6C82-5F838C495624637A>.
- Five of six offices visited had no voter registration applications on site; only three of 103 clients interviewed reported being provided with the NVRA-required "declination form." Complaint, *Harkless v. Brunner*, No. 06-cv-2284 (N.D. Ohio Sept. 21, 2006), pp. 8-9, *available at* <http://www.demos.org/pubs/Final%20pdf%20version%20of%20Complaint.pdf>.
- 98 Complaint Exh. C, *Harkless v. Brunner*, No. 06-cv-2284 (N.D. OH Sept. 21, 2006) (letter from Judy Grady, Director of Elections and Election Reform, Office of Ohio Secretary of State, to Cynthia Samples and Roslyn Talerico, Co-Convenors, Greater Cleveland Voter Coalition, May 26, 2006).
- 99 *Harkless v. Brunner*, 545 F.3d 445 (6<sup>th</sup> Cir. 2008), *available at* <http://www.demos.org/pubs/6th%20circuit%20opinion.pdf>.
- 100 Lisa J. Danetz, "Expanding Voter Registration for Low Income Ohioans: The Impact of the National Voter Registration Act," *Demos*, July 22, 2010, *available at* <http://www.demos.org/publication.cfm?currentpublicationID=FB9A8098-3FF4-6C82-5F838C495624637A>,
- 101 Data provided by Ohio Department of Jobs and Family Services pursuant to settlement agreement in *Harkless v. Brunner*, No. 1:06-cv-02284 (N.D. Ohio 2010).
- 102 U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005-2006," June 2007, *available at* <http://www.eac.gov/assets/1/Page/NVRA%20Reports%20and%20Data%20Sets%202006-2005.pdf>.
- 103 Lisa J. Danetz & Scott Novakowski, "Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the National Voter Registration Act," *Demos*, Updated April 2008, *available at* <http://www.demos.org/pubs/NVRAupdated.pdf>.
- 104 Data provided by North Carolina State Board of Elections. For more on North Carolina's implementation of the NVRA, *see* Lisa J. Danetz & Scott Novakowski, "Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the National Voter Registration Act," *Demos*, updated April 2008, *available at* <http://www.demos.org/pubs/NVRAupdated.pdf>.
- 105 U.S. Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008," June 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>; U.S. Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996," *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf>.
- 106 "Memorandum of Agreement By and Between the United States and The State of Illinois, Department of Human Services," December 15, 2008, *available at* <http://www.demos.org/pubs/ILAgreement%20Letter.pdf>.
- 107 Compliance report provided by the Illinois Department of Human Services to the Voting Section of the Civil Rights Division of the U.S. Department of Justice pursuant to the Memorandum of Agreement entered into on December 15, 2008, December 11, 2009, on file with the authors.

- 108 U.S. Election Assistance Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008,” June 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>.
- 109 *Id.*; U.S. Federal Election Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996,” *available at* [http://www.eac.gov/assets/1/AssetManager/The Impact of the National Voter Registration Act on Federal Elections 1995-1996.pdf](http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf).
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- 111 For example, there are ongoing problems with offices not reporting data on time and offices with substantial client populations are reporting that they have not registered a single voter, or only a very few, in months. Arizona Department of Economic Security, “Report pursuant to Agreement between the United States Department of Justice and the Arizona Department of Economic Security concerning Standards and Monitoring of Compliance with the National Voter Registration Act of 1993,” December 2008 and June 2009, on file with the authors.
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- 113 Colorado Secretary of State, “NVRA Agency-Based Voter Registration in Colorado: 2009 Annual Report,” April 2010, *available at* [http://www.elections.colorado.gov/Content/Documents/NVRA%20Agency%20Information/2009\\_Report\\_on\\_NVRA\\_compliance.pdf](http://www.elections.colorado.gov/Content/Documents/NVRA%20Agency%20Information/2009_Report_on_NVRA_compliance.pdf).
- 114 *Id.*
- 115 U.S. Election Assistance Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005-2006,” June 2007, *available at* <http://www.eac.gov/assets/1/Page/NVRA%20Reports%20and%20Data%20Sets%202006-2005.pdf>; U.S. Federal Election Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996,” *available at* [http://www.eac.gov/assets/1/AssetManager/The Impact of the National Voter Registration Act on Federal Elections 1995-1996.pdf](http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf).
- 116 U.S. Census Bureau, “Current Population Survey, Voting and Registration Supplement of November 2006,” analysis by Dēmos; *See also* Douglas R. Hess & Scott Novakowski, “Unequal Access: Neglecting the National Voter Registration Act, 1995-2007,” Dēmos and Project Vote, February 2008, *available at* <http://www.demos.org/pubs/UnequalAccessReport-web.pdf>. The percentage of low-income citizens not registered to vote declined substantially in the 2008 election, possibly due to the attention given to the state for its early Democratic caucus.
- 117 U.S. Election Assistance Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008,” June 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>; U.S. Federal Election Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996,” *available at* [http://www.eac.gov/assets/1/AssetManager/The Impact of the National Voter Registration Act on Federal Elections 1995-1996.pdf](http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf).
- 118 Also problematic is the fact clients claiming to be already registered do not seem to be provided with a Voter Registration Rights and Declination form. “MS 0650 Voter Registration Procedures,” January 1, 2010, at (A)(4) *available at* [http://manuals.chfs.ky.gov/dcb\\_manuals/dfs/VOL1/VOLIMS0650.doc](http://manuals.chfs.ky.gov/dcb_manuals/dfs/VOL1/VOLIMS0650.doc). Without completing this form, there seems to be no record in the client’s case file indicating that the offer was made, preventing proper evaluation of NVRA compliance.
- 119 921 KY. ADMIN. REGS. 3:030 § 8.
- 120 42 U.S.C. § 1973gg-5(6)(A); *See also* Department of Justice, “The Voter Registration Requirements of Sections 5, 6, 7 and 8 of the National Voter Registration Act (NVRA),” June 2010, *available at* [http://www.justice.gov/crt/voting/nvra/nvra\\_faq.php](http://www.justice.gov/crt/voting/nvra/nvra_faq.php).
- 121 U.S. Election Assistance Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008,” June 2009, *available at* <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>; U.S. Federal Election Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996,” *available at* [http://www.eac.gov/assets/1/AssetManager/The Impact of the National Voter Registration Act on Federal Elections 1995-1996.pdf](http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf).
- 122 LA. REV. STAT. § 18:116(B)(1)(d).
- 123 *See* Louisiana Secretary of State, “Implementing the National Voter Registration Act in Voter Registration Agencies,” revised October, 2009, p. 5, *available at* <http://www.sos.louisiana.gov/Portals/0/elections/pdf/NVRAManualRevised10-9-09.pdf>. Furthermore, while we were not able to get a clear answer from the Secretary of State’s office on this issue, correspondence with the Commissioner of Elections also suggests that the law may not be being implemented according to its language. Email correspondence with Angie Rogers LaPlace, Commissioner of Elections, Louisiana Secretary of State, April 19, 2010.
- 124 Terri Lynn Land, Michigan Secretary of State, “Voter Information Center: Frequently Asked Questions,” *available at* [http://www.michigan.gov/sos/0,1607,7-127-1633\\_11619-123989--,00.html#42](http://www.michigan.gov/sos/0,1607,7-127-1633_11619-123989--,00.html#42).
- 125 *See e.g.*, Adrienne Packer & Molly Ball, “Alleging fraud, authorities raid voter group,” Las Vega Review-Journal, October 8, 2008.
- 126 COLO. REV. STAT. § 1-2-703(4).
- 127 KY. REV. STAT. § 119.207.

- 128 MO. REV. STAT. § 115.203.
- 129 NEV. REV. STAT. § 293.805.
- 130 518 F.3rd 375 (2008).
- 131 OHIO REV. CODE § 3503.29; MO. REV. STAT. § 115.205.
- 132 N.M. STAT. § 1-4-49. *American Association of People With Disabilities v. Herrera*, 580 F.Supp.2d 1195 (D.N.M. 2008)
- 133 42 U.S.C. § 1973gg 7(d).
- 134 Email correspondence with Ryan High, HAVA Administrator, Nevada Secretary of State, July 20, 2010.
- 135 Brennan Center for Justice, “State Restrictions on Community-Based Voter Registration Drives,” August 4, 2008, pp. 11, 13, *available at* [http://brennan.3cdn.net/ca85dbcf2d2ac045ff\\_awm6iviui.pdf](http://brennan.3cdn.net/ca85dbcf2d2ac045ff_awm6iviui.pdf).
- 136 *Id.* at p. 11.
- 137 *Id.* at pp. 12-13.
- 138 *Id.* at p. 19.
- 139 MO. REV. STAT. § 115.205.
- 140 Robin Carnahan, Missouri Secretary of State, “Voter Registration Information,” *available at* [http://www.sos.mo.gov/elections/s\\_default.asp?id=voter](http://www.sos.mo.gov/elections/s_default.asp?id=voter).
- 141 Interview with Paul Hodges, Political Director, ISSI-Missouri, March 23, 2010.
- 142 MO. REV. STAT. § 115.205.
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- 144 Bernie Buescher, Colorado Secretary of State, “Voter Registration Drives,” *available at* <http://www.elections.colorado.gov/Default.aspx?PageMenuID=1456>.
- 145 *Id.*
- 146 *Id.*
- 147 Interview with Jenny Flanagan, Executive Director, Common Cause of Colorado, May 20, 2010.
- 148 Email from Hilary Rudy, Legal Analyst for the Colorado Secretary of State, June 29, 2010.
- 149 8 COLO. CODE REGS. § 1505, Rule 44.2.
- 150 Bernie Buescher, Colorado Secretary of State, “Voter Registration Drive FAQs,” *available at* <http://www.elections.colorado.gov/Default.aspx?PageMenuID=1459>.
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- 562 S. 528, 111th Cong. (2009); H.R. 103, 111th Cong. (2009). The Senate and House bills differ slightly on this point. The Senate bill includes the foreclosure status of a voter’s residence, and “information indicating a change of residence” other than that obtained under the National Voter Registration Act section 8(d) among the inappropriate bases for challenge or disqualification by election officials, while the House bill includes non-material errors in voter registration and other documents, and other categories of evidence as designated by the Election Assistance Commission. Both bills include voter caging documents or lists, and lists created through a matching process which does not include unique information intended to prevent incorrect matches.
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- 569 The full set of qualifications is as follows: An individual is eligible to register to vote if such individual: "1.) Is a citizen of the United States; 2.) Will be eighteen years of age or more on or before the date of the regular general election next following his registration; 3.) Will have been a resident of the state twenty-nine days next preceding the election, except as provided in § 16-126 (permitting new movers to vote for President and Vice President only); 4.) Is able to write his name or make his mark, unless prevented from so doing by physical disability; 5.) Has not been convicted of treason or a felony, unless restored to civil rights. 6.) Has not been adjudicated an incapacitated person." ARIZ. REV. STAT. § 16-101.
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- 572 ARIZ. REV. STAT. § 16-552.
- 573 ARIZ. REV. STAT. § 16-591.
- 574 ARIZ. REV. STAT. § 16-594 (requiring only that a list be kept including "the names of all persons challenged, the grounds of the challenge and the determination of the board upon the challenge.").
- 575 ARIZ. REV. STAT. § 16-592 ("Any returned United States mail addressed to the person challenged or the spouse of the person challenged, or both, and to the address appearing on the precinct register or affidavit shall be considered as sufficient grounds to proceed under this section.").
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- 782 U.S. Census Bureau, "Voting and Registration in the Election of November 2008," Detailed Tables, Table 13, *available at* [www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html](http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html).
- 783 Randal C. Archibold, "Arizona Endorse Immigration Curbs," *The New York Times*, April 15, 2010. The law was subsequently temporarily enjoined in part and remains in litigation.
- 784 Teresa Watanabe, Anna Gorman, & Nicholas Riccardi, "Arizona's Crackdown on Illegal Migrants Feels Familiar," *Los Angeles Times*, April 16, 2010.
- 785 Interview with Abigail Duarte, Arizona State Coordinator, Mi Familia Vota April 14, 2010.
- 786 *Id.*
- 787 Interview with Alberto Olivas, Director of Center for Civic Participation, Maricopa Community College, April 20, 2010.
- 788 Email correspondence with Tammy Patrick, Federal Compliance Officer, Maricopa County Elections, May 19, 2010.
- 789 Email correspondence with Judd Choate, Director of the Division of Elections, Colorado Department of State, March 29, 2010.
- 790 Elections Division, Office of the Clerk and Recorder, "Spanish Language Voting Advisory Committee," *available at* <http://www.denvergov.org/elections/ForVoters/ACCESO/tabid/430227/Default.aspx>.
- 791 Email correspondence with Stephanie Y. O'Malley, Clerk and Recorder, Office of the Clerk and Recorder, Elections Division, June 4, 2010.
- 792 *Id.*
- 793 *Id.*
- 794 Congressman Heller introduced a bill in Congress in 2009 that would *require all ballots*, regardless of jurisdiction to be in English only. In announcing the new legislation, he stated that as Secretary of State "the most frequent complaint he heard in Carson City involved Spanish-language ballots in Clark and Washoe counties. 'There was not anything I could do about it because it was a federal issue,' Heller said. 'Now that I am in a federal position, I can.' Heller said bilingual ballots are an unfunded mandate in the 36 states that are required to supply them. He said the ballots are contrary to the goal of getting immigrants to assimilate. 'If you are going to be successful in this country you have to learn the language,' Heller said. 'Too many times the federal government encourages people not to learn the language.'" Steve Tetreault, "Voting Rights Act: Heller offers English-only bill," *Las Vegas Review-Journal*, May 7, 2009.
- 795 Email correspondence with Harvard Lomax, Registrar of Voters, Clark County, Nevada, May 5, 2010.
- 796 Email correspondence with Heather Lemley, Senior Deputy, Washoe County, Registrar of Voters, July 6, 2010.
- 797 Email correspondence with Cate Salim, Senior Deputy, Washoe County Registrar of Voters, July 12, 2010.
- 798 Interview with Katie Schwartzman, Legal Director, ACLU Foundation of Louisiana, March 30, 2010.
- 799 Email correspondence with Angie Rogers La Place, Commission of Elections, Office of the Secretary of State of Louisiana, April 20, 2010.
- 800 Letter from Angie Rogers LaPlace, Commissioner of Elections, Louisiana Secretary of State, July 7, 2010.
- 801 Immigration Policy Center, "New Americans in the Pelican State," October 26, 2009.
- 802 Interview with Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights, March 25, 2010.
- 803 James Lee, "Naturalizations in the United States:2009," Office of Immigrant Statistics, Department of Homeland Security, April 2010, p. 3.
- 804 Fiscal Policy Institute, "Immigrants and the Economy: Contribution of Immigrant Workers to the Country's 25 Largest Metropolitan Areas," December 2009, p. 5.
- 805 Email from Ken Menzel, Legal Counsel, Illinois State Board of Elections, April 20, 2010.
- 806 *Id.*
- 807 "Board of Election Commissioners for the City of Chicago," *available at* [http://chicagoelections.com/index.php?id=1&change\\_language=ch&real\\_page=](http://chicagoelections.com/index.php?id=1&change_language=ch&real_page=) (last visited July 29, 2010).
- 808 Interview with Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights, March 5, 2010.
- 809 Email correspondence with Jonathan Williams, Manager of Community Services, Election Division Office of Cook County Clerk David Orr, May 21, 2010.
- 810 *Id.*
- 811 Interview with Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights, March 5, 2010.

