

*electionline.org*

# Briefing



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“Exceeded the margin of litigation.”

It’s perhaps the most apt way to explain why the 2004 election lacked the drama of 2000 when so many people in so many places reported problems, when lawsuits were filed before, during and after the vote and when procedures, machines and counters were called into question throughout the casting, counting, and certification of the vote.

The 2004 election exceeded the margin of litigation in states such as Ohio, North Carolina, Texas and elsewhere because President George W. Bush won the states by enough votes that the problems encountered, if resolved, would most likely not have changed the outcome.

But the fact that the results of the election is not – at least by most – in doubt does not mean that efforts to reform America’s electoral system in the wake of the disputed 2000 vote are at all finished.

In this ninth Election Reform Briefing: The 2004 Election, *electionline.org* seeks to offer an early analysis of what happened – good and bad – on November 2.

There were improvements. Voters who believed they were registered were given provisional ballots nationwide rather than being turned away at the polls if their names were not on registration rolls. Millions of voters who cast ballots on punch-card machines in Florida, California and elsewhere in 2000 used newer technology that guarded against over votes and warned of under votes. Thousands of poll watchers, from

Republicans and Democrats to civil rights advocates and international election experts, observed the polls and, in many cases, headed off trouble before it started. Statewide registration databases were used in 16 states and the District of Columbia, making for a smoother election process by reducing the number of double registrants and better tracking voter movement between jurisdictions.

There were also problems, however, some of them brought about by the same reforms that created improvements elsewhere.

At least a million Americans cast provisional ballots, but variations in the way states and localities handled those ballots triggered pre-election lawsuits and post-election questions.

Touch-screen voting supporters said a record number of ballots were cast and counted accurately and securely while thousands of voters who had previously never been able to cast a ballot independently and secretly did so.

But those concerned about the machine's security and reliability

said they were provided more evidence that e-voting cannot be trusted, as seen in counting and casting glitches around the country particularly North Carolina.

Punch cards and lever machines were used by millions of voters in Ohio, New York, Connecticut and elsewhere, much to the frustration of some activists, state officials and voters who expected the antiquated systems would be replaced after the 2000 fiasco in Florida.

The election was not as close or contentious as 2000. But clearly, it was far from perfect.

Both partisan and neutral observers found reason for concern.

DeForest Soaries, the Republican chairman of the Election Assistance Commission summed up his analysis of Election Day at the first meeting of the four-member board in late November.

"The margin was enough that the glitches were not important," Soaries said. "The bad news is, we still don't live up to the expectations that democracy demands."

With the 2004 election over, the recounts finished (in most of the country) and the machines stored away, states will now begin to take the next steps in changing the way they administer elections.

As part of the Help America Vote Act, states face critical deadlines little more than a year from now. They must meet federal mandates for statewide voter registration databases by 2006 as well as offer at least one machine per polling place accessible to people with disabilities. A number of states that took federal money for voting machine replacement must decide what systems to use. In California and Ohio, counties must meet a deadline to implement electronic voting machines with voter verifiable paper audit trails.

The road to election reform did not end on November 2. Rather, it reached a mid-point where procedures and equipment can be judged and evaluated. And while the margin of victory exceeded the margin of litigation, it did not exceed the margin of concern.



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# Executive Summary

The margins of victory in most races during the 2004 election exceeded the margin of litigation, meaning resolving the trouble that arose in many states would most likely not have changed the outcome. When it came to problems at the polls, one observer pointed out, “there were no bigs – but lots of littles.”

But there were clear signals that not only had the problems of 2000 not been solved completely, but some of the fixes put in place might have been the root of troubles on November 2. Long lines plagued early and election-day voting in a number of states, electronic machine glitches called some results into doubt and differing procedures for provisional ballot counting across state and sometimes county lines could have triggered post-election chaos, had the margin of victory been narrower.

There were some positive signs as well: American voters had rights they never had before, including provisional ballots, complaint procedures and, in many communities, voting systems that warned of potentially ballot-spoiling errors.

The *electionline.org* post-election analysis found:

## E-VOTING

The election did little to change the entrenched positions of those who support and oppose paperless electronic voting. More than 30 million Americans – more than ever before – had an opportunity to cast a ballot electronically. Reports of sharply reduced under votes in Florida were countered by troubling instances of lost votes from over-loaded data storage in North Carolina. Positive reviews of electronic voting in Georgia and Maryland were met with phantom added votes in one Ohio county. Nevada voters were the first in the nation to cast Presidential ballots on electronic voting machines that offered voter-verified paper audit trails. An election-day survey found that less than a third of voters compared the paper ballot with the electronic one on the screen.

## PROVISIONAL VOTING

Post-election surveys found early indications of sharply contrasting numbers of provisional ballots being distributed and counted from state to state. Pennsylvania election officials distributed 54,000 provisional ballots to

voters, while in neighboring battleground state Ohio, voters cast nearly three times that number.

When counting ballots, states applied different standards and rules. While Florida officials would disqualify a provisional ballot cast by a voter in the incorrect precinct, Georgia officials would count the “top of the ticket” if cast by a qualified voter in the correct county. The analysis found some explanation for the counting discrepancies.

Some states allowed voters to use provisional ballots to update their addresses or other information. Some states distributed provisional ballots to voters lacking requisite identification, while others had voters without ID sign affidavits.

While the majority of states treated provisional ballots as final when cast, some states and localities were allowing voters a second chance to correct errors on registration applications that would allow their provisional ballots to be counted. Some leaders have already called for national standards for provisional ballots in the wake of the November vote.

## EARLY/ABSENTEE VOTING

More states than ever allowed voters to cast ballots early at polling places and/or send in no-excuse absentee ballots. Thirty-five states allowed voters to cast ballots early while 25 permitted voters to cast absentee ballots without any reason. (While many states allowed both, they are counted separately in each category.)

Early voters in some Florida localities waited as long as six hours to cast ballots. Voters waiting in long lines in Ohio on Election Day could be the impetus for that state to permit early voting in the next federal election.

Some voters reported never receiving requested absentee ballots, while in Broward County, Florida, nearly 60,000 ballots “went missing.”

## ELECTION OBSERVERS

A record number of poll watchers observed the election across the country, concentrated in the battleground states of Missouri, Florida, Pennsylvania and Ohio. Their presence was generally welcomed, though some reports of trouble between poll workers, poll watchers and party operatives indicated sporadic friction. Organizations on the ground to take voter complaints logged thousands of problems around the country. International observers from Europe were on the ground as well, and produced a post-election report stating while the election was “orderly and peaceful” there were nonetheless “a number of concerns.”

# Provisional Ballots Are Central Focus of Election 2004

The election wasn't that close. But if it were, provisional ballots would have been even more of a focus after the election than they were before it.

