

# Barriers to the Ballot: *2008 Election and Beyond*

*December 2009*



## Election Report 2008



2008 was a banner year for U.S. democracy and its elections. Many states saw record increases in voter registration – particularly among minority and youth voters – and record increases in voter turnout. Undoubtedly, there was an excitement and new level of attention around this historic election. And, after two presidential elections with angrily disputed results, the 2008 election seems poised to restore a calm confidence in America’s democratic processes. While the 2008 election ended without the sense of crisis that marked the last two presidential elections, the surface calm may distract from the critical need to continue reforming our election system. Millions of voters continued to be disenfranchised by a variety of election administration failures, and in close elections these failures will continue to undermine national confidence in our democracy.

This report looks behind the 2008 results to assess the performance of the election process in five key battleground states where Advancement Project had a strong advocacy presence: Florida, Missouri, Ohio, Pennsylvania, and Virginia. The report focuses on several illustrative election administration issues in these states and identifies trends that resulted in the disenfranchisement of thousands of potential voters as well as trends that made voting easier and more reliable. The report primarily assesses these issues and the states’ performance through the lens of Advancement Project’s voter protection efforts, discussing the months of early research, advocacy, assessment, and litigation that preceded Election Day and resulted in the protection of tens of thousands of voters across the country.

### **The Results of the Presidential Election, Their Impact on Perceptions, and the Persistence of Failures in Election Administration**

The margin of victory nationwide and in all but a few states was large enough that there was never any question about the true winner of the 2008 presidential election. Indeed, a quick comparison of the 2000 and 2008 results highlights the difference in breathing room allowed election administrators: in 2000, just 540,000 votes separated George W. Bush and Al Gore nationwide (with Al Gore winning the popular vote).<sup>1</sup> The final results in Florida, the key state for deciding the Electoral College, had the two men in a virtual tie – Bush received just 537 more votes than Gore after weeks of disputed vote counting.<sup>2</sup> In 2008,

by comparison, Barack Obama won the national vote by 7 percentage points – receiving 9.5 million more votes than John McCain.<sup>3</sup> In Florida, Obama won by three percentage points – 51 percent to 48 percent – or 237,000 votes.<sup>4</sup> While Missouri’s presidential contest was quite close – John McCain won the state by fewer than 4,000 votes – the outcome of the presidential election did not hinge on these votes.<sup>5</sup>

Behind us was the fear that 300 votes here – when a machine fails – or 500 votes there – when voters are improperly dropped from the rolls – affected the outcome of the presidential election. This margin of error, so to speak, does not change the actual successes or failures of election administration except for the critical factor of democratic perception. Because the vote difference was large enough, no official microscope will be applied to the administrative failures during the heat of the election and its immediate aftermath. Quite unlike the race in 2000 when almost any problem (from butterfly ballots and hanging chads to the likely disenfranchisement of thousands of voters wrongly listed as felons) could have changed the election result, the 2008 results – and, indeed, the improved performance of many states – have led many to breathe a sigh of relief.<sup>6</sup>

But the run-up to the 2008 election and assessments in its aftermath demonstrate that serious problems continue to undermine the infrastructure of American democracy. Indeed, nonpartisan political scientists have already estimated that approximately eight million registered non-voters did not vote because of administrative problems – such as long lines at the polls, registration issues, and absentee ballot issues.<sup>7</sup> Of those, 3 million were registered voters who could not vote because of registration problems.<sup>8</sup> This is not indicative of a system that can effectively perform and engender confidence in a close election.

As this report demonstrates, the apparently smooth Election Day was preceded by months and even years of research, relationship-building, advocacy, and litigation by Advancement Project and its voter protection partners. At every step of the process – from voter registration to the training of poll workers to the counting of provisional ballots – Advancement Project stepped in to identify problems and begin resolving them well before Election Day. This early, pre-emptive action is essential to effective voter protection; flaws in election administration that are not identified until Election Day are likely to disenfranchise voters.