- 812 *Id.*
- 813 U.S. Census Bureau, “Quick Facts, Lake County, Illinois,” *available at* <http://quickfacts.census.gov/qfd/states/17/17097.html>.
- 814 Email correspondence with Sarah Ball Johnson, Executive Director, Kentucky State Board of Elections, July 8, 2010.
- 815 Email correspondence with Ben Hovland, Deputy Counsel, Missouri Secretary of State’s Office, April 27, 2009.
- 816 Email correspondence with Ben Hovland, Deputy Counsel, Missouri Secretary of State’s Office, July 14, 2010.
- 817 Email correspondence with Don Wright, General Counsel, North Carolina State Board of Elections, March 30, 2010.
- 818 Email correspondence with Cherie Poucher, Director Wake County Board of Elections, May 24, 2010.
- 819 Interview with Tony Asion, Executive Director, El Pueblo, April 26, 2010.
- 820 Audrey Singer & John Mollenkopf, “Immigration, Incorporation and the Prospects for Reform,” Presentation at the Brookings Institute, March 24, 2010.
- 821 See various press releases on the Secretary of State’s website at [http://www.michigan.gov/sos/0,1607,7-127-1640\\_9150---Y,00.html](http://www.michigan.gov/sos/0,1607,7-127-1640_9150---Y,00.html), for example “New Citizens Have Opportunity to Register to Vote,” Press Release, March 22, 2010 at [http://www.michigan.gov/sos/0,1607,7-127-1640\\_9150-233853--,00.html](http://www.michigan.gov/sos/0,1607,7-127-1640_9150-233853--,00.html).
- 822 Email correspondence with Susan Reed, Immigration Law Attorney, Michigan Poverty Law Program/Michigan Immigrant Rights Center, April 12, 2010.
- 823 Interview with Christina Kuo, Common Cause Michigan, March 19, 2010.
- 824 Email correspondence with Kellye Pinkleton, Director, Voting Rights Institute, Office of the Secretary of State, April 9, 2010.
- 825 *Id.*
- 826 Celinda Lake, Lake Research Partners, & Brian Nienaber, the Tarrance Group, “Memorandum on Support for Military and Overseas Voting,” September 11, 2008, *available at* [http://www.pewcenteronthestates.org/uploadedFiles/Pew%20Omnibus%20Memo%20f%20091208\\_.pdf](http://www.pewcenteronthestates.org/uploadedFiles/Pew%20Omnibus%20Memo%20f%20091208_.pdf).
- 827 Federal Voting Assistance Program, “FVAP Plans and Initiatives,” slide 3, presented at the Overseas Vote Foundation 2010 Summit, March 19, 2010, *available at* [http://www.fvap.gov/resources/media/FVAP\\_Initiatives\\_Presentation\\_to\\_OVF\\_Summit.pdf](http://www.fvap.gov/resources/media/FVAP_Initiatives_Presentation_to_OVF_Summit.pdf). Note that two-thirds of the known UOCAVA voters are uniformed service voters. Locating civilians abroad has been trickier.
- 828 Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat 924 (codified at 42 U.S.C. § 1973ff).
- 829 *Id.*
- 830 *See* 42 U.S.C. § 1973ff-3.
- 831 42 U.S.C. § 1973ff(b), 1973 ff-1(b).
- 832 42 U.S.C. § 1973ff-1(a).
- 833 42 U.S.C. § 1973ff-1(b)(1).
- 834 42 U.S.C. § 1973ff(b)(10); *See also* Federal Voting Assistance Program, “Absentee Voting Overview,” *available at* <http://www.fvap.gov/index.html>.
- 835 UOCAVA effectively repealed its predecessors, the Overseas Citizens Voting Rights Act of 1975, at 42 U.S.C. § 1973dd *et seq.*, and the Federal Voting Assistance Act of 1955, at 42 U.S.C. § 1973cc, *et seq.*
- 836 PEW Center on the States, “No Time to Vote: Challenges Facing America’s Overseas Military Voters” January 2009, *available at* [http://www.pewcenteronthestates.org/uploadedFiles/NTTV\\_Report\\_Web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf).
- 837 42 U.S.C. § 1973ff-4; *See also* U.S. Department of Justice, “The Uniformed and Overseas Citizens Absentee Voting Act,” *available at* [http://www.justice.gov/crt/voting/misc/activ\\_uoc.php](http://www.justice.gov/crt/voting/misc/activ_uoc.php).
- 838 United States Department of Justice, Civil Rights Division, “Voting Section Litigation,” *available at* [http://www.justice.gov/crt/voting/litigation/caselist.php#uocava\\_cases](http://www.justice.gov/crt/voting/litigation/caselist.php#uocava_cases).
- 839 Tova Andrea Wang, “Bringing Voting Rights to Overseas and Military Voters,” November 28, 2007, *available at* [http://www.tcf.org/publications/electionreform/military\\_brief.pdf](http://www.tcf.org/publications/electionreform/military_brief.pdf); PEW Center on the States, “No Time to Vote: Challenges Facing America’s Overseas Military Voters,” January 2009, *available at* [http://www.pewcenteronthestates.org/uploadedFiles/NTTV\\_Report\\_Web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf).
- 840 PEW Center on the States, “No Time to Vote: Challenges Facing America’s Overseas Military Voters,” January 2009, *available at* [http://www.pewcenteronthestates.org/uploadedFiles/NTTV\\_Report\\_Web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf).
- 42 U.S.C. § 1973ff-4; *See also* U.S. Department of Justice, “The Uniformed and Overseas Citizens Absentee Voting Act,” [http://www.justice.gov/crt/voting/misc/activ\\_uoc.php](http://www.justice.gov/crt/voting/misc/activ_uoc.php).
- 841 *Id.*
- 842 U.S. Election Assistance Commission, “Uniformed and Overseas Absentee Voting Act: Survey Findings,” November 2009, p. 2, *available at* <http://www.eac.gov/program-areas/research/eavs/uniformed-and-overseas-citizen-absentee-voting-act-studies/?searchterm=electoral>.
- 843 MOVE was part of the National Defense Authorization Act of FY 2010, Pub. L. No. 111-84.
- 844 42 U.S.C. § 1973ff-1(a)(6)(A)-(C),(7),(8)(A),(B); (e)(1)(A)-(C).

- 845 *Id.* at (a)(6)(B); *See also* Federal Voting Assistance Program, “Department of Defense: Expanding the Use of Electronic Voting Technology for UOCAVA Citizens,” May 2007, *available at* <http://www.fvap.gov/resources/media/ivas2007.pdf>.
- 846 *Id.* at (a)(8)(A),(B), as amended. Even after this 45-day deadline has passed, states must “if practicable and as determined appropriate by the State, [transmit ballots] in a manner that expedites the transmission of such absentee ballot.” *Id.* at (a)(8)(B)(ii), as amended.
- 847 Military and Overseas Voter Empowerment Act § 577(b), Pub. L. No. 111-84, 123 Stat. 2320 (2009).
- 848 42 U.S.C. § 1973ff-2A(b)(1)-(5), as amended.
- 849 Ian Urbina, “States Move to Allow Overseas and Military Voters to Cast Ballots by Internet,” *The New York Times*, May 7, 2010, *available at* <http://www.nytimes.com/2010/05/09/us/politics/09voting.html?scp=1&sq=Ian%20Urbina,%20States%20Move%20to%20Allow%20Overseas%20and%20Military%20Voters%20to%20Cast%20Ballots%20by%20Internet,%20N.Y.%20Times,%20May%207&st=cse>.
- 850 42 U.S.C. § 1973ff-1(e)(6).
- 851 ARIZ. REV. STAT. § 16-103(C); ARIZ. REV. STAT. § 16-543(A), as amended by Arizona House Bill 2427 (signed by the Governor on February 11, 2010). *See* “83 Bills Signed So Far; Three Vetoed,” April 19, 2010, *Arizona Capitol Times*, *available at* <http://azcapitoltimes.com/blog/2010/04/19/83-bills-signed-so-far-three-vetoed/>. Such proposed legislation was precleared by the Department of Justice on May 17, 2010. Because Arizona is subject to section 5 of the Voting Rights Act, changes to its elections practices and procedures must be pre-cleared by the Department of Justice or the United States District Court for the District of Columbia before being implemented. 42 U.S.C. § 1973c.
- 852 ARIZ. REV. STAT. § 16-543(A).
- 853 42 U.S.C. § 1973ff-1(a)(8)(A),(B), as amended.
- 854 ARIZ. REV. STAT. § 16-543(A), as amended. Note that such turn-around applies for all “county” elections. According to Amy Bjelland, State Election Director for the Arizona Secretary of State, all federal elections – general and primary elections – are deemed “county” elections because the county runs them. Interview with Amy Bjelland, State Election Director for the Arizona Secretary of State, May 25, 2010.
- 855 Office of the Arizona Secretary of State, “Military and Overseas Voters,” *available at* <https://www.azsos.gov/election/military/> (last visited June 3, 2010).
- 856 Office of the Arizona Secretary of State, “Overseas Voter Login,” *available at* <https://www.azsos.gov/election/military/VoterLogin.aspx> (last visited June 3, 2010). Note that instructions are also provided to the user who doesn’t have such information.
- 857 PEW Center on the States, “No Time to Vote: Challenges Facing America’s Overseas Military Voters,” January 2009, p. 16, *available at* [http://www.pewcenteronthestates.org/uploadedFiles/NTTV\\_Report\\_Web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf) (quoting GAO Report 07-774, “Action Plans Needed to Fully Address Challenges in Electronic Absentee Voting Initiatives for Military and Overseas Citizens,” June 2007, p. 30).
- 858 Arizona uses a “virtual private network” with Industry Standard 128 bit SSL encryption technology. Interview with Amy Bjelland, State Election Director for the Arizona Secretary of State, May 25, 2010.
- 859 *Id.*
- 860 *Id.*
- 861 *Id.*
- 862 Interview with Dr. Claire M. Smith, Research Program Director at Overseas Vote Foundation, April 20, 2010.
- 863 42 U.S.C. § 1973ff-1(g)(1), as amended. According to Judd Choate, Colorado Secretary of State’s Elections Division Director, the state requested such a waiver for the 2010 general election on August 3, 2010. Choate also states that, during a conference call with the Department of Justice, the agency recommended adjusting the waiver to apply only to those counties that could not meet the 45-day requirement, rather than state-wide. Choate believes many of the counties could meet this requirement, and has asked all counties to inform the Secretary of State’s office by August 12, 2010 on whether they can meet it. The waiver request may then be modified depending on responses. Email from Judd Choate, Elections Division Director for the Colorado Secretary of State, to Allegra Chapman, Counsel at Dēmos (August 11, 2010)(on file with author).
- 864 42 U.S.C. § at (g)(2)(A),(B), as amended.
- 865 *Id.* at (g)(4), as amended.
- 866 Interview with Judd Choate, Elections Division Director for the Colorado Secretary of State, March 22, 2010.
- 867 COLO. REV. STAT. § 1-8-103.5.
- 868 COLO. REV. STAT. § 1-18-111. This provision applies to all mail-in ballots, not just UOCAVA ones.
- 869 COLO. REV. STAT. § 1-8-104(3).
- 870 COLO. REV. STAT. § 1-8-103.5(2)(a).
- 871 COLO. REV. STAT. § 1-8-103.5(2)(a).
- 872 Interview with Judd Choate, Elections Division Director for the Colorado Secretary of State, March 22, 2010.
- 873 COLO. REV. STAT. § 1-8-116.
- 874 COLO. REV. STAT. § 1-8-117.
- 875 COLO. REV. STAT. § 1-2-201, 208.

- 876 Colorado Secretary of State, Elections Division, “Guide for Absent Uniformed Service and Overseas Electors,” *available at* [http://www.elections.colorado.gov/Content/Documents/UOCAVA/guide\\_for\\_uniformed\\_and\\_overseas\\_electors.pdf](http://www.elections.colorado.gov/Content/Documents/UOCAVA/guide_for_uniformed_and_overseas_electors.pdf).
- 877 Interview with Judd Choate, Elections Division Director for the Colorado Secretary of State, March 22, 2010.
- 878 COLO. REV. STAT. § 1-8-103.5(2)(b).
- 879 COLO. REV. STAT. § 1-5.5-101(1)(e).
- 880 Interview with Hilary Rudy, Legal Analyst for the Colorado Secretary of State’s office, April 1, 2010.
- 881 *Id.*
- 882 *Id.*
- 883 10 ILL. COMP. STAT. § 5/20-2.1, as amended by H.B. 6077, signed into law as P.A. 096-1004 on July 6, 2010.
- 884 *Id.*
- 885 10 ILL. COMP. STAT. § 5/20-2.2, as amended.
- 886 10 ILL. COMP. STAT. § 5/20-2, as amended.
- 887 10 ILL. COMP. STAT. §§ 5/20-2; 5/20-2.3, as amended.
- 888 10 ILL. COMP. STAT. § 5/20-4, as amended.
- 889 *Id.*
- 890 Additionally, the law permits officials to use the FWAB if they can’t comply with the duty to have a sufficient number of ballots on hand 60 days before a general election and 45 days before any other election for mailing out. 10 ILL. COMP. STAT. § 5/16-5.01(a),(b).
- 891 H.B. 6077 (Ill. 2010), signed into law as P.A. 096-1004 on July 6, 2010.
- 892 10 ILL. COMP. STAT. § 5/20-2.1 and 5/20-2.3, as amended.
- 893 *Id.*
- 894 10 ILL. COMP. STAT. § 5/20-5, as amended.
- 895 10 ILL. COMP. STAT. § 5/20-2; 20-2.1; 20-2.3; 20-8 (c), (d).
- 896 Interview with Cris Cray, Director of Legislation for the Illinois State Board of Elections, May 26, 2010.
- 897 *Id.*
- 898 *Id.*
- 899 KY. REV. STAT. § 116.045(2).
- 900 KY. REV. STAT. § 117.085(1)(b)
- 901 KY. REV. STAT. § 117.085 (1)(a).
- 902 KY. REV. STAT. § 117.085 (1). Although Kentucky’s new legislation hasn’t expanded to permit submission of these forms by email, it has always allowed “*requests* for an application [for] the absentee ballot” by fax, mail or email. KY. REV. STAT. § 117.085(1) (emphasis added). So, if a UOCAVA voter is already registered, he may email the clerk to request an absentee ballot, rather than fax in the FPCA form.
- 903 31 KY. ADMIN. REGS. 4:130, as amended.
- 904 31 KY. ADMIN. REGS. 4:140, as amended.
- 905 KY. REV. STAT. § 117.085(4),(5).
- 906 KY. REV. STAT. § 117.085(3).
- 907 Interview with Sarah Ball Johnson, Executive Director of the Kentucky State Board of Elections, May 27, 2010. Under state law, the State Board of Elections shall, as necessary and with the Attorney General’s concurrence, promulgate necessary administrative regulations regarding UOCAVA voting. KY. REV. STAT. § 117.079.
- 908 Interview with Sarah Ball Johnson, Executive Director of the Kentucky State Board of Elections, May 27, 2010.
- 909 *Id.*
- 910 As in MOVE, Louisiana’s new legislation does not define “electronically.” See Louisiana House Bill 1200, signed into law on June 25, 2010 as Act 624
- 911 LA. REV. STAT. § 18:103(B)(3); (C)(3), as amended.
- 912 LA. REV. STAT. § 18:1308.2(A)(1),(2), as amended.
- 913 LA. REV. STAT. § 18:1308(A)(2)(b), as amended.
- 914 LA. REV. STAT. § 18:1308(A)(2)(d)(i), as amended.
- 915 Letter from Angie Rogers LaPlace, Commissioner of Elections, Louisiana Secretary of State’s office, July 7, 2010. A voter may also use the FWAB envelope as a security measure. *Id.*; LA. REV. STAT. § 18:1308(A)(2)(d)(ii).
- 916 *Id.*

- 917 LA. REV. STAT. § 18.1308(A)(2)(d)(i), as amended.
- 918 LA. REV. STAT. § 18:1308(A)(2)(e), as amended.
- 919 *Id.*
- 920 Louisiana Secretary of State, “Military and Overseas Voters,” available at <http://www.sos.louisiana.gov/tabid/618/Default.aspx> (last visited June 3, 2010).
- 921 *Id.*
- 922 Interview with Angie Rogers LaPlace, Commissioner of Elections for Louisiana Secretary of State, May 26, 2010.
- 923 *Id.*; See also 42 U.S.C. § 1973ff-1(h).
- 924 *Id.*
- 925 *Id.*
- 926 *United States v. Michigan*, 1:00-cv-583 (W.D. Mich. 2000).
- 927 United States Department of Justice, Civil Division, “Cases Raising Claims Under the Uniformed and Overseas Citizen Absentee Voting Act,” available at [http://www.justice.gov/crt/voting/litigation/recent\\_uocava.php](http://www.justice.gov/crt/voting/litigation/recent_uocava.php).
- 928 MICH. COMP. LAWS § 168:759a(2),(4), as amended by 2010 PA 50.
- 929 MICH. COMP. LAWS § 168:759a(4), (6).
- 930 MICH. COMP. LAWS § 168:759a(5), as amended.
- 931 One of the three state bills enacted since MOVE’s passage requires county boards to deliver absent voter ballots to county clerks 47 days before an election or primary, MICH. COMP. LAWS § 168:713, as amended by 2010 PA 51, another requires these county clerks to then deliver absentee ballots to local officials at least 45 days before a regular or special election. MICH. COMP. LAWS § 168:714(1), as amended by 2010 PA 43. These new requirements go hand in hand with the additional amendments resulting from Michigan’s Public Act 50, a comprehensive bill responsive to the federal law’s new requirements.
- 932 MICH. COMP. LAWS § 168:759a(2), as amended.
- 933 MICH. COMP. LAWS § 168:759a(4), as amended.
- 934 MICH. COMP. LAWS § 168:759a(8), as amended.
- 935 MICH. COMP. LAWS § 168:759a(2), as amended.
- 936 MICH. COMP. LAWS § 168:759a(6), as amended.
- 937 MICH. COMP. LAWS § 168:759a(7), as amended
- 938 Email from Kelly Chesney, Communications Director for the Michigan Secretary of State, June 3, 2010.
- 939 MICH. COMP. LAWS § 168.759(a)(1), as amended.
- 940 Michigan Department of State “The Military and Overseas Voter Empowerment Act,” available at <http://www.michigan.gov/sos/0,1607,7-127-1633-238835--00.html> (last visited July 15, 2010).
- 941 MO. REV. STAT. §§ 115.156(1); 115, 278, as amended by House Bill 2260 (signed into law May 27, 2010). Note that, as with several other state MOVE-implementing bills, “electronic communication” is not defined in Missouri H.B. 2260. Nothing in the new (or old) legislation states that voters may return their completed voter registration forms by fax or email, but the Secretary of State’s office claims that such forms may be returned by fax, though not by email. Interview with Waylene Hiles, Deputy Secretary of State for Elections, Kaye Dinolfo, Director of Elections, and Chrissy Peters, Missouri Secretary of State’s Office, May 21, 2010.
- 942 MO. REV. STAT. § 115.135(1).
- 943 MO. REV. STAT. § 115.279(3), as amended by H.B. 2260 (Mo. 2010), signed into law May 27, 2010.
- 944 MO. REV. STAT. § 115.281(3), as amended.
- 945 MO. REV. STAT. § 115.287(1).
- 946 MO. REV. STAT. § 115.291; 115.293. Persons in “federal service,” “when sent from a location determine by the secretary of state to be inaccessible” on Election Day, may return completed ballots by fax. MO. REV. STAT. § 115.291(2). Also, if an emergency is declared by either the U.S. President or the Missouri Governor, the Secretary of State may permit return of completed ballots by fax. MO. REV. STAT. § 115.291(3).
- 947 Interview with Ben Hovland, Deputy Counsel, Missouri Secretary of State, July 8, 2010.
- 948 MO. REV. STAT. § 115.291(2).
- 949 Interview with Waylene Hiles, Deputy Secretary of State for Elections, Kaye Dinolfo, Director of Elections, and Chrissy Peters, Missouri Secretary of State’s Office, May 21, 2010.
- 950 *Id.*
- 951 MO. REV. STAT. § 115.287(5), as amended.
- 952 Before the 2009 bill was enacted, UOCAVA voters were already permitted to submit FPCAs (to both register and request absentee ballots) electronically. NEV. REV. STAT. 293 § 501(2)(b).