The weeks before the election saw an explosion of interest from the candidates, political parties, poll

more than 1.2 million provisional ballots were cast by people who either believed or hoped to be registered but whose names were not found on registration rolls.

The post-election analysis, while still incomplete, reveals wildly contrasting numbers of ballots being distributed and/or counted

attributed to a number of factors. Some states allowed voters to use provisional ballots if they lacked identification while others required affidavits.

In both cases, the voters were likely on registration rolls. But the use of provisional ballots as a step to confirm a voter's identity after the election undoubtedly raised the number of provisional ballots in those states that did so.

The majority of states treated provisional ballots as the final stage in the voting process. The voter either would have their vote counted or they wouldn't. But even this was not applied uniformly across the country, or even across county lines. Some local clerks and registrars contacted those who cast provisional ballots to seek additional information, such as an identification card. Those who responded with the requisite information had their votes counted.

The data does offer some interesting preliminary observations, namely that state laws requiring that provisional votes be cast in the correct precinct do not necessarily result in higher percentage of votes rejected.

Georgia, which does not have such a requirement, rejected nearly 70 percent of provisional ballots, while two states that do require provisional ballots to be cast in the correct precinct, Missouri and Ohio, rejected approximately 60 and 25 percent respectively. One possible explanation is that Georgia

**The post-election analysis, while still incomplete, reveals wildly contrasting numbers of ballots being distributed and/or counted from state to state.**



watching groups and the media over how provisional ballots would be distributed and counted. Lawsuits were filed in a number of battleground states, including Ohio, Missouri and Florida.

But with the results in all three states going either strongly – or strongly enough – for President Bush, provisional ballots ended up being the “could-have-been” butterfly ballot of 2004.

While a number of states had yet to certify results as of early December, a combination of reports from state election offices, surveys conducted by the National Association of Secretaries of State (NASS), [electionline.org](http://electionline.org) and press reports from reputable sources including *The Associated Press* found

from state to state.

Voters in Ohio cast nearly 155,000 provisional ballots. In Pennsylvania, the NASS survey indicates nearly 54,000 provisional ballots were cast, while Texas had just over 23,000. Arizona led the country with the most provisional ballots per registered voter. The state distributed more than 200,000 fail-safe ballots, or nearly 10 percent of Arizona's 2.64 million registered voters.<sup>1</sup>

Variations could also be found in the percentage of ballots counted. Kansas officials counted nearly 70 percent of the 45,500 provisional ballots cast. Delaware counted only six of the 94 cast. Georgia counted 30 percent of provisional ballots while Colorado counted 76 percent.

Those differences can be

has a statewide voter registration database (which would make it easier to identify voters who are not registered to vote) while Ohio and Missouri do not.

### Calls for national standards

Such disparities in nearly all aspects of the provisional balloting process – beginning with the question of which voters receive them and ending with whether they are counted – might not have been anticipated by the authors of the Help America Vote Act (HAVA). After thousands of Floridians – mostly African Americans – were wrongly turned away from polls in 2000 after a faulty purge left them off of registration rolls, members of Congress sought a method to ensure that qualified voters would not be turned away at the polls without having an opportunity to cast a ballot.

Fail-safe voting in some form, affidavits, challenge ballots or provisional ballots, was already the norm in more than two-thirds of states before November 2000. The passage of HAVA and the 2004 presidential election marked the first time the requirement was national in a general election.<sup>2</sup>

The weeks leading up to November 2, 2004 provided the first signs that troubles lay ahead for the HAVA-compliant system of provisional voting. States established essentially two primary systems of provisional voting – both with vastly different meaning for voters.

Twenty-eight states would only consider ballots if cast in the correct precinct. Seventeen states would consider for verification provisional

ballots cast in the correct jurisdiction, typically a county, city or township under a single registrar of voters. Six more offered election-day registration, while North Dakota has no voter registration requirement and is therefore exempt from HAVA's provisional voting mandate.<sup>3</sup>

Those divisions broke down even further. A study by New York-based Demos found 10 states would not count provisional ballots if voters did not present identification on Election Day. Those included Missouri, Ohio, Indiana, New Mexico, Texas, South Carolina, Massachusetts, Kentucky and Delaware.

Fifteen states offered essentially “second-chance” provisional ballots that allowed voters to have their provisional ballots counted if they were properly registered and presented some verification to a clerk “shortly after” Election Day. Those included Alaska, Washington, Nevada, Montana, Wyoming, Wisconsin, Iowa, Illinois, Michigan, Georgia, North Carolina, Alabama, West Virginia, Maryland and New Jersey.<sup>4</sup>

Democrats filed lawsuits in a handful of states to expand the number of locations where would-be voters would be issued countable provisional ballots. Ohio and Missouri were notable examples. In a related action, Iowa Republicans sought to restrict provisional ballot eligibility only to those cast in a would-be voter's correct precincts.<sup>5</sup>

While this mish-mash of rules and counting standards is fertile ground for post-election lawsuits, the election results in most states have sapped urgency from those

deliberations.

“If the election had been closer... fights over provisional ballots would have been a near certainty,” wrote Dan Tokaji, an Ohio State University law professor in an article published at *FindLaw.com*. “In Ohio, nearly 155,000 provisional ballots were cast statewide. With precious little guidance over how to go about assessing voters' eligibility, different counties would have been left to their own devices in determining which ballots should be counted.”<sup>6</sup>

“An equal protection challenge would have been inevitable – arguably, it was just this kind of arbitrary county-by-county counting that provided the rationale for the Court's holding in *Bush v. Gore*,” Tokaji continued.<sup>7</sup>

Sen. Christopher Dodd, D-Conn., a strong proponent of federal election reform since 2000, said in a statement in early December that it might be time to “broach the subject” of making provisional voting and other election practices more uniform throughout the country “to ensure that no matter where and how a ballot is cast for the office of President ... all Americans will have confidence that their vote was cast and counted in a uniform and non-discriminatory way.”<sup>8</sup>

Editorial pages, including *Newsday*, *USA Today*, *The Washington Post*, CBSNews.com and numerous others, called on Congress to amend the portions of HAVA dealing with provisional voting to create more uniformity nationwide.

“When Congress passed HAVA, it failed to say which [provisional



ballots] ballots should be counted, resulting in different standards in different states,” noted *Business Week* in an editorial. The magazine’s editors continued: “[s]ome states decreed that provisional votes cast in the right county would count; others accepted provisional ballots only if cast at the smaller precinct level ... [such laws] raise a fairness question: Why should a vote count under one state’s rules but not under another’s?”

It remains to be seen if Congress is prepared to tackle that question.