## A Summary of Representative Issues and Work in Battleground States

As this report demonstrates, elections remain a fundamentally local affair. States determine who is qualified to vote and establish the rules and basic conditions for holding elections. Election processes and, thus, the right to vote are subject to the frequently partisan whims of state legislatures and local officials and underfunded local bureaucracies. Since the 2000 election debacle, the federal government has stepped up its regulation of elections and enacted reforms designed to require more uniformity and equity in election administration. But, as discussed throughout this report, the results are mixed at best. In each recent national election, several issues have emerged as ones that highlight continuing problems

***Advancement Project’s Early and Persistent Advocacy Efforts in Key States:*** In the year leading up to the election, Advancement Project had an active presence in nine battleground states: Colorado, Florida, Michigan, Missouri, Nevada, North Carolina, Pennsylvania, Ohio, and Virginia. In key states, Advancement Project relied on an attorney and local advocate to build or develop diverse voter protection coalitions within the state. The coalition partners represented African Americans, Latinos, Asian Americans, youth, and low-income voters as well as labor unions and communities of faith. Advancement Project and its coalition partners focused on developing productive relationships with local and state election officials wherever possible. They also assisted voter registration groups in navigating the rules and practices of local elections boards to ensure that all eligible voter applicants were added to the rolls. Advancement Project also litigated against state and local election officials to force the removal of illegal barriers to voting in several states.

*Advancement Project's goal as the 2008 election approached was to anticipate potential election administration problems early in the cycle and to begin resolving them well before Election Day. Across the nation this approach protected the rights of tens of thousands of voters.*

In each recent national election, several issues have emerged as ones that highlight continuing problems with guaranteeing the right to vote and securing public confidence that every vote will be counted. Several of this year's key challenges – particularly those related to registration and provisional ballots – involved the interplay of federal, state, and local requirements. Others, such as improved poll worker training and the allocation of resources, represent nuts-and-bolts government reform that could substantially improve election administration and voter confidence with little fanfare. Finally, in two of our focus states, a state-based change, the expansion of early voting in Florida and Ohio, has been credited with substantially improving election administration in 2008.

The following introduction of the representative issues, challenges, and reforms provides background for the body of the report.

### Voter Registration and Database Problems

Voter registration – the gateway to the franchise in all but one state – was the pivotal election administration issue of 2008, just as voting machines were in 2000 and provisional ballots were in 2004. The intense registration drives that began early in 2008 combined with federal rules and new statewide computer databases threaten to create a perfect storm of registration failure and political conflict. Indeed, the tension between thriving registration drives and new registration regulations exemplified core political divisions and threatened to undermine confidence in the election. This is true particularly in light of emerging evidence that African-American, Latino, and low-income voters are disproportionately hurt by more stringent registration rules.



Despite technological advances in other aspects of the election system and a handful of states moving toward online registration, voter registration remains largely a paper-based, locally managed system that is then grafted onto newly mandated state registration databases. Information is primarily collected as handwritten paper forms that must be manually keyed into databases. Consequently, the system is highly susceptible to error. Additionally, many states were relying on the federally-mandated state voter registration databases for the first time in a presidential election.

*The experience of St. Louis County in 2008 illustrates the registration problems of combining old and new technology. Flooded with new registrations, the county's election workers struggled to enter data from old pen and paper forms into two databases (the existing local database and the new state database). Thus, they had double the effort and double the chance of error. The county fell far behind in processing applications. Many new potential voters did not receive notice of registrations or registration problems until well after the registration deadline. On Election Day, scores of voters reported registration problems.*

It is not surprising, then, that registration would become a kind of clearinghouse for failures of election administration and partisan battles, as the politics filtered from the federal level to the states and on to local election authorities. As the body of this report illustrates, each state had its own variation on registration challenges – ranging from record keeping to problems with change of address rules – growing out of the state’s laws on registration, its culture, and the stresses particular to the 2008 election. Because the impact of the new federal rules was so widespread, it is important to address the application and misapplication of Help America Vote Act’s registration regime in some detail here.

## Helping America Vote? HAVA Implementation in the 2008 Presidential Election

The Help America Vote Act of 2002 (“HAVA”) was passed in response to some of the problems of the 2000 presidential election. It was designed to address a number of problems in election administration, ranging from voting technology to registration, and primarily sought to require some uniformity and equity in election administration. In some instances, HAVA’s goals are unclear or actually contradictory – with threads designed to make it easier to vote sometimes in direct conflict with the threads designed to make it “harder to cheat.” The law set standards and requirements for new voting technology, required provisional ballots, and, as discussed here, established registration-related rules.