- 953 NEV. REV. STAT. § 293.3155(3)(b); *See also* NEV. REV. STAT. § 293.019, as amended by A.B. 41 (Nev. 2009) (“[A]pproved electronic transmission” means sending information by facsimile machine or by use of the Internet, pursuant to the acceptable standards set forth by regulations by the Secretary of State’s office.”).
- 954 NEV. REV. STAT. § 293.320(2), as amended.
- 955 NEV. REV. STAT. § 293.501(1),(2)-(3).
- 956 NEV. REV. STAT. § 293.560(1).
- 957 NEV. REV. STAT. § 293.309(2)(b).
- 958 Interview with Ryan High, HAVA Administrator for the Nevada Secretary of State, May 19, 2010.
- 959 Adopted Reg. R092-09 § 27(1)-(3).
- 960 Adopted Reg. R092-09 § 29(3)(b).
- 961 NEV. REV. STAT. § 293.3157(1)(a),(b).
- 962 NEV. REV. STAT. § 293.3157(3), as amended by AB 41.
- 963 NEV. REV. STAT. § 293.3157(5), as amended.
- 964 NEV. REV. STAT. § 293.317, as amended.
- 965 Interview with Ryan High, HAVA Administrator for the Nevada Secretary of State, May 19, 2010.
- 966 Email from Ryan High, HAVA Administrator, Nevada Secretary of State, July 7, 2010.
- 967 *United States v. North Carolina*, 5:06-cv-06118-H (E.D.N.C. 2006).
- 968 Consent Decree, *United States v. North Carolina*, 5:06-cv-06118-H (E.D.N.C. 2006), available at [http://www.justice.gov/crt/voting/misc/nc\\_uocava\\_cd.pdf](http://www.justice.gov/crt/voting/misc/nc_uocava_cd.pdf).
- 969 *Id.*; *See also* United States Department of Justice, Civil Rights Division, “Cases Raising Claims Under the Uniformed and Overseas Citizens Absentee Voting Act,” available at [http://www.justice.gov/crt/voting/litigation/recent\\_uocava.php#pa\\_uocava2](http://www.justice.gov/crt/voting/litigation/recent_uocava.php#pa_uocava2).
- 970 Dismissal of Consent Decree, *United States v. North Carolina*, 5:06-cv-06118-H (E.D.N.C. 2006), available at [http://www.justice.gov/crt/voting/misc/nc\\_uocava\\_dismcd.pdf](http://www.justice.gov/crt/voting/misc/nc_uocava_dismcd.pdf).
- 971 N.C. GEN. STAT. § 163-82.6(a).
- 972 N.C. GEN. STAT. § 163-82.6(c)(2)a.
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# RECOMMENDATIONS

## REGISTRATION

### **Ensure Compliance with Agency Registration under the NVRA.**

States must ensure full implementation of the NVRA, especially in public assistance offices and state-funded offices that serve people with disabilities. Millions of new voters could be added to the voting rolls if all states properly implemented the NVRA. At a minimum, states should do the following:

- **Ensure the agency has a set of detailed, compliant procedures** in a format accessible by frontline caseworkers. These procedures should include the requirement that a voter registration application and a declination form be provided to all clients engaging in an application, recertification, or change of address, including those who may be doing so via phone, mail, or Internet.
- **Ensure all agency employees receive training at least annually** on voter registration procedures and all new employees receive training prior to their first contact with clients.
- **Require frequent data reporting and monitoring of NVRA compliance.** All offices should collect and report bi-weekly to state-level officials the number of voter registration applications completed at its office, the number of declination forms completed, broken down by the client's response, and the number of applications, recertifications, and changes of address processed by the agency. Additionally, compliance with NVRA procedures should be incorporated into employee job performance evaluations and the federal government's Management Evaluation review of the SNAP program. Follow-up and corrective action should be taken in all circumstances in which non-compliance is found.
- **The U.S. Department of Justice should step up its NVRA enforcement efforts.** While the Department was largely derelict during most of the Bush years, it did enter into two settlement agreements with states in 2008. The Obama administration has so far failed to take any enforcement action under Section 7 of the NVRA. However, the Department did issue guidance in June 2010 addressing the elements and procedures a state must have in place to satisfy the law's requirements.

### **Designate Additional NVRA Agencies.**

In the absence of automatic registration, additional state and federal agencies should be designated as voter registration agencies under the NVRA. State agencies should include offices of unemployment compensation and departments of corrections. Federal agencies to be designated should include U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security, which administers naturalization ceremonies for new citizens; the medical and homeless facilities of the Veterans' Administration; the Social Security Administration (Social Security Income and Social Security Disability Insurance); the Department of Health and Human Services (Indian Health Services); and military pay/personnel offices. In the case of federal agencies, the agency must also consent to being designated. Federal agencies can also be designated through an executive order or an agency directive. Designation of these agencies will help make registration more broadly available, a key goal of Congress in enacting the NVRA.

### **Enact Same Day Registration (SDR) .**

States should adopt SDR and make it available during periods of early voting and up through Election Day. In the age of computerized statewide databases, registration deadlines are an antiquated relic. States that allow SDR consistently have higher turnout than non-SDR states. Academic research demonstrates that a significant portion of this difference is due to SDR and that historically marginalized groups such as communities of color, young voters, and low-income voters may particularly benefit from SDR. Additionally, recent research suggests that combining SDR with early voting is more effective than early voting on its own.

### **Permit Pre-registration.**

States should adopt a policy allowing 16 and 17 year-olds to "pre-register" to vote. These individuals would then be automatically added to the active voter rolls when they turn 18. Pre-registration has the benefit of reaching young

people when they first apply for a driver's license and allowing high schools to play an active role in registering their students. Several states currently allow pre-registration in some form and preliminary research shows a positive impact on turnout among those taking advantage of it.<sup>1</sup> The benefit is particularly strong among young African Americans.<sup>2</sup>

### **Remove unnecessary barriers to registration.**

States should remove onerous barriers to voter registration, such as proof of citizenship requirements. Arizona requires all voters to provide documentary proof of their citizenship in order to register to vote, and other states are considering similar measures (Georgia has in fact passed such a law but must have it "precleared" by the U.S. Department of Justice before it can be implemented.) This has resulted in the rejection of thousands of registrations of eligible voters while providing no real benefit as voters already must attest to their citizenship under penalty of criminal sanction when they sign voter registration forms.

### **Remove unduly harsh restrictions on registration drives.**

Because the government currently does very little to actively ensure that Americans are registered to vote, independent citizen groups are an essential component in the effort to get voters involved in the political process, particularly voters from marginalized communities. Additionally, civic groups play an important role in monitoring the processing of registration applications through internal verification checks of the forms and tracking of the registration process at elections offices. States should not have laws that place restrictions on these groups that are so harsh they effectively put them out of commission.

### **Allow citizens to register to vote online regardless of listing in an existing state database.**

A number of states have set up online voter registration processes. Allowing citizens to register to vote online can save states and counties time and financial resources. However, some states are only allowing citizens who are already part of an existing state database such as the Division of Motor Vehicles, to register to vote online. For states that opt for online registration, they should not restrict this convenience only to a certain class of citizens, but should allow online registrants to provide a signature at the polls on Election Day. Many citizens such as the elderly, the poor and urban voters do not have driver's licenses. These citizens should be given the opportunity to register to vote online and should not be denied this opportunity simply because they do not drive or have a driver's license.

### **Modernize and Automate Voter Registration.**

In the long term, states should move away from 19<sup>th</sup> century pen and paper methods of voter registration, which involve costly data entry processes and inevitably introduce errors and duplicate registrations. Instead, states should work toward primarily utilizing existing government databases to register voters and to update registrations with current address and eligibility information.

- **Provide automatic registration.** States should ultimately proactively register citizens to vote at any opportunity where government agencies are in a position to ascertain a person's address and eligibility. For instance, a state's Department of Motor Vehicles could routinely register eligible citizens when they apply for driver's licenses. Even if the applicant has not yet reached voting age, which is common for first-time driver's license applicants, he or she could be registered with a flag in the database to activate the registration only when he or she reaches an eligible age as with the pre-registration techniques described above. Other opportunities include public assistance agencies automatically registering their clients, military branches automatically registering members of the armed forces when they relocate or return from duty abroad, parole officers registering former felons who have completed parole requirements and automatic registration of new citizens upon successful completion of their naturalization process. As we recommend elsewhere, these agencies should all be providing registration forms to voters currently, but with automation the registration process could be incorporated into existing forms and databases that would then transmit data to voter databases. All of these procedures should have an opt-out option for those who actively choose not to be registered.
- **Ensure permanent registration.** Elections officials should undertake policies to update registrations of existing voters whenever they move based upon data readily available from U.S. Postal Service change of address databases, DMV databases, Social Security, Medicare, Medicaid, and state and federal income tax databases. Citizens should receive notices that their registration will be automatically updated to their new location unless they respond, to provide for those who may not wish to change their registrations, such as college students or

those in the military who are only temporarily relocating and wish to vote at the permanent address. With the implementation of statewide voter databases, it should now be possible to incorporate permanent registration policies for any relocations within a state, and in the future, states should push toward automatic address updates for moves between states. Given how frequently citizens notify the government of where they live, there is no good reason to require them to yet again notify election officials of a new address.

## Voter Registration Databases

When the Help America Vote Act was passed, the statewide voter registration database was considered an important tool in ensuring that all eligible voters but only eligible voters are registered and able to vote. These databases still hold enormous promise, but not if they are used ineffectively or as a means to take voters off the rolls injudiciously. With respect to use of databases, some states have nonexistent or poor data-matching procedures and others have rules that are likely to lead to disenfranchisement.

- **Use fair, effective, uniform, statewide matching protocols.** No matter how well a state's database is constructed, it will only work as well as the humans who are operating it and the rules that govern its administration. As a result, standards for matching voter registration information with information in current databases must be both fair and effective and not so technical that they serve to disenfranchise voters rather than to ensure clean lists. Specifically, states should not impose exact match standards, but rather employ substantial match standards. Moreover, the same standard should be employed uniformly throughout state.
- **Ensure Transparency** about what process they use for matching. Several of the states under review do not make clear what the standards are or how they are applied.
- **Do not remove voters without verification and notification** of the voter, including persons convicted of felonies. No voter's registration should be rejected simply on the basis of a computer returning a non-match. Because databases rely on the people who are operating them, human error will occur during list maintenance or data entry. As a result, no voter should be removed from the list without being given timely and effective notification of the pending removal and an opportunity to contest that removal. These procedures should also be followed in the context of any inter-state data sharing.
- **Provide access to confirm registration.** Voters should be able to confirm their presence on the voter rolls by phone or on the Internet
- **Ensure integrity of database technology.** The database technology must be open and must be rigorously tested, with vendors subject to restrictions on partisanship or conflicts of interest.
- **Do not reject registration on the basis of a mismatch** with Social Security. Relying on the Social Security Administration for verification of a voter's identity is inherently problematic. Of 7.7 million inquiries by states to SSA in 2008, nearly 2.4 million were non-matches.<sup>3</sup> SSA's database is known to have up to a 29% error rate when used for voter verification.<sup>4</sup>
- **Do not use Department of Motor Vehicle databases for citizenship verification.** The Secretary of State of Georgia attempted to do this in 2008 with respect to both new registrants and to purge existing voters on the rolls. Due to the outdated data and misinformation in the system, this resulted in thousands of eligible American voters receiving notices that they had to prove their citizenship and possibly attend a hearing prior to the election or else they would not be permitted to vote. This practice disproportionately impacted naturalized citizens and violated the National Voter Registration Act.<sup>5</sup>
- **Adhere to the NVRA when purging voter registration lists.** Maintenance of voter registration lists is necessary, but presents an acute risk of disenfranchisement. Federal law is clear as to how states may remove names from the voting lists used in elections for federal office.<sup>6</sup>

## EX-FELON DISENFRANCHISEMENT

An estimated 5.3 million people are unable to vote in the United States due to felon disenfranchisement laws.<sup>7</sup> The 10 states that we have surveyed for this report constitute a little less than a million people with criminal records who are ineligible to vote.

### **Remove barriers to registration and voting for citizens with felony convictions.**

Anyone convicted of a felony should automatically have their rights restored upon completion of their incarceration. Persons still on probation or parole should be allowed to vote. This is not only the right thing to do as a matter of democratic principles; it also simplifies the process for election administrators. Election administrators as well as administrators of the criminal justice system must be trained on the law regarding the voting rights of persons who have been convicted of a crime and the registration procedures for them. All persons who have had their rights taken away must be notified in a consistent and uniform manner of the restoration of their voting rights and the process they must undertake to exercise them.

### **Clarify what must be on the registration form in order for it to be accepted.**

As the ACLU and the Brennan Center have recommended, states should make the information about eligibility very clear on registration forms. Concise information about the eligibility of persons convicted of a felony should be included in the form itself, and details included in the instructions portion of the form.<sup>8</sup>

## IDENTIFICATION REQUIREMENTS

Continuing an unfortunate trend that began with the very minimal voter identification requirements enacted in the Help America Vote Act of 2002, states across the country continue to consider and pass strict voter identification laws. As has been pointed out repeatedly by groups, academics, and other advocates, voter identification laws are inherently discriminatory, amount to a poll tax, and are not an effective means of preventing or catching voter fraud.

### **Limit identification requirements to those established in the Help America Vote Act.**

As has been widely documented, laws that require photo identification or other narrowly defined forms of identification too often block eligible voters from exercising their right to vote. States requiring identification should not add additional requirements beyond those in HAVA that voters registering for the first time by mail in a jurisdiction provide one of a variety of forms of identification.

### **Train poll workers on HAVA identification requirements.**

Studies have recently emerged demonstrating discriminatory and unequal implementation of voter identification laws by poll workers. African Americans and Latino voters are asked for identification far more frequently than white voters.<sup>9</sup> Poll workers who believe that voters should have to show ID are more likely to ask for it even where they are not supposed to under the law. Individual attitudes of poll workers heavily influence whether they ask for ID – regardless of what the law says.<sup>10</sup> Poll workers must be thoroughly educated on their state's process for verifying voters' identities and poll workers who infringe those rules should be removed. Moreover, the Department of Justice must be vigilant in ensuring that voter identification rules are not applied discriminatorily and take legal action under the Voting Rights Act where there is evidence that is occurring.

## ENACT AND ENFORCE LAWS PROHIBITING VOTER SUPPRESSION/INTIMIDATION

Efforts to suppress the vote and to intimidate voters continue across the United States. Some efforts push the lines of legality, such as targeted and mass challenges to voters' registrations and voters' rights to vote at the polls. Others are less subtle, such as sending email and text messages with false information about election procedures. States are not doing nearly as much as they could to address these problems. More must be done to prevent, punish, and rectify the damage caused by these activities.

## **Pass Deceptive Practices Laws.**

Under such laws, state and local governments must prosecute deceptive practices criminally and have in place emergency procedures to immediately correct the information spread by deliberate misinformation campaigns. While it is sometimes impossible to catch the individuals or groups responsible for disseminating fraudulent information immediately, officials can take aggressive steps to quickly and effectively alert the public to the fraud and educate the public about accurate election procedures. It is crucial that administrators use all educational and public relations resources at their disposal when such situations arise.

## **Enforce existing laws and prosecute illegal activities intended to intimidate voters or disrupt turnout.**

Many suppression and intimidation activities continue to take place because those who engage in them believe there will be no repercussions. Too often, they are right. Sometimes no action is taken, while on occasion these malfasants are simply told by an administrator to stop engaging in the offensive activity. This is insufficient and unacceptable.

## **Monitor online deceptive practices.**

While most states have some sort of statutory prohibition on interference with the lawful right to vote, criminal enforcement of these statutes does not solve the problem entirely. More importantly, states should have mechanisms in place that correct the record and disseminate correct information in the wake of deceptive practices. Online deceptive practices are particularly problematic because of their viral nature. Secretaries of State should dedicate resources – staff – to specifically monitor online misinformation campaigns in the run up to an election. These staffers should serve as online points of contact to respond quickly to deceptive practices with correct information. These rapid response teams are most necessary during the critical days up to and including Election Day.

## **Pass laws that specifically address online deceptive practices.**

Most states have computer crime statutes on the books that either prohibit the use of a computer in the commission of a crime or artifice to defraud, or otherwise prohibit unlawfully accessing a computer to commit a crime (through the use of spyware, for example). States should clarify and strengthen these laws so that there is no doubt that they apply to online deceptive practices that interfere with lawful right to vote.

## **Enact legislation on vote caging.**

Several bills to prevent vote caging have been introduced in the United States House and the United States Senate. The Caging Prohibition Act would forbid the use of caging lists to challenge voters or, in the case of elections officials, as a basis to refuse to allow individuals to register or vote. The Act would also mandate that anyone who challenges another person's right to vote must set forth the specific grounds for their alleged ineligibility, based on first-hand knowledge, under penalty of perjury.

## **Establish fair standards for challenges.**

All states should have uniform challenge procedures characterized by transparency and fairness. Such procedures must be designed to prevent disenfranchisement, voter deterrence, and frivolous challenges. States should enact stringent requirements outlining when a challenge can be made, who can make a challenge, and the bases upon which such challenges can be made. States should follow the lead of states like Ohio and not allow any pre-Election Day challenges to registration eligibility other than by election officials. On Election Day, challenges should only be allowed from individuals properly registered in the precinct. Individuals who knowingly assert an unsubstantiated challenge should be subject to criminal sanction, and in the case of Election Day challenges, removal from the polls. In the long term, when we have implemented voter registration modernization, only elections officials should be permitted to challenge a voter's right to vote.

## **States must establish fair standards for adjudication of challenges.**

Where a state empowers a private citizen to challenge another citizen's right to vote, it should create a fair and straightforward procedure to adjudicate that challenge. The burden of proof should fall on the challenger to pres-

ent evidence as to the absence of a voter qualification. The evidence offered by challenger should be based on the challenger's personal knowledge. Allowing for unsupported statements as to voter eligibility unreasonably threatens citizens with disenfranchisement and may inundate local election officials with unfounded partisan claims. The states should also detail what forms of evidence are insufficient to sustain a successful challenge. Neither returned mail nor evidence that a voter's home is in foreclosure should be considered sufficient. Challenged voters should be permitted to vote a regular ballot upon signing an affirmation of their qualifications to vote—they should not be required to present special identification documents.