### Preliminary Provisional Vote Data

STATE	CAST	COUNTED	PERCENT COUNTED
Alabama	6,560	1,836	27.99
Alaska	23,241		
Arizona	200,000+		
Arkansas	7,520	3,606	47.95
California	439,969		
Colorado	51,477	39,163	76.08
Delaware	94	6	6.38
District Of Columbia	12,000		
Georgia	12,893	3,839	29.78
Hawaii	300		
Iowa	15,264		
Kansas	45,563	31,805	69.80
Kentucky	1,494		
Louisiana	5,971	2,411	40.38
Massachusetts	9,628	2,169	22.53
Michigan	5,610	3,227	57.52
Mississippi	12,000		
Missouri	8,183	3,292	40.23
Nebraska	16,978		
Nevada	6,154	2,460	39.97
New Mexico	18,000		
North Carolina	77,469	50,370	65.02
Ohio	153,539	118,734	77.33
Oklahoma	2,615	201	7.69
Pennsylvania	53,810		
Rhode Island	2,147		
South Dakota	533	66	12.38
Texas	23,246		
Utah	25,900		
Vermont	101	37	36.63
Wyoming	95	24	25.26
Total	1,238,354		

Note: Data as of December 1, 2004. Sources for this data include [electionline.org](http://electionline.org) research of state election Web sites and news stories, an [electionline.org](http://electionline.org) survey of state election officials and a National Association of Secretaries of State (NASS) survey of state election officials – “Summary and Highlights: NASS Survey of the Election Community Regarding Provisional Ballots; Provisional Ballots Cast in 2004 General Election,” updated November 24, 2004.

States not listed permitted election-day registration, do not require registration, or did not report results by press time.

# Election Answers Few Concerns Over E-voting

## Critics, Supporters Still at Odds Over Security, Accuracy

November's vote marked the most widespread use of electronic voting machines in American history. An estimated 30 million voters cast ballots on some form of direct-recording electronic (DRE) voting systems, by touching screens, turning scroll wheels or pressing buttons for their candidates.

While the reviews have been mixed and data on machine performance has not yet been gathered nationwide, it is clear nonetheless that Election Day 2004 did nothing to change the minds of those who had strongly supported or opposed the use of paperless voting technology.

Accusations of conspiracy and mischief bombarded email boxes and were detailed prominently on Web sites. And so did press releases from voting machine manufacturers proclaiming the resounding proof of the real-world success of their products on the largest of all stages – a presidential vote.

Reports of under and overvotes are trickling in, from a number of different sources. Supporters of DREs are touting their record of accuracy and reliability on November 2 with nearly as much zeal as those contending that they stole thousands of votes, switched ballot choices and could have changed totals during tabulations.

In the past month and a half, information has emerged that gives some indication of where the debate might go in the coming years as

more and more states adopt some form of electronic voting to address the needs of voters with disabilities or to replace older paper or lever-based voting systems.

### Falling under votes, but no rising confidence

*The Miami Herald* reported in two separate stories that a random sampling of 18 voting locations in South Florida found no evidence of problems with electronic voting machines<sup>10</sup> and found a “drastic reduction” in the formerly “scandalous rates of spoiled ballots.”<sup>11</sup> Uncounted votes for president in Miami-Dade, for example, dropped from 4.37 percent using the punch-card system in 2000 to just over 0.5 percent using touch-screen machines this year.

Georgia Secretary of State Cathy Cox, in a statement released two weeks after the election, trumpeted a similarly sharp decrease in uncounted ballots. The state averaged 5 percent or more uncountable votes for president in 56 counties using punch cards in 2000, Cox said. Using DREs in November, that number dropped to under-vote rates of less than 0.5 percent.<sup>12</sup>

With little more than a month since the election, there is an absence of comparative data from around the country to measure with some certainty the performance of voting machines. DREs have received special attention from many circles, mostly because of con-

cerns over hacking, malicious code and ties between companies that produce the machines and political parties and candidates.

But a number of groups around the country have started taking a closer look at what happened on November 2. BlackBoxVoting.org, a group that has been out front in opposing the current batch of electronic voting machines and tabulators, said it was seeking information from states for its “Help America Audit” campaign. Bev Harris, the organization's founder, said on her Web site that she would seek evidence of voter fraud through “the most massive Freedom of Information action in history.”<sup>13</sup>

### Electronic voting troubles

Other organizations that agree with some of Harris' critiques of e-voting, however, have said the margin of victory was sufficient that machine problems would likely not have changed the outcome. Still, they said the vote raised a number of concerns. VerifiedVoting.org, a group founded by Stanford University Professor David Dill, tracked more than 23,000 complaints from voters concerning election technology on Election Day (and another 11,000 after).<sup>14</sup>

One North Carolina county lost more than 4,500 votes when officials said they believed ballot storage devices could hold more data than they did. *USA Today*

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# Early voting proves popular

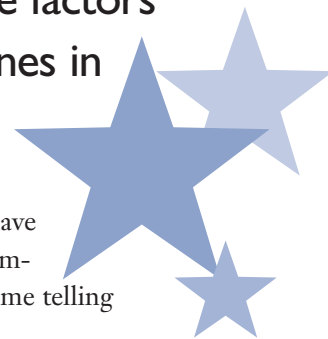
Early voting, whereby voters cast ballots on a voting machine or via in-person absentee ballot prior to Election Day, was used by more states than ever in the 2004 presidential election. Proponents argue that early and no-excuse absentee voting is convenient for voters, helps prevent long lines on Election Day, increases voter turnout and saves jurisdictions money by reducing the number of polling places and poll workers needed on Election Day.

Opponents counter by stating those who vote do so with less information than election day voters, that the process diminishes the importance of Election Day as one of the last communal activities we have as a nation and that there is no proof that early voting increases voter turnout.<sup>18</sup>

Despite opposition, early voting continues to spread. Thirty-five states now have it in some form. And after coping with long lines at the polls on November 2, officials from Pennsylvania, Michigan, and Ohio are considering implementing early voting as well. Michigan Secretary of State Terri Lynn Land “hopes legislators will pass laws to ... permit residents to vote in-person before the election, as they do in Florida and some other states.”<sup>19</sup>

Georgia voters this year had the option to vote early for the first time in a presidential election. Kathy Rogers, the state’s election director, said early voting was one of the factors that helped to eliminate long lines in some

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places on Election Day.<sup>20</sup>

An *electionline.org* observer in Florida reported seeing long lines in South Florida on Monday November 1st, in some cases much more severe than those at regular polling places on Election Day. At the Lauderhill Mall, for example, voters waited up to six-and-a-half hours to vote, many bringing food and folding chairs to see them through.<sup>21</sup> In contrast, lines were almost nonexistent at precincts a few blocks away from the early voting site on Election Day, a consequence of the high voter turnout and limited polling places and voting machines in the preceding weeks.<sup>22</sup>

After this experience, some Florida election officials proposed a plan that would eliminate early voting in its current state and instead create an “election season” lasting several days or even weeks and ending on the traditional Election Day. Polling places would be fused into large vote centers with voters able to go to any of them to cast a ballot.<sup>23</sup>

Early voting statistics for the November election are somewhat difficult to come by, partly because many states have not reported them yet and partly because some states combine early and absentee voting numbers. However, there are several

states that have reported numbers with some telling results.

