



# **Testimony of Barbara R. Arnwine Executive Director, Lawyers' Committee for Civil Rights Under Law**

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## **"Lessons Learned From the 2008 Election"**

Before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties

**March 19, 2009**

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Executive Director, Lawyers' Committee for Civil Rights Under Law

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Mr. Chairman and members of the Committee, thank you for inviting me to this hearing today. My name is Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee leads Election Protection, the nation's largest nonpartisan voter protection and education effort. This historic coalition brought together hundreds of national, statewide and local organizations in common purpose to provide eligible voters with the tools they need to cast a ballot that counts. Through our state of the art 866-OUR-VOTE hotline, interactive web tools and comprehensive field programs, we directly helped over half a million voters in 2008's historic election.

Mr. Chairman, I want to thank you for your leadership in combating deceptive voting practices. As you know, voters across the country still have to navigate through deliberate attempts by political operatives to confuse, deceive and intimidate them as they try to vote. In particular, I thank Chairman Conyers for reintroducing the Deceptive Practices and Voter Intimidation Prevention Act of 2009. This bill will not only prevent these practices under federal law, but will provide the necessary administrative remedies to ensure quick dissemination of correct information to the affected communities in ways they trust. In addition, this Committee has played a lead role in exposing the failures of the Justice Department in the previous Administration, particularly in the area of voting rights. These two issues – the need for federal legislation banning deceptive practices and Justice Department enforcement of federal voting rights protections – are the focus of my testimony today.

The Lawyers' Committee, founded 46 years ago, by President Kennedy enlists the private bar in providing legal services to address racial discrimination. Since our inception, voting rights has been at the core of our work. Just yesterday, we filed our brief in the United States Supreme Court in *Northwest Austin Municipal Utility District No. 1 v. Austin*, where we assert that Congress acted within its broad authority to enforce the guarantees against voting discrimination in the 14<sup>th</sup> and 15<sup>th</sup> Amendments when it reauthorized Section 5 of the Voting Rights Act three years ago.

In the aftermath of the 2000 election debacle, we cofounded Election Protection to monitor and mitigate problems and to help ensure that all voters have an equal opportunity to participate in the political process. In 2005, we created an initiative within the Voting Rights Project of the Lawyers' Committee – the National Campaign for Fair Elections – to lead Election Protection and the Lawyers' Committee's efforts to reform the election process.

The 2008 Election Protection program was our most ambitious voter education and protection

effort in history. Election Protection built the largest voter protection and education effort yet, bringing together civil rights advocates, diverse community partners, media and concerned citizens to safeguard the votes of all Americans. We did a tremendous amount of public outreach with NBC, BET, and other media to educate voters on our efforts. With the support of over 150 coalition partners, we worked with election officials, conducted strategic legal voter protection field programs and answered over 240,000 calls to 1-866-OUR-VOTE our one of a kind voter support hotline that, combined with our sister hotline 1-888-Ve-Y-Vota, is the only nationwide number to provide live, real-time assistance to voters to help them cast a ballot. Further, we took advantage of new technology, and initiated our online voter education program – [www.866OURVOTE.org](http://www.866OURVOTE.org), which served as an interactive clearinghouse for state and national voting rules, regulations, news and information on hot election topics. From September 17<sup>th</sup> through Election Day, more than 283,000 people visited the website. Of course, Election Protection’s primary purpose is to deliver a comprehensive support network to voters. That goal, however, is followed closely by our unique data collection effort. Combining the stories from callers into the hotline with those that come in from our interactive webchat and those developed in the field, our partner, the Electronic Frontier Foundation, created [www.ourvotelive.org](http://www.ourvotelive.org), a public website that collects the experiences of the hundreds of thousands of voters with whom Election Protection interacts. The result is the most complete picture of the obstacles Americans face as they head to the polls from the perspective of the voters.

Mr. Chairman, I believe we have not only a legal obligation, but a moral one to uphold such fundamental rights of all eligible Americans. Since the ratification of the civil war amendments, through the Voting Rights Act of 1965, the National Voter Registration Act of 1993 (“NVRA”) and the Help America Vote Act of 2002, Congress has demonstrated its commitment to protecting this right. Now is the time to continue that tradition by focusing on election reform when we are not clouded by the partisanship of an election year. Instead, we should focus on election reform – both here in Congress, and in the administrative agencies responsible for protecting our rights – at a safe enough distance to develop and pass real, meaningful reforms. Now is the time to pass the Deceptive Practices and Voter Intimidation Act and now is the time to refocus the Department of Justice on its historic role as a protector of the right to vote. We have a duty to make our elections equally open to all eligible citizens, conduct them fairly and make them transparent so all Americans have confidence in the electoral system, today, Mr. Chairman, you are taking the critical first step on that noble path.

The recent election season presented us with a stark dichotomy in which we saw a historic election take place amid a background of old concerns. We should ensure that such elections, although they may be historic, are substantiated by increased access and credibility. Attached to my testimony is our report, *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow*, which details the Election Protection experience from 2008 and our recommendations as to how to improve our election system. My testimony focuses on two issues of particular concern to this Committee: the endemic problem of practices that disfranchise voters by intentionally deceiving them as to the time, place and manner of elections and the under-enforcement of federal voting protections by the United States Department of Justice.

## **Deceptive Practices**

Our Election Protection efforts are very important to me; In fact, I personally help answer phones and participate in a variety of ways during the chaos and excitement of each election season, surrounded by hundreds of dedicated colleagues committed to providing voters with the information they need to go to the polls and have their vote counted. The phones will ring on the day after the election and sometimes it is an ultimately heartbroken voter who, because of a flier, email or call went to the poll on the wrong day. This should never happen. I hope you will stand with me in ensuring that it does not continue.

Our Election Protection experience in the last several cycles has confirmed an unfortunate reality; deceptive practices - false information designed to mislead voters about the time, place, and manner of elections - has become an endemic problem. For example, in 2004, there were fliers from the non-existent Milwaukee Black Voters League telling voters that if they had voted in the primary or if anybody in their family had been guilty of any infraction, even a traffic ticket, they could not vote in the Presidential election and would be imprisoned for ten years if they voted. In Allegheny County, Pennsylvania there was a notice on official-looking letterhead informing Republicans to vote on Tuesday, November 2 and Democrats to vote on Wednesday, November 3. Indeed, the day after the election the 866-OUR-VOTE hotline received calls from voters asking us why the polls were not open. In 2006, we received reports from voters in several states saying that they had received calls stating their polling place had been moved when it had not and or stating that their registrations had been cancelled.

In 2008, Election Protection received almost daily reports in the weeks leading up to the election of voters targeted with misinformation and voter intimidation. These were intentional efforts to keep voters from casting ballots. Fliers, robocalls, e-mails, text messages and online social networking programs such as Facebook were all used to deliver deliberately false information about registration, polling locations, poll closing times and voter ID requirements. These are deceptive practices we have observed repeatedly since the start of our Election Protection efforts. In fact, this year, deception expanded, as new, high tech outlets made it easier than ever to disseminate false information quickly. One egregious example occurred on the campus of George Mason University – an e-mail circulated around the campus purportedly from Provost Peter Stearns, informed students and staff that the election had been postponed until Wednesday, November 5<sup>th</sup>. Later, Stearns sent a message revealing that someone had hacked into the system and that voting would indeed take place “today, November 4<sup>th</sup>.”

Our efforts need to adapt accordingly to combat these practices and minimize the effect of partisan tricks. This is an opportunity for us to use new media to combat those very same tactics. We need to make sure correct information is clearly identified, consistent and widely accessible.

More examples follow, which demonstrate the influences deceptive practices had on the most recent election:

**Pennsylvania** – In a West Philadelphia neighborhood, fliers appeared stating that anyone who showed up at the polls with a criminal record of any kind – including something as minor as an unpaid traffic ticket – would be arrested on the spot by law enforcement officials stationed at every polling location. Election Protection conducted aggressive media outreach in the area to quickly debunk this myth. As a result of Election Protection’s efforts, the false fliers were discussed and discredited in articles about election-related dirty tricks published by the Associated Press, *Philadelphia Inquirer*, McClatchy and ABC.com.

**Michigan** – Misinformation about student voting rights surfaced in Michigan as in other states. Emily D. of Grand Rapids was working to get eligible voters – including students – registered in time to vote for November’s general election. Like many students, Emily was given erroneous advice from election officials that registering students in a county other than where their parents lived could endanger their financial aid and health insurance. She called the 866-OUR-VOTE hotline to verify this information, and upon learning that students could register in Michigan without legal repercussions, Emily went on to register 200 new student voters

**Missouri** – The Secretary of State’s office in this state reportedly received complaints from people who had received text messages claiming that due to high turnout, Democrats would be voting on Wednesday, November 5. In one location, it was reported that there was a sign posted, informing voters that they were not allowed to vote a straight ticket, which prompted the voter who called Election Protection – and untold others – to vote against his preferred party once to ensure that his ballot would be counted.

These were not cases of isolated incidents - quite the contrary - they only begin to highlight occurrences of similar circumstances in many states throughout the country.

As we have noted, voters in nearly a dozen states were the victims of misinformation in the weeks leading up to and including Election Day. By denying a voice to eligible voters, deceptive practices increase the poisonous cynicism voters have about the process.

Again, we applaud the work done by this Committee in reintroducing the Deceptive Practices Act this year. We believe Congress should prioritize this bill, as such legislation can have a tremendous stake in the election process in light of the problems we still see, as outlined above. An effort to make it “unlawful for anyone before or during a federal election to knowingly communicate, or attempt to communicate, false election-related information about that election, with the intent to prevent another person from exercising the right to vote” is directly responsive to the type of problems we see. We believe this is a warranted and welcomed effort to remedying those persistent problems.

Historically, voters who are deliberately provided misinformation about when, where or how to vote or about voter registration requirements do not have adequate legal recourse. The Deceptive Practices Act and extended enforcement therein, establishes a clear standard of federal

law: if you intend to deceive voters, you will be punished. For that, Mr. Chairman, you deserve our utmost appreciation for your continued attention to this matter.

While it will be an improvement to prohibit deceptive practices through federal law, in the heat of an election season, when most of this activity happens, voters should also be informed of correct information through sources they trust. Prosecutions are often not possible or the most effective way to overcome deceptive information as Election Day approaches – the most important goal near an election. This remedy should be collaboration between the relevant government actors at the general, state and local levels. The Justice Department should collect information and statistics about these practices to inform investigations and determine the extent and character of deceptive voting practices. We laud the fact that the Act “requires the Attorney General, immediately after receiving such a report, to consider and review it and, if there is a reasonable basis to find that a violation has occurred, to: (1) undertake all effective measures necessary to provide correct information to voters affected by the false information; and (2) refer the matter to the appropriate federal and state authorities for criminal prosecution or civil action after the election.”

### **Voting Rights Enforcement by the United States Department of Justice**

We are shoveling our way out of a hole dug by several years of insufficient attention to voting rights enforcement in the previous administration. This Committee’s record in unearthing the previous administration’s lack of enforcement is notable, but we are still digging. There is a need for the Department of Justice to continue to expand enforcement measures to help us dig out of the hole more expeditiously.

One notable area where the Bush Administration’s failure to enforce federal voting protections impacted millions of poor Americans was its under-enforcement of Section 7 of the National Voter Registration Act of 1993 (“NVRA”). Section 7 requires public assistance agencies to provide voter registration applications and offer assistance to individuals applying for benefits. Congress included Section 7 to make sure that people who are too poor and vulnerable would not be disadvantaged in voter registration because they did not have drivers’ licenses and thus would not be registered through the “motor voter” provisions of the NVRA.

There is large-scale noncompliance with Section 7 as the Lawyers’ Committee has found while working with Demos and Project Vote on a national effort to enforce Section 7. The numbers tell much of the story. The United States Election Assistance Commission (EAC) reports to Congress on NVRA compliance after every federal general election. In the last reporting period, which covers the two year period preceding the November 2006 election, election officials received only 527,752 applications from public assistance offices as compared to 16,591,292 applications from motor vehicle offices. We estimate that more than half of the states are in violation of Section 7.

For most of the Bush Justice Department, Section 7 noncompliance was ignored despite repeated efforts by the civil rights community to prod it into action. The Department brought only one case under Section 7 -- in Tennessee, where it was part of a larger NVRA case. Only last year

did the Bush Justice Department begin taking its enforcement responsibility seriously by reaching out-of-court settlements in Illinois and Arizona.

Active Section 7 enforcement can make an enormous difference. Last year, the Lawyers' Committee filed suit against Missouri's Department of Social Services in *ACORN v. Scott*. In July, the district court granted our motion for preliminary injunction and ordered an interim remedial plan into effect. In the first six-and-a-half months under the remedial plan, the Department of Social Services registered nearly 80,000 people -- a **2000%** increase as compared to the 2005-06 reporting period. Moreover, in Tennessee, the one place where the Bush Justice Department brought a case, the public assistance agencies generated more than 120,000 voter registration applications in the 2005-06 reporting period. This represented more than one in five registrations from public assistance agencies in the *nation*.

