



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

MAXIMIZING THE EFFECTIVENESS OF PROVISIONAL VOTING

Every registered citizen who votes should have her ballot counted. This is not a controversial statement. Yet, for a variety of reasons, some voters arrive at the polls on Election Day only to be turned away when their names do not appear on the list of registered voters. Congress has attempted to correct this situation by including “fail-safe” or provisional voting requirements in the Help America Vote Act (HAVA) of 2002. States had the opportunity to adopt laws and procedures that maximized the chances for a provisional ballot cast by an eligible voter to count. The 2004 elections show, however, that states have taken very different paths in implementing provisional voting requirements. Consequently, the rates at which provisional ballots are counted vary widely from state to state— from 96% counted in Alaska to only 6% counted in Delaware. These practices sometimes even vary widely within the state.

This policy brief outlines HAVA’s provisional voting requirements, reviews the experience of states with the 2004 implementation of provisional voting, and provides policy recommendations.

HAVA’s Statutory Requirements for Provisional Voting

Section 302 of HAVA requires election officials to provide individuals who are not listed on the voter rolls but believe themselves to be both properly registered and eligible to vote an opportunity to vote by provisional ballot. Voters casting provisional ballots must complete an attestation that they are registered to vote in the given jurisdiction and that they are eligible to vote in the federal election. If election officials later determine that a provisional voter is eligible to vote under state law, then that provisional ballot will be counted. Following is a summary of Section 302 of HAVA.

739 8th Street, SE
Suite 202
Washington, D.C. 20003

2101 South Main Street
Little Rock, AR 72206
1-800-546-8683

www.projectvote.org

MAXIMIZING THE EFFECTIVENESS OF PROVISIONAL VOTING

Issues in Election Administration: Policy Brief Number 6

08.21.06



1. If an individual declares herself as a registered and eligible voter, but the individual's name does not appear on the list of registered voters, the individual shall be permitted to cast a provisional ballot.ⁱ
2. The individual must sign an affirmationⁱⁱ that she is "a registered voter in the jurisdiction in which the individual desires to vote"ⁱⁱⁱ and "eligible to vote in that election."^{iv}
3. If the appropriate election officials determine the individual is eligible to vote under state law, the individual's "provisional ballot shall be counted as a vote in that election in accordance with State law."^v
4. State or local election officials must establish a free notification system to allow individuals to determine "whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted."^{vi}
5. Polling place officials must provide individuals who vote provisionally with written information describing the method to access the free notification system.^{vii}
6. "Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot."^{viii}

A Summary of Research Findings

There have been few studies on provisional ballots, but all reports indicate that states are implementing HAVA's provisional voting requirement differently. Some states have elected to count provisional ballots cast within the correct county, even if they are cast at the incorrect polling place. Other states have retained precinct-specific polling regulations. Some states, Washington for instance, notify voters whose provisional ballots are in danger of being rejected. Other states, South Carolina for example, count all provisional ballots unless otherwise challenged at a hearing. Vermont has voting procedures that reduce the necessity for casting provisional ballots.^{ix} The wide range of laws and

rules implementing HAVA's provisional voting requirement has resulted in significant variations in the rate of provisional ballots cast and counted. The variations also provide the opportunity for states to share best practices learned from the 2004 election cycle. The chart on pages 13-14, "Provisional Ballot Statistics," shows the rates at which provisional ballots are cast and counted.

There are five key reports available that outline the implementation of the provisional ballot component of HAVA in different states, the impact provisional ballots played in the 2004 election, and court decisions impacting the implementation of provisional ballots.

Demos: Continuing Failures in "Fail-Safe" Voting

While most of the literature on provisional ballots outlines rules, regulations and laws for implementation, this report by Demos, a non-partisan public policy research and advocacy organization, covers what is actually happening at the polls. Using data from a national hotline for voters to report election problems in 2004, Demos noted that:

- Polling places ran out of provisional ballots, so many voters were sent home without casting a vote.
- List maintenance issues and minor discrepancies often resulted in voters having to cast provisional ballots rather than regular ballots, while only 3% of callers had to cast a provisional ballot due to their own error.
- Confused poll workers were responsible for a number of problems, including:
 - Offering provisional ballots when the voter was eligible to use a regular ballot;
 - Refusing to offer a provisional ballot when the voter was eligible;
 - Actively discouraging voters from voting provisionally by incorrectly declaring that no provisional ballots would be counted; and
 - Incorrectly insisting that provisional ballots would be counted if cast in the wrong polling place.