In Texas, more people voted early than on Election Day, according to the Secretary of State’s unofficial election returns.<sup>24</sup> And in Nevada, official election results show over 40 percent of voters cast their ballots early.<sup>25</sup>

## No-excuse absentee voting

In recent years more states have been allowing voters to cast absentee ballots without providing a reason. Several states allow voters to register as permanent absentee voters. Like early voting, supporters of no-excuse absentee voting argue that less restrictive absentee voter rules are more convenient for voters.

For the 2004 election, 25 states permitted no-excuse require absentee voting, while 25 states and the District of Columbia require an excuse. Michigan,<sup>26</sup> Connecticut,<sup>27</sup> Virginia<sup>28</sup> and others are considering shifting to no-excuse absentee voting by the 2006 election.

Some concerns raised over absentee voting included unmet requests for absentee ballots, uncounted ballots and thousands lost in the mail in South Florida.



# Litigating the 2004 Election

Beginning last summer lawmakers, civil rights organizations and likely voters headed to court in anticipation of a possible repeat of the 2000 election debacle.

Courts were inundated with lawsuits concerning provisional ballots, voter identification, paper trails, voter accessibility and electronic voting machines. *electionline.org* counted 43 suits filed during the five-month period from June to Election Day. Five cases were filed in Ohio on November 1 and 2 alone.

Plaintiffs across the country sought clarification of several aspects of the Help America Vote Act (HAVA) but the most popular subject was provisional voting.

HAVA mandates that states provide provisional ballots to any voter who believes that he or she is registered but whose names does not appear on the voter rolls. However, HAVA also specifies that it is state, not federal law, that governs whether and how such ballots are counted. Consequently, plaintiffs in five states – Colorado, Florida, Michigan, Missouri and Ohio – challenged rules that restricted the consideration of provisional ballots solely to those cast in the voters' correct precinct.

As many election experts had predicted, a number of post-election lawsuits were also filed, focusing on provisional ballots as well as a number of other issues, leading to calls for recounts in several states including North Carolina, Ohio and

Washington.

A few days after the election, Washington Democratic and Republican state parties headed to the courts to argue over the counting of provisional ballots in one of the tightest gubernatorial elections in the state's history – one still unresolved in early December after two machine counts showed Republican Dino Rossi defeating Democrat Christine Gregoire by 42 votes out of 2.8 million cast.

People for the American Way filed a lawsuit in late November to overturn the rejection of thousands of provisional ballots.

The Washington, D.C.-based advocacy group requested that the county board of elections hand check 8,099 provisional ballots against voter registration cards, instead of a computerized list compiled from the cards. The suit also sought to give voters a chance to have their provisional ballots count-

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On November 12, the Washington Democratic Party filed suit against King County election officials to block them from discarding approximately 929 provisional ballots.<sup>29</sup> The same day the court ordered officials to give the state Democratic Party the names of the voters who cast them.

The Washington Republican Party responded by suing Secretary of State Sam Reed in U.S. District Court on November 20 to stop King County election officials from hand-counting ballots that optical scanning machines rejected.<sup>30</sup>

In Cuyahoga County, Ohio, the

ed if they cast ballots in the wrong precinct without being directed to the correct precinct.<sup>31</sup>

In Washoe County, Nevada, a local businessman filed suit seeking a hearing to investigate whether thousands of voters in the state might have been denied the right to vote because of, “massive irregularities and malfunctions in the registration process” and should still be allowed to cast ballots.<sup>32</sup> The challenge was aimed at blocking Nevada's five electoral votes from being cast next month for President Bush.<sup>33</sup>

## litigating

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A judge tossed out the complaint stating that the plaintiffs “could not show that the outcome of the election would change if it [a hearing] went forward.”<sup>34</sup>

The final vote tally in North Carolina was hampered by computer glitches in Carteret County, where over 4,500 votes were lost by a touch-screen voting machine during early voting. As of early December, the state planned to conduct a special election in Carteret County to determine the winner of the one race affected by the lost votes.

North Carolina also saw a partisan fight over provisional ballots.<sup>35</sup> Attorneys for the state and three Republican political candidates argued over whether approximately 10,000 provisional ballots cast on Election Day should be counted. The Republican candidates for superintendent of public instruction and two

county races argued that provisional ballots cast in state and local elections at the wrong precinct should be thrown out.<sup>36</sup>

Lawyers for the candidates argued that the state constitution does not recognize votes cast by people who voted in the wrong precinct. The state countered that the candidates were misinterpreting the constitution by confusing the right to vote in specific local races with the place a person votes.<sup>37</sup>

A Wake County judge rejected the request and refused to stop the state’s efforts to complete the vote tally. Lawyers for the three candidates said they planned to appeal.<sup>38</sup>

Third party presidential candidates from the Green and Libertarian parties called for recounts spanning three states.

A federal judge in Ohio denied the candidates request before the official state count was finished. The judge said that the law allows for recounts, but said it can wait. The

judge wrote that he saw no reason to interfere with the final stages of Ohio’s electoral process. Officials have said the results will be certified by Dec. 6.<sup>39</sup>

The candidates also asked for recounts in Nevada and New Mexico citing widespread problems associated with the use of electronic-voting machines.<sup>40</sup> The Nevada request was ultimately abandoned.<sup>41</sup>

Independent presidential candidate Ralph Nader sought and was granted a recount in 11 New Hampshire voting precincts. Nader asked for the recount after an independent analysis revealed wide differences in voting patterns between the 2000 and 2004 presidential elections. According to the report about three quarters of the discrepancies came in precincts using optical scanning machines manufactured by Diebold, whose touch-screen voting machines are already the target of substantial criticism nationwide. When the recount was completed, there were few changes in the results.<sup>42</sup>

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## e-voting

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reported the Unilect Corp., which produced the electronic voting system used in Carteret County, told local officials that the machines could hold 10,500 votes when, in fact, the capacity was only 3,005 votes. The data was irretrievable.<sup>15</sup>

In another well-publicized

incident, Bush received nearly 4,000 extra votes in a Franklin County, Ohio precinct because of a computer glitch.<sup>16</sup>

Nevada’s first-ever general election using voter-verifiable paper audit trails provided at least a preview of what elections will look like in California, Ohio and other states that will require similar rules in two years. While voters there were

instructed to compare their votes on the screen to a paper record behind a plastic screen, a survey taken on Election Day found that 60 percent of voters would have preferred a take-home slip, resembling an ATM receipt. A more striking finding – less than a third of voters surveyed compared the entire paper ballots with the vote on the screen.<sup>17</sup>

# Statewide Voter Registration Databases

While much of the focus during this past election was on electronic voting machines and provisional voting, many states now face the challenge of building statewide voter registration databases, a step many see as equally important in the election reform process.