If there was full compliance with Section 7, 2-3 million poor people would be registered to vote at public assistance agencies per year as opposed to less than 270,000 per year as indicated in the EAC's last biannual report to Congress. If approximately 15 attorneys and eight paralegals were added to the Department of Justice's Voting Section to focus on NVRA Section 7 work, we believe that full compliance could be achieved in a two to three year period. This would be a small price to pay for the results that would be achieved.

### **Conclusion**

Mr. Chairman, thank you and the Committee for your continued commitment to our fundamental patriotic need to provide an equal opportunity for every eligible citizen to make her voice heard through the ballot box. For far too long, the cynicism of deception and intimidation has kept that goal just out of reach. To truly realize our constitutional democratic promise, we must eliminate these cynical practices and restore the role of the Department of Justice as a guardian of our most fundamental right, the right to vote.

Thank you for the opportunity to testify today and I would be happy to answer any questions.

**APPENDIX I:**

*Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow*

A report on the Non-Partisan Election Protection program



# THANK YOU

Election Protection would like to thank the hundreds of state and local organizations that led the program in their communities. The program's success is owed to their experience, relationships and leadership. In addition, we would like to thank our national partners, without whom this historic effort would not have been possible:

Advancement Project	Demos	National Disability Rights Network
Alliance for Justice	Electronic Frontier Foundation	National Education Association
Alliance for Retired Americans	Fair Elections Legal Network	National Lesbian and Gay Law Association
American Association for Justice	Go Vote Absentee	Native Vote
American Bar Association	Hispanic National Bar Association	National Council of La Raza
American Civil Liberties Union	Human Rights Campaign	New Voters Project
Artists for a New South Africa	Impact	Nonprofit Voter Engagement Network
Asian American Association for Justice	Leadership conference on Civil Rights	Our Faith Our Vote
Asian American Justice Center	Education Fund	People for the American Way Foundation
Asian American Legal Defense	League of United Latin American Citizens	Latino Justice — PRLDEF
and Education Fund	Mobilize.org	Progressive Future
Brennan Center for Justice	National Association for the Advancement	Religious Action Center of Reform Judaism
Campaign Legal Center Voting Rights	of Colored People	Rock the Vote
Enforcement Project	NAACP Legal Defense Fund	Service Employees International Union
Center for Community Change	National Asian Pacific American Bar Association	Sierra Club
Citizens for Responsibility and Ethics	National Association of Latino Elected	The Campaign Legal Center
in Washington	and Appointed Officials Educational Fund	United States Student Association Foundation
Color of Change	National Bar Association	United States Hispanic Leadership Institute
Committee of Seventy	National Black Law Students Association	U.S. PIRG
Common Cause	National Campaign for Fair Elections	Verified Voting Foundation
CREDO Mobile	National Coalition for the Homeless	Voto Latino
Democracia USA	National Council of Jewish Women	Women Donors Network

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**Note:** This report reflects the views of the Lawyers' Committee for Civil Rights Under Law and does not necessarily reflect the views of any other Election Protection partner or supporter.

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# EXECUTIVE SUMMARY

## WHAT HAPPENED IN 2008

The strength of our democracy is measured by our capacity to include all Americans who are eligible to vote and want to participate. This can only happen if the administration of our elections is fair and accurate. While the American election system rests on a fundamentally strong foundation, the current infrastructure simply cannot handle the weight of full participation. The system needs to be upgraded and modernized to serve all eligible Americans in every future election.

The 2008 general election inspired millions of new voters across the country. For that energy to ignite lasting civic participation, those new voters need faith in a system that is relevant and responsive.

The high voter turnout in 2008 widened cracks that have existed in our elections system for decades. Election officials nationwide were grossly under-resourced. The mad rush to Election Day multiplied systemic problems: valid voters were purged from the rolls, new voters were never added to the rolls, absentee ballots were delayed or never sent, and hundreds of thousands of Americans were forced to wait in hours-long lines to vote. These problems and more presented barriers to voting for eligible Americans across the country in the weeks leading up to and on Election Day. They had an impact on all voters, but particularly affected voters of color, new citizens, military service members, elderly voters, people with disabilities and students. These are old challenges, made more urgent than ever by the increasing enthusiasm of eligible voters across the country. In the 2000 presidential election, Cal Tech and MIT found that several million eligible voters were prevented from voting because of problems with election administration. Unfortunately, we have yet to put in place the systemic solutions to move past these hurdles.

Without a serious effort to improve the system, millions more voters could be disenfranchised in every future election. Election reform must start now, while the new Congress has Election Day problems fresh in mind and before the next campaign cycle injects the politics of an election season into this policy debate. Americans deserve a system that is efficient, fair and accurate. Our democracy demands nothing less.

## THE ROLE OF ELECTION PROTECTION

The nonpartisan Election Protection Coalition was created in 2001 to monitor and mitigate problems and to help ensure that all voters have an equal opportunity to participate in the political process. The 2008 Election Protection program was the most ambitious voter education and protection effort in history — a robust extension of the coalition's voter protection programs in 2004 and 2006. In the 2008 election cycle, Election Protection received more than 200,000 calls from voters from all 50 states to its 866-OUR-VOTE hotline, including nearly 100,000 calls on Election Day alone. Election Protection's network of more than 10,000 trained legal volunteers fanned out across the country engaging and assisting election officials, coordinating with community partners and educating voters throughout the year. These volunteers provided crucial on-the-ground support to voters, collaborated with election officials, and, when necessary, litigated, helping to solve countless problems and preventing disenfranchisement from coast to coast. Hundreds of thousands of voters who faced barriers to voting benefited from direct contact with Election Protection's volunteers.

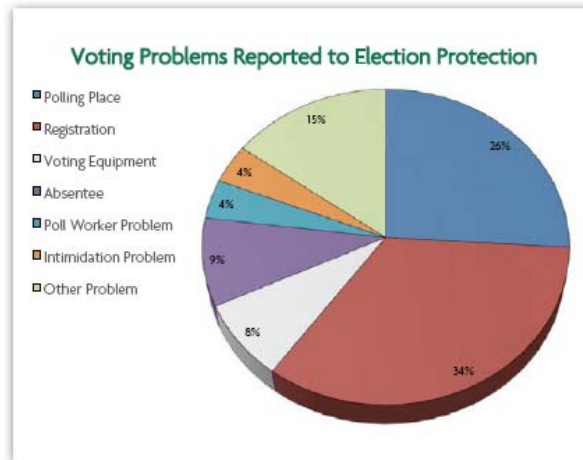
The diversity, size and reach of the coalition allowed its success. More than 80 national organizations, representing the full spectrum of the electorate, worked to weave Election Protection into the fabric of the historic 2008 election. Hundreds of other partners joined locally in cities and states across the country.



## THE PROBLEMS WE SAW

Information collected throughout this unprecedented effort was entered into Election Protection's "Our Vote Live" database, developed by the Electronic Frontier Foundation. This data paints the most comprehensive picture available of the obstacles Americans face as they head to the polls. The results illustrate an overburdened system and a frustrated electorate.

More than 200,000 voters called Election Protection for assistance during the general election. Thousands of others sought help from trained volunteers on the ground. The reports gathered from these voter interactions are only a small percentage of the problems experienced across the country. This report offers the first analysis of the data. More information will be available in subsequent reports as we continue to probe the data set in even greater detail.



## KEY ISSUES

The most significant challenges to voting that Americans faced on and before Election Day fall into four categories: registration problems, absentee ballot problems, deceptive practices and polling place problems. These problems occurred in nearly every state to some degree, often varying due to the sophistication of the state's election rules and the commitment of resources to election administration.

- **Registration Problems**  
The greatest number of voting problems — more than one-third of those reported in the fall of 2008 — were a result of our overburdened, inefficient and under-resourced registration system. In many jurisdictions, the crush of applications caused major administrative problems on Election Day. Unprocessed applications, mistakes on the voter rolls and confusion at the polling place left thousands of voters frustrated, slowed long lines on Election Day and prevented eligible citizens from voting across the country.
- **Absentee Ballot Problems**  
For millions of voters, including many military service members, senior citizens, people with disabilities, college students away from home and Americans living overseas, absentee ballots are the *only* way to vote. Many were not able to have that vote counted this year. Voters across the country reported to Election Protection that their ballots were not received in time or mailed to a wrong address. Others discovered their request for an absentee ballot was never processed at all. Moreover, overly strict counting procedures left many otherwise eligible absentee ballots uncounted. The enormous number of new registrations in the months and weeks before November 4 overwhelmed election officials and forced them to choose between processing new registrations and handling absentee ballot requests.
- **Deceptive Practices**  
In 2008, Election Protection received almost daily reports in the weeks leading up to the election of voters

being targeted with misinformation and voter intimidation. These were intentional efforts to keep voters from casting a ballot. Fliers, “robocalls,” emails, text messages and online social networking programs such as Facebook were all used to deliver deliberately false information about registration, polling locations, poll closing times and voter ID requirements.

- **Polling Place Management Issues**

Too often the difference between the vote of an eligible American being counted or not boils down to the decision of a poll worker. Many poll workers — critical players in the election process — simply did not have the information, training or resources to effectively make these judgments in the face of such complicated election rules and regulations. There were widespread problems with provisional ballots, particularly regarding confusion over their purpose and when they should be used. As a result, voters who should have been offered regular ballots were forced to vote provisionally and many voters who were entitled to vote provisionally were simply denied the right to vote. Other polling place problems, such as breakdowns of voting equipment, prevented voters from casting a ballot and exacerbated long lines.

## WHY WE NEED REFORM NOW

Election administration is too often affected by partisan interests. Because election administration is so political, progress has never been made to implement systems that protect voter interests. Over the last decade, millions of Americans have been disenfranchised by unresponsive voter registration systems, deceptive voting practices, a lack of resources, and poorly designed inefficient administration systems. Lawmakers from both sides of the aisle must improve the process before the same unnecessary outcome affects voters in the next election cycle. Action should be taken early, outside of the rancor of an election season, to address the problems voters face and provide needed resources to relieve the nation’s dedicated election officials.

## POLICY RECOMMENDATIONS

- **Start by Modernizing Voter Registration**

Updating the voter registration system to one in which voters are automatically registered and stay on the rolls permanently will ensure that every eligible voter who wants to cast a ballot can participate. At the same time, it will stop the flood of last-minute registrations that put an unmanageable burden on election administrators in the critical weeks before an election. By keeping registration data accurate and current, automatic and permanent registration will solve the significant problems and confusion around provisional balloting.

- **Combat Deceptive Practices**

The past few election cycles have seen a disturbing increase in deceptive information designed to prevent eligible Americans from exercising their right to vote. In 2008, we saw these activities go online and increase dramatically in their sophistication and targeting. Unfortunately, there is no adequate remedy in federal law for these types of practices. Deceiving eligible voters about the mechanics of elections or registration must be unambiguously illegal. Federal, state and local officials should be empowered not just to punish violators but also to quickly correct deceptive information through sources trusted by affected communities.

- **Provide Election Officials the Resources to Succeed**

Thanks to election officials and poll workers’ tireless efforts and creative problem solving, many Election Day disasters were averted this year in the face of two opposing forces: high turnout and a desperate lack of resources. Election officials should have adequate resources and support to ensure that every polling place can handle the voters assigned to it. Poll workers should have adequate training to understand and properly carry

out their complex and critical tasks. Election officials should not have to reallocate supplies and people at one polling place to meet the needs at others. Instead, they should be empowered to think creatively about how to fill poll worker shortages.

- **Expand the Vote: Make Early Voting Available Everywhere**

Almost one third of voters cast their ballots before Election Day in 2008. Early voting alleviated significant stress on the system and allowed election officials to recognize problems and find real-world solutions before the majority of Americans went to the polls. Giving voters flexibility will minimize administrative issues that lead to problems like long lines. Allowing instant voter registration at early voting sites would also bring new voters into the democratic process who may have missed or were unable to meet restrictive registration deadlines.



# ELECTION PROTECTION: THE PROGRAM

## VOTING IN 2008

The 2008 election cycle saw an unprecedented enthusiasm for politics sustained over the course of two years. Record turnout of first time voters energized the long, contentious primary season. From coast to coast, states experienced double digit increases in voter turnout; a resounding endorsement of the American democracy. Many new voters were among those who were traditionally left out or stayed away from the process; low-income Americans, minorities and youth.

This increased participation and enthusiasm was inspiring. Voting rights advocates knew it would also further burden an overwhelmed election system, which would exacerbate existing problems like registration backlogs, long lines and limited resources at the polls. Throughout the primary season, registered voters' names were missing from the rolls, absentee ballots went undelivered, and voters stood in long lines as they waited to cast ballots — forecasting what was to come in the general election.

