

Provisional Voting In New Mexico

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Recently, New Mexico has been a closely contested state drawing national attention, especially at the federal level. Provisional votes were potentially important in both the 2004 presidential and the 2006 First Congressional District (CD1) races, as thousands of uncounted provisional ballots in both races made them too close to call on election night. For example, the election night margin in the 2006 CD1 race had the Republican incumbent 1,487 votes ahead, but there were as many as 3,756 provisional ballots still to be qualified and counted.¹ The provisional ballot count cut the Republican's winning margin to 816 votes.

Provisional Voting: The 2006 General Election

In 2006, legal questions arose regarding provisional ballot qualification. New Mexico law requires that a provisional voter sign the signature roster or the provisional ballot's outer envelope. However, there are two sides to the outer envelope. One side includes the voter's name, address, birth year, and an affidavit the voter is expected to sign, attesting that this is the only ballot he cast. On the other side is a voter registration form, which also requires a signature. The legal question was whether the signature on the detachable voter registration part of the form was as an official ballot signature that could be considered the signature to the provisional affidavit and therefore qualify the ballot for counting. The Bernalillo county clerk asked for a legal clarification and the state's attorney general's office ruled that a signature anywhere on the form met the legal requirement for qualifying the ballot.² According to observers, however, some counties adopted alternative rules to qualify ballots.³

Provisional Voting: The 2008 Primary

Provisional votes were a large problem in the 2008 February party-run Democratic presidential primary. The party was unprepared for a strong turnout; many precincts ran out of ballots and used provisional ballots to serve these voters. Some voters, for unknown reasons, had been dropped from the voter list provided by the New Mexico Secretary of State.⁴ In addition, the Democrats expanded state provisional voting rules and allowed voters the opportunity to cast a provisional ballot in any precinct in any county, regardless of where they were registered. Many voters took advantage of this opportunity due to shortened precinct

¹ Atkeson, Lonna Rae and Lorraine Tafoya. 2008. "Close, but Not Close Enough: Democrats Lose Again by the Slimmest of Margins in New Mexico's First Congressional District," In *War Games: Issues and Resources in the Battle for Control of Congress*, edited by David Magleby and Kelly Patterson, Boulder: Paradigm Publishers.

² Note that the Democratic candidate who ultimately lost this contest was the attorney general who ruled on this question, pointing out the inherent conflicts of interest in our system of administration.

³ Atkeson and Tafoya 2008.

⁴ See Jim Belshaw. 2008. "Vote-counting Delays Go Beyond Quirky." *Albuquerque Journal* February 8, 2008, accessed electronically June 11, 2009.

hours (12:00-8:00 PM) and extensive precinct consolidation. Together, these factors resulted in 17,276 provisional ballots cast statewide.⁵

Because of database problems, provisional ballots went through up to two reviews. The primary database qualified 6,038 and disqualified 3,785 provisional ballots. The remaining 7,453 ballots were compared against a secondary database; 2,366 of these ballots were qualified and 5,087 were disqualified. In total, 48.6% of provisional ballots were qualified. However, New Mexico is a closed primary state; only registered Democrats are able to vote. Of the 51.4% of ballots disqualified, 42.5% were disqualified because the voter was not a registered Democrat and another 15.4% were disqualified because the voter was not registered.

Table 1 provides the reason for ballot disqualification. One problem with the qualification process was that poor poll worker training led to many precincts separating the affidavits from the ballot. Unfortunately, these voters could not be qualified.⁶ These ballots are listed as ballots without affidavits and affidavits without ballots in the Table 1.

Table 1. 2008 Democratic Presidential Party-Run Primary Reasons for Provisional Rejection

N	Explanation
1363	Not registered to vote
2858	Decline to State (DTS)
600	Republican
110	Independent
172	Green
19	Other party
13	Libertarian
276	Already voted
2588	Ballots with no name or affidavit
838	Affidavits-no ballot (total 2003)
12	Completed Affidavit, placed ballot in ballot box
13	Caucus manager Voided Affidavit and Ballot
8	Non residents
1	Overseas Federal Ballot, submitted as provisional
1	Voter stated registration date was Feb 4, 2008
8872	Total

Provisional Voting: The 2008 General Election

Turning to the 2008 general election, Table 2 shows the number and percentage of provisional ballots counted across voting mode by counties. Counties are ordered from largest to smallest based upon the total number of registered voters. Election Day voting in most

⁵ These data come from the Democratic Party of New Mexico Judge’s Report on the 2008 New Mexico Democratic Caucus, February 16, 2008.

⁶ Ibid.

counties (61%) accounted for a majority of counted provisional ballots. However, for over one-third (33%) of counties, in-lieu of provisional ballots represented a majority of the provisional ballots counted. In-lieu of ballots are used for designated absentee voters who did not receive or submit their ballot and want to vote on Election Day. Few provisional ballots were counted from absentee or early voting modes, suggesting fewer provisional ballots are cast in these voting modes.