November's election marked a milestone of sorts, though one hardly noticed. It was the last time counties, cities or towns will have their own voter registration databases in federal elections. When voters cast ballots in 2006, every state will have in place a centralized, uniform statewide voter registration list.

The Help America Vote Act (HAVA) requires each state to "implement...a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level."<sup>43</sup>

Some experts say statewide lists will go a long way to prevent bloated voter rolls, keep track of voters moving within the state or between states and help prevent fraud by catching double registrations. With enhanced communication between state agencies and voter registrars, the databases could similarly reduce the number of provisional ballots as there would be fewer steps to transmit new voter data from one part of the bureaucracy to another.<sup>44</sup>

States had until January 1, 2004 to complete this task unless they applied for a waiver until January 1, 2006. More than 80 percent of the states applied for the waiver.<sup>45</sup>

The status of voter registration databases varies from state to state. Sixteen states as well as the District of Columbia – which is a single jurisdiction – currently use a statewide list. Not all of these lists comply with the requirements of HAVA, but will with some tweaking.

Other states are at different points in developing and deploying the databases.

Twenty-one states have signed contracts with vendors to construct databases or have opted to build the lists in-house. Several states are close to having their databases up and running, including Rhode Island and Pennsylvania. Others, such as Nevada, recently signed contracts

Nevada, Rhode Island and West Virginia.<sup>46</sup>

Four states signed contracts with Accenture in 2004 – Colorado, Kansas, Wisconsin and Wyoming. Other states, after a competitive bidding process, selected local firms. Oregon selected state-based Saber consulting to build their database while in Indiana the state chose locally-based Quest Information Systems.

Several other states are developing databases in-house, including Ohio, Utah, Vermont and Washington.

Nine states are in the process of evaluating bids from different companies after the states issued requests for proposals (RFPs) to build databases. In Arkansas and Mississippi, officials are expected to select ven-

**November's election marked a milestone of sorts, though one hardly noticed. It was the last time counties, cities or towns will have their own voter registration databases in federal elections.**

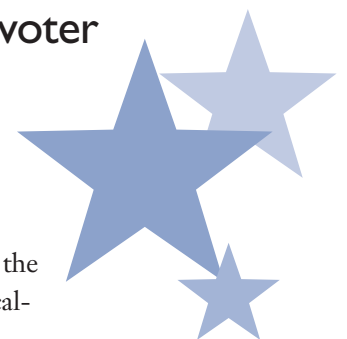
with vendors and will take some time to have the lists completed.

A variety of companies have been retained to develop databases, including Election Systems and Software (ES&S), Covansys Corporation and PCC Technology Group Inc. Covansys and PCC have been hired cooperatively by four states – Idaho,

dors before the end of the calendar year.

New Jersey and Maryland both issued their RFPs last month.

Three states are still in the process of deciding how to proceed with building their databases – California, Montana, and New



York. In New York, the lack of movement on election reform issues has been a cause for concern for the state's Election Commissioners' Association. In early December, the association warned state lawmakers that if they did not pass legislation to comply with HAVA, the state will lose federal funding for big ticket items – including the database.<sup>47</sup>

In California, the process of initiating a technology project is complex. Before issuing a RFP, a feasibility

study report must be written and then approved by a special unit in the Governor's budget office, which is where the state is at now according to the Secretary of State's office.<sup>48</sup>

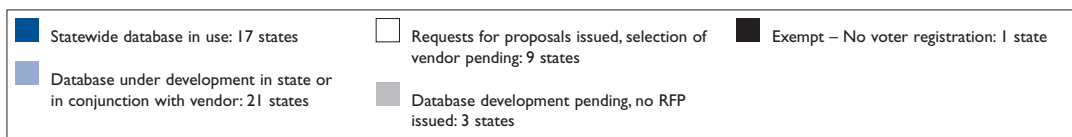
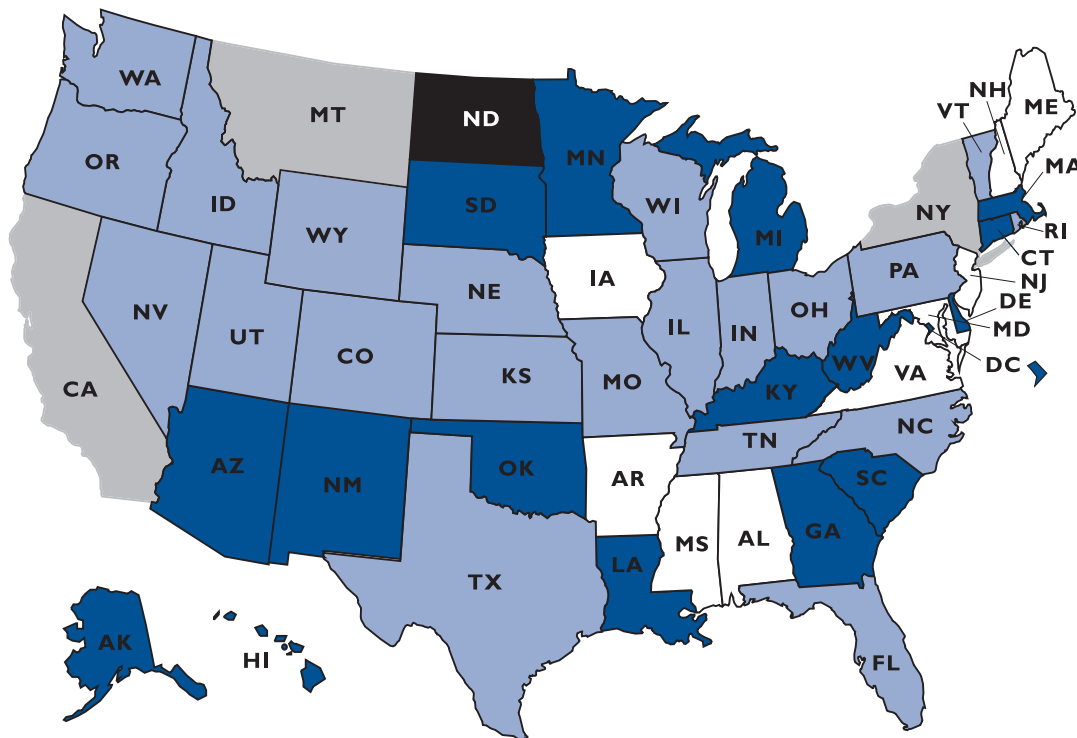
Montana has just completed their requirements definitions for the database and will either issue an RFP or pick a pre-approved vendor by the state in the coming weeks.<sup>49</sup>

Funding, of course, is also a major issue, and statewide voter registration databases are expensive.