Despite these hurdles in the primaries, the general election season continued to see record registration reported across the country. The *Detroit News* reported that 98 percent of the voting-age population in Michigan was registered. Early voting saw tremendous turnout in states like North Carolina, Ohio and Florida. On October 30, officials in Nevada reported that 42 percent of registered voters had already cast a ballot. Illinois reported more than 821,000 early voters. Voters clearly demonstrated in 2008 that Americans firmly believe in making the electoral process work.

## HISTORY OF THE ELECTION PROTECTION PROGRAM

In the wake of the disputed presidential elections in 2000, the civil rights community formed Election Protection to provide a comprehensive and proactive structure to ensure that every eligible voter has an opportunity to cast a ballot that is counted. The coalition has grown into the nation's largest non-partisan voter protection program and has become an integral part of the election process.

The legal program serves as the coalition's centerpiece by organizing thousands of trained volunteers into a comprehensive voter services and education program. This nationwide effort establishes a support structure for nonpartisan voter mobilization partners, meets with election officials, creates comprehensive state-specific materials, litigates when necessary and administers the 866-OUR-VOTE voter services hotline. The program, paired with advocacy for reform at the state and federal level, has enabled Election Protection to help millions of voters exercise their right to vote.

In 2004, Election Protection's first presidential election cycle, the coalition developed over 30 Election Protection Legal Committees in more

### The Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law has been the legal lead of Election Protection since helping establish the coalition in 2001. The nationwide legal program serves as the coalition's centerpiece, organizing thousands of trained legal volunteers, overseeing a national legal field deployment, meeting with election officials, litigation, establishing a support structure for non-partisan voter mobilization partners, and administering the 1-866-OUR-VOTE voter services hotline.



than 25 states. Voters from every state called 866-OUR-VOTE more than 150,000 times in the two weeks up to and including Election Day. Of the 25,000 Election Protection volunteers nationwide, more than 8,000 were legal volunteers. The Lawyers' Committee worked with more than 100 nonpartisan local, state and national coalition partners to accomplish its mission.

Through its comprehensive data collection program, Election Protection established a new benchmark for measuring the problems Americans faced as they headed to the polls. This information allows Election Protection partners to shape election reform policy initiatives, identifies areas where litigation is needed to remedy poor election administration processes, and serves as a valuable tool for election administrators and the community to identify areas for improvement. At the federal level, the information gathered from Election Protection made the case for the *Deceptive Practices and Voter Intimidation Prevention Act* introduced by then-Senator Barack Obama and the *Count Every Vote Act* introduced by then-Senator Hillary Clinton. The data informed similar policy efforts at the state and local levels.

## 2008: HISTORIC ELECTION, HISTORIC UNDERTAKING

The 2008 campaign season was Election Protection's most ambitious effort to date, starting earlier, reaching more voters and mobilizing more volunteers than ever before. Election Protection's work began during the presidential primaries, continued through the spring and summer, was in full force for the voter registration period and concluded with its most comprehensive Election Day program ever. Election Protection built the largest voter protection and education effort in history, bringing together civil rights advocates, diverse community partners, media, and concerned citizens to safeguard the votes of all Americans.

Early in the year, Election Protection focused on five primaries: the February 5 "Super Tuesday" primary; the February 12 "Potomac Primary;" the March 4 "Second Super Tuesday" primary; the April 22 Pennsylvania primary; and the May 6 primaries in Indiana and North Carolina. During the primary season, Election Protection deployed 1,700 trained legal volunteers, received almost 7,000 calls from 43 states and the District of Columbia to nine 866-OUR-VOTE Hotline call centers, and organized legal field programs in ten states and Washington, DC. This important work not only assisted thousands of voters, but also formed the basis for Election Protection's primary report, "Looking Ahead to November" foreshadowing what election officials and the coalition could expect in the general election — long lines, purging, backlogs, and a system overwhelmed by the crush of large numbers of new voters.

Even while analysis of primary data was underway, the Lawyers' Committee and its partners quickly began laying the foundation for a successful general election program. To ensure Election Protection was responsive to the needs of a diverse electorate, an equally diverse coalition was assembled. By Election Day, the coalition had swelled to nearly 160 national, state and local legal, community and media partners. The coalition included groups representing African Americans, Latinos, young voters, Asian Americans, Native Americans, people with disabilities, the elderly, unions, women's rights groups, faith groups, the GLBT community, and others. These organizations helped to augment the great work of Election Protection's legal and community leaders



*One of Election Protection's more than 10,000 volunteers assists voters outside a Broward County, Florida polling place. There were Election Protection mobile legal volunteers in more than 40 voting jurisdictions across the country.*

on the ground, publicizing the 866-OUR-VOTE hotline and other coalition resources, assisting election officials, educating voters and playing a vital role in minimizing problems on Election Day.

Election Protection and its media partners— NBC News, MSNBC, BET networks, TV One, E!, Video the Vote and YouTube — collaborated on the most extensive voter education initiative in history; working together to educate millions of voters, often instantly debunking false and confusing information disseminated through innovative and far reaching mediums.

The Lawyers' Committee and the coalition also developed 46 Election Protection Legal Committees in 25 states across the country. These committees worked with local non-partisan grassroots organizations to provide valuable legal support for their voter registration, education, and get-out-the-vote efforts. Additionally, Election Protection Legal Committee leaders established and expanded relationships with local election officials to get detailed information about Election Day plans and to help them improve administration as Election Day approached.

On September 17, Election Protection officially launched the 866-OUR-VOTE hotline, more than a month earlier than in previous efforts, to provide vital support to voters during the end of the voter registration period. Trained volunteers staffed the hotline at a call center housed by the Lawyers' Committee which received more than 100,000 calls through November 2. Volunteers helped callers with questions about registration, early and absentee voting, polling place locations, and identified trends and problems for local Election Protection leadership to address.

On the ground, Election Protection Legal Committees were finalizing plans for Election Day programs, investigating systemic problems that came in through the hotline and working with election officials and community partners to overcome barriers. The diversity of the coalition allowed Election Protection to quickly respond to problems, prioritizing collaborative solutions with election officials, but filing critical litigation where necessary.

For the first time, the Election Protection Hotline joined with 888-Ve-Y-Vota, administered by the National Association of Latino Elected and Appointed Officials Education Fund (NALEO) to provide a complimentary resource to Spanish speaking voters. In partnership with Univision, Impremedia and Entravision, NALEO informed millions of Spanish-speaking voters of their rights and provided guidance on the voting process.

Taking advantage of new technology, Election Protection rolled out a dynamic online voter education program in 2008. The [www.866OURVOTE.org](http://www.866OURVOTE.org) website served as an interactive clearinghouse for state and national voting rules, regulations, news, and information on hot election topics. Voters were able to click on their state on a map and quickly access state-specific voting manuals, frequently asked questions, and voting news. The dynamic website provided a compendium of resources for interested media, volunteers, and citizens on what was current in election administration. During the final weeks of the campaign, visitors to the website could instantly engage in a web chat with trained volunteers who were ready to help with questions or problems. From September 17 through Election Day, more than 283,000 people visited the website.



*On Election Day, Election Protection had 32 calls centers nationwide, including this call center in Washington, DC. Volunteers answered thousands of calls from the 1-866-OUR VOTE Hotline, and logged reports of voter inquiries and problems that were broadcast on ourvoteline.org.*



The coalition also harnessed new media in an expansive way, increasing the number of voters served by tens of thousands. Social networking tools like Facebook, Twitter and YouTube dramatically increased the online reach of Election Protection and allowed the coalition to further connect with young voters. Election Protection leaders constantly posted updates to its social networking pages and allowed voters with cell phones to text-message problems on and before Election Day to the coalition's Twitter page. New media allowed new techniques to analyze the kinds of problems voters encountered.

Through the Lawyers' Committee's vast pro bono network, the Election Protection hotline expanded to thirteen call centers on November 3 and then to 32 call centers for Election Day. The 866-OUR-VOTE and 888-Ve-Y-Vota hotlines received nearly 50,000 calls on November 3 and nearly 100,000 calls on November 4. Inquiries came from all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, and from Americans abroad. In addition to assisting hundreds of thousands of voters over the phone and the Internet, Election Protection provided crucial on the ground assistance to voters and poll workers at their polling places and in election officials' offices across the country. The coalition deployed teams of mobile legal volunteers to monitor targeted polling places in more than 40 voting jurisdictions. These volunteers were strategically placed in areas with a high concentration of traditionally disenfranchised voters and in areas with a history of election problems. Election Protection's mobile legal volunteers helped voters with their questions, assisted poll workers and were dispatched to address issues reported to the hotline. The coalition stationed legal volunteers at local election offices to resolve problems quickly and directly.

The Electronic Frontier Foundation developed the interactive Our Vote Live database allowing hotline volunteers to quickly capture as much information as possible in real time. Call reports were instantly categorized by type, location, and urgency, and made publicly available, without any individually identifying information, at [www.OUR-VOTELIVE.org](http://www.OUR-VOTELIVE.org). More than 86,000 reports were entered into the database between August 15 and November 4. On Election Day, this data informed the coalition's voter protection efforts by identifying trends, providing evidence of ongoing problems, and illustrating the scope of problems to the media. This unprecedented data collection system paints the clearest picture available of the problems voters face and serves as the basis for this report.

## LITIGATION

Though Election Protection aims to resolve issues by working directly with election officials, litigation is sometimes required to overcome barriers to the polls. In 2008, Election Protection partners filed several lawsuits that ensured voters were able to register and remain on the rolls. These cases focused on violations of the National Voter Registration Act of 1993 (NVRA), the Help America Vote Act (HAVA), and other voting procedures.

### Enabling Registration at State Agencies

Several of the court decisions in 2008 dealt with failures by states to properly and vigorously enforce the National Voter Registration Act of 1993 ("NVRA"), also known as the "motor voter law." That historic legislation represents the most significant effort by Congress to expand opportunities to register to vote since the enactment of the Voting Rights Act of 1965. The NVRA

#### Courts Order Compliance with the National Voter Registration Act of 1993

In July 2008, Election Protection Partners won a federal lawsuit in Missouri which allowed more than 26,000 citizens to register to vote for the first time through state social service agencies.

In October 2008, Election Protection Partners prevailed in the case of *Harkless v. Brunner*, when a federal appeals court rejected arguments by Ohio state officials that they could avoid responsibility for the failure of public assistance agencies to carry out their voter registration duties.

requires that citizens have the ability to register whenever they go to a state motor vehicle office to apply for a driver's license and whenever they seek services at a wide variety of state agency offices. The NVRA also requires that citizens be able to register by mail. The statute further imposes strict limitations on the circumstances in which persons who are registered to vote, and continue to meet basic state eligibility requirements, may be purged from the voter rolls.

There have been recurring problems with NVRA implementation in certain states, especially with regard to the agency registration requirement and the limitations on voter purging. The failure of state agencies to regularly offer voter registration to their clients was the subject of two court decisions in 2008, in suits brought by Election Protection partners. In July 2008, a federal trial court granted an injunction against the State of Missouri, which resulted in state social service agencies registering 26,000 new voters during the first six weeks of compliance. In October 2008, the federal Sixth Circuit Court of Appeals rejected arguments by Ohio state officials that they could avoid responsibility for the failure of public assistance agencies in the state to carry out their voter registration duties.

### Purging

The federal courts stopped two states from purging registrants in violation of the NVRA. In *United States Student Association Foundation v. Land*, the state of Michigan was prevented from purging new registrants whom the state believed may have moved. The court found that the state was circumventing safeguards contained in the NVRA, which was designed to ensure that voters who have not moved are not mistakenly purged. In October, the Sixth Circuit Court refused the state's request to stay the injunction. Also in October, in the case of *Common Cause of Colorado v. Coffman*, the state of Colorado was prevented from violating the NVRA's prohibition on purging qualified voters within 90 days of a federal election.

### No Match, No Vote

Another set of court decisions concerned efforts to misapply the Help America Vote Act of 2002. Election Protection partners successfully opposed arguments that would have required labor-intensive one-by-one reviews of registration applications any time a computer failed to precisely match a different government listing for the same individual. This computer database matching is a deeply flawed process to remove voters from registration lists; errors occur in as many as a fifth of all records spot-checked. Unfortunately, state officials and private parties tried to force matches with other government databases and remove those voters who came back as a "non-match." These attempts were often made at the 11th hour, potentially preventing election officials from instituting safeguards against faulty matches.

In Ohio and Wisconsin, Election Protection partners filed amicus briefs successfully supporting election officials who were sued by parties demanding removal of voters who came back as non-matches. In Ohio alone, this could have put in jeopardy more than 200,000 entries on the statewide registration list. The Ohio dispute went all the way to the United

#### Setting Precedent: *League of Women Voters v. Brunner*

In November, following the election, the Sixth Circuit Court of Appeals held that the State of Ohio may be sued under the Constitution to remedy systemic failures in its election system, involving registration, absentee voting, and polling place procedures.