## DEVELOP UNIFORM STATEWIDE STANDARDS FOR PROVISIONAL BALLOTS

When HAVA was passed, the hope was that provisional ballots would be the safeguard against a voter arriving at a polling place, being told he or she was not on the voting list, and then being turned away. HAVA's vagueness in describing how these ballots are to be administered created a number of problems in the 2004, 2006, and the 2008 elections. Some state rules for distributing and counting provisional ballots are overly technical and disenfranchise legitimate voters. Provisional ballots must be fully implemented as a meaningful safety net for voters when there are problems with registration or identification requirements, yet not be used as an automatic fallback whenever anything out of the ordinary occurs at the polling place.

### **Adequate supplies**

Require that each polling place be stocked with an adequate number of provisional ballots—for this election we recommend it be equal to at least 10 percent of registered voters.

### **Count provisional ballots for federal or statewide offices.**

Count ballots cast in federal or statewide races even if, for whatever reason, the voter is not in their own precinct. In no case should a provisional ballot cast at the wrong precinct but at the right polling site be disqualified. This simply means in many cases that a voter went to the wrong desk in the right school or gym. It is clear that voters not knowing where to vote is a major problem. Voters should not be disenfranchised due to failures in administration.

### **Require poll workers to direct voters to the correct precinct.**

As discussed above, in many states, a voter's provisional ballot will not count if it is cast in the wrong precinct, even if the voter is registered in the state. This is worse than if the voter were simply turned away at the polls – because the voter is deceived into believing that their vote will count when it will not. That is the reason provisional ballots are sometimes derisively called “placebo” ballots. Therefore, states should require election workers to help voters determine their correct voting location if they do not appear on the rolls. Statewide voter registration databases should be able to help poll workers direct voters to their correct location.

### **Establish procedures to verify a voter's eligibility so the provisional ballot is counted.**

When a voter casts a provisional ballot during ordinary polling hours, it is because he, in good faith, believes he is registered to vote. County and state election officials should have procedures in place to determine why a voter's name did not make it on to the rolls at the precinct level. Statewide databases, county records, department of motor vehicles records, and other records should be exhaustively checked before the voter is disqualified.

## IMMIGRANT OUTREACH AND SECTION 203 COMPLIANCE<sup>11</sup>

### **Make Better Use of Websites.**

On every website of every chief elections official there should be translated information and materials. At a minimum this should include the information and registration forms already provided by the U.S. Election Assistance Commission (EAC) in several languages. In states where there is any jurisdiction or jurisdictions subject to the Section 203 requirements of the Voting Rights Act, the state chief elections official should have a full range of materials available in the covered language on the website. Ideally, states that have any substantial number of lan-

guage minority voters would have an array of useful information and tools on the website that is not just translated through an Internet translation service, but is developed in coordination with community groups and/or language specialists.

### **Employ Bilingual Coordinators/ Immigrant and Ethnic Minority Community Liaisons.**

Such liaisons should be employed in jurisdictions where there is a substantial LEP and/or immigrant citizen community (whether or not the jurisdiction is covered by Section 203 of the Voting Rights Act). Bilingual coordinators and community liaisons in jurisdictions with substantial numbers of limited English and naturalized citizen voters can help elections officials reach out to and work with the community and groups representing it. They can be helpful in identifying poll locations where language assistance would be helpful, recruiting bilingual poll workers, language translators and other people to help with the election, and working with groups and individuals to provide education to LEPs and immigrant voters on voter registration and the voting process.

### **Conduct Voter Registration at Naturalization Ceremonies.**

Unless and until USCIS is designated a voter registration agency under federal law as discussed above, elections officials in all states should make every effort to send a representative or representatives to as many naturalization ceremonies as possible to provide voter registration forms and information, assist new Americans complete them, and take them for processing. Elections officials everywhere should also seek out and work with nonpartisan community organizations that wish to provide voter registration services at naturalization ceremonies and facilitate their ability to do so.

### **Go Beyond Section 203.**

As reported here, a few states have their own laws that are designed to provide language assistance in voting to more voters than Section 203 demands. This should be the norm. Section 203 should be a floor, not a ceiling. Where possible, state legislation should be passed that lowers the threshold for language assistance requirements to kick in so that more voters get the assistance they need. Alternatively, it might be possible for states to extend coverage on a more case-by-case basis. Community and ethnic group organizations could apply for extended coverage based on their ability to provide evidence of barriers to participation, educational disparities and low literacy rates, and comparatively low registration and turnout.<sup>12</sup>

### **Improve poll worker training.**

Studies have found that a huge part of the failure to provide assistance to language minority voters is due to lack of adequate poll worker training. The chief elections officer in each state should ensure that localities and election workers are trained about language assistance and the particular needs of voters in the covered languages.<sup>13</sup>

### **Establish an Advisory Committee.**

In jurisdictions with any substantial number of immigrant or ethnic minority voters, the elections official should establish an advisory committee comprised of representatives from groups in the community. The elections official should meet with the committee on a regular basis throughout the year and more frequently as elections approach. Such ongoing communication can help identify potential and real problems, help with poll worker recruitment, provide information on poll sites and language needs at various poll sites and assistance with translation needs. Community representatives will be better empowered to educate people about effectively registering and voting. Building such a relationship will also pay dividends during the voting period itself as challenges arise.

### **Make Clear Section 208 of the Voting Rights Includes Limited English Speakers.**

States should make clear through legislation or some other authoritative guidance that the Section 208 mandate that applies to all states and requires that voters who have difficulty at the polling place be allowed to be accompanied by a person of their choice to assist them extends to voters who are not English proficient. Even absent such clarifying rules, elections officials should be clear that Section 208 does include people with language assistance needs and train poll workers accordingly.

### **Mine Creative Sources for Poll Worker Recruitment.**

In efforts to recruit bilingual pollworkers and translators, include students, especially community college and high school students who are bilingual and in many states may serve.

### **Engage Ethnic Media.**

Some of the most effective programs for language minority and immigrant voter outreach by election administrators are ones that work with the ethnic media to inform voters about the election, about the availability of language assistance, and to recruit poll workers. Cook County and others were cited in this regard in the report.<sup>14</sup>

### **Allow Legally Resident Non-citizens to Play a Role.**

States should allow and use legally resident noncitizens, such as legal permanent residents, to provide assistance with elections, especially when it comes to providing outreach to immigrant voters and language translation. Such noncitizens can be used as translators at the polls in many places, and this should be utilized everywhere. They can also be helpful in providing translation services and reaching out to and educating foreign born Americans. In many places they can also be used in voter registration drives. Having legal noncitizens engaged in the process not only helps election administrators and voters, but will help to integrate and engage in the community many non-citizens who are likely seeking to become American citizens.

## **MILITARY AND OVERSEAS VOTERS**

Now that Congress has responded to the needs of military and civilian voters overseas with the MOVE Act, it will be up to the states to properly implement the new federal requirements. As we saw in the last couple federal elections, overseas voters simply were not receiving their absentee ballots with enough time to complete and return them. With MOVE's requirement that ballots be transmitted 45 days in advance of Election Day for those requests that have been received by then, voters are now likelier to receive their forms with enough time to submit them for counting. States, for the most part, have not included the exact wording of the federal law's 45-day rule in their implementing legislation. Advocates will have to monitor states to see how each one fares in this upcoming mid-term. Since this is a new law, some implementation problems are likely to arise. Following are some recommendations states can adopt going forward:

### **Adopt clear statutes regarding the 45-day requirement.**

Very few states have included in their MOVE-implementing legislation language requiring local elections officials to transmit absentee ballots to UOCAVA voters 45 days before an election for all those ballot requests submitted by that date. Several states allow officials to send out ballots with less than 45 days before the election. For some voters in hard-to-reach areas, this delay could indeed make the difference between having a vote counted or not. Those that have not yet done so must incorporate the proper language in their legislation to ensure that all local authorities are complying with the 45-day rule, if not earlier.

### **Allow all transactions to be completed by email or fax except for return of completed ballots.**

Thanks to MOVE's requirement that states provide registration forms and absentee ballots by electronic means, voters in all nooks of the world can easily request to register or receive a ballot by fax or over the Internet. Such transactions save a huge amount of time and give the voter a much better shot at receiving and returning a ballot in time. Although this is an important step, states should refrain from allowing UOCAVA voters to return completed ballots by electronic means, given the risk to privacy, security, and possible corruption of the ballot. At the very least, voters should be informed – as most states permitting electronic ballot return have already done – that they are waiving their right to a secure and private vote. FVAP has a cover letter available that voters should use.

### **Use better encryption techniques.**

For all electronic transmissions, states must use top-of-the-line encryption technology. This is especially important for states that allow voters to return completed ballots by email or fax. As experts have pointed out, such transmissions are susceptible to vote rigging and hacking, thereby necessitating proper safety guards to be put in place.

## Take a more aggressive approach to voter outreach and education.

Since the new federal law has required states to amend the registration and absentee ballot regulations on the books, elections officials will have to ensure they transmit this information to military and civilian voters abroad through updated elections websites, step-by-step instructions, and revised UOCAVA manuals.

## Coordinate with international organizations to get the word out on MOVE's new provisions.

Along the same lines of informing voters of the new regulations is the need to encourage voters overseas to get involved in the political process, no matter where they are located. Nonprofit organizations abroad can help states identify their citizens and follow up with mobilizing efforts. Americans in the military are much likelier to vote than civilians stationed in other countries, and this may have something to do with the voting contacts service men and women have on base. Because civilians don't have that same access, states should implement a more aggressive political outreach program to bring them into the fold. Some groups states could consider working with are the Overseas Vote Foundation, the Association of Americans Resident Overseas, Federation of American Women's Clubs Overseas, and American Citizens Abroad.

## Educate and train local officials on MOVE's mandates.

New modes of transmission and deadlines are now in place for the exchange of voter registration forms and absentee ballots. States must ensure that all local elections officials are up to speed on what they have to do and by when they have to do it. To avoid mishaps, states should regularly train clerks on updates in the law. States should be ready to enforce MOVE's mandates among their local election officials if needed.

## Track UOCAVA voters and ballots.

Reporting the numbers of UOCAVA ballots requested, transmitted, returned and counted, as required by federal law, has improved markedly in recent elections, but significant holes remain. States should use the U.S. EAC survey to comply with federal law and report complete information on UOCAVA voting.

## ENDNOTES

- 1 Michael P. McDonald, "Voter Preregistration Programs," Pew Center on the States, January 2010.
- 2 Id.
- 3 Ian Urbina, "States' Use of Social Security Database," The New York Times, October 8, 2008
- 4 Justin Levitt, Wendy Weiser, Ana Munoz, Making the List: Database Matching and Verification Processes for Voter Registration, Brennan Center for Justice, March 24, 2006
- 5 See Lawyers Committee for Civil Rights, *Morales v. Handel*, available at [http://www.lawyerscommittee.org/projects/voting\\_rights/page?id=0021](http://www.lawyerscommittee.org/projects/voting_rights/page?id=0021)
- 6 First, any systematic removal of the names of ineligible voters from the lists must be completed no later than 90 days prior to the date of a primary or general election for federal office, unless the removal of a name is at the request of the voter, death, or as provided in state law for the criminal conviction or mental incapacity of a voter. Second, the NVRA requires states to follow state law when removing names for reasons of death, criminal conviction, or mental incapacitation. Finally, for purges that are based on changes in residence, the NVRA delineates the process that states must follow. Such names may only be removed if a voter confirms, in writing, that she has changed residence to a place outside of the jurisdiction that is conducting the purge. Alternatively, election officials may mail an address confirmation notice with prepaid postage and pre-addressed return card by forwardable mail. Officials may only remove names of voters who have failed to respond to this notice if the voter has not voted in two subsequent federal elections that occur after the date the notice was mailed. See 42 U.S.C. § 1973gg-6.
- 7 "Felony Disenfranchisement," The Sentencing Project website, available online at <http://www.sentencingproject.org/template/page.cfm?id=133>.
- 8 "Voting with a Criminal Record," ACLU, October 1, 2008, p. 16
- 9 Stephen Ansolabehere, Is There Racial Discrimination at the Polls? Voters' Experiences in the 2008 Election, Paper Prepared for the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 2-5, 2009, p. 4
- 10 Lonna Rae Atkeson, University of New Mexico, Yann Kerevel, University of New Mexico, R. Michael Alvarez, California Institute of Technology, Thad E. Hall, University of Utah, Who Asks for Voter ID? Explaining Poll Worker Discretion, Prepared for delivery at the Midwest Political Science Association's Annual Meeting April 22-24, 2010, Chicago, Ill., p. 24

- 11 For a range of excellent suggestions and descriptions of some model programs such as that in Los Angeles, see Karen Narasaki and Terry Ao, Meeting the Demand of a Growing Language Minority Populate, Excerpted from Voting Rights, American Bar Association Section of State and Local Government Law, edited by Benjamin E. Griffith, 2008
- 12 Jocelyn Benson, Su Voto Es Su Voz! Incorporating Voters of Limited English Proficiency Into American Democracy, Boston College Review, Vol 48:251, 2007, at 315. Brian Sutherland expands upon this and explains,

“A state Board of Elections or other body with rulemaking authority, including perhaps the Secretary of State, should be given the power to include language minority groups that need coverage under the state scheme. Depending upon whether a state has chosen to provide coverage without the requirement of showing an illiteracy rate above the national average or other specific evidence of educational or electoral disparities, language minority groups may apply to receive a determination of coverage by the agency.

The determination could be made in the course of an administrative process with the opportunity for opposing evidence to be presented by the jurisdiction or other interested parties. The final determination could be reviewable after a certain period of time, or jurisdictions could be empowered to seek a termination of coverage upon a proper showing, such as is the case under §§ 4(f)(4) and 203. This approach is consistent with the “inherently local and complex nature of determining which LEP communities face language barriers.”

Brian Sutherland, The Patchwork Of State And Federal Language Assistance For Minority Voters And A Proposal For Model State Legislation, 134 65 N.Y.U. Ann. Surv. 323 (2009) at 150-151
- 13 James Thomas Tucker, Rodolfo Espino, “Government Effectiveness and Efficiency? The Minority Language Provisions of the VRA, Texas Journal on Civil Liberties and Civil Rights, Vol 12:2, , 2007, pp. 230-231
- 14 Karen Narasaki and Terry Ao, Meeting the Demand of a Growing Language Minority Populate, Excerpted from Voting Rights, American Bar Association Section of State and Local Government Law, edited by Benjamin E. Griffith, 2008, p. 7

# ARIZONA

	Current Status	Assessment
Voter Registration		
Verification	License numbers or last four digits of Social Security numbers compared with motor vehicle database. <sup>1</sup> The identifying number and date of birth require an exact match, whereas last names must have at least five letters in common and first names must have three letters in common. <sup>2</sup>	Satisfactory
Notification	Registrants notified within 30 days of placing name on the rolls. <sup>3</sup> Notification by nonforwardable first class mail, and if returned as undeliverable, registrant sent a follow-up notice to the forwarding address provided by the postal service, which shall include a new registration form that must be returned otherwise the voter's name will be transferred to the inactive voter list. <sup>4</sup> Voters on the inactive voter list may still vote upon providing affirmation at the polling place. <sup>5</sup>	Exemplary
Database	Arizona maintains a bottom-up, computerized statewide voter registration database with information entered at the county level and uploaded to the statewide voter registration database. <sup>6</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Citizens must register 29 days prior to the election. <sup>7</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	Arizona's Department of Economic Security entered into a settlement agreement with the U.S. Department of Justice in the spring of 2008. <sup>8</sup> Compliance has improved under the agreement, although concerns of ongoing non-compliance remain. <sup>9</sup> The WIC program is not covered under the settlement agreement.	Satisfactory
3rd Party Registration	No law for VRD employees earning compensation. Deputization process on the books but no current requirement. <sup>10</sup>	Satisfactory
Ex-Felon Voting Rights	Restoration process is only applicable to individuals with only one felony conviction. Persons with two or more felonies are permanently disenfranchised. Those with a single-count felony will see their rights restored upon completion of sentence, including probation and parole. <sup>11</sup>	Unsatisfactory
Ex-Felon Registration Notification	Over half the election officials interviewed in a survey were uncertain about the distinction of voting rights between these two classes of felons. <sup>12</sup> The registration form says, "you cannot register to vote in Arizona if: you have been convicted of a felony and have not yet had your civil rights restored." <sup>13</sup>	Mixed
Voter Identification		
Voter Identification	Arizona is currently the only state that requires proof of citizenship to register to vote. All voters must present either one form of photo ID or two forms of non-photo ID that bears the name and address of the voter. If the voter does not have the requisite identification as the poll worker sees it, he is forced to cast a provisional ballot. <sup>14</sup>	Unsatisfactory

	Current Status	Assessment
Provisional Ballots		
Distribution	Voter is given a provisional ballot if he/she: does not appear on the signature roster or inactive list and has not moved, has moved within the precinct, has moved to a new precinct within the county, has been issued an early ballot but states he/she has not voted and will not vote early or he/she surrenders the early ballot, has changed his/her name, has not provided sufficient identification at the polling location, or, is challenged at the polling place. <sup>15</sup>	Satisfactory
Verification	Voters who cast conditional provisional ballots because of failure to present proper identification at the polls must provide proper identification to the county recorder within five business days for general federal elections or three business days for other elections in order for the ballot to be counted. <sup>16</sup> The poll worker will provide instructions. <sup>17</sup> All other provisional ballots will be processed by the county recorder and counted when verified. <sup>18</sup>	Unsatisfactory <sup>19</sup>
Wrong Precinct	If a voter does not live within the district, the election official will direct the voter to the appropriate polling place for voter's address. <sup>20</sup> Provisional ballots cast in the wrong precinct will not be counted. <sup>21</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	It is unlawful to knowingly, by "fraudulent device or contrivance... impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter." <sup>22</sup> Arizona law prohibits computer crimes that could occur via spyware or software that intentionally misdirects voters, interferes with control of a computer or tampers with internet browsers. <sup>23</sup>	Mixed
Challengers	Voters in Arizona may be challenged by any qualified elector of the same county. <sup>24</sup> Standards for initiating challenge procedures are low, with as little as a piece of returned mail addressed to the challenged voter or the challenged voter's spouse considered sufficient evidence to initiate challenge procedures. <sup>25</sup> Challengers at the polls on Election Day may make challenges orally, <sup>26</sup> and the record made of the challenge is not required to include the name of the challenger. <sup>27</sup>  A challenged voter may vote a regular ballot only if a majority of the election officials are "satisfied that the challenge is not valid" after conducting an examination of the challenge. <sup>28</sup> Otherwise the voter may vote only by provisional ballot. <sup>29</sup>  Arizona law does not empower one individual to challenge the registration of another (as opposed to challenging an individual's right to vote as they attempt to do so).	Unsatisfactory