In a survey by the National Association of Secretaries of State (NASS), of the 27 state election officials that responded, about a fifth indicated their states would spend up to 70 percent of their federal allotment of HAVA money on databases. Over half said they will spend up to 40 percent on building the databases.<sup>50</sup>

## Status of Statewide Voter Registration Databases

One of the primary requirements of the Help America Vote Act, statewide voter registration databases are required nationwide by 2006. When in place, the systems are designed to make it easier for states to update voter information, better maintain registration rolls and track information from other state agencies. This map provides information on the status of statewide voter registration databases as of December 1, 2004.



# Thousands Watched as Election Day Unfolded

The 2004 election brought about an unprecedented amount of national and international attention as well as the most ambitious effort to date to observe, track and report voter's complaints and questions.

In the months leading up to the election, volunteers descended upon battleground states as well as those with a history of voting irregularities and disenfranchisement.

Nearly 25,000 volunteers, including 8,000 lawyers and law students, served in 56 field offices, 43 legal command centers, and more than 3,500 precincts in 17 states as part of the Election Protection Coalition, headed by the People for the America Way Foundation. Over 80 organizations, including the Brennan Center, the California Voter Foundation and the National Bar Association took part in the volunteer effort.<sup>51</sup>

The U.S. Department of Justice sent out 840 federal observers and more than 250 Civil Rights Division personnel to 86 jurisdictions in 25 states to monitor the general election.<sup>52</sup> Other civil service organizations and party loyalists also added to the mix.

Just Democracy, an organization created by Harvard law students, mobilized close to 2,000 law student volunteers who worked as non-partisan election judges, precinct legal assistants, poll workers, observers and translators.

Observers were motivated by a number of reasons – many supported

**The report concluded that despite reforms undertaken in response to the 2000 election, confidence in and the equity of the U.S. electoral system continues to be compromised by ambiguities in election standards, partisan oversight and problematic voting equipment.**

Sen. John Kerry's campaign, while others volunteered because of what they perceived as the injustice of the 2000 election. For some, it was a combination of both. In some places, observers were on hand to make sure other observers weren't disturbing voters. Republicans were watching Democrats, Democrats were eying Republicans. All were watching poll workers and hearing from voters.

Volunteers from all over the world took part in the Fair Election International project spearheaded by Global Exchange, an international human rights organization. Early this month the organization released a report summarizing election observations conducted by 15 election experts and democracy advocates from five continents who observed voting activities in Florida, Ohio and Missouri.

The report concluded that despite reforms undertaken in response to the 2000 election, confi-

dence in and the equity of the U.S. electoral system continues to be compromised by ambiguities in election standards, partisan oversight and problematic voting equipment. All of the practices, the coalition agreed, needlessly undermine voter confidence in the integrity of U.S. election systems.<sup>53</sup>

“In addition, the partisan nature of the electoral administration, the inconsistent procedures from county to county, and the permanent disenfranchisement of former felons placed unnecessary stress on the process and remains far from international standards.”<sup>54</sup>

Following an invitation from the United States, the Organization for Security and Co-Operation in Europe (OSCE) deployed an Election Observation Mission (EOM) to the U.S. beginning on October 4. The OSCE released a report several days after the election concluding that “EOM observation reports indicated





that the electoral process was orderly and peaceful. However, “there were a number of concerns.”<sup>55</sup>

“There was considerable confusion and varying approaches from one state to another regarding provisional ballots. Occasional faults and breakdowns of Direct Recoding Electronic voting machines sometimes resulted in delays for voters. Some concerns were expressed by observers regarding the secrecy of the vote due to the positioning of the voting machines.”<sup>56</sup>

During the first week of December, Election Protection reported that its hotline in Allegheny County, Pennsylvania received the most calls of any of the 50 call centers it set up across the nation on Election Day. The center fielded 6,089 calls from voters either complaining about being unable to vote or asking questions such as where to vote.<sup>57</sup>

Following close behind were Broward County, Fla., which received 5,904 calls, Los Angeles which received 5,836 and New York City, which received 5,185.<sup>58</sup>

In contrast, many election officials reported problems with the poll watchers themselves. Officials alleged that observers at some precincts across the country were extremely aggressive during polling hours.

At Milwaukee’s Palmer Street School, observers appeared to be “taking charge” of the voting process. After the polls closed, a poll worker there “broke down crying” at pressure she said was caused both by long lines of voters and observers.<sup>59</sup>

Early on November 2, the Michigan State Republican Party filed a lawsuit in Wayne County,

saying party poll watchers were illegally ejected from polling places in Detroit. The Detroit branch of the NAACP, meanwhile, complained that GOP poll watchers had harassed and intimidated Detroit voters. But the NAACP backed off a threat to sue Tuesday evening in federal court.<sup>60</sup>

Republicans in Iowa joined those in Minnesota, New Hampshire, Colorado and Michigan in complaining that on Nov. 2 volunteers from MoveOn.org were illegally campaigning too close to polling sites.<sup>61</sup>

The complaints came from Polk, Story, Linn, Johnson and Pottawattamie counties. Ames police and the Polk County attorney’s office were among those called to help move people away from polling sites. No arrests were made.<sup>62</sup>

In Mississippi, some officials were wary of efforts by poll watchers who had reportedly disrupted the process in previous elections. Secretary of State Eric Clark said his office received complaints about overly aggressive poll watchers in last November’s statewide election. There were reports of some watchers attempting to videotape voters.<sup>63</sup>

In Ohio, however, it was the absence of challengers that was the biggest news. State Republicans fought in court to open the polls to challengers – ultimately succeeding

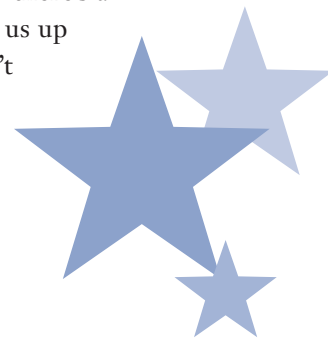
in the wee hours of the morning on Election Day – but challengers largely failed to appear in the numbers some had predicted.<sup>64</sup>

There were also some positive developments despite the controversy and acrimony, as observed by *electionline.org* staff during the election.