The suit was filed by Election Protection partners in 2005 based on the state's conduct in the 2004 general election and prior elections. This is a precedent setting decision, as it represents the first time a federal appellate court has held that plaintiffs may base a challenge to systemic election administration failures on the Constitution, relying on the Supreme Court's 2000 ruling in *Bush v. Gore*.

States Supreme Court, which in October refused to require the manual reviews. In Wisconsin, a state trial court judge ruled, also in October, that HAVA does not mandate states implement these strict policies because of the obvious risk to eligible voters.

Election Protection partners also successfully blocked a related effort by the state of Georgia to use database matching to prevent new registrants from voting. The Secretary of State claimed that under HAVA, the state was compelled to rely on citizenship information included in the state's driver's license database to verify the U.S. citizenship of new registrants. The federal trial court found that Georgia had unlawfully implemented this new practice without obtaining federal preclearance, as required under Section 5 of the Voting Rights Act.

A third set of court decisions dealt with matters other than voter registration, including early voting or absentee voting procedures, and Election Day polling place procedures. The most significant ruling came from the Supreme Court in the case of *Crawford v. Marion County Election Board*. In April 2008, the Court rejected a constitutional challenge to an Indiana law that requires that voters generally present a government-issued photo ID in order to cast a ballot at the polls on Election Day. Various members of the Election Protection coalition filed amicus briefs urging the Court to hold that the procedure unconstitutionally infringes on the right to vote.

In Ohio in September, Election Protection partners successfully urged the courts to reject a challenge to an Ohio procedure which allowed residents to both register and cast an absentee ballot during a special five-day period. This involved participation by Election Protection partners in three different lawsuits (*State ex. rel. Colvin v. Brunner*; *Project Vote v. Madison County Board of Elections*; *Ohio Republican Party v. Brunner*) in the Ohio Supreme Court, two federal trial courts, and the Sixth Circuit Court of Appeals.

The NAACP, an Election Protection partner, won an important decision in October on behalf of Pennsylvania voters. A federal trial court ruled, in the case of *NAACP-SCP v. Cortes*, that the state's procedures for emergency paper ballots (as a back-up if and when voting machines fail) were unconstitutional, and required the state to use paper ballots at any polling location where 50 percent or more of the machines became inoperable.

Taken together, these cases allowed for hundreds of thousands of new voters to register and for eligible voters to ensure that they remained on the rolls.



# KEY ISSUES FACING VOTERS

Many of the voter questions or problems that came in to Election Protection were resolved quickly by trained volunteers. Election Protection entered more than 86,000 reports into the Our Vote Live Database, creating the data analyzed in this report. The reports entered are illustrative of problems faced in larger numbers by others who did not call. A single call often represents the experience of tens, hundreds or thousands of voters. For example, when a caller reports that polls are not functioning or that hours long lines are preventing voters from casting a ballot, hundreds or thousands of voters are affected by that report.

There are seven broad categories of problems that affected voters throughout the 2008 election cycle: registration (34%), polling place (26%), absentee ballot (9%), voting equipment (8%), poll worker (4%), intimidation (4%), and other problems (15%) such as language, accessibility, student residency, identification requirements and electioneering concerns. This distribution of problems was consistent with what we saw on Election Day alone when the most commonly reported issues were polling place (31%), registration (28%), absentee ballot (5%), voting equipment (11%), and poll worker (5%) problems. These problems, with varying severity, existed in nearly every state and disenfranchised countless voters.

## REGISTRATION PROBLEMS

Millions of Americans who had never voted before were energized to go to the polls in 2008. Disproportionately, these voters came from traditionally under-represented demographics such as youth, racial and ethnic minorities, and low income families. These Americans turned to third-party registration drives, registered through their DMV or social service agency, or directly submitted their application to their board of election, often just as deadlines loomed. As more voters eagerly tried to participate, the volume of requests overwhelmed election officials. Backlogs mounted as registration deadlines passed and Election Day grew near.

At the same time, election officials worked to clean the voter rolls of people who had passed away, moved, or were no longer eligible to vote. Keeping the rolls accurate is an important step in ensuring that elections are fair, but officials were sometimes told to check rolls against inaccurate data sources, contrary to federally mandated guidelines. This left hundreds of thousands of eligible voters in Ohio, Georgia, Florida and other states vulnerable to being purged from the rolls. Voting rights advocates pressured officials to suspend purging activities until after the election, then just a few weeks away.

Numerous stories of voters who were able to vote in the primary but who were purged off the general election rolls came to the 866-OUR VOTE hotline. On Election Day, registration inquiries rose throughout the morning, peaking at 1 pm and holding steady until polls closed. Confusion over voter registration, names missing from rolls and eligibility concerns caused problems on Election Day. Poll workers were often confused about how to handle this situation, forcing voters who were entitled to regular ballots to vote provisionally and turning away those voters with a right to a provisional ballot. These problems exacerbated long lines at polling places across the country.

## ABSENTEE BALLOT PROBLEMS

Absentee voting is the only way for many to cast ballots, including military and overseas voters, students away from home, people with disabilities, and people who cannot get to the polls for business, familial obligations or other reasons.

As with voter registration applications, requests for absentee ballots flooded election officials' offices. Ballot requests started early and grew with increasing volumes as deadlines approached. Local and state officials, already overwhelmed by registration applications, sometimes could not attend to absentee ballot requests in a timely manner.

Voters who waited patiently were not always rewarded. On November 3, for instance, voters who had not received their absentee ballots called the Election Protection hotline throughout the day from various states including California, Georgia, New York, Florida and Virginia. On Election Day, voters who had not received ballots turned to the hotline for advice in increasing numbers between 2 pm and 6 pm, asking how they could still have their voices heard. In Los Angeles County alone, for instance, many voters called to see if they could still vote at their polling place after their requested ballot never arrived. Unfortunately, they could not. The rights of these and other Americans to vote were simply lost in the mail or still sitting in an election office pile, waiting to be processed.

## DECEPTIVE PRACTICES

There is a long and sorry history of political operatives trying to trick Americans out of voting. In 2008, these tactics were focused on voters in battleground states. In Philadelphia, fliers distributed and posted in a West Philadelphia neighborhood claimed that any violation as simple as an unpaid parking ticket would render people ineligible to vote and subject to arrest at the polls. In southern Virginia and at George Mason University in the northern part of the state, official-looking fliers "informed" voters that, because of projected high turnout, Democrats should wait and vote on November 5, the day after the election.

The same technology that allows efficient, rapid dissemination of accurate information also opens opportunities for mass mischief. In 2008, false e-mails, text and Facebook messages "directed" college students to vote on the Wednesday after polls closed. Official websites and email lists were breached in Missouri and Virginia, spreading misinformation. Election Protection coalition members worked diligently to ensure that millions of voters knew their rights. Election Protection partners Common Cause and the Lawyers' Committee documented these new problems in a white paper, "Deceptive Practices: 2.0."

## POLLING PLACE PROBLEMS

Voters suffer when polling places are understaffed or staffed by poorly trained poll workers. Long lines, misapplication of election laws, and paralyzing confusion resulted in eligible voters being turned away across the country in 2008.

Many poll workers are experienced, but laws and voting technologies change over time and require new training. Poll workers routinely get only a few hours of training on hundreds of pages of nuanced election law. While it is one thing to administer an election with a paper system, it is a completely different process to administer one with a touch-screen voting machine or electronic scanner. Unfortunately, poll workers are often not given the guidance they need to adequately administer the election when systems change.

Poll workers too frequently do not understand basic rules of elections in their jurisdictions. Poll workers demanded ID's in states where it is not required, forced provisional ballots on voters who should have cast regular ballots, and inaccurately instructed voters to cast provisional ballots that might not be counted instead of directing them to the correct precinct where their vote would count.

Election officials are critical resources for poll workers and voters alike, determining resource allocations, design-

ing ballots, and offering interpretation of key laws. Resource allocation problems and challenging ballot design issues manifested themselves on Election Day. Many voters were forced to wait in long lines where there should have been additional resources. Other voters came away from the process confused when ballots were unclear. Some election officials misinterpreted laws to the detriment of voters. In Virginia, Michigan and Colorado, students were told that if they registered where they went to school (instead of at their parents' address) they could lose their healthcare, financial aid, and jeopardize their parent's taxes — all false claims. On Election Day, many poll workers exacerbated the situation by second-guessing the eligibility of student voters.

Machines fail, of course. Proper preparation means technicians and backup systems must be readily available. Unfortunately, these precautions were either not taken or insufficiently deployed to polling places across the country. More than a tenth of all reported problems on Election Day were related to voting machine issues; more than a quarter of all the calls received by the hotline by 9 am were in regard to polling place problems. There were numerous reports of machines breaking and jamming. Voters in Florida and Virginia were asked to put plain paper ballots in unmarked bags or boxes, alarming many voters who feared their vote would not be counted or was not secure.



# POLICY RECOMMENDATIONS

- **START BY MODERNIZING VOTER REGISTRATION**

The last-minute deluge of registration applications overwhelmed election officials across the country in 2008, forcing them to make tough decisions about which problems to address and which to leave unresolved. These untenable choices inevitably disenfranchised eligible voters. In some cases, officials opted to use their limited time and resources processing registration applications instead of distributing absentee ballots — a choice that no election official should ever be forced to make.

These problems have real consequences. On the eve of the election, Election Protection received more than 1,300 reports of registration problems. Too often, eligible voters were left off of the rolls or removed through unreliable purging methods. New voters arrived at the polling place energized by the history of Election Day, only to find their names not on the rolls because of application backlogs. These problems confused poll workers, extended already long lines and prevented eligible Americans from having a say in the 2008 election. As the problems that Election Protection saw in 2008 demonstrate, we have a 19<sup>th</sup> Century registration process in a 21<sup>st</sup> Century political system.

Modernizing the voter registration system to one that is **automatic, permanent**, and allows for **Election Day correction** will go a long way to solving these persistent problems by providing all eligible voters with an assurance that their names will be on the rolls while preventing the flood of last minute registrations that strain election administrators in the critical weeks before an election. A modern election system will include more eligible Americans, will save money in increased efficiency, and will build confidence in the electoral process.

**Automatic Registration:** Automatic registration shifts the burden of registration from voters to the government and eliminates the need to rely on independent, third-party voter registration organizations to sign up voters. Such a registration system will help states efficiently identify eligible voters from other government databases and add those names to their registration rolls. Voters can opt out if they prefer to not be registered, but for those who want to be included on the rolls, this system will continually update the names of eligible voters, eliminating the last minute deluge of registration applications just before registration deadlines.

**Permanent Registration:** Every year, at least one in six Americans move, most within their state. Millions more change their names. Under current, outmoded registration systems, the process for updating registrations is cumbersome, increasing the possibility for mistakes by voters or administrators. Many voters simply do not realize that they must clear this hurdle to remain eligible. Voters should be able to update their registration when their circumstances change, such as when they fill out a change of address form with the postal service. This will lessen the administrative burden on election officials and make it more likely these voters will not face problem at the polls.

**Election Day Correction:** Making registration automatic and permanent will go a long way to overcoming the obstacles that our current registration system creates. No system, however, is perfect. Voters who are not automatically added to the rolls, those who change their names or who move without updating their registration, or those voters who show up and find their information on the voting rolls is incorrect should be able to update that information up to, and on, Election Day. A modern, sophisticated system of automatic and permanent registration will make this fail-safe rare. No eligible voter should be turned away at the polls because her name was not added or was incorrectly taken off the list.

According to the United States Census Bureau, in 2006 there were 65,226,000 unregistered citizens of voting age; that means one-third, or 32 percent, of the 201,073,000 citizens of voting age population did not even have an opportunity to vote. Making registration automatic and permanent will give these voters a chance to have their voices heard.

- **COMBAT DECEPTIVE PRACTICES**

Voters in nearly a dozen states were the victims of misinformation in the weeks leading up to and including Election Day. Inaccurate information was disseminated about registration, polling locations, poll closing times, voter ID requirements, and a host of other eligibility issues. In addition to denying a voice to eligible voters, deceptive practices increase the poisonous cynicism voters have about the process.

In Virginia, Michigan and Colorado, out-of-state students were told that if they registered where they went to school, they could lose their healthcare, financial aid, and jeopardize their parent's taxes — all untrue. In minority communities in Philadelphia, fliers were found stating that police officers would be positioned at poll locations to arrest anyone with a police record including something as small as an unpaid parking ticket. In predominantly African American neighborhoods in Virginia, a letter was circulated on state letterhead instructing Democrats to vote on November 5, one day after Election Day. Election Protection worked rapidly with local officials and media to debunk this false information.