While administrative rules and procedures compose the foundation of provisional ballot implementation, poll worker training and accountability are critical to the administration of fair elections.



Electionline.org: Solution or Problem? Provisional Ballots in 2004

Electionline.org, which provides non-partisan, non-advocacy information and analysis on election issues, composed a report that both tallied the number of provisional votes cast and counted – and the corresponding percentage of each state’s total votes made up of provisional ballots – and drew a number of important connections about provisional ballot implementation in the states. In particular, the electionline.org report noted that:

- 17 states did count provisional ballots cast out of precinct in 2004, while 28 states reported they would not count provisional ballots cast out of precinct. Yet a number of counties within precinct-only states decided to count ballots cast in the correct county.
- In another example of in-state variation, some voters got a “second chance” to have their provisional ballot counted because they were contacted by election officials to remedy issues after their ballots were cast – in certain counties, but not others.
- States that count provisional ballots cast out of precinct had a higher percentage of provisional ballots counted than those that did not count ballots cast out-of-precinct – 70% to 62%.^x

As one of the first examinations of provisional voting, the electionline.org report brings to light a number of issues election administrators and advocates will want to take notice of.

Election Data Services: Provisional Ballots

The report by Election Data Services, a political consulting firm contracted by the Election Assistance Commission, provides a wealth of information. In addition to tallying responses from election officials on the administration of provisional ballots, including the most reported reasons why provisional ballots were rejected, the report drew connections between the rates of provisional ballots cast and counted with demographic information, geographic and political data, and state administrative procedures. Some of EDS’s interesting findings include:

- Non-Hispanic Native American jurisdictions had the second highest rate of provisional ballots cast and one

of the lowest rates of provisional ballots counted —under 50 percent.

- Battleground states have lower incidences of provisional ballots cast, but a higher percentage of provisional ballots counted.
- Rates of provisional ballots cast increase with the median income of the area. Further, higher income jurisdictions counted provisional ballots at almost twice the rate of low-income communities.
- States with statewide voter registration databases had about half the number of provisional ballots cast as those states without databases, but the rate of counting of provisional ballots was similar between the two groups.

Brennan Center for Justice: Summary of Litigation Concerning Provisional Ballots in the 2004 Elections

The Brennan Center’s report outlines the legal battles in 2004 around Provisional Ballots. The consensus of the courts seems to be:

- Voters must be allowed to cast provisional ballots even if they vote in the wrong precincts (but poll workers should try to direct voters to the correct precinct).
- HAVA does not require that a state count provisional ballots that are cast out of precinct, and voting in the correct precinct is not an unnecessary burden on the voter.
- However, if no one directs voters to the proper precinct, such provisional ballots cast in the wrong precinct should be counted.
- Voters who request but do not cast an absentee ballot, or who claim not to have received their absentee ballot, must have their provisional ballot counted.

In general, the courts have given the states a great deal of power in the implementation of the provisional ballot component of HAVA.

National Association of Secretaries of State: NASS Survey of the Election Community Regarding Provisional Ballots

Through surveys with its members, NASS has compiled general information on provisional ballot implementation, e.g. which states allow Secretaries of State to have some rule-making power in HAVA compliance, general state guidelines for provisional ballots to be considered valid, and the time frame for validating provisional ballots.



Casting Provisional Ballots

A provisional ballot is used when a voter believes she is properly registered in the given precinct, but her name is not found on the voter list. Some states use provisional ballots for other purposes. For example, West Virginia directs voters to cast provisional ballots if the voters fail to provide a correct form of ID. Voters in Utah must cast a provisional ballot if the voters' eligibility is challenged. Maryland requires voters to use provisional ballots if polling places extend their hours.