In South Florida, *electionline.org* observers saw lawyers working for the Democratic Party head off potential controversies by reminding election officials in one precinct to keep the poll open past the required closing time of 7 p.m. if voters were still in line. A Broward County lawyer talked down a poll worker who threatened to “stop the voting,” if people in a long line failed to “quiet down” during early voting.

An *electionline.org* observer in Pittsburgh was asked by a poll judge “why she had a pile of provisional ballots.”

Republican and Democratic poll watchers sat together in South Florida, largely agreeing that the voting was going well in one Florida precinct, and while the Democrats teased the Republican for “not having a chance” to win, the GOP poll watcher calmly responded, “there’s a lot more of us up north. Don’t worry.”



**A Broward County lawyer talked down a poll worker who threatened to “stop the voting,” if people in a long line failed to “quiet down” during early voting.**

# Election Problems Reported in the Media

*Note: The incident reports were compiled primarily using media reports from Election Day, early and absentee voting and the days following the vote. It is not intended to be a comprehensive account. Rather, these incidents were observed by or reported to news sources. Organizations, including the Election Protection Coalition, VotersUnite.org and FAIR International have compiled their own incident reports generated by voters who opted to call them or reported problems to representatives of organizations at polling places. Those incidents are not reported in this summary, though electionline.org does not intend in any way to judge the validity, impartiality or importance of those reports through their omission here.*

*States were not listed if there were no problems reported in the media on or around Election Day.*

## Alabama

Madison County voters experienced long lines, too few polling places and confusion over voter registration cards listing two polling places. Some voters reported they did not have time to stand in line for the hours it would take to vote, and were therefore unable to do so.<sup>65</sup>

There were reports that no uniform standards were used in issuing provisional ballots, even though the state established such standards.<sup>66</sup>

In Mobile County, 1,700 out of 6,900 absentee ballots were not returned, making some officials concerned about possible disenfranchisement.<sup>67</sup>

## Alaska

A Juneau post office held up almost 2,500 absentee ballots for a day in late October because the Division of Elections had underestimated the cost of postage.<sup>68</sup>

## Arkansas

Some state voters cast provisional ballots unnecessarily, opting to use the fail-safe ballots to vote.<sup>69</sup>

## California

Some polling places in Monterey County ran out of provisional ballots. Election workers were able to bring additional ballots to all but two. In those precincts, officials photocopied provisional ballots for people to use.<sup>70</sup>

Approximately 24 polling places in Sacramento County ran out of ballots, and voters had to wait in line for over an hour for more ballots.<sup>71</sup>

Tabulating of San Francisco's ranked choice voting was temporarily halted due to the system being unprepared for the high voter turnout. Election Systems & Software (ES&S), the company that makes the software, submitted a programming change to the California Secretary of State to correct the problem.<sup>72</sup>

Election results were delayed in Santa Clara County due to the unexpectedly high voter turnout.<sup>73</sup>

Some Nevada County residents reported receiving two absentee ballots while some say they never received ballots.<sup>74</sup>

## Colorado

Before Election Day, 13,000 absentee ballots were mailed out late and the instructions were considered "confusing."<sup>75</sup>

Boulder County election results were delayed by a printing error that distorted the bar codes on paper ballots.<sup>76</sup>

## Florida

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Miami-Dade County had to bring in more tabulators because the high number of ballots delayed the counting.<sup>77</sup>

Almost 40 votes cast on electronic voting machines were lost in Boynton Beach after a power failure.<sup>78</sup>

During the final day of early voting, a journalist was arrested for taking pictures of the long lines at a Palm Beach County polling place. He was punched and tackled during the arrest.<sup>79</sup>

In Volusia County, 14,000 ballots had to be recounted after a memory card failed to record the votes from optical-scan ballots.<sup>80</sup>

A glitch in a ballot tabulator in Broward County caused the machine to start counting backwards after 32,000 ballots.<sup>81</sup> This problem was seen in other counties as well.<sup>82</sup>

A computer glitch in Escambia County fed the wrong information to computers in the elections office, giving Escambia the highest voter turnout in the state for several hours before the problem was seen and corrected.<sup>83</sup>

Nearly 270 votes were discovered in a box in Pinellas County two weeks after the election.<sup>84</sup> Several days later, 12 more uncounted votes were found.<sup>85</sup>

## Georgia

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A Norcross polling place had a ballot mix-up that caused voters to cast ballots in the wrong State House race for nearly two hours.<sup>86</sup>

Voting machines were down for two hours in Twig and Hancock counties due to an encoder problem. Voters cast provisional ballots until the problem was fixed.<sup>87</sup>

## Illinois

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Long lines led to long waits at the polls in Macomb County and elsewhere. In Bloomington, a court ordered ballots to be brought from Des Moines, Iowa because they had run out.<sup>88</sup>

## Indiana

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Vote totals in Vanderburgh County were questioned, because the number of people signed in did not match the number of votes at many polling places. After a recount the vote totals were still in question.<sup>89</sup>

Lines became backed up in Vanderburgh County because, according to County Clerk Marsha Abell, untrained poll workers caused dozens of voting machines to malfunction.<sup>90</sup>

Franklin County recounted ballots after “election equipment counted straight-party Democratic votes as Libertarian votes.”<sup>91</sup>

## Iowa

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Prior to Election Day, a mistake on a ballot meant that 4,200 supplemental ballots had to be sent out in Lee County, most of which were not tallied until several days after the election.<sup>92</sup>

Electioneering was alleged against observers from MoveOn.org, but no formal charges were filed. Republicans challenged several hundred absentee ballots. Allegations of identity theft, registration problems, over-voting, and address change issues were also reported.<sup>93</sup>

## Kansas

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An observer watching the vote count suggested using a hair dryer to solve the problem of wet ballots jamming an electric scanner.<sup>94</sup>

## Kentucky

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Two voting machines were sent to the wrong polling place. The mistake was corrected after only two people voted, and their votes were transferred to a correct machine.<sup>95</sup>

## Louisiana

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A printing problem with some mail-in ballots meant that they had to be counted by hand, as the tabulator rejected the ballots. Power outages across the state, long lines, and provisional ballot confusion also added to delays.<sup>96</sup>

## Maryland

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Vote counting in Baltimore County did not conclude on Election Night due to data transmission problems, possibly caused by human error.<sup>97</sup>

## Michigan

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The NAACP received 35 complaints that Republican poll watchers harassed voters in Detroit, causing them to file suit against the city. Republicans filed their own suit alleging that their poll watchers were illegally removed from the polling places.<sup>98</sup>