The implementation of HAVA combined with increases in voter registration through third-party voter registration explains in large part why registration became the election administration issue in the 2008 presidential election. This was the first presidential election in which HAVA’s statewide registration database requirement was in effect nationwide.<sup>9</sup> Before HAVA’s database requirement, most states kept their voter rolls at the local level.<sup>10</sup> 2008 was also the first presidential election year during which states were implementing the so-called HAVA match.

The HAVA matching regime grows out of HAVA’s requirement that states verify new registrations and, as a companion to the verification provision, the requirement that states enter into agreements with their state motor vehicle authorities to ‘match’ voter registration and motor vehicle (driver’s licenses) records against one another.<sup>11</sup> Voter applicants who do not have driver’s license (or state identification) numbers could be matched against the federal Social Security database. Although HAVA does not expressly set forth the consequences of a non-match on an applicant’s application,<sup>12</sup> Advancement Project and other voting rights advocates maintain that HAVA preempts state laws that prohibit otherwise eligible applicants from becoming registered due to a non-match.<sup>13</sup>

While these requirements may seem quite technical, they have a significant impact on which voters become registered and added to the statewide list of voters and, consequently, whose votes will be counted. Making the matching issue even more troubling, many states were not transparent about their matching practice; they were neither transparent about how they performed the ‘match’ nor the consequences of a failed match.<sup>14</sup> Florida, on the other hand, was transparent; its code provides that ‘matching’ is a pre-

requisite to voter registration. In 2006 and 2007, Florida’s law disenfranchised thousands of otherwise eligible voters, with a disproportionate impact on minority voters, particularly Latinos, Haitian Americans, and African Americans. The law prompted a federal lawsuit—in which Advancement Project is counsel—and eventual resistance from many local supervisors of elections. As a result of the filing of the litigation in September 2007, 16,000 unmatched voter applicants were added to the rolls, an amendment to the law that eased some of the burdens on voters was enacted, and considerable public attention to the issue was generated. This public attention prompted dozens of supervisors of elections to act within their discretion to minimize the burden of the law on voters.

Most other states simply required that unmatched voters present identification to verify their identification at the polls.<sup>15</sup> But a number of states, including those that eventually allowed verification at the polls, were not clear about their HAVA matching practices. For instance, in Missouri, state and local practices related to matching, and even the number of unmatched voter applicants, remained unclear to election officials.

Similarly, in Ohio, state law is silent on how the matching process is to be administered and the consequences of a non-match. In the months leading up to the election, this lack of clarity was pounced on by the state Republican Party, which filed lawsuits demanding that the Secretary of State institute a matching procedure and provide the names of voters with failed matches to local election officials. The lack of clarity in Ohio’s procedures raised suspicions about the reliability of the state’s procedure – even though Ohio requires voters to present identification at the polls.

It is not clear how many voter applicants were caught in the HAVA dragnet across the country. But as this report describes in detail, the advocacy efforts on the part of Advancement Project and other allies saved thousands of voters from HAVA matching problems during the 2008 election cycle.

*HAVA mandated that all states develop and implement a statewide voter database by January 1, 2004, or by January 1, 2006 if the state obtained a waiver – and 2008 was the first presidential election in which nearly all state databases were operable. The computerized databases may improve the accuracy and completeness of voter registration lists over time and should allow for intrastate portability of voter registrations. In most states, voter registration lists had been maintained at the county level and were subject to significant error and even less transparency.*

*Lack of transparency, however, remains a substantial problem in many states. Even with the advent of the databases, it remains unclear in some states whether state or local officials have the authority to make changes to records. Depending on the database protocols, it can be harder than ever to determine what has happened when a registration fails or disappears. Without significant safeguards, it is also possible for thousands of registrations to be removed with the click of a button. Increased transparency and accountability combined with clear protocols are critical to the reliability of voter databases.*

## Training of Poll Workers Continues to Fall Short of the Demands

On Election Day 2008, approximately two million temporary, short-term employees appeared at precincts around the country to run the election. These are the poll workers. As anyone who has voted knows, poll workers check in voters, decide in the first instance whether a voter is registered, direct voters to the proper precinct, operate the voting machines, and distribute provisional ballots. They have been called the “first line” of democracy and voting’s “weak link.” The 2008 election made clear that poll workers across the country need more training, better training, and better materials.