Few of the states surveyed track the reasons why provisional ballots were not counted. One survey question asked election officials for the top five reasons provisional ballots were not counted. The accompanying chart reviews the reasons why provisional ballots were rejected and the frequency at which they were listed as one of the top five reasons for rejection.^{xi}

There are simple solutions to many of these problems that will maximize the opportunity for a valid ballot to count.

Reason for Rejecting Provisional Ballots	Frequency of Mention
Not Registered	18
Wrong Precinct	14
Improper ID	7
Incomplete Ballot Form	6
Wrong Jurisdiction	5
Already Voted	3
Ballot not Timely Received	3
Ineligible to Vote	3
No Signature	3

Not Registered

Eighteen states reported voters not being registered as one of the top five reasons a provisional ballot was not counted.^{xii}

Wrong Precinct or Jurisdiction

In 2004, 28 states did not count provisional ballots cast in the incorrect precinct. In a number of states, including the battleground state of Ohio, individual counties chose whether to count provisional ballots at the county level or at the precinct level.^{xiii} With the record-breaking turnout, many election offices were overwhelmed with registration applications prior to the election. As a result, communication about the correct polling locations did not reach voters in time. Such was Project Vote's experience in Michigan. This confusion may have led to the disenfranchisement of some voters. The table on page 5 shows the jurisdiction in which provisional ballots must be cast to be counted.

Certification Period

The National Association of Secretaries of State survey on provisional ballots noted that 3 states require provisional ballots to be validated the day after Election Day,^{xiv} while 5 states allow 2-3 days for validation.^{xv} Four states reported they were concerned or may be concerned about the lack of time, including Colorado, Kansas, Nebraska, and Delaware, among others. Project Vote recommends a 15-day certification period so that time and care are taken in determining the eligibility of each ballot.

Incomplete Ballot Form or No Signature

A frequently reported reason for rejecting a provisional ballot is the lack of a signature or an otherwise incomplete ballot form. Election Data Services reported that the rate of provisional ballots counted decreases as voters education level decreases. This fact suggests that voters with low literacy skills may be less likely to have their provisional ballots counted because of their difficulty in completing provisional ballot forms.



Policy Recommendations

Project Vote has developed a set of policy recommendations based upon a survey of provisional voting procedures across the country, a review of state statutes and existing literature on provisional voting, as well on our experiences from 2004. We believe these recommendations will both expand democracy and maintain the integrity of our election system.

Provisional Ballots Should Be Counted On A Statewide Basis

Election officials in 14 states report that one of the top five reasons provisional ballots were not counted was because the ballots were cast in the wrong precincts.^{xvii} Precinct boundaries and polling locations change; Americans move frequently, and new voters may not get notification of their polling places in time. By counting provisional ballots at the county or statewide level, more voters will be enfranchised. This also provides the benefit of ensuring uniform standards for counting provisional ballots. Currently, 15 states count provisional ballots cast in the incorrect precinct, and Maryland, Oregon and Washington count provisional ballots at the state level. (Three states had in-state variations in 2004: Arizona, Illinois, and Ohio.)

What is the jurisdiction for counting provisional ballots?	
Statewide	Maryland* Oregon* Washington*
County	Alaska California Colorado* Delaware Georgia* Kansas* Louisiana*(and in correct parish) New Jersey* New Mexico* North Carolina* Pennsylvania* Utah*
City or Municipality	Rhode Island* Vermont* Virginia
Precinct	Alabama* Arkansas* Connecticut* District of Columbia Florida* Hawaii Indiana Iowa* Kentucky* Massachusetts Michigan* Missouri Montana* Nebraska Nevada New York Oklahoma* South Carolina* South Dakota* Tennessee* Texas Virginia West Virginia
States with In-State Variation in 2004	Illinois (county in 2006) Ohio (precinct in 2006) Arizona (precinct in 2006)
States with Election Day Registration or No Voter Registrations Requirements	Idaho Maine Minnesota New Hampshire North Dakota Wisconsin Wyoming

*Completed Project Vote's Provisional Ballot Survey



Provisional Ballots Should Also Serve As A Voter Registration Applications

Election officials in 18 states report that one of the top five reasons provisional ballots were not counted was that the voters were not registered to vote. A forward-thinking solution adopted by some states is to use the provisional ballot also as a voter registration application. This way, more people are registered to vote for the next election.