New mediums make it easier than ever to disseminate deceptive information quickly; our election system needs to adapt accordingly to combat these practices and minimize the effects of partisan tricks. False information was distributed via Facebook and text messages in 2008, for example, targeting new and young voters.

**Prohibit Deceptive Voting Practices:** Federal law does not adequately protect against voter deception. While the Voting Rights Act provides a remedy against voter intimidation, voters who are deliberately provided misinformation about when, where, or how to vote or about voter registration requirements do not have adequate legal recourse. This should be corrected. Federal law should be clear: if you intend to deceive voters, you will be punished.

**Provide an Adequate Administrative Remedy for Deceptive Voting Practices:** While it will be an improvement to prohibit deceptive practices through federal law, in the heat of an election season, when most of this activity happens, voters should be informed of correct information through sources they trust. Prosecutions are often not possible or the most effective way to overcome deceptive information as Election Day approaches— the most important goal near an election. This remedy should be a collaboration between the relevant government actors at the federal, state, and local levels. The Justice Department should collect information and statistics about these practices to inform investigations and determine the extent and character of deceptive voting practices.

- **PROVIDE ELECTION OFFICIALS THE RESOURCES TO SUCCEED**

Thanks to election officials, poll workers and Election Protection volunteers' tireless efforts and creative problem solving, many Election Day disasters were averted in 2008, despite high turnout and a desperate lack of time, staff and funds. Still, shortages of resources prevented many problems from being solved, leading to voter disenfranchisement. From broken voting machines to untrained poll workers, preventable problems caused long lines and kept frustrated voters from casting their ballots. These problems could have been avoided if the administration of our electoral process provided officials and poll locations with the resources needed to handle the weight of full participation.



Voters in Chesapeake, Virginia, had to wait as long as seven hours to cast ballots on Election Day due to problems with new electronic poll books and a shortage of voting machines and poll workers. In California, poorly trained poll workers wrongly instructed thousands of registered voters to cast provisional ballots on Election Day when they were entitled to regular ballots. In Pittsburgh and Los Angeles, a lack of poll workers caused such long lines and confusion on Election Day that officials asked Election Protection volunteers to step in to act as poll workers. Like so many other averted crises on Election Day, officials made smart quick fixes, but the cause of these problems remain unaddressed. These problems can only be prevented when election officials are given the resources they need to process forms, prepare poll locations, and train workers adequately in advance.

By modernizing the administrative process, we can remove the barriers to a successful, accurate election.

**Provide Adequate Resources to Election Officials:** State and local election officials need to be provided adequate resources to do their jobs and encourage implementation of new innovations. There should also be adequate incentives to encourage creativity in poll worker recruitment, training and deployment as well as in other election management such as resource distribution and adequacy. Election officials should be provided incentives to experiment with using other government employees as poll workers and explore possibilities of public/private partnerships and student poll worker programs to fill the gaps in recruitment.

- **EXPAND THE VOTE: MAKE EARLY VOTING AVAILABLE EVERYWHERE**

In the historic 2008 election, almost one-third of voters cast their ballots before Election Day. Early voting alleviated significant stress on the system on Election Day and allowed election officials to recognize problems and find solutions before the majority of Americans went to the polls. Early voting also allows citizens to correct mistakes such as the omission of their names from the rolls and provides an opportunity for voters who cannot get to the polls on Election Day to be part of the process. “No excuse” early voting, especially when it includes instant voter registration, enables significantly more citizens to participate in the electoral process.

In North Carolina, where early voting with instant registration was allowed for the first time in a presidential election, 49 percent of all ballots cast for president were cast before Election Day and the state had its highest percentage turnout in 24 years. In Georgia, more than 500,000 people voted early in the final week of October. In Texas, more people voted early in 2008 than on Election Day in 2004. And in Florida, a whopping 4 million people voted early for the 2008 general election.

States that had early voting fared better than those that did not in overcoming some of the most pressing problems of this election season. These states significantly alleviated Election Day challenges like unprepared election officials and poll workers, malfunctioning machines, shortages of paper ballots, and long lines.

**“No Excuse” Early Voting:** Voters should be given flexibility in choosing when and how they vote to minimize long lines and overburdened balloting systems. States should provide voters with a voting period that lasts at least two weeks and spans at least one weekend. Early voting sites should be convenient and accessible to all eligible voters in the jurisdiction. Voters should have an option to permanently vote absentee — without excuse — and not have to re-apply every election cycle.

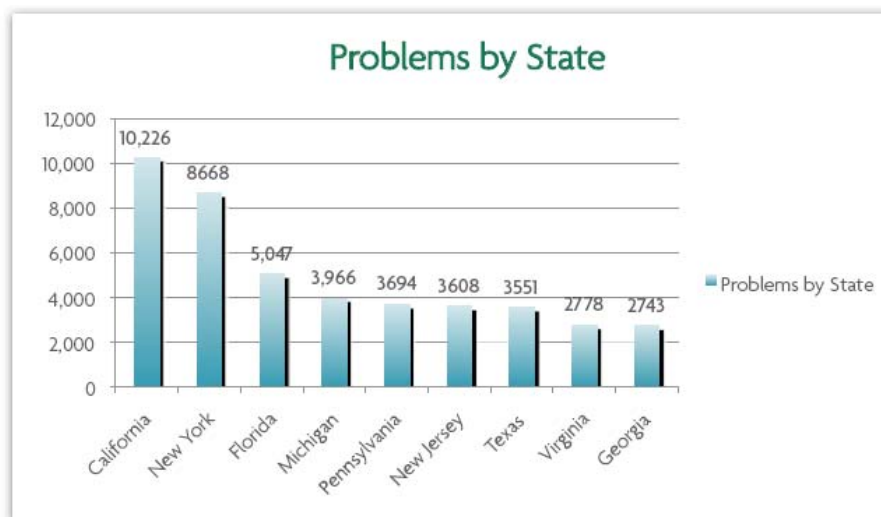
**Registration During Early Voting:** Offering instant voter registration at early voting sites further empowers voters who may have missed restrictive registration deadlines. It also allows voters to correct mistakes or omissions on the voter registration list.

# THE STATES: PROBLEM, SOLUTIONS AND ELECTION DAY

While the administration of elections varies significantly from state to state, clear patterns emerge across most states — registration backlogs, absentee ballot issues, voter purging, confusion about ID laws, a dearth of poll workers, and long lines.

These problems have turned away countless voters in previous elections, but they are all problems that can be solved with common sense federal reforms. The states that Election Protection has examined can be divided into four categories:

- **Battlegrounds (Virginia and Missouri):** These states had to balance record turnout and limited resources. This combination created registration backlogs, long lines, and poll worker shortages.
- **Big States, Big Problems (Pennsylvania, New York and California):** These heavily populated states had registration backlogs and unfilled absentee ballot requests due to a large influx of applications close to the deadline, a bureaucratic log jam that disenfranchised thousands.
- **Troubles Foreshadowed (Michigan and Georgia):** Registration and list maintenance issues threatened to illegally purge voters from the rolls in these states. These emerging issues ultimately became major problems during the general election. However, election officials and advocates were able to work together to protect the rights of voters.
- **Historic Problem Areas (Florida and Ohio):** Politically charged and notoriously problematic, these states had the greatest likelihood for repeating problems of previous cycles. Officials and Election Protection worked together to resolve many of them but more progress should be made.



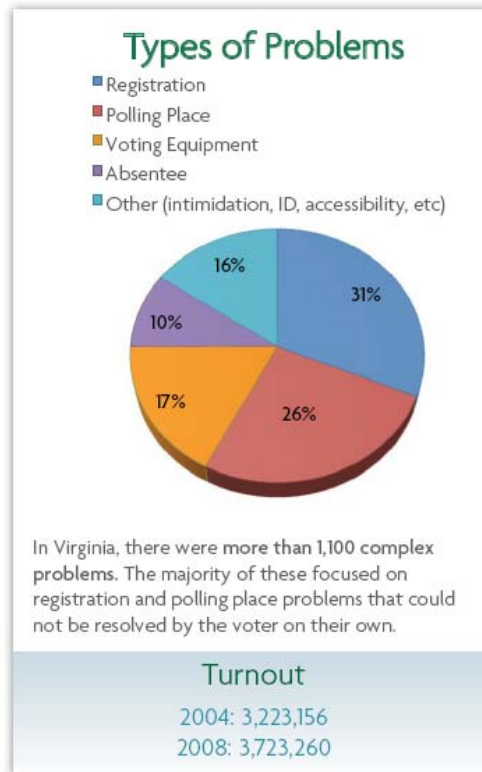
# VIRGINIA

By 7 am on Election Day, Election Protection had received multiple reports from across the state of broken machines, long lines and polling places opening late. News helicopters captured images of lines snaking around parking lots and school buildings. As a new battleground, Virginia election officials were new to the scrutiny of the national spotlight and overwhelmingly high turnout.

Given the conditions on the ground and high turnout forecasts, experts anticipated that Virginia had the potential for widespread voting issues. In an effort to mitigate problems, Election Protection worked prior to the election with local news media to ensure that Virginians were aware of their rights, including voting rules and deadlines.

Leading up the election, the most noteworthy problem targeted students throughout the state: registrars hampered student registration and infringed upon their right to vote at school by mailing out lengthy questionnaires to students and allegedly refusing to register some. Many students were reportedly forced to cast provisional ballots on Election Day.

On Election Day itself, the residents of Virginia found themselves in some of the longest lines in the country. With a lack of preparedness and resources, and a seven percentage point higher voter turnout than 2004, Virginia proved to be a hotbed of voting problems. Although the vast majority of problems reported on Election Day were the result of overburdened polling places, Virginia voters faced many other obstacles, including several instances of dirty tricks and misinformation.



## DECEPTIVE PRACTICES

A combination of dirty tricks by political operatives, voter intimidation and honest mistakes contributed to the spread of misinformation across the state, particularly affecting students. In one especially audacious instance, phony fliers bearing the state seal were circulated in an attempt to trick voters into voting on the wrong day. Still, the most egregious forms of deception and misinformation targeted college and university campuses.

Election Protection reached out to the State Board of Elections about clarifying and correcting information on its official website related to college standards for voting. Eventually, the Board of Elections made some positive changes. However, problems at specific colleges persisted.





In August, the Montgomery County registrar sent out a release incorrectly warning Virginia Tech students that they may face serious consequences for registering in Virginia, including being dropped from their parents' health insurance or voiding their status as dependents on their parents' tax returns.

At Virginia Commonwealth University, there were reports that instructors told students they would be punished with a grade point drop if they missed class to vote. Ultimately, the dean sent an email to all faculty members instructing them to be flexible on Election Day to accommodate students who needed to vote.

As Election Day approached, rumors circulated at Virginia Polytechnic Institute that all out-of-state students who tried to vote in Virginia would put their financial aid in jeopardy. This rumor persisted on several campuses across the country. Election Protection conducted aggressive media outreach to debunk such myths and get the word out about students' voting rights.

At James Madison University, a registered student received a letter from the Board of Elections stating that there was incorrect information on his application and that he could not vote unless he went to court. He went to the courthouse and was told he would have to pay \$10 to schedule a hearing, which he did. He then received a call informing him that the location of the hearing had been changed. The location was too far for the student to travel and he never voted.

At 1:16 am on the Tuesday of the election, an email circulated around the campus of George Mason University, purportedly from Provost Peter Stearns, informing students and staff that the election had been postponed until Wednesday, November 5th. Later, Stearns sent another message revealing that someone had hacked into the system and that voting would indeed take place "today, November 4th."

## VOTER REGISTRATION

Voter registration surged nearly ten percentage points higher than in 2004 with more than five million Virginians registered to vote in the 2008 election. Unsurprisingly, a third of the problems reported to Election Protection by callers from this new battleground state involved registration problems. Multiple voters who registered through the Department of Motor Vehicles or via third party groups reported never receiving a registration card. In other cases, they arrived at their polling places only to find their names missing from the voter rolls. Some voters did not fill out their registration paperwork correctly, but were not notified of this until well after the registration deadline of October 6.

Confusion over registration inevitably leads to problems at the front of the voting line, creating a longer wait for everyone behind. Registration problems were one factor in long lines across the state.

## POLLING LOCATION PROBLEMS

Early on Election Day morning, Virginia voter Zaheer T. called 866-OUR-VOTE on behalf of two colleagues who were stuck in an extremely long line at the Doctor Clarence Cuffee Recreation Center in Chesapeake. His colleagues arrived at the polling place at 7 am, only to find a line that wrapped around the building twice and was not moving. His colleague estimated that 900 people were waiting. After calling the city, Zaheer learned they were sending additional voting machines and election personnel. There were also reports that the seven voting machines in the building had failed and that there were no paper ballots available. Voters at that polling place waited in line for an extraordinary seven hours and fifteen minutes to vote.