Elections have become technologically and procedurally more complex, and, in some states, voting technology has been changing every few cycles. In states with electronic voting machines, poll workers are often required to connect cables and troubleshoot inoperable machines. They may need to be knowledgeable about computers. They use electronic poll books and decide what to do if the electronic poll book does not work. In states like Ohio, they must apply a dizzying list of factors to determine if someone should vote a provisional ballot and, if so, in what precinct. They must determine what type of identification is required – often applying a new rule that lists an array of possible identifications. They often must perform these tasks under stressful conditions with little time to seek help.



Despite the magnitude of these Election Day responsibilities, the training of poll workers receives short shrift. Even as millions of dollars poured into state electoral processes to purchase new voting technology and to modernize voter registration databases, few additional resources have been devoted to the training of poll workers. There are no federal standards for training or staffing, and many states allow local authorities to control training.

In each of its focus states, Advancement Project pressed officials to improve poll worker training. Attorneys and local advocates studied training manuals, recommending improvements and corrections. In most states, Advancement Project attended several poll worker training sessions and debriefed local officials on how to improve the process. Advancement Project learned that many trainings fail to emphasize common problems that workers are likely to confront on Election Day or explain complex election laws that poll workers are expected to apply. Advancement Project also issued a brief to assist state and local election officials in ensuring the adequacy of their poll worker training.<sup>16</sup>

On Election Day, some poll workers, who were unprepared and insufficiently trained, caused long lines and voting delays in precincts across the country. From St. Louis County to Yeadon County, Pennsylvania, to Chesapeake, Virginia, voters waited hours and hours to vote because of poll worker confusion over a range of issues.

*Advancement Project produced a ‘palm card’ for poll workers and voters in twenty states. The palm card is a succinct explanation of key voting rules in each state. Titled “The Top 10 Things Every Pollworker in [state] Should Know,” it is designed to serve as quick reference for resolving the common problems that poll workers face on Election Day.*

*Advancement Project drafted the cards based on its research of previous poll worker errors and problems at the polls on Election Day. Attorneys narrowed the issues down to ten primary concerns that could occur on Election Day in each state and drafted the cards in an easy-to-read, easy-to-understand format.*

*One state election official and several county officials adopted the cards or ones that were substantially similar and distributed them to thousands of poll workers for use on Election Day. In states where officials did not directly distribute the cards to poll workers, Advancement Project distributed them to organizations whose members often serve as poll workers.*



## Polling Place Resources – Too Few Resources and Misallocations

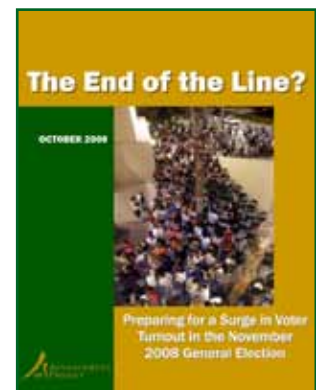
The misallocation and under-allocation of polling place resources continued to create substantial barriers to voting. Election Day news was dominated by footage of voters waiting hours to cast their ballot. At one polling place in St. Louis County, dubbed by CNN the “longest wait in America,” voters waited more than seven hours – in part because of machine breakdowns and the failure to provide back up paper ballots. At some precincts in Virginia, voters waited hours to vote because too few machines had been allotted to their precinct, and the state had declined to require the distribution of paper ballots. Similar problems flared up at polling places across the country.



The 2008 election demonstrated yet again that the voting experience may vary wildly from state to state, within a state, and even within a county – depending on the voter’s precinct. Resource allocation requires the consideration of several factors: Are there enough machines in the precinct to handle the expected number of voters and what is the formula for determining the number of machines to allocate to a precinct? Does the formula take into account increases in registration? Are there enough poll workers assigned to the precinct? Are paper ballots available in case of machine malfunction or long waits for machines?