Colorado, Iowa, Kansas, New Mexico, New Jersey, Oregon, and Rhode Island all capture applications during provisional voting. The voter registration can either be on a provisional voting request form, as in Oregon, on the provisional ballot envelope or on the required affidavit. Arkansas's state law requires that an application is provided to a provisional voter, but the application is not captured as part of the voting process. Colorado, Iowa, North Carolina and Utah are required by state law to capture registration applications. In Oregon, 1,200 new voters joined the rolls through the combined provisional ballot/registration application; in Rhode Island, 1,163 voters registered to vote in this way.

Does the provisional ballot also serve as a voter registration application?	
Yes	Colorado ¹ Iowa ² Kansas ³ Michigan New Jersey ⁴ New Mexico North Carolina ⁵ Oregon ⁶ Rhode Island Utah ⁷
No	Alabama ⁸ Arkansas ⁹ Connecticut Florida Georgia Kentucky Louisiana Maryland Montana Oklahoma Pennsylvania South Carolina South Dakota Tennessee ¹⁰ Vermont ¹¹ Washington
Exempt States & States with Election Day Registration	Idaho Maine Minnesota New Hampshire North Dakota Wisconsin Wyoming
Refused to participate	Indiana

¹ C.R.S. 1-8.5-102

² Required by state law.

³ Completing a voter registration application is a mandatory prerequisite for casting a provisional ballot.

⁴ Required by state law but not yet implemented.

⁵ Required by state law.

⁶ The provisional ballot request form serves as a voter registration application

⁷ Required by state law

⁸ Alabama does, however, require provisional voters to complete the Update form, which will register voters at their new address if there is a change from the last outdated record

⁹ State law requires voter registration applications are provided to voters casting provisional ballots.

¹⁰ State law requires applicants to complete a voter registration form before casting a provisional ballot.

¹¹ Vermont voters who are not listed on a voter list are allowed to cast a regular ballot by completing a sworn affidavit indicating they did submit a voter registration application. The few voters who refuse to complete the affidavit may complete provisional ballots. If a provisional voter is eligible to be registered in the given city, that voter will be added to the voter list. Provisional ballots, therefore, effectively serve as a registration application.



Voters Should Be Given A Chance To Remedy Issues With Their Provisional Ballots

Provisional voters whose ballots are missing pertinent information, such as proof of identity or signature should be notified and given a 10-day period in which to supply the needed information. Fifteen states allow provisional voters to return after casting a ballot to provide supplemental or missing information in order to have their ballot counted. In addition, two states—Iowa and Kansas—allow provisional voters who failed to provide ID to return and present it even though they do not allow voters to correct other errors. South Carolina counts all provisional ballots unless challenged. Maryland allows provisional voters whose ballots are challenged by election officials to respond.

May a voter remedy a provisional ballot that is rejected?	
Yes	Alabama Arkansas Colorado ¹ Florida ² Iowa ³ Michigan ⁴ Montana New Mexico Oregon North Carolina Pennsylvania South Carolina ⁵ Washington
No	Connecticut ⁶ Georgia ⁷ Kansas ⁸ Kentucky Louisiana Maryland ⁹ New Jersey ¹⁰ Oklahoma Rhode Island South Dakota ¹¹ Tennessee Utah ¹² Vermont
States with Election Day Registration or no voter registration requirements	Idaho Maine Minnesota New Hampshire North Dakota Wisconsin Wyoming
Refused to participate	Indiana

If voters may remedy deficient provisional ballots, how are they notified of the opportunity	
Phone	
Mail	Alabama Colorado New Mexico Washington ¹³
Varies by jurisdiction	Arkansas (phone or mail) Montana South Dakota ¹⁴
No Notification	Florida Iowa Michigan Oregon North Carolina Pennsylvania South Carolina
No Opportunity to Remedy	Connecticut Georgia Kansas Kentucky Louisiana Maryland New Jersey Oklahoma Rhode Island South Dakota Tennessee Utah Vermont

¹ Provisional voters who fail to sign their provisional ballots have eight days to go to the county clerk's office and sign their ballots.