In the city of Chesapeake, where Zaheer was calling from, lines as long as six hours were reported at various points throughout the day. Election Protection received reports from one Chesapeake precinct of all the voting machines malfunctioning simultaneously around 7 am, resulting in lines in excess of three hours for much of the day. Reports later in the afternoon vacillated between only one and two machines working properly. These long lines were especially challenging for elderly voters and people with disabilities who were often not offered curbside or other assistance to accommodate physical challenges as required by law. Similar calls came in from across the Commonwealth throughout the day.

Polling place problems, poll worker training and machine problems were serious issues in Virginia and together comprised 43 percent of the reports received by Election Protection for the state. Early in the morning on Election Day, equipment malfunctions contributed to long lines across the state, particularly in Richmond and Northern Virginia. Additionally, multiple callers reported poll workers who were confused by electronic poll books. Problems persisted throughout the day in the Tidewater region in the eastern portion of the state, which includes the Hampton Roads area. Long lines and machine issues were exacerbated by poor weather. Voters with rain-soaked hands and clothing caused the ballots to get damp, leading to problems with electronic scanners.

# MISSOURI

The symptoms of Missouri's greater voting problems were foreshadowed during the early voting period. Missouri allows in-person absentee voting for several weeks leading up to Election Day. On November 3, voters formed lines as early as 5:30 am in some places, and stood for several hours to cast absentee ballots.

Problems on Election Day ranged from hours-long voting lines and intimidation, to misused provisional ballots and voter rolls arriving at the wrong precincts. However, the most severe problems were the result of major administrative problems and unprepared poll locations. Missouri officials were swamped by high levels of voter registration and unprecedented requests for absentee ballots.

## ADMINISTRATIVE BACKLOG

As with many other states, Missouri election officials were overwhelmed by paperwork. In addition to dealing with new registrants, Missouri officials also had to accommodate an estimated 40 percent increase in absentee ballot requests compared to those cast in 2004. Again, this is symptomatic of a larger problem: election administrators were overloaded and under-supported, both in terms of resources and policies.

In St. Louis, a troubling pattern began to emerge. Voters who had submitted change of address forms several weeks prior to Election Day found to their disappointment that these forms had not been processed by Election Day.

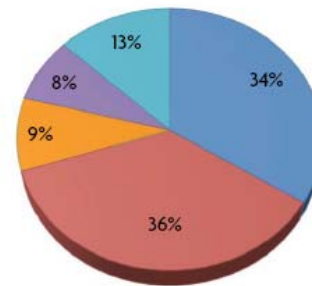
Gretchen H., a voter who contacted the Election Protection hotline, was told (along with many other MO voters) to appear before a judge at the St. Louis City Board of Elections on November 4 to have her change of address form approved by a judge in order to vote. When Gretchen showed up at the courthouse, she discovered a waiting room full of dozens of other voters awaiting the same approval process. At 2 pm, these voters were told that the judge would no longer hear those requests. All the remaining voters were denied the right to vote. In the city of St. Louis, the volume of paperwork and the toll on administrators' time meant that many voters were unable to cast the regular ballot to which they were entitled. Although they had followed the rules and filled out the necessary paperwork, they were unable to vote in 2008.

## POLLING LOCATION PROBLEMS

Several precincts across the state received the wrong voter lists, which caused enormous confusion and long lines. Other locations opened

### Types of Problems

- Registration
- Polling Place
- Voting Equipment
- Absentee
- Other (intimidation, ID, accessibility, etc)



There were nearly 500 complex problems in Missouri, with the vast majority of these problems being polling place and registration problems that required working with high-level election officials.

### Turnout

2004: 2,764,635  
2008: 2,925,205

"There were a lot of us who had to fill out a provisional ballot because they weren't on the rolls."

— Latrease C., St. Louis, MO.  
*Latrease filled out a change of address form, but upon arriving at her polling location found she was not on the voter rolls.*



late, only to find that they did not have sufficient resources to handle the turnout. In Kansas City, voters reported lines taking as long as eight hours. Like several other states, voters arrived at the polls to find that their registration applications had not been processed, despite the fact that their registrations were sent in on time. Many were forced to vote provisionally, while some were even denied the opportunity to cast a provisional ballot.

These issues could have been much worse. After observing high voter registration levels and in anticipation of high turnout, Secretary of State Robin Carnahan made \$2 million available for additional poll workers to serve at polling locations across the state — a bold step that provided critical resources at a critical time. Missouri also has a state statute in place which allows military and citizens serving away from home on Election Day to vote by fax or e-mail and then put the original in the mail.

## VOTER MISINFORMATION AND MISTREATMENT

Election Protection received several reports from voters who were given intimidating misinformation. The Secretary of State's office reportedly received complaints from people who had received text messages claiming that, due to high turnout, Democrats would be voting on Wednesday, November 5. In one location, it was reported that there was a sign posted, informing voters that they were not allowed to vote a straight ticket (all Republicans or all Democrats), which prompted the voter who called Election Protection — and untold others — to vote against his preferred party once to ensure that his ballot would be counted.

On another occasion, a registered voter in a predominantly African-American neighborhood attempted to vote in-person absentee during the allowed time period, because he was going to be away on Election Day. He had all the appropriate identification, but the polling precinct had confused his birth date with that of his father, who has the same name. The voter presented a current utility bill with his name and address as proof, which is allowed under state law, but the poll worker refused to accept it. Even after an Election Protection volunteer informed the poll worker of this statute which allows someone to vote with a current utility bill, he refused to change his mind. The voter was at the polls all day working to resolve the issue.

Election Protection received several reports from different precincts of voters being asked for photo identification or multiple forms of identification, neither of which is legally required to vote in Missouri.

# PENNSYLVANIA

In the weeks leading up to Election Day, Pennsylvania experienced many registration and absentee ballot problems. As isolated reports of dirty tricks and voter intimidation circulated, Election Protection quickly worked to dispel the misinformation through the local media and grassroots outreach. At the same time, Election Protection worked with election officials so that they were not overwhelmed on Election Day.

As in other states, the registration statuses of some voters were questioned in the weeks leading up to the election. Delaware County, which includes Philadelphia suburbs, rejected 250 voter registrations and questioned 4,000 more just five days before the election.

Election officials took precautions that alleviated a great deal of the expected problems. The deadline for appealing registration rejections and corrections was pushed back. Additionally, a judge upheld a lawsuit filed by voting rights advocates to ensure that back-up paper ballots would be on hand if half the voting machines in a given precinct broke down.

## VOTER MISINFORMATION AND INTIMIDATION

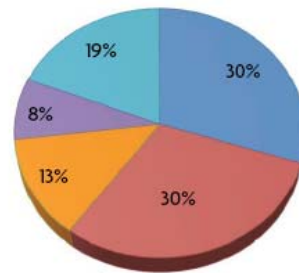
In a West Philadelphia neighborhood, fliers appeared stating that anyone who showed up at the polls with a criminal record of any kind — including something as minor as an unpaid traffic ticket — would be arrested on the spot by law enforcement officials stationed at every polling location. Election Protection conducted aggressive media outreach in the area to quickly debunk this myth. As a result of Election Protections efforts, the false fliers were discussed and discredited in articles about election-related dirty tricks published by the Associated Press, *Philadelphia Inquirer*, McClatchy and ABC.com.

Voters in a largely minority and low-income neighborhood — the Creekside Apartments in Bensalem — were concerned that the move of their polling location threatened to disenfranchise many because the new location was not accessible for people without cars. The *Philadelphia Inquirer* editorialized that the location, a mile from where it had been in previous election cycles, had been moved to further partisan ambitions of Bucks County officials. The new location had no sidewalk and required voters to cross a five-lane highway.

Recently, at school, an Obama supporter approached me during a rock the vote assembly. He informed that on the day of the election there will be undercover officers to execute warrants on those who come to vote based on the anticipated turnout. He advised me if I had any outstanding warrants or traffic offenses I should clear them up prior to voting. They assume this to be an opportunity for those who normally go by fake names and addresses, to give their real names and id's. Allowing them to place name and face together and walla, gotchal! Arrested on the spot. So if you have one or the other to take care of it.

### Types of Problems

- Registration
- Polling Place
- Voting Equipment
- Absentee
- Other (intimidation, ID, accessibility, etc)



There were nearly 500 complex problems in Pennsylvania. As in the other states, registration and polling place problems dominated the cases.

### Turnout

2004: 5,769,590  
2008: 5,992,384

## POLLING PLACE PROBLEMS

Election Day was very problematic at the start in Pennsylvania due to late precinct openings in Philadelphia, broken voting machines, and underprepared poll workers. By mid-morning, serious problems were being reported from a dozen precincts across the state. Many voters who could not use voting machines had difficulties obtaining the paper ballots to which they were entitled. Some voters were given provisional ballots because paper ballots ran out at multiple locations. The major cities of Philadelphia and Pittsburgh reported the greatest number of problems. Issues caused by severely understaffed polling places in Pittsburgh were largely remedied as Election Protection volunteers stepped in to serve as temporary poll workers. Still, each of these problems resulted in eligible voters being prevented from voting.

Machine problems particularly affected voters with disabilities. Betty P. is blind, so she always uses the voting machines on the visually impaired mode. At her polling place in 2008, the mode did not work and no one at the polling location could find a machine manual to fix the problem. Poll workers told Betty to go home without casting her vote. She wisely objected and in the end, a poll worker agreed to assist her. Betty effectively cast her vote, though she was not able to do it with the privacy or certainty to which every voter is entitled.

“The poll worker asked me not to report the problem.”

— Betty P., Philadelphia, PA.  
*Betty is visually impaired. The voting machine at her precinct wasn't working properly and she was unable to vote privately.*

## ABSENTEE PROBLEMS

As a result of the administrative backlog that plagued population centers in the state, many Pennsylvania voters in cities reported not receiving absentee ballots by Election Day. This caused additional problems at polling places on Election Day, as some of those who feared their votes would go uncounted took time away from family obligations, work, or struggled with a disability to get to their polling place. Upon arrival, they were told they would be unable to vote in person since they had already requested an absentee ballot.

For nine pregnant women in Pittsburgh's McGee-Women's Hospital, Election Protection was able to ensure their absentee vote. “I had plans on voting. And all through my labor I was asking how was I going to go about that. Fortunately, there was a knock on my door,” said Juana S, who gave birth to a son on Election Day. Juana and eight other women were in labor when a nurse called Election Protection for assistance. The volunteer was able to file a request for emergency absentee ballots with the state in time to have their votes cast and counted.



# NEW YORK

The story in New York took shape in the days before Election Day. In New York City, paperwork from new registrants and absentee ballot requests overwhelmed election officials, leading to frustrated and disenfranchised voters on Election Day. Although most problems were related to registration, there were significant numbers of polling location issues on November 4.

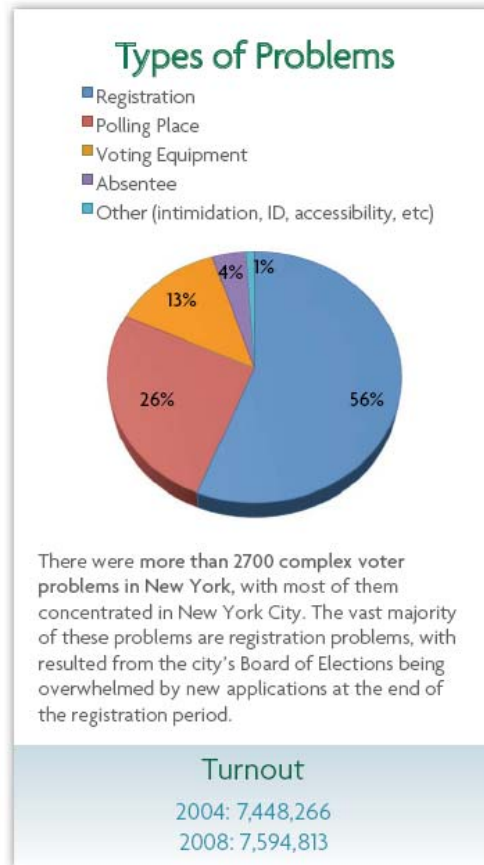
Notably, there were few accessibility problems reported in New York, likely due to the compliance of the New York City Board of Elections with federal mandates to make ballot-marking devices accessible to disabled voters at every city polling place.

## REGISTRATION PROBLEMS

Registration problems were rampant in New York, comprising more than half of the problems reported by New Yorkers to the Election Protection Hotline. New York law states that registration applications must be received no later than 20 days prior to Election Day. This fact, combined with record registration in many counties meant that New York election officials faced a tidal wave of paperwork a little more than two weeks before the election, allowing them little time to process new applications. New York City saw 204,000 new voter registration forms arrive at the Board of Elections in just the first two weeks of October. By October 15, nearly three quarters of a million registration applications had been received for the year. Tacking on an additional request for 50,000 — 60,000 absentee ballots, officials told the media they would have to work around the clock to process all the paperwork in time for Election Day.