	Current Status	Assessment
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	In Maricopa County, where most ceremonies take place <sup>30</sup>	Satisfactory
Assessment of State Website	On the homepage for the SOS's elections website, there are subtitles in Spanish below most of the major headings. On the voter information page, each section can be viewed in either English or Spanish. The only voter information section without a Spanish translation is the "Voter Outreach" section. <sup>31</sup>	Exemplary
Assessment of County Websites	Both Pima and Maricopa counties provide translations on their websites. The entire Pima County website can be machine-translated into Spanish with the click of a button. <sup>32</sup> A disclaimer is provided saying that the translations may not be entirely accurate as they are generated by a computer. The Maricopa County website provides better translations, as they are not provided by a computer. They also have audio files in Spanish and O'odham. <sup>33</sup>	Mixed <sup>34</sup>
Voluntary Efforts/Laws Beyond 203	None	Unsatisfactory
Laws that may Impede LEP Voting	English only in the Constitution <sup>35</sup> but state is entirely covered by the Voting Rights Act <sup>36</sup>	N/A
Overseas Voters		
Voter Outreach/ Education	AZ Secretary of State's office has done some outreach to military bases, and intends to do more in anticipation of the upcoming election. <sup>37</sup> As for civilian outreach, the office has not done much; however, county elections do keep voters up to date and provide them with new information (assuming these voters are keeping their addresses/ emails up to date). <sup>38</sup>	Satisfactory
Blank Ballot Transmission	AZ does not follow the 45-day rule exactly, but it does require clerks to transmit blank ballots within 24 hours of receiving a request. <sup>39</sup>	Mixed <sup>40</sup>
Privacy/ Security Matters	The state allows voters to return completed ballots by Internet. <sup>41</sup>	Unsatisfactory

## COLORADO

	Current Status	Assessment
Voter Registration		
Verification	Verification requires a match of name, date of birth, and identification number. <sup>42</sup> Common variants or nicknames shall be acceptable. <sup>43</sup> Officials are authorized to use good judgment with mail-in registrations and correct minor errors in voter-provided identification numbers and consider the voter verified. <sup>44</sup> Minor errors include, but are not limited to, a transposition of two numbers, or accidentally adding or omitting a number. <sup>45</sup>	Exemplary

	Current Status	Assessment
Notification	Applicant is notified of application status. When incomplete, election officials must tell the applicant what additional information is required. This notification must be given within 10 business days. <sup>46</sup> If the notification is returned as undeliverable, the registration will be cancelled. <sup>47</sup>	Mixed
Database	“SCORE” (Statewide Colorado Registration and Election), is required by state law to be administered by the Secretary of State. <sup>48</sup> There were numerous news reports about list maintenance procedures which eventually spawned litigation in 2008 to restore the names of wrongfully removed voters.	Satisfactory
Registration Deadlines and Same Day Registration	Citizens must register no later than 29 days before the election. <sup>49</sup> Additionally, state law provides for “emergency registration” after the close of regular registration up to and including Election Day for voters meeting certain qualifications and whose qualification to vote can be immediately established. <sup>50</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	The Colorado Secretary of State and Department of Human Services have been working cooperatively with advocates since 2007 to improve their NVRA procedures. While some counties are still having difficulties, there has been significant overall improvement. <sup>51</sup>	Inconclusive
3 <sup>rd</sup> Party Registration	Fifteen day turnaround time for forms collected by VRDs. <sup>52</sup> VRDs must register with the state and organizers must be trained. <sup>53</sup>	Satisfactory
Ex-Felon Voting Rights	Voting rights are restored automatically upon release from parole. Those on probation can vote but persons in prison or on parole are ineligible. <sup>54</sup>	Unsatisfactory
Ex-Felon Registration Notification	Interviews with Colorado elections officials revealed that half of the local officials were unaware that people who were serving probation were eligible to vote. <sup>55</sup> Colorado Secretary of State’s website states, “no one will tell you when you are eligible to vote” and ex-offenders receive no notification of their restored right. <sup>56</sup> No information pertaining to voting with a criminal record can be found on the voter registration form itself, though there is a brief mention in the instruction sheet accompanying for the form. <sup>57</sup>	Unsatisfactory
Voter Identification		
Voter Identification	All voters must present an acceptable form of ID, which can be one of a wide range of types <sup>58</sup> If the ID includes an address, it must be a Colorado address. <sup>59</sup> If the voter does not have ID the voter must cast a provisional ballot and that ballot will be counted if the voter was registered and eligible to vote. <sup>60</sup>	Satisfactory

	Current Status	Assessment
Provisional Ballots		
Distribution	A voter receives a provisional ballot if: his/her name does not appear on the registration list at the polling place; he/she does not present proper identification at the polls; he/she was issued a mail-in ballot but has spoiled it or otherwise does not want to use it to vote. <sup>61</sup> A voter who had applied for and received a mail-in ballot must affirm under oath that he/she did not and would not cast the mail-in ballot. <sup>62</sup> Voters casting a provisional ballot must complete and sign the provisional ballot affidavit. <sup>63</sup>	Satisfactory
Verification	Local election officials must verify the eligibility of voters who cast provisional ballots to vote and count the ballots within 10 days of a primary and 14 days of a general election. <sup>64</sup> For individuals who did not present proper identification but have voted in previous elections, elections administrators will verify the ballot after the close of polls based on approved databases. <sup>65</sup> A first time voter who did not provide ID will be mailed a letter within three days, and will be required to bring ID to the county election office with within eight days in order for their vote to be counted. <sup>66</sup> If the voter did not sign the provisional ballot affidavit, the official must contact the voter no later than two days after the election and notify him/her of the omission, giving him/her eight days to return a signed affidavit to the election authority. <sup>67</sup>	Exemplary
Wrong Precinct	If the voter registered to vote but casts a provisional ballot in the wrong precinct but within his/her county of residence, his/her ballot is counted only for the elections for which he/she is eligible to vote (i.e., state and federal). A provisional ballot cast in a county other than his/her county of residence shall not be counted. <sup>68</sup>	Satisfactory
Suppression/Challenges		
Deceptive Practices Law	It is unlawful in Colorado to “impede, prevent, or otherwise interfere with the free exercise of the elective franchise.” <sup>69</sup> Broadly worded “catch all” statute prohibits an individual from knowingly accessing a computer “for the purpose of devising or executing any scheme or artifice to defraud.” <sup>70</sup>	Unsatisfactory
Challengers	Any registered voter may challenge the registration of any other elector, but such challenges must be made at least sixty days prior to Election Day. <sup>71</sup>  A person’s right to vote may also be challenged by written oath in the voter’s presence on Election Day by any eligible elector of the precinct, or by a poll watcher or elections official. <sup>72</sup> In that case, the voter may cast a regular ballot if she or he satisfactorily answers all relevant questions that establish her or his eligibility to vote and signs an oath. <sup>73</sup>	Satisfactory

	Current Status	Assessment
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	None that could be ascertained	Unsatisfactory
Assessment of State Website	The Elections homepage does not offer Spanish translation. However, voter registration site ( <a href="http://www.govotecolorado.com">www.govotecolorado.com</a> ) does offer a Spanish translation, including for a printable voter registration form and the online voter registration system. <sup>74</sup>	Unsatisfactory
Assessment of County Websites	Denver's entire website can be translated into several languages using Google's translation service. In addition there is a link to the Spanish Language Voting Advisory Committee (ACCESO) website on the homepage. <sup>75</sup>	Exemplary
Voluntary Efforts/Laws Beyond 203	Colorado Revised Statute at 1-2-202(4) (2006) requires that county clerks, where a precinct is composed of <i>three percent or more</i> non-English speaking eligible voters, recruit staff members that speak that language. <sup>76</sup>	Satisfactory
Laws that may Impede LEP Voting	English-only provision in the Constitution <sup>77</sup>	Unsatisfactory
Overseas Voters		
Voter Outreach/ Education	The Secretary of State's office has conducted MOVE trainings with FVAP at military installations and worked with the Overseas Vote Foundation on some outreach. <sup>78</sup>	Satisfactory
Blank Ballot Transmission	Colorado has applied for a waiver of the 45 –day requirement. The Secretary of State's office may modify the request only to those counties that cannot meet the requirement. <sup>79</sup>	Unsatisfactory
Privacy/ Security Matters	The state allows voters to return completed ballots by Internet. <sup>80</sup>	Unsatisfactory

# ILLINOIS

	Current Status	Assessment
Voter Registration		
Verification	Identifying information is matched against the state motor vehicle database or the Social Security database. <sup>81</sup> County clerks or board of election commissioners promulgate procedures for processing voter registration forms. <sup>82</sup> It is ultimately up to the local election official to decide how to proceed if a match is not definitive.	Satisfactory
Notification	Illinois regulations state that “every application . . . shall be examined to determine if the information contained on the application is sufficient on its face.” <sup>83</sup> Successful applicants receive a voter identification card. <sup>84</sup> If officials are unable to verify the information, it is unclear whether local officials will reject the application, or permit the applicant to vote contingent on providing identification. <sup>85</sup>	Mixed
Database	Illinois has a bottom-up statewide computerized voter registration database. <sup>86</sup> It is maintained by the State Board of Elections. <sup>87</sup> Local election officials synchronize voter registration data once every 24 hours. <sup>88</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Regular registration closes 27 days prior to an election. <sup>89</sup> However, all jurisdictions in the state allow eligible citizens to register and vote at the same time between the close of regular registration and the 7 <sup>th</sup> day prior to an election. <sup>90</sup> Additionally, some jurisdictions allow eligible citizens to register and vote an in-person absentee ballot on the same day during a 13-day period after absentee ballots become available but before the regular voter registration deadline. <sup>91</sup>	Satisfactory
NVRA Implementation in Public Assistance Agencies	Illinois’ Department of Human Services entered into a Memorandum of Agreement with the U.S. Department of Justice in December 2008. <sup>92</sup> Compliance has improved under the agreement and the number of registrations from DHS offices has increased significantly. <sup>93</sup> The WIC program is not covered by the Memorandum of Agreement.	Satisfactory
3 <sup>rd</sup> Party Registration	No law for VRD employees earning compensation. Seven day turnaround time for forms collected by VRDs. <sup>94</sup> Complicated deputization process that requires a lot of the VRD. <sup>95</sup>	Unsatisfactory
Ex-Felon Voting Rights	Voting rights are restored automatically upon release from prison; persons on parole or probation are eligible to vote. <sup>96</sup>	Exemplary
Ex-Felon Registration Notification	The registration form states that to vote you must “not be convicted and in jail.” <sup>97</sup>	Unsatisfactory

	Current Status	Assessment
Voter Identification		
Voter Identification	Only mandates the federal requirement under HAVA: First-time voters who register by mail and do not provide ID verification with registration application must present one of many different forms of photo and non-photo ID, including a copy of a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. <sup>98</sup>	Exemplary
Provisional Ballots		
Distribution	A voter who claims to be registered may cast a provisional ballot if: his/her name does not appear on the register, his/her voting status is challenged, he/she votes during a court ordered extension of time for closing the polls beyond the time established by state law, voter registered by mail and fails to present identification as required. <sup>99</sup> Voter must execute a written affidavit that he/she is eligible to vote. <sup>100</sup>	Satisfactory
Verification	Provisional ballots are validated and counted within 14 days of the election by election officials. <sup>101</sup> No additional forms or information are generally required from the voter, though the voter may submit additional information to election officials within two calendar days of the election. <sup>102</sup>	Exemplary
Wrong Precinct	If voter is at the wrong precinct, election official will instruct voter to go to the proper polling place. <sup>103</sup> Provisional ballots cast in the wrong precinct are not valid. <sup>104</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	It is a felony under Illinois law to use force, intimidation, threat, deception or forgery knowingly to prevent any other person from lawfully voting. <sup>105</sup> It is a felony to knowingly access a computer "for the purpose of devising or executing any scheme, artifice to defraud, or as part of a deception." <sup>106</sup>	Satisfactory
Challengers	Illinois allows any registered voter to file a challenge with the county clerk to remove the name of any other registered voter from the registration roll. <sup>107</sup> A challenge to remove is allowed only "between the hours of 9:00 a.m. and 5:00 p.m. of Monday and Tuesday of the second week prior to the week" in which an election will be held. <sup>108</sup> Election Day challenges may be brought by any person lawfully at the polls. <sup>109</sup> Election Day challenges need not be written, and no record is kept of the name of the challenger. <sup>110</sup> Illinois law specifies only that challenges must be "for cause," <sup>111</sup> and there are no "bright line" standards regarding the source of the challengers knowledge, or the method by which poll workers are to determine the outcome. <sup>112</sup>	Unsatisfactory

	Current Status	Assessment
	In order to vote a regular ballot, a voter challenged on Election Day is required to subscribe to an oath and provide two forms of identification showing the voter's current residential address or to have a registered voter within the district or precinct swear to the voter's eligibility. <sup>113</sup>	
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	Only in Cook County <sup>114</sup>	Mixed
Assessment of State Website	No comprehensive translations are provided. There is no Spanish or translation service on the homepage of the website. <sup>115</sup> If a Spanish speaker wishes to obtain a voter registration form in Spanish they must first go to the state elections website, then click a button that says, "voters," then click a button that says, "How Do I Register?," and then they will be directed to a link that says, "Illinois Voter Registration Application Form(Spanish)" <sup>116</sup>	Unsatisfactory
Assessment of County Websites	Cook County's website has a button that allows the entire website to be translated into Spanish, Polish, Chinese and Korean. The website also provides downloadable registration forms in all five languages on the homepage of the website. <sup>117</sup>	Exemplary
Voluntary Efforts/Laws Beyond 203	None. Does specify language in its Section 208 implementation. <sup>118</sup>	Mixed
Laws that may Impede LEP Voting	English-only law <sup>119</sup>	Unsatisfactory
Overseas Voters		
Voter Outreach/ Education	The State Board of Elections has updated its website to reflect MOVE's new requirements. Counties will update their websites with new voter information too. <sup>120</sup>	Satisfactory
Blank Ballot Transmission	Illinois has no new legislation mirroring MOVE's 45-day requirement. Rather, its Code specifies that ballots "will be available for mailing 60 days prior to the date of the election." <sup>121</sup>	Unsatisfactory
Privacy/ Security Matters	Completed ballots must be returned by regular mail. <sup>122</sup>	Exemplary

# KENTUCKY

	Current Status	Assessment
Voter Registration		
Verification	Kentucky is exempt from the database matching provisions of the Help America Vote Act. Because Kentucky uses the entirety of the applicant's Social Security number, it does not verify or match against motor vehicle databases or the Social Security databases for verification of voter registration purposes. <sup>123</sup>	N/A
Notification	Kentucky law states that each county clerk shall send notice to each applicant of the disposition of an application to vote. <sup>124</sup>	Satisfactory
Database	A centralized statewide voter registration system has been used in Kentucky since 1973. The current computerized system has been in place in 1995 with list maintenance taking place at the state level and then reported to county clerks. <sup>125</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Citizens must register 28 days prior to the election. <sup>126</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	Voter registration applications from public assistance agencies have declined dramatically since initial implementation of the law. <sup>127</sup> The Cabinet for Health and Family Services has a unique technological infrastructure in place which should facilitate compliance, <sup>128</sup> although other procedures do not seem to be in compliance with the NVRA and are likely preventing the state from maximizing its NVRA implementation.	Inconclusive
3 <sup>rd</sup> Party Registration	No statutory regulation of third party registration groups aside from restrictions on compensation based upon quotas. <sup>129</sup>	Satisfactory
Ex-Felon Voting Rights	Any person with a prior felony conviction can only regain their right to vote by way of an executive pardon issued by the Governor. Executive pardons are issued on an individual basis. <sup>130</sup>	Unsatisfactory
Ex-Felon Registration Notification	Kentucky allows people with misdemeanor convictions to vote, however in that state 53% of county clerks responded incorrectly to the question of whether these people are eligible to vote. <sup>131</sup> On the voter registration form, voters must swear and affirm that they are "not a convicted felon, or if [they] have been convicted of a felony, [their] civil rights must have been restored by executive pardon." <sup>132</sup>	Unsatisfactory
Voter Identification		
Voter Identification	Poll workers are required to confirm the identity of each voter either by personal acquaintance or by a document, such as a driver's license, Social Security card, credit card, other ID card with a picture and a signature or any additional documents approved by the State Board of Elections. Voters unable to produce acceptable ID are required to vote provisionally. <sup>133</sup>	Satisfactory