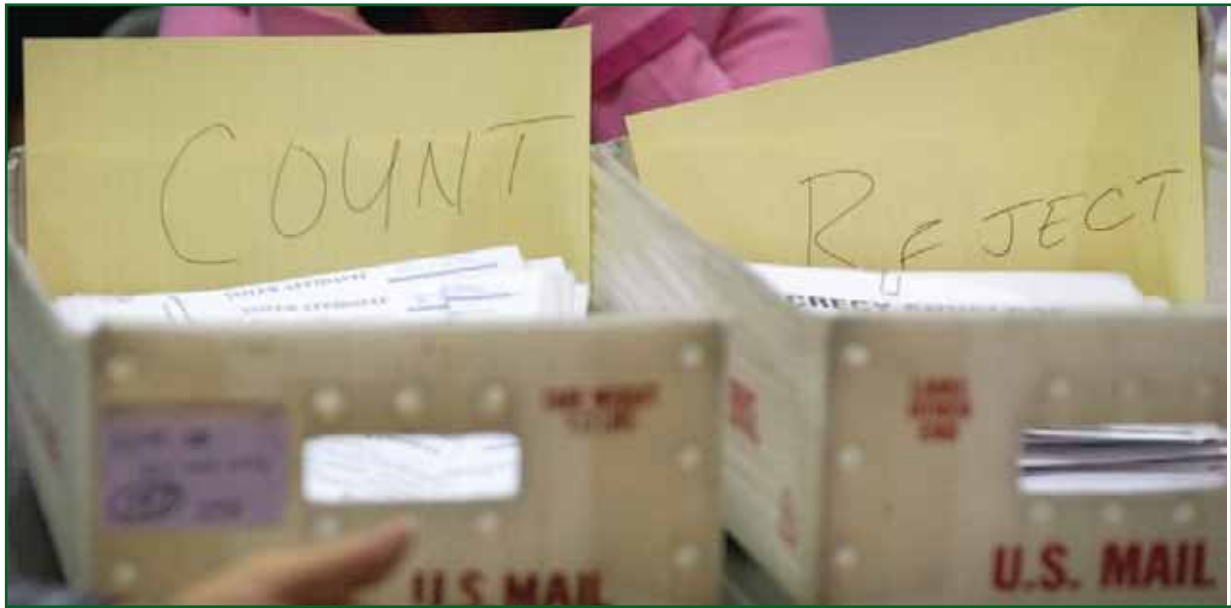
*After the 2000 election and at the encouragement of HAVA, many states implemented electronic voting systems. It took only a few elections under those expensive systems for a number of states to decertify them and return to a paper-based optical scan system. An important part of Advancement Project’s advocacy in 2008 involved requesting that states expand the availability of backup paper ballots in areas where electronic machines were still in use. Advancement Project pressed for guidelines making clear that paper ballots should be made available when half of the machines in a precinct fail and that they should be made available immediately, not after a technician has tried to repair the machine. Additionally, Advancement Project pressed for rules that would allow the distribution of paper ballots whenever the voter lines exceeded a certain time – 45 minutes, for example. Finally, Advancement Project encouraged local authorities to allow voters who were willing to forgo privacy to vote their paper ballot on a clip board rather than in a privacy booth. Simple, common sense fixes like this reduced wait times at many precincts.*

Advancement Project’s ground-breaking research and advocacy on this issue revealed that many states had severely under-resourced precincts and that, often, there was a substantial disparity in allocations between jurisdictions and even within jurisdictions. Advancement Project’s End of the Line report illustrated potential problems in Michigan, Missouri, Ohio, Pennsylvania, and Virginia.<sup>17</sup> Advancement Project used the results of its analysis to advocate for changes and improvements in resource allocation across the country, from adding or re-allocating voting machines to printing additional backup paper ballots to adding phone lines.