Many voters who registered or changed their address through the DMV while filling out license applications did not appear on the rolls. The same was true of individuals who had registered via third party registration drives. Voters whose forms could not be processed by the NYC Board of Elections because they were incomplete were placed on a "suspension list." Unfortunately, many of those voters did not receive the notice of suspension in time to correct their applications. They showed up at the polls only to be told they were not registered. Election Protection volunteers helped hundreds of these voters obtain orders from New York State Supreme Court Judges sitting in each of the counties to allow these voters to cast their ballots. Nothing, however, could stop the river of paperwork problems from cascading down to affect the polling places, causing long lines and confusion on Election Day.

On December 2, the *New York Post* reported that more than 3,500 voter registration forms were shipped to the New York City Board of Elections on September 10, only to sit in a box until November 6 — two days after the



election. The voters who cast provisional ballots were counted, but it is unclear how many other voters were turned away at the polls.

## POLL WORKER PROBLEMS

Registration issues exacerbated other problems, including poll worker training and availability. In one instance, the NYC Board of Elections had printed supplemental registration books to augment the original poll books due to the high volume of new and last minute registrants. However, according to reports, some poll workers did not sufficiently understand the purpose or validity of the books and, in some instances, did not remember to check them before turning eligible voters away.

“When I signed in at the table, the election worker asked me to sign a sheet and put an R or D next to it. Just a loose leaf sheet!”

— Mary O., Merrick, NY.  
*A poorly trained poll worker was requiring all voters to write their party affiliation on a list she was keeping.*

Lack of poll worker availability and training contributed to these problems. Election Protection received reports of polling locations with too few poll workers, as well as polling locations with poorly trained or obstinate poll workers. When machines broke or malfunctioned, workers in some cases were not aware of how to address such issues, leading to late openings of polling places and long lines. In another instance, a voter reported that he was inaccurately listed as inactive. Although by law he would be entitled to vote provisionally, a poll worker attempted to prevent another worker from providing a ballot to him, and instructed him not to vote.

## BROKEN MACHINES AND IMPROPER BALLOTS

Throughout New York City, particularly in Brooklyn and Manhattan, large numbers of voting machines broke down. In many of these sites, poll workers followed proper procedure and distributed emergency paper ballots to voters while they waited for engineers to arrive and fix the machines. However, in several instances, poll workers provided voters with unofficial provisional ballots in the place of emergency ballots, or turned people away from the polls altogether. Election Protection volunteers worked throughout the day to swiftly alert election officials to these issues, and, where possible, to send out mobile legal volunteers to visit these problem polling sites in person and help to clarify any misunderstandings for poll workers and voters.

# CALIFORNIA

Californians faced problems throughout the voting process — registration, early voting, absentee ballot request and polling place problems. Although reports were highly concentrated in Los Angeles County, voters across the state faced a litany of issues resulting from the state's overtaxed election administration system.

An overwhelming number of last-minute registration applications and requests for absentee ballots made it impossible for election administrators to fully process all forms in time for Election Day. These problems manifested themselves in the form of long lines and confusion — by voters and poll workers alike. There were numerous reports of people who did not receive their absentee ballots in time, preventing them from voting. Nearly 13 percent of all absentee ballot problems came from California, the highest of any state. Poll workers were unprepared and made significant errors, including misusing provisional ballots. New registrations were processed slowly and incompletely, which caused confusion at the polls and long lines.

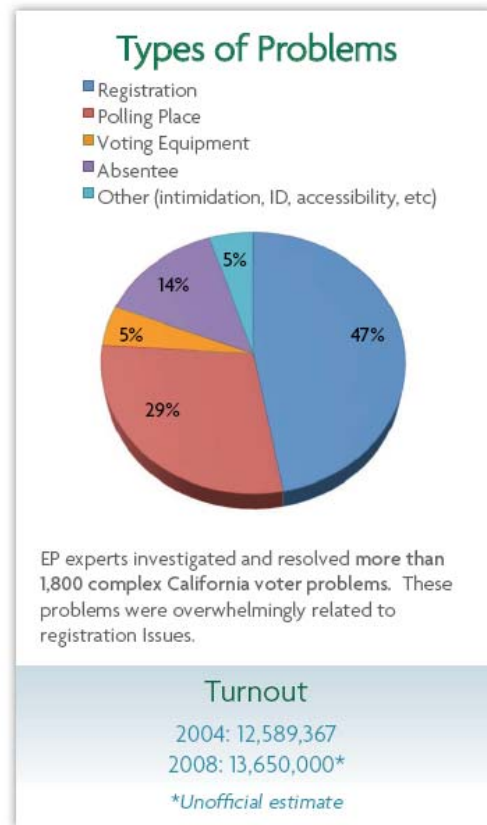
State officials rightly have established late registration and absentee ballot request deadlines to reduce the hurdles to voting. Governor Schwarzenegger recently passed an online voter registration law that will continue to break down those barriers. However, these changes did not do enough in 2008. Turnout was only slightly higher than in 2004, but even this small increase placed an enormous burden on California's already overloaded system.

## BALLOT PROBLEMS

Voters at poorly prepared poll locations in Los Angeles County and elsewhere began reporting ballot shortages in the early afternoon on Election Day. Many people who went to the wrong polling place were incorrectly instructed to vote provisionally instead of being sent to the correct location. At one polling place, provisional ballots were handed out because so many voters were unaware that their poll location had changed and had gone to the wrong location. In other places, voters were not offered provisional ballots even when they were warranted, for example, when paper ballots were requested or when regular ballots were running out. In all, about a million people voted by provisional ballot in California, a staggering number.

## POLLING PLACE PROBLEMS

In addition to problems stemming from higher turnout, voters grappled with under-equipped polling places and poor training of poll workers. Twenty-five percent of all reported polling place problems came from California.



Broken or too few voting machines made long lines even longer. In vote-by-mail districts, there was confusion over the procedures for a voter who had not received his or her vote-by-mail ballot.

## ABSENTEE BALLOT REQUESTS

Due to high volume, absentee ballots were not mailed to many Californians even though they submitted their request well before the deadline. This disenfranchised many voters who were out of the state, physically unable to go to the polls, or had to attend to family or work obligations. It left others confused as to whether they could go to their polling place to vote even though they had requested a ballot.

“People were getting frustrated and not waiting to be told where to put their completed ballots. It didn’t seem it was professionally secured, or respectful of the process. It’s a day you want everything to go smoothly and it seemed so rinky-dink.”

— Katie W., Escondido, CA  
*on the chaos at her polling place.*



# FLORIDA

A familiar feeling of cynicism blanketed Florida in the weeks leading up to November 4, even though state officials had worked to ensure a smoother election than in previous cycles.

Heading into the general election, Florida election officials pushed to implement the state's new "no match, no vote" voter registration policy by checking names of voter registration applications against flawed public databases. If the voter's name or information was inconsistent, her application would be rejected. The databases that the registration lists were checked against were notoriously unreliable. This lightning rod injected a familiar anger and frustration in Floridians still simmering from 2000. Election Protection partners, led by the Brennan Center for Justice, litigated to lessen the disenfranchising impact of the law.

During the early voting period, problems at overburdened early voting sites were dramatically lessened when Governor Charlie Crist courageously issued an executive order to extend voting hours for the week before Election Day. While this solution enabled millions of Floridians to cast a ballot early, registration, polling place and voting equipment problems still cropped up across the state on Election Day.

## REGISTRATION PROBLEMS

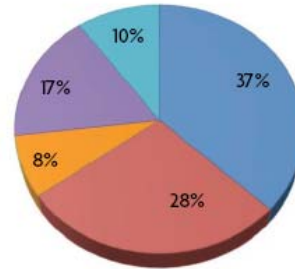
High registration rates meant that voters were either turned away at the polls because of registration issues or told to vote by provisional ballot. Other voters found they had not been added to the rolls because their registration did not match driver's license or social security information under Florida's no-match, no-vote law. Additionally, Election Protection received reports from voters who had registered through the Department of Motor Vehicles, but upon arriving at their polling place and showing ID, were told they were not registered. Overall, 37 percent of the problems Floridians reported to the Election Protection hotline involved a registration issue.

## ABSENTEE BALLOTS

Administrative time and resources spent on processing registrations and comparing voter lists complicated other parts of election administration. Many voters reported never receiving their absentee ballots, despite timely requests. Some came to the polls, only to be forced to vote provisionally because records showed they had requested an absentee ballot. The residents of a hospital in Broward County who had requested absentee ballots did not receive them in time to vote. In another example, a voter named Harvey D. from Coconut Creek, FL, had suffered a

### Types of Problems

- Registration
- Polling Place
- Voting Equipment
- Absentee
- Other (intimidation, ID, accessibility, etc)



There were more than 1,100 reports that required EP expertise. These cases were largely registration issues that resulted from the state's "no match, no vote" law and polling places that were overwhelmed by record turnout.

### Turnout

2004: 7,640,319  
2008: 8,390,744

"He's probably not going to get his vote in, and that's that."  
— Harvey D.'s daughter,  
Coconut Creek, FL.  
*Harvey is disabled and never received his absentee ballot.*



stroke. Neither Harvey nor his wife, who is his primary caregiver and cannot leave him alone, were able to go to their polling place on Election Day. In anticipation, they had requested absentee ballots well ahead of time. Their ballots had still not arrived when they called the hotline on November 4, disenfranchising the couple.

## POLLING PLACE PROBLEMS

Difficulties with voting machines were prevalent across the state on Election Day, and were the second biggest problem reported to the hotline. Over the course of the day, at least three dozen polling places in populous areas all across the state — Manatee, Orange, Hillsborough, Miami-Dade, Lee, Palm Beach, Pinellas, Duval, Volusia, Broward, Escambia, Lee, Leon and Sarasota Counties — reported significant problems with their optical scanning machines. This breakdown of optical scanners had a cascading effect of additional problems in many locations. When the scanners broke, voters were required to manually insert ballots into a safe box. When boxes filled up, poll workers begin stacking ballots in unsecured locations throughout polling places. This also contributed to long lines and general confusion.

“There’s a three and a half to four and a half hour wait to vote and I can’t find out why.”  
— Mary O., Miami, FL

Even though stuffing ballots into bags struck many callers as odd, poll workers were actually following protocol. In other instances, poll workers did not properly carry out their duties. At one precinct in Tampa, two voters showed up at 6:55 pm to vote. Although anyone standing in line before 7 pm should have been allowed to cast a ballot, poll workers shut the doors before these Floridians could cast a ballot. An Election Protection volunteer on site stayed with them, calling the Supervisor of Elections to protest the premature poll closing. The two voters were ultimately allowed in to cast their votes.

## LONG LINES

As was the case all over the country, the excitement over the election had prompted unprecedented registration and turnout in Florida. During the early voting window, there were initial reports of Floridians waiting several hours to cast an early ballot — a situation partially alleviated by Governor Crist’s extension of early voting hours. On Election Day, however, long lines persisted.

Hundreds of voters in highly populated areas waited in line well past 9 pm at the Emmanuel Lutheran Church in Miami, and several universities were affected as well. At the University of South Florida in Tampa, voter turnout was wildly underestimated. Nearly 1,900 students were registered to vote at a single polling location with only two poll workers. They could only process between 60 and 90 voters an hour. At the University of Florida, Gainesville, student voters waited past 9 pm to cast their ballots. At the University of Central Florida in Orlando, voters waited in lines upwards of five hours. The Orange County Elections Supervisor sent additional staff members to monitor the situation.

# OHIO

In the weeks leading up to Election Day, Ohio voters faced a politically charged environment, with Democrats and Republicans battling over the window from September 30 to October 6, when voters could register and cast early ballots at the same time. Election Protection partners, led by the Lawyers' Committee for Civil Rights Under Law, successfully litigated to allow Ohio residents to simultaneously register and cast absentee ballots during the special five-day period.

Reminiscent of 2004, the tension between the parties and election officials was palpable. Reports of intimidation — license plates being recorded outside of polling locations and misinformation on eligibility — further polarized a pre-election season once again dominated by litigation. A protracted legal battle that reached all the way to the U.S. Supreme Court was fought over database matching rules. More rigorous database matching rules were not required under existing election law and created new opportunities to wrongly purge eligible voters from the rolls. Ultimately, Ohio election officials were not required to institute unnecessary database matching procedures, but problems persisted.