	Current Status	Assessment
Provisional Ballots		
Distribution	Voters registered in a precinct must sign a statement to that effect and may use a provisional ballot if: their name does not appear on the roster and registration status cannot be determined by the precinct officer, their name does not appear on the roster and has been verified as ineligible to vote, they do not have identification, they have been challenged by all four precinct election officials, or, they are voting as the result of a court order extending the polling hours. <sup>134</sup>	Satisfactory
Verification	County board of electors will verify eligibility to vote in the precinct where ballot cast in accordance with the law. <sup>135</sup>	Unsatisfactory <sup>136</sup>
Wrong Precinct	Ballots cast in the wrong precinct will not be counted. <sup>137</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	It is a felony in Kentucky to prevent or attempt to prevent any voter from casting a ballot, or intimidate or attempt to intimidate voters. <sup>138</sup> Kentucky law prohibits a person from accessing a computer unlawfully to then devise or execute a scheme or artifice to defraud. <sup>139</sup>	Unsatisfactory
Challengers	Only a person who is a designated challenger or who is a regular election official may challenge a voter's right to vote. <sup>140</sup> Designated challengers must be trained and if they violate election laws can be prohibited from serving as challengers for five years. <sup>141</sup>  A challenged voter will be permitted to vote if she or he signs an oath attesting to her or his qualifications to vote, and each oath will be investigated after the election to determine whether any votes were illegally cast. <sup>142</sup>  Kentucky law does not empower one individual to challenge the registration of another (as opposed to challenging an individual's right to vote as they attempt to do so).	Exemplary
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	None	Unsatisfactory
Assessment of State Website	Kentucky provides translations on the homepage of their statewide elections website through Google. <sup>143</sup>	Unsatisfactory
Assessment of County Websites	No survey of county websites.	N/A
Voluntary Efforts/Laws Beyond 203	None, but does refer to language in its Section 208 implementation. <sup>144</sup>	Mixed

	<b>Current Status</b>	<b>Assessment</b>
Laws that may Impede LEP Voting	English-only law <sup>145</sup>	Unsatisfactory
Overseas Voters		
Voter Outreach/ Education	The Secretary of State's office has recently linked to the Overseas Vote Foundation's website to facilitate UOCAVA voters in requesting voter registration forms and absentee ballots. <sup>146</sup> Aside from a few short instructions on its website, the office has not posted online a more in-depth manual. <sup>147</sup>	Satisfactory
Blank Ballot Transmission	The state did not include a 45-day provision, as required by MOVE, in its legislation, though the State Board of Elections is addressing that through its training program. Ballots are mailed to voters within three days of receipt of request. <sup>148</sup>	Mixed
Privacy/ Security Matters	Completed ballots must be returned by mail. <sup>149</sup>	Exemplary

# LOUISIANA

	Current Status	Assessment
Voter Registration		
Verification	Registration information is matched to records of the Louisiana Department of Public Safety and Corrections or the Social Security Administration. <sup>150</sup> While Louisiana law outlines the procedures officials should follow once a match is or is not confirmed, the precise matching standard is not delineated in state law or regulations. <sup>151</sup> However, according to the Secretary of State’s Office, Louisiana does not require an exact match for names. <sup>152</sup>	Unsatisfactory <sup>153</sup>
Notification	State law states that if a match is made, the registrar of voters shall send a notice of registration to the applicant. <sup>154</sup> If there is no match, a verification letter shall be sent granting the applicant ten days to respond. <sup>155</sup> If the applicant does not respond, the application shall be rejected. <sup>156</sup>	Unsatisfactory
Database	Louisiana has maintained its centralized statewide voter registration database (Elections and Registration Information Network or “ERIN”) since 1987. Parish registrars are responsible for entering parish data onto the system and have real time, online access to the database. <sup>157</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Citizens must register 30 days prior to the election. <sup>158</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	Louisiana experienced the seventh steepest decline in public assistance registrations in the nation since initial implementation of the law, <sup>159</sup> suggesting significant non-compliance.	Unsatisfactory
3 <sup>rd</sup> Party Registration	No law for VRD employees earning compensation. Thirty day turnaround time for forms collected by VRDs. “Non exclusive” deputy registrar system and forms can be collected by VRDs without deputization. <sup>160</sup>	Satisfactory
Ex-Felon Voting Rights	Voting rights are restored upon completion of the sentence, including parole and probation. <sup>161</sup> If the voter wishes to continue voting under an existing registration record (rather than submitting a new voter registration form) she or he must appear in person and show proof that she or he is no longer under an order of imprisonment. <sup>162</sup>	Unsatisfactory
Ex-Felon Registration Notification	The Louisiana voter registration form says, “to register to vote and be eligible to vote you must. . . 3) not be under an order of imprisonment for conviction of a felony 4) not be under a judgment of full interdiction or limited interdiction where your right to vote he been suspended.” <sup>163</sup>	Unsatisfactory <sup>164</sup>

	Current Status	Assessment
Voter Identification		
Voter Identification	Louisiana requires photo identification. A voter may cast a ballot with non-photo ID by signing an affidavit. <sup>165</sup>	Satisfactory
Provisional Ballots		
Distribution	In an election for federal office, voter may cast a provisional ballot if his/her name does not appear on the precinct register and the registrar of voters has not authorized the applicant to vote by affidavit, or if commissioner asserts voter is ineligible to vote and voter declares himself/herself to be a registered voter and eligible to vote. <sup>166</sup> Where a court order extends poll hours, votes cast during the extension shall also be by provisional ballot. <sup>167</sup>	Satisfactory
Verification	Ballots are counted on the third or fourth day after the election. <sup>168</sup> The parish board of election supervisors will determine whether the voter casting a provisional ballot is a registered voter and eligible to vote in the election. <sup>169</sup>	Satisfactory
Wrong Precinct	Voters in the wrong precinct can vote by provisional ballot and will have their ballot counted if they are registered to vote in the parish in which they vote and they are eligible to vote. <sup>170</sup>	Satisfactory
Suppression/Challenges		
Deceptive Practices Law	It is unlawful to knowingly, willfully, or intentionally intimidate, deceive, or misinform, directly or indirectly, any voter or prospective voter "in matters concerning voting." <sup>171</sup> There are existing prohibitions against accessing a computer "with the intent to . . . defraud." <sup>172</sup> An anti-phishing statute prohibits the creation of a webpage or a domain page for the purpose of inducing, requesting, or soliciting an individual to provide identifying information for a purpose than an individual believes is legitimate. <sup>173</sup>	Satisfactory
Challengers	Any qualified voter may challenge a person attempting to vote in a primary or general election at the polls on Election Day. <sup>174</sup> The challenge must be made in writing and signed by the challenger. <sup>175</sup>  The person challenged will be permitted to vote only if a majority of the commissioners determine that the challenge is not valid. <sup>176</sup> The standards for this determination are not clearly laid out.  Louisiana law does not empower one individual to challenge the registration of another (as opposed to challenging an individual's right to vote as they attempt to do so).	Unsatisfactory

	Current Status	Assessment
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	None	Unsatisfactory
Assessment of State Website	The Louisiana SOS website is in English only and there are no links to non-English voter registration forms. <sup>177</sup>	Unsatisfactory
Assessment of County Websites	No survey of county websites.	N/A
Voluntary Efforts/Laws Beyond 203	None	Unsatisfactory
Laws that may Impede LEP Voting	In 1992, the Attorney General made the following statement: "It is the opinion of this office that English is the sole official language of Louisiana." <sup>178</sup> Louisiana also has a limited English-only statute. <sup>179</sup>	Unsatisfactory
Overseas Voters		
Voter Outreach/ Education	Secretary of State's website provides some brief instructions and a link to the Federal Voting Assistance Program's website, but does not provide in-depth information.	Satisfactory
Blank Ballot Transmission	Although the Secretary of State must provide registrars with absentee ballots 45 days before an election, the state's statutes do not require registrars to transmit ballots to voters for requests received by that day. <sup>180</sup>	Unsatisfactory
Privacy/ Security Matters	Citizens who don't have enough time to vote by mail may request and submit a ballot by fax, so long as they sign waivers to a secret ballot. <sup>181</sup>	Unsatisfactory

# MICHIGAN

	Current Status	Assessment
Voter Registration		
Verification	If a voter uses a driver's license number as the identification number, system indicates both exact and close matches. Official may then manually examine close matches. If Social Security number is used, an exact match for the last four digits of the Social Security number, the first and last names, and the month and date of birth are required. <sup>182</sup>	Satisfactory
Notification	Voter will be sent a voter identification card. <sup>183</sup> Voter registration shall not be rejected solely on the ground that the individual's original disposition notice or voter identification card is returned by the Postal Service as undeliverable. <sup>184</sup> If the clerk determines the person is not qualified to vote, a notice is sent stating the determination and the reasons for it. <sup>185</sup>	Satisfactory
Database	Michigan's database is known as the Qualified Voter File. It is maintained by the Department of State's Bureau of Elections and allows local officials to input and correct voter registration information. <sup>186</sup>	Exemplary
Registration Deadlines and Same Day Registration	Citizens must register 30 days prior to the election. <sup>187</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	The state's Department of Human Services launched a Civic Engagement Initiative in 2008 which included improvements in NVRA procedures. <sup>188</sup> However, voter registration data collected by the state suggest it is still underperforming. <sup>189</sup>	Inconclusive
3 <sup>rd</sup> Party Registration	No statutory regulation of third party registration groups. <sup>190</sup>	Satisfactory
Ex-Felon Voting Rights	Voting rights are restored automatically upon release from prison; persons on parole or probation are eligible to vote. <sup>191</sup>	Exemplary
Ex-Felon Registration Notification	No information pertaining to voting with a criminal record can be found on the voter registration form itself, though the instruction sheet accompanying the form states that to register to vote in Michigan you must be "not serving a sentence in jail or prison." <sup>192</sup>	Mixed
Voter Identification		
Voter Identification	Voters are "required" to present photo ID. If a voter fails to do so he may sign an affidavit and will still be allowed to cast a regular ballot. <sup>193</sup>	Satisfactory
Provisional Ballots		
Distribution	A voter whose name is not on the registration list and who cannot provide a validated voter registration receipt may receive a provisional ballot if he/she signs an affidavit stating he/she is registered to vote, and affirms that he/she is eligible to register. <sup>194</sup>	Satisfactory

	<b>Current Status</b>	<b>Assessment</b>
Verification	The ballot is tabulated in the precinct if the voter’s valid registration can be located or if the identity of the voter is established through identification documents such as a government issued photo ID card. <sup>195</sup> If the voter cast a provisional ballot and was unable to present identification at the polling place, the ballot will be counted if she/he submits, via fax, mail, or in person, an acceptable form of identification and document confirming his/her residence within 6 days of the election. <sup>196</sup>	Unsatisfactory <sup>197</sup>
Wrong Precinct	Ballots cast in the wrong precinct will not be counted, but before they are thrown out, it must be determined that the voter was not assigned to the wrong precinct. By law, poll workers must attempt to direct voters who appear at the wrong precinct to the correct precinct. <sup>198</sup> Where a provisional ballot was issued to a voter who appeared to vote in the wrong precinct and declined to travel to his/her proper precinct to vote, the clerk must make every effort to confirm that the voter voted in the wrong precinct before marking the envelope as invalid. <sup>199</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	It is a felony in Michigan to “attempt, by means of bribery, menace, or other corrupt means” to “deter the elector from” giving his or her vote in an election. <sup>200</sup> Michigan law prohibits use of a computer “to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.” <sup>201</sup> Anti-hacking statute prohibits a person from accessing a “computer program, computer, computer system, or computer network” to “devise or execute a scheme or artifice with the intent to defraud.” <sup>202</sup>	Unsatisfactory

	Current Status	Assessment
Challengers	<p>Prior to Election Day, any registered voter of the municipality may, by written affidavit, challenge the registration of any registered voter.<sup>203</sup></p> <p>Any registered voter of the precinct present at the polling place may challenge a voter on Election Day.<sup>204</sup> An election inspector has an affirmative duty to challenge any voter the inspector knows or has good reason to know “is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant’s name in the registration book.”<sup>205</sup></p> <p>Michigan law includes several provisions that forbid challengers from making challenges “indiscriminately and without good cause” and from interfering with or unduly delaying the work of election inspectors, and makes it a misdemeanor to challenge eligible voters “for the purpose of annoying or delaying voters.”<sup>206</sup> A written record must be made of each challenge, and that record includes the name of the challenger.<sup>207</sup></p> <p>A challenged voter must answer, under oath, questions regarding her or his qualifications as an elector, and will be permitted to vote only if the answers establish her or his qualifications.<sup>208</sup></p>	Unsatisfactory
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	The Secretary of State conducts voter registration at naturalization ceremonies. <sup>209</sup>	Exemplary
Assessment of State Website	While the Michigan Secretary of State website does not provide a translation feature, it does provide a Spanish link to a Spanish voter registration form, a document on voting rights and responsibilities, information about voter identification requirements and an absentee ballot application on the website. However, a voter would have to navigate the English language home page to get to this information. <sup>210</sup>	Unsatisfactory
Assessment of County Websites	Kent County does not provide any link on the homepage for non-English speaking voters nor does it provide a translation button. <sup>211</sup> Wayne County does provide a translation button. <sup>212</sup>	Unsatisfactory
Voluntary Efforts/Laws Beyond 203	None	Unsatisfactory
Laws that may Impede LEP Voting	None	Exemplary

	<b>Current Status</b>	<b>Assessment</b>
Overseas Voters		
Voter Outreach/ Education	The Secretary of State is “responsible for disseminating information on the procedures for registering and voting to” absentee armed services and overseas voters.[vi] However, the site’s MOVE page includes only brief instructions and links to the main Michigan elections website and the Federal Voting Assistance Program’s website. <sup>213</sup>	Satisfactory
Blank Ballot Transmission	Ballots are sent out to voters “upon receipt” of request. <sup>214</sup> And ballots must be sent out in accordance with the 45-day rule. <sup>215</sup>	Exemplary
Privacy/ Security Matters	Completed ballots must be returned by mail. <sup>216</sup>	Exemplary

# MISSOURI

	Current Status	Assessment
Voter Registration		
Verification	Local election officials determine if applicants are eligible to register to vote. If a voter has a driver's license number, Missouri will use that number as the identification number and an exact match is not required. <sup>217</sup> However, an exact match is required if the Social Security number is used. <sup>218</sup> Local election officials are instructed to consider common nicknames or name variations in the matching process. <sup>219</sup>	Satisfactory
Notification	Notification is mailed to voters when they have been registered. <sup>220</sup> Notification must also be mailed to an applicant if she or he cannot be registered based on their application (either due to missing information or lack of qualification to vote), stating the reasons. <sup>221</sup> If officials cannot match information, the individual may be placed in "pending/incomplete" status but able to correct the information up to and including Election Day. <sup>222</sup>	Satisfactory
Database	Missouri's Voter Registration System is maintained by the Secretary of State. Local election officials are responsible for entering information into the database. <sup>223</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Citizens must register by the fourth Wednesday, or 27 days, prior to an election. <sup>224</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	A federal judge ruled in July 2008 that the state's Department of Social Services was in violation of the NVRA and ordered it to comply immediately. <sup>225</sup> A subsequent settlement agreement implementing effective procedures was reached in the case. <sup>226</sup> Voter registrations from DSS have since increased dramatically. <sup>227</sup>	Exemplary
3 <sup>rd</sup> Party Registration	In order to be a paid voter registration canvasser in Missouri, soliciting more than 10 voter registration forms, <sup>228</sup> you must be individually registered with the state by filling out a "Voter Registration Solicitor Form," and must register for every two-year election cycle. <sup>229</sup> Anyone who fails to register and receives compensation for circulating applications will be guilty of a class three election offense. <sup>230</sup> There is no training required for VRDs. 7 day turnaround time for forms collected by VRDs. <sup>231</sup>	Mixed
Ex-Felon Voting Rights	Voting rights are restored upon completion of the sentence, including parole and probation. <sup>232</sup>	Unsatisfactory

	<b>Current Status</b>	<b>Assessment</b>
Ex-Felon Registration Notification	There is a law which mandates that persons discharged from prison be notified in writing of the process and procedure to register to vote. <sup>233</sup> The registration form affirmation states, "If I have been convicted of a felony or misdemeanor connected with the right of suffrage, I have had the voting disabilities from such a conviction removed pursuant to law." <sup>234</sup>	Satisfactory
Voter Identification		
Voter Identification	All voters must show some form of photo or non-photo identification. Can be one of a wide range. <sup>235</sup>	Satisfactory
Provisional Ballots		
Distribution	Provisional ballot provided if voter's eligibility cannot be established at polling place, first by checking the precinct register, then by contacting or attempting to contact the election authority, and the voter provides a form of personal identification or executes an affidavit. <sup>236</sup> Provisional ballots will not be provided if the voter's identity cannot be verified for lack of ID. <sup>237</sup>	Unsatisfactory
Verification	Provisional votes will be counted when the election authority determines the ballot was cast in the proper precinct or central voting place, the voter was registered to vote, the voter did not otherwise vote in the same election (e.g. by absentee ballot), and the information on the provisional ballot envelope is found to be correct. <sup>238</sup>	Satisfactory
Wrong Precinct	Provisional ballot not counted if cast in wrong precinct. <sup>239</sup> It is voter's duty to appear and vote at the correct polling place. Poll workers required by law to direct voters to the proper precinct or a central polling place if they appear at the wrong precinct. <sup>240</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	Missouri law prohibits knowingly providing false information about election procedures for the purpose of preventing any person from going to the polls. <sup>241</sup>	Exemplary

	Current Status	Assessment
Challengers	<p>Missouri “does not have pre-election day challenges, only election-day challenges,”<sup>242</sup> though a challenge could be instituted by an election official at the request of an individual.<sup>243</sup></p> <p>Missouri permits challenges only on Election Day.<sup>244</sup> Any registered voter may challenge a person’s eligibility to vote,<sup>245</sup> and there does not appear to be any requirement that challenges be made in writing.</p> <p>The result of a challenge based on the identity or qualifications of a voter will be determined by a a majority of election judges.<sup>246</sup> Any questions regarding the identity of the person challenged or questions as to the individual’s qualifications to vote will be resolved by the election authority if the lection judges are unable to reach a decision.<sup>247</sup></p>	Mixed
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	None	Unsatisfactory
Assessment of State Website	There is no translation service and no non-English voter registration forms could be found on the website. <sup>248</sup>	Unsatisfactory
Assessment of County Websites	No survey of county websites.	N/A
Voluntary Efforts/Laws Beyond 203	None	Unsatisfactory
Laws that may Impede LEP Voting	English-only in the Constitution <sup>249</sup>	Unsatisfactory
Overseas Voters		
Voter Outreach/ Education	The Secretary of State intends to update the UOCAVA section of it’s website to reflect changes in the law, but as of this writing the office had not yet done so. <sup>250</sup> Regardless, there is some helpful information on the site for overseas voters. <sup>251</sup>	Inconclusive
Blank Ballot Transmission	Missouri has not included an effective 45-day requirement in its MOVE-implementing legislation. Plus, clerks have three days in which to respond to requests. <sup>252</sup>	Unsatisfactory
Privacy/ Security Matters	Completed ballots must be mailed back, <sup>253</sup> except that overseas voters in “hostile fire zones” including Iraq and Afghanistan may email or fax their ballots back. <sup>254</sup>	Unsatisfactory <sup>255</sup>