## Mississippi

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In Harrison County, one voting machine had a technical problem while ballot shortages were also reported elsewhere. Some voters also complained about names not being listed on the voter rolls.<sup>99</sup>

## Missouri

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Two ballot counting machines in Jefferson County malfunctioned Election Night, delaying the final tally until early Wednesday morning.<sup>100</sup>

Representatives from the ACLU and other election observers in Jennings saw evidence of campaign workers in the polling places, election judges wrongly demanding ID from voters and the misuse of provisional ballots. Some people were wrongly denied the fail-safe ballots while others were being issued provisional ballots unnecessarily.<sup>101</sup>

## Nebraska

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In Douglas County, a shortage of ballots led to long lines.<sup>102</sup>

In Sarpy County, thousands of ballots were double-counted before tabulating the glitch was identified and corrected.<sup>103</sup>

## New Hampshire

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A State Senate recount in Hollis was put on hold while 253 ballots had to be retrieved from an optical scan voting machine because they had not been removed and counted after voting was finished.<sup>104</sup>

## New Jersey

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Fifteen voting machine cartridges, probably containing 1,500 to 1,800 votes, were missing. The Hudson County clerk said he believed that they were left in voting machines.<sup>105</sup>

## New York

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Voting machine breakdowns and problems with voter rolls slowed voting in Dutchess County.<sup>106</sup>

## North Carolina

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A sharp increase in provisional ballots caused North Carolina to miss the deadline to certify election results.<sup>107</sup>

Over 4,500 votes were lost on electronic voting machines in Carteret County. A special election for Carteret is scheduled for January 11.<sup>108</sup>

In Mecklenburg County, errors in vote totals were discovered. One candidate's votes were over counted, while the opponent's were undercounted. In addition, after the first count, more ballots were reported than there were early voters who cast them.<sup>109</sup>

In Craven County, two problems with electronic voting machines caused vote counting errors. When recounted, the correct total changed the outcome of the District 5 seat on the Craven County Board of Elections.<sup>110</sup>

An apparent interruption in the transmission of early votes left about 12,000 votes out of the unofficial count in Gaston County. The error was corrected.<sup>111</sup>

In Guilford County, lost votes were found and counted two weeks after the election.<sup>112</sup>

## North Dakota

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Two weeks before the election, all 120,000 ballots in Cass County had to be reprinted due to a printing error.<sup>113</sup>

## Ohio

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Franklin County recorded an extra 3,893 votes for President Bush due to an error on an electronic voting machine. Franklin County cast a total of about 600 votes.<sup>114</sup>

Long lines and confusion over provisional ballots marked the election in Ohio.<sup>115</sup> A shortage of machines was another principal cause of long lines in some jurisdictions.<sup>116</sup>

Sandusky County election officials found that some votes had been counted twice. The problem was noticed when one precinct's results indicated 131 percent of registered voters casting ballots.<sup>117</sup>

In Summit County, 29 people who voted absentee also voted a provisional ballot on Election Day. Officials were trying to determine whether it was intentional.<sup>118</sup>

A Kenyon College student waited in line for 10 hours in order to vote on Election Day. At her precinct, there were only two voting machines for 1,300 voters. Each machine was designed to handle 20 voters per hour.<sup>119</sup>

In Mercer County, computer malfunctions caused long lines. Paper ballots were delivered to precincts where the machines were not working.<sup>120</sup>

In Hamilton County, problems with voting machines in some polling places delayed the start of voting for nearly an hour. Voters were unable to slide their punch card ballots all the way into voting machines, because all six of the machines were damaged in transit.<sup>121</sup>

In Warren County, officials locked down the county administration building on Election Day and did not allow anyone to observe the vote count. The officials cited security concerns.<sup>122</sup>

## Pennsylvania

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Several Allegheny County polling places ran out of provisional ballots, resulting in some voters being turned away. In addition, the lack of provisional ballots led poll workers to distribute regular ballots to voters who should have cast fail-safe ones.<sup>123</sup>

## South Carolina

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At Benedict College, some students complained about Republican challengers slowing down lines and turning away voters with challenges. Democrats charge that the precinct was targeted by Republicans because it is a historically black college.<sup>124</sup>

## Tennessee

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Voters in Loudon County, were mistakenly locked out of certain school board races by a voting machine. Some, but not all, voters were allowed to vote by paper ballot.<sup>125</sup>

## Texas

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Problems in counting mail-in ballots caused an almost three-hour delay at the start of the vote count in Galveston County.<sup>126</sup>

A Willacy County Clerk failed to buy the necessary memory packs for the voting machines and ended up reporting incorrect results to the state. The clerk said she was trying to save the county money.<sup>127</sup>

In Bexar County, problems with 19 machines delayed vote tabulation until the morning after the election. An ensuing investigation found five of the 19 machines were malfunctioning. Problems on the other 14 machines were caused by operator error.<sup>128</sup>

A Dallas elections judge was removed from his post after shoving a U.S. Department of Justice election observer out of a polling place.<sup>129</sup>

Voters had problems finding polling places after a newspaper printed an inaccurate list. The misprint listed primary election polling places, not general election polling places. The corrected list was later posted on the newspaper's website.<sup>130</sup>

Several machines malfunctioned in Travis County after poll workers hit a button which shut down the voting machines. Voters used paper ballots until the machines were fixed.<sup>131</sup>



## Utah

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Voting machines in Utah County failed to register votes for those who did straight party voting, meaning 33,000 votes were not counted in the unofficial results. The problem has since been corrected and the votes will be in the official vote tally.<sup>132</sup>

## Virginia

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Both Culpepper and Westmoreland counties reported voting machine crashes for 30 minutes to an hour, causing long lines. According to a representative of the vendor, the machines crashed because poll workers, flustered by high turnout, did not allow enough time between voters.<sup>133</sup>

In Richmond, early voters cast ballots in the wrong congressional race until a computer error was discovered. The machines listed candidates in the 7th congressional district, instead of the 3rd. The problem was found and voters cast paper ballots.<sup>134</sup>

## Washington

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In Grays Harbor County, a recount was ordered due to human error after some votes were counted twice during the transfer process.<sup>135</sup>

## Methodology

Information for this report, including the status of voter registration databases and provisional voting data, was culled from primary sources – an electionline.org survey of state election officials and interviews with state election officials – as well as secondary sources including newspaper articles and transcripts of radio and television broadcasts. In addition, data collected by other organizations, including the National Association of Secretaries of State, the Election Protection Coalition and others, were used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy electionline.org or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

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1101 30th Street, NW  
Suite 210  
Washington, DC 20007  
tel: 202-338-9860  
fax: 202-338-1720  
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