Advancement Project decided to investigate and analyze polling place resources due to its concern that minority voters and low-income voters would be subject to longer voter lines than voters outside of those communities. This hypothesis proved to be accurate. According to a survey conducted just after the election, African-American voters across the country waited in line, on average, more than twice as long as all other voters on Election Day – and twice as long when voting early.<sup>18</sup>

### Provisional Ballots – Why are they distributed? When are they counted?



HAVA also required that all voters in federal elections, who declare that they are registered and eligible but whose name does not appear on the voting rolls, have access to a provisional ballot.<sup>19</sup> A provisional ballot allows voters to cast a ballot when there is some issue with their registration that cannot be resolved immediately, they lack full identification, or, in some instances, when they have moved. Like many of the other voting issues, each state has its own rules on provisional ballots, and, in many, provisional ballot practices and policies remain overly complex, confusing, and fraught with controversy.

Advancement Project has been studying and investigating the use and misuse of provisional ballots since the 2004 election when they became a problematic mainstay of the election process. In many ways, provisional ballots have become a kind of stage where problems with registration and poll worker training play out. If large numbers of provisional ballots are distributed, it is likely that there is some failure in the registration process, or rules related to voters who move, because too many people think they are registered in one place but do not appear on the precinct list. If large numbers of the ballots are not counted, it often reflects barriers to voter registration, poll worker misdirection of voters to the wrong precinct, or other poll worker error, such as failing to ensure that provisional ballot envelopes were completed.<sup>20</sup>

In 2008, it was clear that problems remain with the distribution and counting of provisional ballots. In too many instances, poll workers gave a voter a provisional ballot to soothe the voter when his or her name did not appear on the precinct roster and the poll worker had difficulty contacting election headquarters to ask for assistance. Additionally, too many ballots were cast in the wrong precinct. A number of states require the disqualification of provisional ballots cast in the ‘wrong precinct’ – that is, at a precinct other than the one that serves the voter’s residence. Advancement Project’s investigation has shown, however, that a ballot is usually cast in the wrong precinct because of poll worker error. In many instances, provisional ballots that were rejected for having been cast in the wrong precinct were actually cast in the right polling place. This is especially true in urban areas where polling places include several precincts.

## Early Voting

Finally, the expansion of early voting, particularly in the battleground states of Florida, North Carolina, and Ohio, took pressure off the system on Election Day. In Florida, an astonishing 55 percent of the votes had already been cast when the polls opened on Election Day. In North Carolina, too, more than half the votes were cast before Election Day. In Ohio, 30 percent of the votes were in before Election Day.

It is clear that expanded early voting provided increased opportunities across the board and should be further expanded. But, resources to support early voting must also be fortified.

In Florida and Ohio, the early voting system groaned under the heavy turnout. There were reports of voters waiting up to seven hours to vote early. These long waits suggest a planning and resource failure that could result in the disenfranchisement of many voters and in a close election could undermine confidence in the result.



## FLORIDA



Ever since the chaos of the 2000 presidential election, Florida has been a kind of ground zero for election reform watchdogs and for battles over expanding and retracting access to the polls. In 2008, Florida was under the spotlight yet again because of the threat that its rigid matching requirements for registration could disenfranchise thousands of eligible voters because of a typo. Other registration barriers, spotty planning, and poor poll worker training—particularly relating to provisional ballots—suggested that Florida, once again, could be the poster child for election failure and voter frustration. Indeed, before the election, it was predicted that it would be harder to vote in Florida than in any other state.<sup>21</sup> This report analyzes some of Florida’s key election challenges in 2008 with a focus on the advocacy efforts that helped mitigate the effects of these challenges.

Across the state, interest in this historic election was intense throughout the cycle. Voter registration rolls increased by almost 1 million – more than 9 percent over the 2004 record registration.<sup>22</sup> Interest was particularly high among the state’s African Americans whose registration increased 20 percent – from 1,223,875 registered voters in 2004 to 1,468,682 voters in 2008.<sup>23</sup> As these registrations poured in, Florida’s unusually strict registration rules – subject to an eleventh-hour enforcement plan from the Secretary of State – threatened to block thousands of new registrants from voting. Advocacy groups and a number of county election supervisors, scrambling to prepare for the election, pushed back against the rules. This conflict combined with Florida’s troubled registration history and rumors of Election Day challenges created the sense among many in Florida’s large and diverse population that the 2008 vote would once again feel more like a lottery than a fair and equitable election.