# NEVADA

	Current Status	Assessment
Voter Registration		
Verification	Election officials complete a character for character match for first and last name, date of birth, and the driver's license or other state identification number. <sup>256</sup>	Unsatisfactory
Notification	If the county clerk determines that the application is complete, notice is mailed to the newly registered voter. <sup>257</sup> If it is deemed incomplete, the county clerk shall mail a notice to the applicant informing him/her that additional information is necessary to complete the application within 15 days after the notice is mailed. <sup>258</sup> If a voter attempts to vote after being mailed a notice to which they responded, and information still did not match, or to which they have not responded, then the voter is marked "ID Required" in the pollbook and must provide ID before voting. <sup>259</sup>	Satisfactory
Database	"NevVoter," Nevada's statewide voter registration database is maintained by the Secretary of State's office. County clerks and other registrars input the applicable information. <sup>260</sup>	Satisfactory
Registration Deadlines and Same Day Registration	Registration by mail ends 30 days prior to the election. <sup>261</sup> In-person registration at the county clerk's office or buildings designated by the county clerk ends 21 days prior to the election. <sup>262</sup>	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	The Nevada Secretary of State's office has taken steps to improve NVRA compliance in the past several years. <sup>263</sup> Data on the effectiveness of the new procedures did not arrive in time to be analyzed for this report.	Inconclusive
3 <sup>rd</sup> Party Registration	Ten day turnaround time for forms collected by VRDs. <sup>264</sup> No deputization or training process. Any group wishing to obtain 50 or more registration forms must file a "Distribution Plan". <sup>265</sup>	Satisfactory
Ex-Felon Voting Rights	Restoration process is only applicable to certain criminal convictions. Those with more than one felony, or those convicted of Class A or Class B under Nevada law are not restored the right to vote automatically, even if pardoned by a judge. <sup>266</sup>	Unsatisfactory
Ex-Felon Registration Notification	The registration form states, "I swear or affirm... I am not laboring under any felony conviction or other loss of civil rights that would make it unlawful for me to vote." <sup>267</sup>	Unsatisfactory <sup>268</sup>
Voter Identification		
Voter Identification	Only mandates the federal requirement under HAVA: First-time voters who register by mail and do not provide ID verification with registration application must present one of many different forms of photo and non-photo ID, including a copy of a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. <sup>269</sup>	Exemplary

	Current Status	Assessment
Provisional Ballots		
Distribution	Voters may cast a provisional ballot if: they declare they are eligible to vote but their name does not appear on the registration list as eligible or if an election official challenges their eligibility; if they applied to register by mail and this is their first time voting, and they do not present required identification; if they are voting at a polling place after the normal closing time as the result of a court order extending the time for polling. <sup>270</sup>	Satisfactory
Verification	The county or city clerk will verify eligibility to vote. Vote will be counted if the county or city clerk determines that the person who cast the provisional ballot was registered to vote in the election, eligible to vote in the election and was issued the appropriate ballot for the address at which the person resides. <sup>271</sup> Voters who fail to provide identification at the polls or with their mailed ballot must provide the required identification to the county or city clerk not later than 5 p.m. on the Friday following Election Day <sup>272</sup> .	Unsatisfactory <sup>273</sup>
Wrong Precinct	If the voter appears at the wrong polling place, election officials must point the voter to the right polling place, and inform the voter that while a provisional ballot may be cast at the incorrect precinct, the vote may not be counted. <sup>274</sup> A provisional ballot will be counted if the voter has cast the provisional ballot at a polling place that is located in the congressional district in which the voter resides. <sup>275</sup>	Exemplary
Suppression/Challenges		
Deceptive Practices Law	It is unlawful in Nevada to "impede or prevent, by . . . fraudulent contrivance, the free exercise of the franchise by any voter." <sup>276</sup> It is unlawful to knowingly, willfully, and without authorization interfere with an individual's lawful right to use a computer, and it is a felony if this violation of the law is done as part of a "scheme or artifice to defraud. . . or [c]aused an interruption or impairment of a public service." <sup>277</sup>	Unsatisfactory
Challengers	A person's voter registration may be challenged between 35 and 30 days prior to Election Day, <sup>278</sup> or a voter's right to vote may be challenged on Election Day. <sup>279</sup> In either case the challenge must be made by a registered voter of the same precinct. <sup>280</sup>  A challenge to a voter's registration must be in writing, be based on the challenger's personal knowledge, provide the basis for the challenge, and be signed by the challenger. <sup>281</sup>  A challenged voter must execute an oath or affirmation of her or his eligibility to vote, and depending on the reason for the challenge, may be required to show some form of identification. <sup>282</sup>	Unsatisfactory

	Current Status	Assessment
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	In Clark and Washoe Counties <sup>283</sup>	Satisfactory
Assessment of State Website	There is no translation service and no non-English voter registration forms could be found on the website. <sup>284</sup>	Unsatisfactory
Assessment of County Websites	Clark County's website has a button that allows for the entire website to be translated into Spanish. <sup>285</sup>	Exemplary
Voluntary Efforts/Laws Beyond 203	Nevada law says that "Any registered voter who by reason of a physical disability or an inability to read or write English is unable to mark a ballot or use any voting device without assistance is entitled to assistance from a consenting person." <sup>286</sup>	Mixed
Laws that may Impede LEP Voting	None	Exemplary
Overseas Voters		
Voter Outreach/ Education	The Nevada Secretary of State does have information for UOCAVA voters on its website. <sup>287</sup> Although it doesn't work with other organizations in conducting voter outreach, it has, this past Spring, put on a presentation for the National Guard stationed in Nevada on MOVE's new rules. <sup>288</sup>	Satisfactory
Blank Ballot Transmission	Nevada has no 45-day provision in its laws, but the Secretary of State's office does intend to follow the federal mandate. Currently its statutes conflict with MOVE's mandate: county clerks must have absentee ballots available for UOCAVA voters no later than 40 days before an election. <sup>289</sup> (Further action is expected to be taken on these issues in the upcoming 2011 legislative session.)	Inconclusive
Privacy/ Security Matters	Completed ballots may be returned by fax or email, so long as the voter waives his right to a secret ballot. <sup>290</sup>	Unsatisfactory

## NORTH CAROLINA

	Current Status	Assessment
Voter Registration		
Verification	If an applicant uses a driver's license, the data is considered "valid" if the driver's license number, last name, first name, and birth date match a driver's license number with the North Carolina Department of Motor Vehicles. Local officials have discretion to decide whether any possible matches could constitute a proper match. If a Social Security number is used, the last four digits of the number, the name, and month and year of birth must match the data in the Social Security Administration database exactly. <sup>291</sup>	Satisfactory
Notification	If the county officials find a match and determine that the applicant is qualified to vote, notice is sent by nonforwardable mail. <sup>292</sup> Without a match, the applicant must provide identification at the polls in the form of photo identification and a document to confirm the voter's address. A failure to match "shall not prevent the individual from registering to vote and having that individual's vote counted." <sup>293</sup>	Satisfactory
Database	North Carolina's Statewide Election Information Management (SEIMS) is the statewide voter registration database. County officials may access the database to make additions and changes, and it can receive data from those who register to vote at a driver's license office. <sup>294</sup>	Satisfactory
Registration Deadlines and Same Day Registration	The deadline to register to vote is 25 days prior to the election. <sup>295</sup> However, qualified individuals who miss the voter registration deadline may register to vote in-person and cast a ballot at "one-stop" voting sites at any time between 18 days before the election and 1:00 pm on the Saturday before the election. <sup>296</sup>	Satisfactory
NVRA Implementation in Public Assistance Agencies	The state agencies are working effectively under an implementation plan developed by the State Board of Elections in cooperation with advocates in 2007. <sup>297</sup>	Exemplary
3 <sup>rd</sup> Party Registration	No statutory regulation of third party registration groups.	Satisfactory
Ex-Felon Voting Rights	Voting rights are restored upon completion of the sentence, including parole and probation. <sup>298</sup>	Unsatisfactory
Ex-Felon Registration Notification	The North Carolina State Board of Elections has worked with the North Carolina Department of Corrections to design information on voter registration that is given out along with a registration form to every discharged felon at the time of discharge. <sup>299</sup> The registration form affirmation states, "I have not been convicted of a felony, or if I have been convicted of a felony, I have completed my sentence, including any probation or parole. (Citizenship and voting rights are automatically restored upon completion of the sentence. No special document is needed.)" <sup>300</sup>	Exemplary

	Current Status	Assessment
Voter Identification		
Voter Identification	Only mandates the federal requirement under HAVA: First-time voters who register by mail and do not provide ID verification with registration application must present one of many different forms of photo and non-photo ID, including a copy of a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. <sup>301</sup>	Exemplary
Provisional Ballots		
Distribution	Where a voter claims to be registered to vote in the jurisdiction and though eligible to vote his/her name does not appear on the official list of eligible registered voters, he/she may cast a provisional ballot upon executing a written affirmation of registration and eligibility. <sup>302</sup> If a voter who registered by mail is required to present identification but is unable to, they may cast a provisional ballot. <sup>303</sup> Votes cast after the statutory poll closing time by virtue of a lawful order shall be by provisional ballot. <sup>304</sup>	Satisfactory
Verification	The county board of elections shall count the voter's provisional official ballot for all ballot items on which it determines that he/she was eligible under state or federal law to vote. <sup>305</sup> Where a voter cast a provisional ballot for an incomplete voter registration, being contacted by the county board of elections and not having supplied the completed form before the election, they have until the day before the county canvass of the election (seven or ten days after the election depending on the year) <sup>306</sup> to provide such missing information. <sup>307</sup>	Exemplary
Wrong Precinct	Ballots cast within the correct county can be counted if the voter is eligible to vote. <sup>308</sup> Eligibility to vote on a ballot item shall be determined by whether the voter is registered in the county and whether the voter is qualified by residency to vote in the election district. <sup>309</sup>	Satisfactory
Suppression/Challenges		
Deceptive Practices Law	It is a felony in North Carolina "for any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communications where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote." <sup>310</sup> It is unlawful to "willfully, directly or indirectly...access...any computer for the purpose of devising or executing any scheme or artifice to defraud." <sup>311</sup>	Exemplary

	Current Status	Assessment
Challengers	<p>Any registered voter in a county may challenge a voter before the 25<sup>th</sup> day before an election,<sup>312</sup> but only an individual registered to vote in a precinct may challenge any voter at his or her precinct on Election Day.<sup>313</sup> North Carolina does not appear to require that challenges made on Election Day be made in written form or recorded.</p> <p>Mail returned as undeliverable is not affirmative proof that an individual is not properly registered, and is not admissible as evidence in a challenge hearing on Election Day.<sup>314</sup></p> <p>A challenged voter must make an oath or affirmation regarding her or his eligibility to vote, and even once she or he has done so, elections officials may still refuse to allow the individual to vote a regular ballot “unless they are satisfied that the challenged registrant is a legal voter.”<sup>315</sup></p>	Unsatisfactory
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	The State Board of Elections reports that local county boards sometimes go to ceremonies <sup>316</sup>	Unsatisfactory
Assessment of State Website	There is no translation button or any links in non-English on the homepage of the website. <sup>317</sup> However voter registration forms can be obtained in Spanish if the user first navigates through some English links. Both the form and instructions can be found in Spanish. <sup>318</sup>	Unsatisfactory
Assessment of County Websites	Mecklenburg County has no translation button and no non-English links or information on the homepage. However, after navigating through English, a Spanish voter can download a Spanish voter registration form in the voter registration section. <sup>319</sup> Wake County has a translation button that provides translations in Spanish. <sup>320</sup>	Satisfactory
Voluntary Efforts/Laws Beyond 203	North Carolina requires that every county or municipality where the Hispanic population exceeds six percent, in accordance with the most recent decennial census, all instructions to the voter be in both English and Spanish, and that the state board of elections prepare a Spanish translation of ballot instructions for local boards of election. <sup>321</sup>	Exemplary
Laws that may Impede LEP Voting	English-only law <sup>322</sup>	Unsatisfactory

	Current Status	Assessment
Overseas Voters		
Voter Outreach/ Education	North Carolina’s State Board of Elections (SBE) doesn’t do any outreach to voters, since other organizations – Overseas Vote Foundation and Federal Voting Assistance Program – handle that. <sup>323</sup> While there is some helpful information on the SBE’s website, there is no instruction on how a voter should return his completed ballot. <sup>324</sup>	Mixed
Blank Ballot Transmission	Like many other states, North Carolina has no 45-day rule on its books. But the SBE must provide absentee ballots to local officials no later than 60 days before an election or 50 days before a primary. <sup>325</sup>	Unsatisfactory
Privacy/ Security Matters	Completed ballots must be mailed back. <sup>326</sup>	Exemplary

## OHIO

	Current Status	Assessment
Voter Registration		
Verification	First name, last name, date of birth and identification number are matched. New system flags non-matches between the Secretary of State & Bureau of Motor Vehicles databases so that registrants may update their information. <sup>327</sup> Voter registration cannot be cancelled solely because voter provided information does not match information on file with Bureau of Motor Vehicles or Social Security Administration	Inconclusive
Notification	Board of Elections notifies voter in writing by nonforwardable mail once the applicant is registered. <sup>328</sup> If the mail is returned, officials must investigate and "cause the notification to be delivered to the correct address." <sup>329</sup> If an investigation does not yield a correct address, voter will be added to the poll list but must provide identification prior to voting a provisional ballot. <sup>330</sup>	Satisfactory
Database	Ohio operates a computerized statewide voter registration database and is working to improve the processing system to resolve non-matches. <sup>331</sup>	Inconclusive
Registration Deadlines and Same Day Registration	In order to vote in an election, an individual must have been registered for 30 days prior to the date of that election. <sup>332</sup> However, Ohio law establishes a 35-day no-excuse in-person absentee voting period, <sup>333</sup> creating a five-day "overlap period" in which an individual may both register and cast an in-person absentee ballot at the board of elections.	Unsatisfactory
NVRA Implementation in Public Assistance Agencies	The state's Department of Job and Family Services entered into a settlement agreement to effectively implement and monitor the NVRA in November 2009. <sup>334</sup> The first couple months of data reporting under the agreement are encouraging. <sup>335</sup>	Exemplary
3 <sup>rd</sup> Party Registration	Ten day turnaround time for forms collected by VRDs. <sup>336</sup>	Satisfactory
Ex-Felon Voting Rights	Voting rights are restored automatically upon release from prison; persons on parole or probation are eligible to vote. <sup>337</sup>	Exemplary
Ex-Felon Registration Notification	The registration form states "You are not incarcerated (in jail or in prison) for a felony conviction," as a requirement under the eligibility section. <sup>338</sup>	Satisfactory
Voter Identification		
Voter Identification	Voters must present a valid form of photo or non-photo identification in order to vote at the polls; voters who fail to bring proper identification may provide the last four digits of their Social Security number and cast a provisional ballot, or may sign an affirmation of their identity and cast a provisional ballot. <sup>339</sup>	Satisfactory

	Current Status	Assessment
Provisional Ballots		
Distribution	A voter can be issued a provisional ballot for any of the following reasons: name is not on official poll list, or an official challenges voter's eligibility; voter is unable to provide required identification; name is noted on list of voters who received absentee ballots; mark in poll book noting that mail had been returned "undeliverable" from voter's registration address; voter's eligibility challenged; election official believes voter's signature on ballot does not match registration signature. <sup>340</sup>	Unsatisfactory
Verification	Provisional ballots are counted if: a local election authority determines that the voter who cast the ballot is eligible to vote in that precinct <sup>341</sup> ; the voter did not bring proper identification to the polls but presents identification to the board of elections within ten days of the election. <sup>342</sup> To determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election. <sup>343</sup>	Satisfactory
Wrong Precinct	Provisional ballots cast at the wrong precinct will not be counted. Officials are required by law to direct voters to the appropriate polling place. <sup>344</sup>	Unsatisfactory
Suppression/Challenges		
Deceptive Practices Law	It is a felony to "attempt by intimidation, coercion, or other unlawful means to induce" an elector to register or refrain from registering or to vote or refrain from voting. <sup>345</sup> Ohio law is strong regarding deceptive practices that involve hacking, altering, or modifying a computer's settings, software, network data, or other computer systems. <sup>346</sup>	Unsatisfactory
Challengers	Any registered voter may challenge another voter prior to the 19 <sup>th</sup> day before Election Day, but only an elections official may challenge on Election Day. <sup>347</sup>  When elections officials challenge a voter on Election Day, they are to ask certain questions and make certain requests for identification, as provided by law, with the specific questions and documentation depending on the grounds for the challenge (age, citizenship, or residency requirements). <sup>348</sup> Only voters able to satisfy the elections officials of their eligibility are permitted to cast a regular ballots; others must vote by provisional ballot. <sup>349</sup>	Satisfactory
Immigrant Outreach/Section 203		
Registration at Naturalization Ceremonies	The SOS office provides voter registration information to all naturalized citizens and has conducted registration at ceremonies.	Exemplary

