



U.S. Election Assistance Commission
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Best Practices on Provisional Voting

Background:

Section 302 of the Help America Vote Act (HAVA) creates the right for potential voters to cast provisional ballots in the event their names do not appear on the registration list or the voters' eligibility is challenged by an election official. The issuance of a provisional ballot is best described as a safety net or fail safe for the voter, in that:

- It maintains the person's intent to vote and selections until election officials determine that the person does or does not have the right to cast a ballot in the election.
- It allows the determination of the voter's eligibility to be made at a time when more perfect or complete information is available either from the voter or from the election jurisdiction.

Election officials make the decision on whether to count provisional ballots based on voter eligibility standards established in State and Federal law, including age, citizenship, and residence requirements. While HAVA establishes identification (ID) requirements for first time voters who registered by mail, many States impose stricter standards for the identification of all voters. States determine which provisional ballots meet those ID requirements.

Provisional balloting prevents the possible disenfranchisement of voters. However, the policies and procedures for administering provisional voting vary from State to State. In some States, a person can cast a provisional ballot in any precinct in the State regardless of where the person is registered. In other States, a person must cast a provisional ballot in the precinct in which the person is eligible to vote. A consistent approach within each State is key to ensuring that all voters are treated equally.

The U.S. Election Assistance Commission (EAC) issued Advisory 2005-006 in September 2005, to provide clarification on provisional voting and identification requirements. The EAC offers the following information as a complement to Advisory 2005-006 and as best practices to guide States as they administer the provisional balloting process. By recommending these practices, the EAC offers informed advice while respecting diversity among the States.

Overview of Recommendations for Best Practices

Although wide variation exists in implementing provisional voting among and within States, recommendations for best practices based on the experiences of the 2004 elections can be useful as States seek to implement provisional voting policies and procedures that are fair, transparent, and effective.

Efforts to improve provisional voting may be most effective as part of a broader effort by State and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable States to identify which aspects of the registration and electoral system cause most voters to end up casting provisional ballots. Election officials can then look to their registration system, identification requirements, or poll worker training as ways to reduce the need for voters to cast provisional ballots.

Election officials are encouraged to review these recommendations as they prepare to administer the distribution and processing of provisional ballots for the November 2006 election cycle. In 2007, the EAC will collect statistical data on provisional ballots cast in this election. Additional analysis and study will result in recommendations for continued improvement in this aspect of election administration.

The recommendations provided below are grouped based on each stage of the provisional voting process, as follows:

- Voter Outreach/Communication
- Laws, Policies and Procedures
- Staff and Poll Worker Training
- Managing Election Day
- Evaluating Voter Eligibility and Counting Provisional Ballots
- Post-Election Statistical and Systems Analysis

Voter Outreach/Communication

- Assess the usefulness and clarity of information provided to voters – both in written format and posted on web sites.
- Take advantage of mandated mailings (i.e. sample ballots and/or registration certificates) to further notify voters of the need to update their voter registration record to reflect a change in name, address, or party affiliation. In States where sample ballots are not required, mail voter registration affidavits with polling place location and address to all voters.
- Inform voters of laws regarding provisional voting. Prominently post and widely distribute provisional voting and administrative complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what to do if they believe their right to vote was denied.

- Inform voters of laws regarding voter identification. Train registration staff and volunteers to collect and verify voter identification requirements at the initial point of registration.
- Collect required identification from voters registering by mail by including an informational handout when you mail their voter registration certificate.
- Monitor the number of registered voters that must show identification on Election Day, and take proactive steps to collect this data prior to Election Day.
- In states that require voters to provide identification in every election, educate voters and poll workers on the various types of acceptable identification.
- Provide clear, straightforward information about the process for re-enfranchising felons.
- Use election office web sites to provide helpful information to voters including whether they are registered to vote; how they can update their registration for changes of name, address or party; boundaries of precincts; location of polling places; requirements for identification; and other helpful information that will facilitate voter registration and voting. In addition, provide an 800 number that voters can use to contact their election official.
- Encourage voter outreach efforts to inform voters of the need to validate/update their voter registration records.

Laws, Policies and Procedures

- Review State laws regarding the validity of a provisional ballot when cast in the wrong precinct. It is a good practice for poll workers to direct the voter to the correct precinct in states where provisional ballots are counted only when cast in the voter's own precinct.
- Utilize State laws or regulations to require an evaluation process for provisional ballots while protecting the names of those who voted provisionally.
- Give voters who lack the needed ID a reasonable period of time to provide it to officials prior to counting provisional ballots.