² Florida accepts additional evidence up to 3 days after the election.

³ Iowa permits provisional voters to supplement their ballots with documentation supporting their eligibility claims.

⁴ Michigan accepts additional documentation up to 6 days after the election.

⁵ Provisional ballots are counted unless challenged. If challenged, the voter may defend the ballot.

⁶ Connecticut does allow voters to return with their ID after casting a ballot.

⁷ First-time registrants in Georgia may return with their ID after casting a ballot.

⁸ Kansas generally does not permit a provisional voter to remedy the ballot except that a provisional voter who was required to provide ID but failed to do so on Election Day may return up until the election is certified to provide ID.

⁹ Maryland allows provisional voters whose ballots are challenged by election inspectors to respond. Voters may also return with ID after casting a ballot.

¹⁰ New Jersey permits provisional voters who were required to provide ID but failed to do so on Election Day to return and present it.

¹¹ South Dakota does not generally allow voters to remedy their ballots, but local jurisdictions may contact voters for additional information to determine eligibility.

¹² Utah does not have a statewide policy of allowing voters to remedy their ballots after being cast. Individual counties may choose to institute their own procedures.

¹³ Washington notifies provisional voters only if they forgot to sign the envelope or affidavit.

¹⁴ South Dakota generally does not contact voters to remedy their ballots, but local jurisdictions may have their own processes.



“Second Chance Registration”

Occasionally, an individual voter may submit a voter registration application before the close of registration, but the application may be incomplete. In this instance, when the voter casts a provisional ballot, the information on the ballot should be used to complete the voter’s application, and the ballot should be counted accordingly. The most frequently cited reason why a provisional ballot was not counted in 2004 was because the voter was not registered. With a “second chance registration system,” valid ballots cast by these citizens would be counted. The statewide databases mandated by HAVA make it easier for states to offer voters this opportunity.

Polling Places Should Have A Required Minimum Number Of Provisional Ballots

A number of voters reported that they were unable to cast provisional ballots because polling places had run out of these ballots.^{xviii} This was Project Vote’s experience in some Pennsylvania jurisdictions in 2004. In our survey, the majority of states reported having no minimum number of provisional ballots at polling places, nor a requirement that local jurisdictions establish a minimum.

Eight states, however, did have minimum standards. They ranged from 1% of registered voters in Connecticut to 10% of registered voters in New Mexico, while Kentucky set a floor of 20 provisional ballots. In some cases, the standard is set uniformly across the state by law or rule, while in others local jurisdictions are assigned the responsibility of determining the minimum quantity supplied to polling places. Two states, Oklahoma and South Dakota—use regular ballots placed in a specially marked envelope while Oregon conducts its election by mail and so does not have polling places.

Project Vote recommends that states should require that polling locations have provisional ballots equal to 5% of its registered voters and a minimum of 15 ballots at each site, whichever is greater.

Is there a required number of provisional ballots at polling places?	
Yes.	Connecticut Kentucky ¹ Louisiana ² Maryland ³ New Mexico Utah ⁴ Vermont
No	Alabama Arkansas Florida Georgia ⁵ Iowa Kansas Michigan Montana New Jersey North Carolina Oklahoma ⁶ Pennsylvania Rhode Island South Dakota ⁷ South Carolina ⁸ Tennessee Washington
Not Applicable	Oregon ⁹
States with Election Day Registration or no voter registration requirements	Idaho Maine Minnesota New Hampshire North Dakota Wisconsin Wyoming

¹ State law requires a minimum of 20 per precinct. Local authorities have the discretion to increase that number.

² Louisiana law creates a formula that takes into account the type of election and voting statistics of a given parish. The state issues a chart with the calculations.