Table 2. 2008 General Election Counted Provisionals Across Voting Modes

County	Percent Early Voting Provisional	Percent Absentee Voting Provisional	Percent Election Day Voting Provisional	Percent In-Lieu of Voting Provisionals	Total Counted Provisionals
Bernalillo	2.1	0.03	41.9	55.9	3116
Santa Fe	2.9	0.0	43.6	53.5	342
Doña Ana	0.0	0.4	63.1	36.5	1934
Sandoval	0.2	0.0	39.6	60.2	510
San Juan	0.0	0.0	84.4	15.6	365
Valencia	0.0	0.0	100.0	0.0	156
McKinley	2.1	0.0	97.9	0.0	425
Chaves	0.0	0.0	42.1	57.9	57
Otero	0.0	0.0	41.7	58.3	24
Lea	0.0	0.0	58.8	41.2	68
Eddy	0.0	2.2	19.8	78.0	91
Rio Arriba	7.8	0.0	49.6	42.6	115
Taos	0.0	0.0	10.9	89.1	303
Grant	0.0	0.0	100.0	0.0	59
Curry	0.0	0.0	9.0	90.9	22
San Miguel	0.0	0.0	48.4	51.6	159
Cibola	0.0	0.0	73.2	26.8	138
Lincoln	0.0	0.0	100.0	0.0	26
Los Alamos	0.0	0.0	100.0	0.0	16
Socorro	0.0	2.7	54.7	42.7	75
Luna	0.0	0.0	20.0	80.0	5
Roosevelt	0.0	0.0	100.0	0.0	34
Torrance	0.0	0.0	51.5	48.5	33
Colfax	0.0	0.0	20.7	79.3	29
Sierra	0.0	0.0	57.1	42.9	7
Quay	0.0	0.0	100.0	0.0	5
Mora	0.0	12.5	87.5	0.0	8
Guadalupe	0.0	81.0	9.5	9.5	21
Hidalgo	0.0	0.0	80.0	20.0	5
Catron	0.0	0.0	85.7	14.3	7

Union	0.0	20.0	70.0	10.0	10
De Baca	0.0	0.0	0.0	100.0	1
Harding	0.0	0.0	0.0	0.0	0
Average	0.47	3.7	58.1	37.6	247.5

Table 3 shows the percentage of provisional ballots counted and uncounted by county. On average, counties counted almost three-in-five (59%) cast provisional ballots. However, the range, from 13% to 96%, is large. The percentage of provisional ballots cast as a function of normal votes cast (e.g. regular non-provisional ballots) is also large, ranging from 0.08 to 5.44. Of course, without knowing why voters were qualified or disqualified, it is hard to interpret these numbers.

Table 3. The Number of Provisional Ballots Counted and Uncounted by County, 2008 General Election

County	Counted Provisionals	Uncounted Provisionals	Percent Of Provisionals Counted	Total Provisionals	Total Provisionals As a Percent of Non-Provisional Ballots Cast
Bernalillo	3116	1491	67.6	4607	1.63
Santa Fe	342	143	70.5	485	.67
Doña Ana	1934	723	72.8	2657	3.95
Sandoval	510	217	70.2	727	1.25
San Juan	365	321	53.2	686	1.49
Valencia	156	57	73.2	213	.74
McKinley	425	815	34.3	1240	5.44
Chaves	57	59	49.1	116	.53
Otero	24	45	34.8	69	.32
Lea	68	62	52.3	130	.70
Eddy	91	16	85.0	107	.54
Rio Arriba	115	142	44.8	257	1.53
Taos	303	17	94.7	320	1.93
Grant	59	NA	NA	NA	NA
Curry	22	30	42.3	52	.36
San Miguel	159	6	96.4	165	1.29
Cibola	138	96	59.0	234	2.61
Lincoln	26	18	59.1	44	.46
Los Alamos	16	5	76.2	21	.19
Socorro	75	NA	NA	NA	NA
Luna	5	2	71.4	7	.08
Roosevelt	34	29	54.0	63	.94
Torrance	33	19	63.5	52	.75
Colfax	29	8	78.4	37	.58
Sierra	7	4	63.6	11	.20

Quay	5	2	71.4	7	.18
Mora	8	4	66.7	12	.44
Guadalupe	21	NA	NA	NA	NA
Hidalgo	5	4	55.6	9	.46
Catron	7	3	70	10	.48
Union	10	66	13.2	76	4.39
De Baca	1	1	50.0	2	.19
Harding	0	0	NA	NA	NA
Total	8166	4405		12,416	
Average	247	152	61.8	428	1.18

Santa Fe County provided data recording the reason why each provisional ballot was counted or uncounted.⁷ Uncounted ballots mostly fell into three categories: (1) unregistered voters (51%), (2) voters registered in another county (27%), and (3) voters purged in 2007 who did not reregister (11%). In terms of counted provisional ballots, 64% were voters at the wrong polling place, 12% were poll worker errors (the voter was on the roster), 9% were restored felons, 3% were county data errors, 6% were in one precinct where a judge thought inactive voters were supposed to vote provisionally, and 1.5% were voters registered under another name.

The New Mexico experience with provisional ballots suggests that rules, poll worker training, and voter education matters. Simple instructions not being followed during processing can result in a ballot's disqualification. Well-trained poll workers are more likely to process provisional's appropriately reducing the risk of ballot disqualification. Voters also need to understand the rules to ensure that they meet the necessary conditions of a qualified voter.

⁷ The Santa Fe County Clerk Valerie Espinoza and her Deputy County Clerk Denise Lamb provided these data.