Staff and Poll Worker Training

- Provide standard information resources for the training of poll workers by local jurisdictions. Examples of training materials might include maps or databases with instructions on how to locate polling places for potential voters who show up at the wrong polling place. Usable and useful information in the hands of poll workers

can protect voters from being penalized by administrative errors at the polling place.

- Ensure that state training materials provided to local jurisdictions clearly indicates that the only permissible requirement for obtaining a provisional ballot is an affirmation that the voter is registered in the jurisdiction and is eligible to vote in an election for Federal office.

Managing Election Day

- Provide poll workers with color-coded supplies, informational handouts and checklists to aid in processing provisional voters. *Example: To avoid confusion while counting ballots produce provisional ballots with a design and/or color that is different from a regular ballot.* Handouts should describe the procedures for evaluating the provisional ballot and steps the voters can take to determine if their ballots were counted. Training materials should include instructions on the options available to provisional voters.
- Ensure that each polling place has sufficient supplies for all provisional voters, i.e. ballots, envelopes, handouts, etc. States should provide guidelines for estimating the provisional supplies needed at each polling place. Offer a practical method to guide the supply of provisional ballots at polling places and that takes into account the number of voters in the district and the number of provisional ballots cast in recent elections. *Example: Connecticut and Delaware provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 percent of the voters in the district; Delaware sets the number at 6 percent.*
- Review the layout and staffing level of all polling places, particularly the multi-precinct polling places. To help voters cast their ballot in the right place, provide greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics.
- Provide voters with printed information explaining how to check to see if their ballot was counted.
- For those States that require voters to appear at their assigned precincts, make sure voters know the importance of voting within their own precincts and ramifications of voting in another precinct. Involve the voter in deciding whether to go to the correct precinct or vote provisionally for only the higher offices at the top of the ballot.
- Establish a clear chain of custody for handling provisional ballots from production through distribution, collection, and evaluation, including written procedures for this chain of custody.

- Collect statistical information regarding number of provisional ballots cast by polling place and provide this data to the media and candidates as soon as possible after Election Day.

Evaluating Voter Eligibility and Counting Provisional Ballots

- Use a signature match method to establish that the individual who voted and the individual returning later with identification is, in fact, the same person. Compare the signature match with motor vehicle records and other databases that are available to counties.
- Prepare a written procedure and checklist for officials to identify the reason why provisional ballots are rejected. After completing the checklist disclose them publicly. *Example: Check the applicable box “unregistered voter,” “lack of signature match,” “wrong precinct”, etc..*
- Notify voters regarding whether their provisional ballots are counted. Provide information to enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.
- Verify provisional ballots in a timely manner. The time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Consider how to divide the time constraints imposed in a presidential election by the safe-harbor provisions regarding certification to the Electoral College. Since some part of this 5-week period will be consumed by the eligibility evaluation, take care to provide a sufficient period of time for challenges.

Post-Election Statistical and Systems Analysis

- Collect data systematically on the provisional voting process to permit consistent evaluation of State procedures and assess changes from one election to the next. *Example: (1) number of provisional ballots cast by county; (2) reasons why provisional ballots were cast and number counted and not counted, by category; (3) measures of variance among jurisdictions; and (4) time required to process and research provisional ballots by jurisdiction.*
- Analyze your State’s provisional voting system, by asking the following questions:
 - 1) Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
 - 2) Does the tally include all votes cast by properly registered voters who correctly completed the steps required?

- 3) Is the provisional voting system sufficiently structured to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
- 4) Do the procedural requirements of the system permit a cost-efficient, accurate and timely operation? Are the administrative requirements of the system reasonable given the availability of staff and other resource requirements?
- 5) How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the State? Is the variation great enough to cause concern that the system may not be administered uniformly across the State?

CONCLUSION

The EAC recommends that States take the following actions:

- Recognize that the first step to improving quality is to see the provisional voting process as a system and to take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
- Allow the provisional ballot to be a procedure for change of address for the voter or for registering the voter for the next election and future elections.
- Establish a clear chain of custody for handling provisional ballots from production through distribution, collection, and evaluation, including written procedures for this chain of custody.
- Collect data systematically on the provisional voting process to enable an ongoing evaluation of how well States' voting procedures are working. Assess changes from one election to the next. The effort should start in the 2006 election and should include collecting the following data:
 - Provisional votes cast and counted by jurisdiction, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot) and the number of ballots actually counted in each category.
 - Reasons why provisional ballots were not counted.
 - Measures of variance among jurisdictions.
 - Number of poll workers trained in the administration of provisional voting by polling place.
 - Number of jurisdictions posting information on provisional voting in the polling place.
 - Time required to process and research ballots by jurisdiction.