	<b>Current Status</b>	<b>Assessment</b>
Assessment of State Website	There is no translation button or language assistance links on the main page of the website. A voter registration form could not be found in any language other than English. <sup>350</sup>	Unsatisfactory
Assessment of County Websites	No survey of county websites.	N/A
Voluntary Efforts/Laws Beyond 203	Ohio law allows the county board of elections to appoint persons who are fluent in a non-English language to serve as interpreters to assist voters in certain election precincts, but does not require it. <sup>351</sup>	Unsatisfactory
Laws that may Impede LEP Voting	None	Exemplary
<b>Overseas Voters</b>		
Voter Outreach/ Education	The Secretary of State's office has been partnering with local elections officials to update them on MOVE. Additionally, it intends to work with non-profit agencies to conduct outreach to UOCAVA voters and work with the Overseas Vote Foundation to update its UOCAVA site. <sup>352</sup>	Exemplary
Blank Ballot Transmission	Absentee ballots for UOCAVA voters must be printed and available by the 45 <sup>th</sup> day before an election. <sup>353</sup> Plus, no later than the 45 <sup>th</sup> day before an election, a board must mail, fax, or otherwise send absentee ballots to those who have requested ballots by that day. <sup>354</sup>	Exemplary
Privacy/ Security Matters	Completed ballots must be mailed back. <sup>355</sup>	Exemplary

# ENDNOTES

- 1 National Association of Secretaries of State, “Maintenance of State Voter Registration Lists,” September 2009, p. 17.
- 2 Brennan Center for Justice, “Making the List: Database Matching and Verification Processes for Voter Registration – Arizona,” AZ-2, available at [http://brennan.3cdn.net/0c7a69d47ce6929f89\\_bcm6bqha3.pdf](http://brennan.3cdn.net/0c7a69d47ce6929f89_bcm6bqha3.pdf)
- 3 Ariz. Rev. Stat. § 16-163.
- 4 Ariz. Rev. Stat. § 16-166(a).
- 5 Ariz. Rev. Stat. § 16-583(a).
- 6 Brennan Center for Justice, “Making the List: Database Matching and Verification Processes for Voter Registration – Arizona,” AZ-1, available at [http://brennan.3cdn.net/0c7a69d47ce6929f89\\_bcm6bqha3.pdf](http://brennan.3cdn.net/0c7a69d47ce6929f89_bcm6bqha3.pdf)
- 7 Ariz. Rev. Stat. § 16-120
- 8 “Agreement Between the United States Department of Justice and the Arizona Department of Economic Security Concerning Standards and Monitoring of Compliance with the National Voter Registration Act,” available at <http://www.demos.org/pubs/Settlement%20&%20Exhibits.pdf>.
- 9 Arizona Department of Economic Security, “Report pursuant to Agreement between the United States Department of Justice and the Arizona Department of Economic Security concerning Standards and Monitoring of Compliance with the National Voter Registration Act of 1993,” December 2008 and June 2009, on file with the authors.
- 10 Brennan Center for Justice, “State Restrictions on Community-Based Voter Registration Drives,” August 4, 2008, pg. 4, available at [http://brennan.3cdn.net/ca85dbcf2d2ac045ff\\_awm6iviui.pdf](http://brennan.3cdn.net/ca85dbcf2d2ac045ff_awm6iviui.pdf)
- 11 Brennan Center for Justice, “Criminal Disenfranchisement Laws Across the United State,” available at [http://www.brennancenter.org/page/-/d/download\\_file\\_48642.pdf](http://www.brennancenter.org/page/-/d/download_file_48642.pdf).
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- 13 Arizona Voter Registration Form, available at [www.azsos.gov/election/forms/voterregistrationform.pdf](http://www.azsos.gov/election/forms/voterregistrationform.pdf).
- 14 Arizona Secretary of State, “Elections Procedures Manual,” 2007 available at [http://www.azsos.gov/election/Electronic\\_Voting\\_System/](http://www.azsos.gov/election/Electronic_Voting_System/)
- 15 Id. at 135-36; see also id at 115 (more detail about early voters); Ariz. Rev. Stat. § 16-579(A)(2).
- 16 Ariz. Secretary of State, “Election Procedures Manual,” 2007, p. 135 available at [http://www.azsos.gov/election/Electronic\\_Voting\\_System/](http://www.azsos.gov/election/Electronic_Voting_System/)
- 17 Id.
- 18 Ariz. Rev. Stat. § 16-584 (E).
- 19 Rated unsatisfactory because of the insufficient time allowed for the voter to return with identification
- 20 Ariz. Rev. Stat. § 16-583.
- 21 Ariz. Rev. Stat. § 16-584; see also Ariz. Secretary of State, “Election Procedures Manual,” 2007, p. 167 available at [http://www.azsos.gov/election/Electronic\\_Voting\\_System/](http://www.azsos.gov/election/Electronic_Voting_System/)
- 22 Ariz. Rev. Stat. § 16-1013(A)(2).
- 23 Ariz. Rev. Stat. § 44-1372.01(A); § 44-1372.01(A)(1)(a)-(b).
- 24 Ariz. Rev. Stat. § 16-591.
- 25 Ariz. Rev. Stat. § 16-592 (“Any returned United States mail addressed to the person challenged or the spouse of the person challenged, or both, and to the address appearing on the precinct register or affidavit shall be considered as sufficient grounds to proceed under this section.”).
- 26 Ariz. Rev. Stat. § 16-591.
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- 29 Ariz. Rev. Stat. § 16-592.
- 30 Email from Tammy Patrick, Federal Compliance Officer, Maricopa County Elections, May 14, 2010.
- 31 Arizona Office of the Secretary of State, “Elections,” available at <http://www.azsos.gov/election/> (last visited June 28, 2010).
- 32 “Pima County Elections Homepage,” available at <http://www.pima.gov/elections> (last visited June 28, 2010).
- 33 “Maricopa County Elections Department,” available at <http://recorder.maricopa.gov/web/elections.aspx> (last visited June 28, 2010).
- 34 The Pima County translation is through Google Translate.
- 35 Ariz. Const. art. 28.

- 36 James Thomas Tucker & Rodolfo Espino, "Government Effectiveness and Efficiency? The Minority Language Provisions of the VRA," *Texas Journal on Civil Liberties and Civil Rights*, Vol. 12:2, 2007, pp. 169-170.
- 37 Interview with Amy Bjelland, State Election Director for the Arizona Secretary of State, May 25, 2010.
- 38 *Id.*
- 39 Ariz. Rev. Stat. § 16-543(A), as amended by Arizona House Bill 2427 (signed by the Governor on February 11, 2010).
- 40 Unsatisfactory on 45-day rule; exemplary on 24-hour turnaround.
- 41 Arizona Office of the Secretary of State, "Military and Overseas Voters," available at <https://www.azsos.gov/election/military/>.
- 42 See 8 Colo. Code of Reg. 1505-1 at 30.4.1.
- 43 See *id.*
- 44 See *id.* at 30.3.4.
- 45 See *id.*
- 46 Colo. Rev. Stat. § 1-2-509
- 47 Email from Jenny Flanagan, Director, Common Cause Colorado, July 23, 2010. The remaining claim in *Common Cause et al. v. Coffman*, 08-cv-2321-WYD (2008), challenges a state law that prevents a new voter registration for an applicant whose first mailing is returned as undeliverable within 20 days of being sent. Common Cause, et al argue that when a citizen submits a voter registration form to a county clerk's office, a voter information card is sent confirming the registration. Under current law, if that card is returned as undeliverable, the registration is cancelled. The Secretary of State has said that the registration is incomplete in such a case.
- 48 Colo. Rev. Stat. § 1-2-302.
- 49 Colo. Rev. Stat. § 1-2-201(3)
- 50 Colo. Rev. Stat. § 1-2-217.5
- 51 Colorado Secretary of State, "NVRA Agency-Based Voter Registration in Colorado: 2009 Annual Report," April 2010, available at <http://www.elections.colorado.gov/Default.aspx?PageMenuID=1331>.
- 52 COLO. REV. STAT. § 1-2-702(2).
- 53 COLO. REV. STAT. § 1-2-701(2).
- 54 Colorado Secretary of State, "Voting and Conviction FAQs," available at <http://www.elections.colorado.gov/Default.aspx?PageMenuID=1411>.
- 55 *Id.* at 3.
- 56 *Id.*
- 57 "Colorado Voter Registration Form," available at [http://www.elections.colorado.gov/Content/Documents/voter\\_registration\\_forms/fillable\\_combo\\_vr\\_english.pdf](http://www.elections.colorado.gov/Content/Documents/voter_registration_forms/fillable_combo_vr_english.pdf).
- 58 COLO. REV. STAT. § 1-7-110.
- 59 COLO. REV. STAT. §, 1-1-104(19.5); 8 Colo. Code Regs. § 1505-1, Rule 26.
- 60 Colo. Rev. Stat. § 1-8.5-106.
- 61 Colo. Rev. Stat. § 1-8.5-101; see also 8 Colo. Code of Reg. § 1505-1, Rule 26.
- 62 Colo. Rev. Stat. § 1-8.5-101(3).
- 63 Colo. Rev. Stat. § 1-8.5-104.
- 64 Colo. Rev. Stat. § 1-8.5-105.
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- 66 Email from Hilary Rudy, Legal Analyst for the Colorado Secretary of State, June 29, 2010.
- 67 Colo. Rev. Stat. § 1-8.5-105.
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- 69 Colo. Rev. Stat. § 1-13-713.
- 70 Colo. Rev. Stat. § 18-5.5-102.
- 71 Colo. Rev. Stat. § 1-9-101.
- 72 Colo. Rev. Stat. § 1-9-201; 1-9-202.
- 73 Colo. Rev. Stat. § 1-9-203.
- 74 "Colorado Secretary of State," available at, available at <http://www.sos.state.co.us/> (last visited June 28, 2010).
- 75 "Denver Elections Division," available at <http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/elections#nogo> (last visited June 28, 2010).

- 76 Brian Sutherland, "The Patchwork of State and Federal Language Assistance for Minority Voters and a Proposal for Model State Legislation," 65 N.Y.U. Ann. Surv. 323, at 356 (2009).
- 77 Colo. Const. art. 2, § 30a.
- 78 Interview with Hilary Rudy, Legal Analyst for the Colorado Secretary of State, April 1, 2010.
- 79 Email from Judd Choate, Elections Division Director for the Colorado Secretary of State, August 11, 2010
- 80 Colo. Rev. Stat. § 1-8-103.5(2)(b)
- 81 National Association of Secretaries of State, "Maintenance of State Voter Registration Lists," September 2009, p. 32.
- 82 10 Ill. Comp. Stat. § 5/1A-16 (c).
- 83 26 Ill. Adm. Code 216.70.
- 84 26 Ill. Adm. Code 216 EXH. D.
- 85 Larry Lanham, Sarah Cherry & Nathan Cemenska, "50 Question for 5 States: Illinois," available at [http://moritzlaw.osu.edu/electionlaw/election06/50-5\\_Illinois.php#3](http://moritzlaw.osu.edu/electionlaw/election06/50-5_Illinois.php#3); See also Brennan Center for Justice, "Making the List: Database Matching and Verification Processes for Voter Registration – Illinois," IL-2, available at [http://brennan.3cdn.net/f11e7b63701d7a97ca\\_kgm6ivtyu.pdf](http://brennan.3cdn.net/f11e7b63701d7a97ca_kgm6ivtyu.pdf).
- 86 Ill. Comp. Stat. § 5/1A-25.
- 87 Center for Democracy and Election Management, "Election Administration Profiles of All Fifty States – Supplement to The State of Elections in the Fifty States: Evaluating the Process Where it Counts," July 15, 2009, p. 42.
- 88 Id.
- 89 10 Ill. Comp. Stat. § 5/4-6; 10 Ill. Comp. Stat. 5 5/5-5; and 10 Ill. Comp. Stat. § 5/6-29
- 90 10 Ill. Comp. Stat. § 5/4-50; 10 Ill. Comp. Stat. § 5/5-50; and 10 Ill. Comp. Stat. § 5/6-100
- 91 Email from Ken Menzel, Legal Counsel, Illinois State Board of Elections, May 19, 2010; See also 10 Ill. Comp. Stat. § 5/19-4; 10 Ill. Comp. Stat. § 5/4-6; 10 Ill. Comp. Stat. § 5/5-5, and 10 Ill. Comp. Stat. § 5/6-29 (establishing that there is a 13 day period between the beginning of absentee voting and the voter registration deadline).
- 92 "Memorandum of Agreement By and Between the United States and The State of Illinois, Department of Human Services," December 15, 2008, available at <http://www.demos.org/pubs/ILAgreement%20Letter.pdf>.
- 93 Compliance report provided by the Illinois Department of Human Services to the Voting Section of the Civil Rights Division of the U.S. Department of Justice pursuant to the Memorandum of Agreement entered into on December 15, 2008, December 11, 2009, on file with the authors.
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- 101 10 Ill. Comp. Stat. § 5/18A-15.
- 102 10 Ill. Comp. Stat. § 5/18A-15(d).
- 103 10 Ill. Comp. Stat. § 5/18A-5(b)(1).
- 104 10 Ill. Comp. Stat. § 5/18A-15(b).
- 105 10 Ill. Comp. Stat. § 5/29-4.
- 106 720 Ill. Comp. Stat. § 5/16D-5.
- 107 10 Ill. Comp. Stat. §§ 5/4-12, 5/5-15, 5/6-44. The Illinois code refers to challenge to remove a voter from the registration list as a challenge to erase. See id.
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- 109 State Board of Elections, "A Guide for Pollwatchers," 10, available at <http://www.elections.il.gov/downloads/electioninformation/pdf/pollguide.pdf>; Email from Ken Menzel, Legal Counsel, Illinois State Board of Elections, May 18, 2010.
- 110 Email from Ken Menzel, Legal Counsel, Illinois State Board of Elections, May 18, 2010.
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- 114 Interview with Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights, March 5, 2010.
- 115 Illinois State Board of Elections, available at <http://www.elections.state.il.us/> (last visited June 28, 2010).
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- 117 Cook County Clerk, "Register to Vote," available at <http://www.voterinonet.com/sub/register.asp#qualifications> (last visited June 28, 2010).
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- 120 Interview with Cris Cray, Director of Legislation for the Illinois State Board of Elections, May 26, 2010.
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- 124 Ky. Rev. Stat. § 116.0452(2).
- 125 Center for Democracy and Election Management, "Election Administration Profiles of All Fifty States – Supplement to The State of Elections in the Fifty States: Evaluating the Process Where it Counts," July 15, 2009, p. 55.
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- 128 See "MS 0650 Voter Registration Procedures," Jan. 1, 2010, at (A) available at [http://manuals.chfs.ky.gov/dcb\\_s\\_manuals/dfs/VOLI/VOLIMS0650.doc](http://manuals.chfs.ky.gov/dcb_s_manuals/dfs/VOLI/VOLIMS0650.doc).
- 129 Ky. Rev. Stat. § 119.207
- 130 League of Women Voters of Kentucky, "Felony Disenfranchisement in the Commonwealth of Kentucky," p. 2, October 2006, available at <http://www.kftc.org/our-work/restoration/lwvreport>.
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- 132 Kentucky Voter Registration Form, available at <http://elect.ky.gov/NR/rdonlyres/BF1B9783-92F9-4753-9AEA-2B6A3EE883C2/198364/RevisedMailinoterregistrationcardfinal.pdf>.
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- 136 Kentucky received an unsatisfactory rating in this category because a voter who does not have adequate identification at the polls is permitted to vote a provisional ballot, but the ballot will not be counted. The better standard would be to allow the voter to return to the county clerk's office within a 10 day period with the proper identification requirement to "cure" the problem and ensure that the provisional ballot is counted.
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- 140 Opinion of the Kentucky Attorney General 77-645.
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- 143 Kentucky Secretary of State, "Elections Overview," available at <http://www.sos.ky.gov/elections/> (last visited June 28, 2010).
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- 145 Ky. Rev. Stat. § 2.013.
- 146 Kentucky State Board of Elections, "Military & Overseas Citizens Overview," available at [http://elect.ky.gov/registrationinfo/military\\_overseas.htm](http://elect.ky.gov/registrationinfo/military_overseas.htm) (last visited July 11, 2010).
- 147 *Id.*

- 148 Ky. Rev. Stat. § 117.085(4),(5).
- 149 Ky. Rev. Stat. § 117.086(1).
- 150 See La. Rev. Stat. § 18:101.1(A)(1).
- 151 Brennan Center, “Making the List: Database Matching and Verification Processes for Voter Registration - Louisiana,” LA-2, available at [http://brennan.3cdn.net/2936540fe73fe12ab9\\_94m6i6af5.pdf](http://brennan.3cdn.net/2936540fe73fe12ab9_94m6i6af5.pdf).
- 152 Letter from Angie La Place, Commissioner of Elections, Louisiana Secretary of State, July 7, 2010
- 153 While we are pleased that the Secretary of State does not use an exact match standard, standards for matching should be established statutorily.
- 154 La. Rev. Stat. § 18:101.1(A)(1)(a).
- 155 Id.
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- 157 See Center for Democracy and Election Management, “Election Administration Profiles of All Fifty States – Supplement to The State of Elections in the Fifty States: Evaluating the Process Where it Counts,” July 15, 2009, p. 58. The database is governed by La. Rev. Stat §§ 18:31, 18:171, 18:192, 18:193 and La. Admin. Code Ch. 31 Part II § 101.
- 158 La. Rev. Stat. § 18:135(A)(1).
- 159 U.S. Election Assistance Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008,” June 2009, available at <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>; U.S. Federal Election Commission, “The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996,” available at <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf>.
- 160 Brennan Center for Justice, “State Restrictions on Community-Based Voter Registration Drives,” August 4, 2008, pg. 12, available at [http://brennan.3cdn.net/ca85dbcf2d2ac045ff\\_awm6iviui.pdf](http://brennan.3cdn.net/ca85dbcf2d2ac045ff_awm6iviui.pdf)
- 161 Brennan Center for Justice, “Criminal Disenfranchisement Laws Across the United State,” available at [http://www.brennancenter.org/page/-/d/download\\_file\\_48642.pdf](http://www.brennancenter.org/page/-/d/download_file_48642.pdf).
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- 163 “Louisiana Mail Voter Registration Application,” available at [http://www.sos.louisiana.gov/portals/0/elections/forms/form\\_0110\\_ver-011106.pdf](http://www.sos.louisiana.gov/portals/0/elections/forms/form_0110_ver-011106.pdf).
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- 165 La. Rev. Stat. §18:562.
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