Turnout was high during the election with almost one million more voters casting ballots in 2008 than in 2004 – 67.5 percent of the voting eligible population compared with 64.4 percent in 2004 and just 55.9 percent in 2000.<sup>24</sup> When the polls closed on election night, there were no panicked reports of large numbers of voters being turned away because of long lines or registration problems. Nor were there significant reports that people feared their votes had disappeared because of technological problems. Overall, there was a sense that Florida had survived the election without significant scandal or further diminishment of the voters’ trust in the system. This is largely attributable to two factors: the margin by which Barack Obama won the state and voters’ enthusiasm for early voting. Additionally, the intensive advocacy by Advancement Project and other allies on registration barriers prevented thousands of voters from frustrating disenfranchisement.

First, unlike the epic 2000 election fracas, the 2008 presidential election in Florida ended with a comparatively large margin of victory, creating a substantial margin of error. In 2000, when all the votes were deemed counted, both George W. Bush and Al Gore were listed as receiving 48.8 percent of the vote, with

Bush winning just 537 more votes than Gore.<sup>25</sup> In 2008, by comparison, Barack Obama won the state by three percentage points – 51 percent to 48 percent – or 237,000 votes.<sup>26</sup> This margin of error prevented several of the challenges discussed below from rising to a crisis level.

The other critical factor that made Election Day feel successful in Florida was the expansion of early voting. By the time the polls opened on Election Day, 55 percent of the vote had already been cast (31 percent in early voting and 23 percent by absentee). Thus, only 45 percent of the votes cast in 2008 were cast on Election Day, monumentally shifting the strain on poll workers, voting machines, and voters themselves.<sup>27</sup> Introduced in 2004 as a way to minimize Election Day problems and to increase opportunities to vote, early voting surged in 2008 as advocates and the campaigns urged people to vote early as a way to avoid lines and to have time to troubleshoot problems. Consequently, it is hardly surprising that during this historic election more than twice as many voters showed up to cast an early ballot in 2008 than in 2004.<sup>28</sup>

The great popularity of early voting overwhelmed a number of polling places. As Election Day approached, long lines snaked around the voting sites, through parking lots, and along busy streets. On October 28, following national news stories of multi-hour waits, growing discontent, and intense advocacy, Governor Charlie Crist ordered voting hours extended for four additional hours each weekday.

Advancement Project had a strong presence in Florida leading up to the 2008 election and has been actively engaged in the state since the wake of the 2000 election. In the years preceding the 2008 election, Advancement Project brought legal challenges to Florida’s statutory burdens on voter registration, including the state’s overly restrictive verification requirements, unnecessary checkboxes, and burdensome regulation of voter registration drives.<sup>29</sup> These lawsuits, while receiving mixed results in the court, were instrumental in spurring legislative reforms. Advancement Project targeted eight counties – Broward, Duval, Hillsborough, Miami-Dade, Orange, Osceola, Palm Beach, and Volusia – to work closely with election administrators and local coalition partners to protect the rights of potential voters by improving poll worker training and resource distribution, as well as improving registration administration.

Florida, with its restrictive laws, and highly partisan election structure, demonstrates some of the key barriers to creating an open and equitable election system. This report discusses the following issues and analyzes how coordinated and knowledgeable advocacy reduced the impact of some of the barriers:

- Registration barriers caused by Florida’s misinterpretation of the HAVA matching requirement
- Insufficient access to early voting
- Inadequate and incomplete poll worker training
- Overuse and misuse of provisional ballots

## VOTER REGISTRATION BARRIERS

Even as voter registration groups fanned across the state, registering hundreds of thousands of voters, Florida enacted and imposed some of the nation’s most rigid voter registration rules. The process – unnecessarily complex and bureaucratic – likely disenfranchised untold numbers of voters.