³ In single-ballot counties, polling locations are required to have enough provisional ballots for 1 percent of registered voters plus the number of spoiled provisional ballots in the previous comparable election, in addition to 20 provisional ballots reserved in case polling locations are mandated to stay open later. In multiple-ballot counties, the counties calculate the number of voters who have changed their address in the past four years, in addition to the 1 percent of currently registered voters, previously spoiled ballots, and 20 emergency late-night ballots.

⁴ State law provides that provisional ballots are supplied to polling sites based on the percentage of registered voters.

⁵ State law assigns to counties and townships the responsibility of determining the number of provisional ballots supplied to polling places.

⁶ Oklahoma uses regular ballots placed inside an affidavit envelope.

⁷ South Dakota uses regular ballots.

⁸ There is an administrative rule that bases the number of provisional ballots supplied to polling places based on historical use.

⁹ Oregon is a vote by mail state and does not have polling places.



States Should Allow Sufficient Time for the Provisional Ballot Canvass

The time period states allot for the provisional canvass varies widely, from 24 hours in Rhode Island to 21 days in Washington. Other states are distributed almost evenly along this continuum. Often, the opportunity to remedy a ballot is dependent on the provisional ballot canvass, which in turn is dependent on the date by which the election must be certified. Regardless of whether the issue is the provisional ballot canvass or the election certification, states need to allow a reasonable time for counting ballots to ensure the accuracy of the tally.

What is the time frame for counting provisional ballots?

Alabama	5 PM on the Monday following the election. ¹
Arkansas	Prior to certification of election. ²
Colorado	10 days after the primary and 14 after the general election ³
Connecticut	6 days after the election
Florida	7-11 days after the election
Georgia	48 hours.
Idaho	Election Day Registration
Indiana	Refused to participate
Iowa	The Monday or Tuesday after the election
Kansas	The day before the county canvass (the Friday or Monday after the election)
Kentucky	Noon Friday after Election Day
Louisiana	The third day after the election
Maine	Election Day Registration
Maryland	10 AM on Monday after Election Day
Michigan	Within 6 days of the Election
Minnesota	Election Day Registration
Montana	By 3PM on the 6th day following Election Day.
New Jersey	No set deadline
New Hampshire	Election Day Registration
North Carolina	The end of the County Board Canvass which is 10 days after the election
North Dakota	No Voter Registration Requirement
Oklahoma	5PM on Friday following Election Day
Oregon	10 days from Election Day
Pennsylvania	7 days after Election Day
Rhode Island	24 hours after the Election
South Carolina	Thursday following the primary, Friday following the general election
South Dakota	13 days following Election Day
Tennessee	48 hours
Vermont	Within 2 days of the Election
Washington	21 days after the General Election
Wisconsin	Election Day Registration
Wyoming	Election Day Registration

¹ Alabama state statute 17-10A(c)(1)(c)

² Arkansas state ACA 7-5-306(b)(3)

³ CRS 1-8.5-105



Provisional Ballots Should be Distinct from Regular Ballots

Provisional ballots should be visually distinct from regular ballots so that election officials do not inadvertently count provisional ballots before they have been reviewed for eligibility. Provisional ballots should also be designed so that precinct-based machines used to count regular ballots cannot count provisional ballots. Washington State prints provisional ballots and regular ballots in different colors and designs the ballots in a way that does not let regular poll-based machines count provisional ballots. Connecticut provisional ballots are optical-scan ballots while regular ballots are paper-and-lever or electronic voting machines. In total, 13 of 26 responding to our survey design visually distinguishable provisional ballot. This ensures the integrity of the voting process by preventing ineligible provisional ballots from being mistakenly counted.

Poll Workers Should Be Thoroughly Trained to Administer Provisional Voting

Poll workers must know when to use provisional ballots, and when not to use them. They must also be able to clearly communicate to voters the prerequisites for provisional voting. Poll workers should also have access to a statewide or countywide list of registered voters and their respective precincts. This would allow poll workers to direct voters to their proper precincts. Finally, provisional ballot forms should be clear and easy-to-read, and poll workers should be trained to check that the voters complete provisional ballot envelopes correctly.

States Should Collect More Detailed Data on Provisional Voting

States should require local jurisdictions to track the number of provisional ballots issued, counted, and rejected. They should also require an explanation for any rejection. The state should then collect the data and report it publicly. This data will allow election officials to improve their practices and to better educate voters.