## POLLING PLACE PROBLEMS

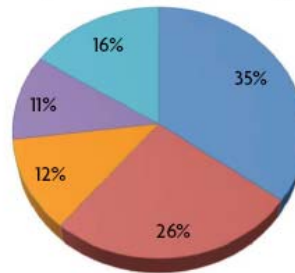
Polling place problems were most common on Election Day, with 35 percent of the total calls received by Election Protection related to this issue. Many of these problems were caused by registration mistakes in the weeks leading up to Election Day. In some cases, voters who had voted in the same precinct for years were not listed in the poll book. In others, voters received registration cards or were listed in the statewide database, but did not appear in the book. These problems exacerbated issues at the polling places. Long lines caused by late openings, insufficient signage or supplies, and machine failures were made even worse when voters were not on the rolls.

## POLL WORKER ISSUES

Election officials did not have adequate resources to properly staff polling locations. This led to undertrained poll workers and caused many of the problems in the days leading up to and on Election Day. Some voters were wrongly told during the early vote period that they would need to vote provisionally if they had requested or received an absentee ballot. Many others were misinformed about the identification requirements and deadlines for the early voting window.

### Types of Problems

- Polling Place
- Registration
- Absentee
- Voting Equipment
- Other (intimidation, ID, accessibility, etc)



More than 900 Ohio voter problems required assistance. These cases focused largely on polling places overwhelmed by record turnout and registration issues.

### Turnout

2004: 5,627,908  
2008: 5,650,000

"It was chaotic, no one was directing or anything... they told you to vote anywhere you could, nothing was private and you could see who everyone was voting for."

— Peggy N., Cleveland, OH.  
*Peggy's poll location was unprepared.*

On Election Day, some poll workers were not equipped to handle the continued trend of high turnout in the state, a problem that voting rights advocates and election officials had anticipated. In one Cleveland polling location, voters were told to forgo using the voting booths and mark their ballot in any location that was available.

A Toledo voter, Letrice M., went with two of her neighbors to the Pathway Community Church to vote. Election officials were confused about provisional ballots and changed Letrice's and one of her neighbor's ballots to provisional ballots, even though they had initially been given regular ballots. After voting, Letrice's ballot was placed in the provisional ballot box, which was unsecured.

"I'm afraid my vote won't count."  
— Letrice M., Toledo, OH.  
*The poll workers at Letrice's poll location were poorly trained and confused on Election Day.*

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. However, some poll workers incorrectly forced voters whose photo ID address did not match the registration address to vote provisionally. Election Protection leaders worked with the county board of elections to notify the county's presiding judge about how to correctly apply the law.

Ohio election officials did what they could to remedy poll worker mistakes on Election Day. Unfortunately, there were not enough resources to assist every eligible voter who faced challenges at the polls. In many cases, poll workers failed to direct voters to the correct precinct and instead instructed them to vote provisionally. In Hamilton County and elsewhere, Election Protection volunteers worked with the Board of Elections to allow a voter who had voted provisionally at the wrong precinct due to poll worker error to come back and vote at the proper precinct so that his or her ballot would count.



# MICHIGAN

Thousands of Michigan voters were at risk of being purged from voter rolls and receiving false information about their rights during the 2008 election cycle. Michigan set off the foreclosure scare — linking foreclosures to voter eligibility — with reports that people who had recently been displaced due to home foreclosures would be challenged as they attempted to vote. Media coverage of the rumors prompted lawmakers in Michigan, Illinois, Nevada, Ohio and Maryland to quickly address these concerns and assure affected registered voters that they would not be disenfranchised. This was a clear example of election officials acting swiftly to fix problems and dispel myths. Sadly, these problems created lasting confusion for Michigan voters among the many other issues that plagued polling locations on Election Day.

Confusing rules, registration problems, untrained poll workers and disorganization at polling places threatened to disenfranchise thousands of Michigan in the 2008 election cycle. In fact, 64 percent of the problems reported to the Election Protection Hotline fell into these categories. These enormous challenges were all simple and preventable, but Michigan's overburdened election officials did not have the resources to fix them in time to ensure the rights of every eligible voter.

## PURGING

It was reported on September 11 that the Macomb County Republican Party Chairman would challenge voters' eligibility if their home had been foreclosed. Election Protection worked with media, election officials and non-partisan grassroots organizations to get the word out to voters that they should not be afraid to go to the polls and that their vote would be counted. In addition, the Michigan Department of Civil Rights rolled out a massive voter education effort less than a month before the election to counteract various myths and rumors surrounding foreclosures, campaign paraphernalia and prior felony convictions.

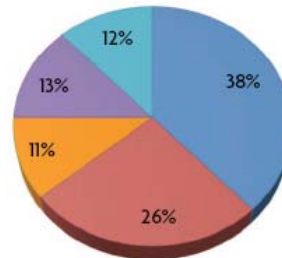
In response to a different lawsuit, a federal judge ordered the Secretary of State to restore to the voter rolls the names of more than 1,500 Michigan voters who were wrongfully purged because their registration cards were undeliverable.

## MISINFORMATION

Misinformation about student voting rights surfaced in

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As in other states, Michiganders faced polling places that were overwhelmed by turnout or mismanaged by poll workers, and registration troubles that required EP assistance. There were more than 550 problems that were resolved by working with high-level election officials.

### Turnout

2004: 4,875,692  
2008: 5,001,766

"Someone at the Board of Elections said he'd advise not to register students in Michigan because it could damage financial aid and insurance. I wanted to clarify, so I went ahead and called the hotline.

— Emily D., Grand Rapids, MI.  
Emily, like many students, heard that her financial aid would be revoked if she voted in her school state.



Michigan as in other states. Emily D. of Grand Rapids was working to get eligible voters — including students — registered in time to vote for November's general election. Like many students, Emily was given erroneous advice from election officials that registering students in a county other than where their parents lived could endanger their financial aid and health insurance. She called the 866-OUR-VOTE hotline to verify this information, and upon learning that students could register in Michigan without legal repercussions, Emily went on to register 200 new student voters.

## POLLING PLACE PROBLEMS

Polling place and registration problems again combined to create headaches and long lines for voters. Poll workers were poorly trained and did not handle check-in efficiently. In many instances, voters had to go to several different precinct stations before they could cast a ballot. Additionally, poll workers were often unaware that voters in Michigan who did not have a government-issued photo ID could vote after signing an affidavit.

“Nothing was communicated by anyone that actually worked.”

— Aisha A., Flint, MI.

*The chaos at Aisha's poll location prevented many from voting.*

In Flint, voters experienced the frustration of long lines, broken machines, and inadequately trained poll workers. After waiting in line for at least two hours, Aisha A. finally heard through another voter leaving the polls that the delay came from the only available machine breaking down. Poorly trained poll workers then made several bad decisions: First, voters were told to use paper ballots for poll workers to feed into the machine later. Then, they divided voters by name alphabetically, which sent people who had been waiting in line for hours back to the end of the line. Frustrated voters started leaving by the dozens without voting, according to Aisha.

Voters in Pontiac were confused about poll location changes. Voters went to the wrong polling location causing confusion and delays. Furthermore, polling places with multiple consolidated precincts caused further confusion when voters were not directed in an orderly way to their correct voting location.

## ABSENTEE BALLOTS

As in other states, absentee voting presented unique difficulties. A Williamston couple experienced problems obtaining information on how to vote absentee. Tina S.'s husband has multiple sclerosis, which has rendered him unable to move from below the shoulder. After many attempts, Tina reached someone at the Governor's office, who told her that she could fill out her husband's absentee ballot on his behalf as long as he placed an “X” on the ballot by holding a pen with his mouth. Tina, unlike many voters, was willing to chase down the answer to her questions and planned well in advance to navigate the complicated system.

“Him not voting would have been unacceptable. He's as smart as he was the day he left college.”

— Tina S., Williamston, MI.

*Tina was worried that her husband who is disabled would not be allowed to vote absentee.*

# GEORGIA

In the weeks leading up to Election Day, Election Protection attorneys were involved in a lawsuit that temporarily ceased a state registration process that threatened to disenfranchise thousands of eligible Georgians based on often outdated and inaccurate information about the citizenship status of new registrants. The court order provided protections and a defined process for those voters flagged as non-citizens.

Georgia Election Protection took more than 1,900 phone calls on Election Day. Officials braced for unprecedented turnout and ultimately saw nearly a five percentage point increase over 2004 levels. This increase created major problems at the polls. During early voting, some precincts saw waits of six to eight hours.

## ADMINISTRATIVE BACKLOG

Only a few weeks before Election Day, officials were still receiving thousands of new registration forms to process. In mid-October, there were reports out of DeKalb County of about 30,000 registrations sitting in a box waiting to be entered. Although Election Day was relatively smooth at the polls in metro-Atlanta and the surrounding areas, the paperwork backlog resulted in unique problems for voters who had recently moved, requested absentee ballots, or were newly registered.

## REGISTRATION PROBLEMS

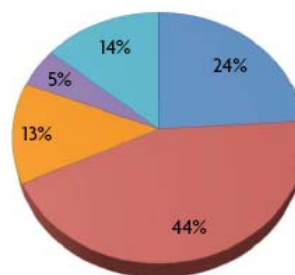
Registration problems accounted for nearly half of all the problems reported to the 866-OUR-VOTE hotline. Backlogs in registration combined with purges created difficulties for many voters on Election Day.

Voter Sharon S.'s story illustrates a problem that thousands of Georgians faced in the weeks leading up to Election Day. Sharon, a resident of Norcross, had recently moved and submitted her updated address during the summer. After a month went by without a sign of her new registration card, Sharon called the Secretary of State's office. The card had mistakenly been sent to an address at which Sharon had lived three moves ago. Sharon had to resubmit her forms at the last minute and — unlike many more Georgia voters — managed to get her forms in on time to vote.

Misspelled names and mistyped birthdates on registrations combined with confusion over ID requirements also turned away eligible voters. For example, Patricia and her daughter live at the same address in Augusta, Georgia

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EP took on more than 1,000 voter reports in Georgia, which largely focused on registration issues resulting from backlogs of new registrations and the purging of eligible voters from the rolls.

## Turnout

2004: 3,317,336  
2008: 3,924,303

“If I had found out about this problem after the registration deadline, I would have been denied my right to vote.”  
— Sharon S., Norcross, GA.

and have similar names. Patricia voted early on September 24. Her daughter then tried to vote early on October 3, but was told that she could not vote early because she had already voted. Patricia's daughter explained that it was her mother who voted early the week before but the poll worker had already closed the screen on the electronic voting machine, terminating the process and did not know how to undo it. Patricia was denied further information about whether or not the problem was resolved and steps she could take to ensure that both of their votes would be protected. She and her daughter still don't know if their votes were counted.

## CITIZENSHIP CHALLENGES

Donovan, of Tucker, GA. waited in line for two hours and 45 minutes on Election Day. When he got to the front of the line, the poll worker told him that he could not vote because he was not a U.S. citizen. Donovan had in fact become a naturalized citizen more than two years ago. After a long back-and-forth, and the generosity of Donovan's boss to give him more time off, Donovan went back to the polls and was finally allowed to vote. Tucker was just one of thousands of eligible new American citizens whose right to vote was threatened in Georgia in 2008.

"I'd be damned if he gave up!  
But he did vote in the end."  
— April A., Tucker, GA,  
*wife of Donovan, whose citizenship  
was wrongfully challenged at the polls.*

## LITIGATION

On October 9, several Election Protection member groups, including the Lawyers' Committee for Civil Rights Under Law, the American Civil Liberties Union (ACLU) Voting Rights Project, and the Mexican American Legal Defense and Educational Fund (MALDEF), filed a lawsuit in Georgia. The lawsuit was filed on behalf of Cherokee County resident Jose Morales, a naturalized citizen whose eligibility was repeatedly challenged by election officials even after providing proof of his citizenship. At the time the lawsuit was filed, Morales and potentially thousands of other Georgians were at risk of having their names purged from voter registrations rolls under Georgia's database matching procedure which flagged suspected non-citizens. The procedure, which relied on the State's Department of Driver's Services ("DDS") database, presented a particularly unfair challenge to new citizens. There is currently no procedure to update the DDS database in order to reflect subsequent naturalization by persons who were legal residents when they obtained their DDS license. This created a systematic bias against naturalized citizens, needlessly jeopardizing their voter registration status and unduly burdening their right to vote. More than 100,000 people became naturalized citizens in the past 10 years in Georgia, according to the Department of Homeland Security, so the potential for harm was significant.

On October 27, The United States District Court for the Northern District of Georgia issued a preliminary injunction against Secretary of State Karen Handel, finding that the database matching process used to flag suspected non-citizens on the voter rolls was adopted in violation of a key provision of the Voting Rights Act. Under the injunction, Georgia officials may not use the citizenship matching program to permanently deny any voter registration applications or permanently remove any existing voter registrants from the rolls unless and until the State obtains clearance for a new procedure.

Eligible voter Jose Morales and the thousands of other voters whose rights were in jeopardy were allowed to vote in 2008. With automatic and permanent voter registration, they would be guaranteed that right in every future election and free to vote without intimidation.