Are provisional ballots visually distinguishable from regular ballots?	
Yes	Alabama Colorado Connecticut Florida Georgia ¹ Kentucky Louisiana Maryland New Mexico Pennsylvania Rhode Island South Carolina ² Utah Washington
No	Arkansas Iowa Kansas Montana North Carolina ³ Oklahoma Oregon South Dakota Tennessee ⁴
Election Day Registration or No Voter Registration Requirement	Idaho Maine Minnesota New Hampshire North Dakota Wisconsin Wyoming
Not Applicable/Not Reported	Indiana Michigan New Jersey

¹ Provisional ballots are paper while regular ballots are cast on electronic machines.

² Regular votes are cast on electronic voting machines while provisional votes are cast on paper ballots.

³ Provisional ballots are placed into a distinctly marked envelope, but are not visually distinguishable in the 75 counties where there optical scan machines. Twenty-five counties have touch-screen for regular voting.

⁴ The envelop, but not the ballot, is visually distinguishable in Tennessee.



Conclusion

For the first implementation of provisional ballots according to the Help America Vote Act, states met many challenges in 2004. With the wide discretion individual states have, election officials were able to experiment with different solutions to a number of these challenges. By sharing best practices such as those outlined in this report's recommendations, election officials can maintain and increase the fairness and integrity of our elections.

Michael Slater
Project Vote
2101 South Main Street
Little Rock, AR 72206



Policy Brief Number 6
Maximizing the Effects of Provisional Voting

www.projectvote.org

Provisional Ballot Statistics: 2004 General Election ^{xix}						
State	Provisional Ballots Cast	Provisional Ballots Counted	Percent of Provisional Ballots Counted	Total Vote for Highest Office	Percent Provisional Ballots Counted of Total Vote	Percent Provisional Ballots Cast of Total Vote
Alabama	6,478	1,865	28.8	1,883,415	0.1%	0.34
Alaska	23,285	22,498	96.6	312,598	7.2	7.45
Arizona	101,536	73,658	72.5	2,012,585	3.66	5.05
Arkansas	7,675	3,678	47.9	1,054,945	0.35	0.73
California	668,408	491,765	73.2	12,419,857	3.96	5.38
Colorado	51,529	39,086	75.9	2,129,630	1.84	2.42
Connecticut	1,573	498	31.7	1,578,769	0.03	0.1
Delaware	384	24	6.3	375,190	0.01	0.1
Washington, DC	11,212	7,977	71.1	227,586	3.51	4.93
Florida	27,742	10,007	36.1	7,609,810	0.13	0.36
Georgia	12,895	3,976	30.8	3,301,867	0.12	0.39
Hawaii	346	25	7.2	429,013	0.01	0.08
Idaho	Exempt					
Illinois	43,464	22,238	51.2	5,275,415	0.42	0.82
Indiana	5,707	910	15.9	2,468,002	0.04	0.23
Iowa	15,406	8,038	52.2	1,506,908	0.53	1.02
Kansas	45,535	32,079	70.4	1,187,756	2.7	3.83
Kentucky	1,494	221	14.8	1,795,860	0.01	0.08
Louisiana	5,880	2,312	39.3	1,943,106	0.12	0.3
Maine	483	486	100	743,688	0.07	0.06
Maryland	48,936	31,860	65.1	2,386,678	1.33	2.05
Massachusetts	10,060	2,319	23.1	2,912,388	0.08	0.35
Michigan	5,610	3,227	57.5	4,839,252	0.07	0.12
Minnesota	Exempt					
Mississippi	Not Reported					



Policy Brief Number 6
Maximizing the Effects of Provisional Voting

www.projectvote.org

Provisional Ballot Statistics: 2004 General Election						
State	Provisional Ballots Cast	Provisional Ballots Counted	Percent of Provisional Ballots Counted	Total Vote for Highest Office	Percent Provisional Ballots Counted of Total Vote	Percent Provisional Ballots Cast of Total Vote
Missouri	8,183	3,292	40.2	2,731,364	0.12	0.3
Montana	623	378	51.2	450,434	0.08	0.14
Nebraska	17,421	13,788	79.1	778,186	1.77	2.24
Nevada	6,153	2,446	39.8	829,587	0.29	0.74
New Hampshire	Exempt					
New Jersey	64,226	35,493	55.3	3,638,153	0.98	1.77
New Mexico	6,410	2,914	44.5	756,304	0.39	0.85
New York	243,450	98,003	40.3	7,448,266	1.32	3.27
North Carolina	77,469	50,370	65	3,501,007	1.44	2.21
North Dakota	Exempt					
Ohio	157,714	123,716	78.4	5,627,903	2.2	2.8
Oklahoma	2,615	201	7.7	1,463,758	0.01	0.18
Oregon	8,298	7,077	85.3	1,836,782	0.39	0.45
Pennsylvania	53,698	26,092	48.6	5,769,590	0.45	0.93
Rhode Island	2,147	984	45.8	437,134	0.23	0.49
South Carolina	4,930	3,207	65.1	1,617,730	0.2	0.3
South Dakota	533	66	12.4	388,215	0.02	0.14
Tennessee	8,778	3,298	37.6	2,437,319	0.14	0.36
Texas	35,282	7,141	20.2	7,410,749	0.1	0.48
Utah	26,389	18,575	70.4	927,844	2	2.84
Vermont	121	30	24.8	312,309	0.01	0.04
Virginia	728	728	15.6	3,198,367	0.02	0.14
Washington	93,781	74,100	79	2,859,084	2.59	3.28
West Virginia	14,658	8,496	58.2	755,887	1.12	1.94
Wisconsin	374	119	53.1	2,997,007	0	0.01
Wyoming	95	24	25.3	243,428	0.01	0.04
National Total	414,022	273,854	66.1	38,283,106	0.72	1.08



End Notes

ⁱ § 302(a)

ⁱⁱ § 302(b)

ⁱⁱⁱ § 302(b)(1)

^{iv} § 302(b)(2)

^v § 302(a)(4)

^{vi} § 302(a)(5)(B)

^{vii} § 302(a)(5)(A)

^{viii} § 302(a)

^{ix} In Vermont, voters who claim that they completed voter registration applications are allowed to complete an affidavit and vote with a regular ballot.

^x 440,538 provisional ballots were cast in states with precinct-only rules, excluding Election Day Registration states and states with in-state variation on provisional ballot counting in 2004; 70 percent of 440,538 is 308,376. In comparison, 179,809 provisional ballots were counted in states with precinct-only rules, excluding Election Day Registration states and states with in-state variation in provisional ballot counting in 2004.

^{xi} Election Data Services, “2004 Election Day Survey Report.”

^{xii} Election Data Services, “2004 Election Day Survey Report.”

^{xiii} Washington state, Arizona, and Illinois also had some counties count only provisional ballots cast in the correct precinct while others chose to count all valid provisional ballots within the county.

^{xiv} Delaware and Montana must validate provisional ballots by the day after the election; Wyoming and Wisconsin must as well, but are exempt from provisional ballot requirements in HAVA.

^{xv} Including Georgia, Kentucky, Louisiana, and South Dakota.

^{xvi} Among the states concerned there may be a lack of time for counting provisional ballots, Colorado has a 12-day timeline; Kansas has until the Friday or Monday following the Election; Nebraska has seven days; and Delaware has until the day after the election.

^{xvii} Electionline.org study “Solution or Problem? Provisional Ballots in 2004”

^{xviii} More than 15% of the incidents reported to the Election Incident Reporting System fell into the specific categories of polling places having no provisional ballots or running out of provisional ballots, according to the report “Continuing Failures in ‘Fail-Safe’ Voting” by Demos.

^{xix} The number of provisional ballots cast and counted is from Election Assistance Commission, except for Pennsylvania, which did not report their figures to the EAC. Pennsylvania figures are from electionline.org’s April 2005 report “Solution or Problem? Provisional Ballots in 2004.” The total vote for highest office is also from electionline.org.