Compared with most other states, Florida takes a decidedly restrictive approach to registration. For instance, the state voter registration application includes boxes affirming that the applicant has not been convicted of a felony and has not been judged mentally incompetent, in addition to its requirement that applicants attest to their eligibility to vote under Florida law. If either of the boxes is not checked, the application is considered incomplete.<sup>30</sup> Additionally, if this – or other information – is judged incomplete

by the registration deadline, the applicant cannot complete it after the registration deadline and vote in the upcoming election.<sup>31</sup> Thus, many applicants who submit their application in the weeks preceding the registration deadline fail to become registered in time to vote because they cannot effectively correct their registrations. As discussed in detail below, Florida also enacted some of the nation's most rigid requirements for matching voter application information against state driver's license and federal Social Security databases. This 'no-match, no-vote' law effectively transformed HAVA's administrative mechanism to track voters into a prerequisite for registration and prevented or delayed the processing of tens of thousands of voter registration applications.

Additionally, Florida attempted to impose some of the nation's most burdensome rules on third-party groups that assist citizens in registering to vote, but as discussed below, the impact of these laws was ameliorated after litigation and a stay of enforcement. Notably, Florida has one registration rule – perhaps a nod to its transient population – that protects voters more than many other states: any registered voter who moves but does not update her registration with her new address is allowed to vote by regular ballot at the precinct serving the new address even if it is in a new jurisdiction.<sup>32</sup>

In the run-up to the 2008 election, Advancement Project and its allies engaged in an all points advocacy, including litigation, to change the rules, lower the barriers, and encourage local election officials to implement relatively easy administrative fixes. This section addresses those efforts and the barriers they sought to lower.

### *Florida's No-Match, No-Vote Law*

In 2005, in the wake of the 2004 presidential election, the Florida legislature enacted a rigid and unnecessary voter registration law requiring an exact match between the information on a voter registration application and certain information in the state driver's license database or the federal Social Security Administration database.<sup>33</sup> Unlike other states, Florida used the matching process as a prerequisite for registration: no-match, no-vote. These requirements threatened to disenfranchise tens of thousands of eligible voters, including a disproportionate number of Latinos and African Americans, because of simple typographical errors or meaningless variations in the spelling of names. Yet these stringent requirements did little or nothing to protect against registration or voter fraud, particularly because Florida requires that all voters present a photo ID at the polls.<sup>34</sup> Indeed, even many local election administrators viewed the procedures as cumbersome.

Fortunately, by Election Day, the impact of this matching law had been significantly reduced because of the multipronged advocacy of Advancement Project and other coalition partners. First, a lawsuit brought by Advancement Project and other voting rights groups forced the state to amend the most cumbersome and unfair elements of the law and spotlighted the injustice of the law. Second, intensive advocacy by Advancement Project and others encouraged most large Florida counties to allow 'no-match' voters to verify their identity on Election Day at the polls – an administrative move supported by a legal opinion from the Florida Association of Supervisors of Elections. And, finally, public education in the months before the election informed voters and voter registration groups about the risks of the no-match law and the steps to take to perfect their registrations.

This report discusses the application and impact of the no-match law, with a focus on the litigation and advocacy efforts that were successful in ameliorating the impact of this rigid law. This discussion provides a telling lens through which to view key elements of election administration in Florida, including the powerful role of local election supervisors, the tug of war between the state and local election officials, the critical role of discretion among the administrators, and the importance of a constituency-based advocacy campaign.

### *Background and Threatened Impact*

In 2005, Florida passed its ‘no match’ law ostensibly in response to the enactment of HAVA in 2002. HAVA directs states to require that voter registration applications include a current driver’s license number, the last four digits of the Social Security number, or a state issued identification card number.<sup>35</sup> HAVA further directs the states to verify this number in a procedure of their choosing. *Id.* The purpose of the HAVA match was to assist with maintaining an accurate voter registration and tracking voters who move within a state, not to serve as a prerequisite to voter registration.<sup>36</sup>

The original version of Florida’s no-match, no-vote law enacted in 2005 required the Secretary of State to verify the authenticity of the number on the application by attempting to match it with the number assigned to the applicant’s name in the driver’s license or Social Security Administration database.<sup>37</sup> Any applicant whose information did not match was not registered to vote and was mailed a notice informing the applicant of the failed ‘match.’ Furthermore, if the error was made by a government official – by transposing numbers in the database, for example – the applicant would be allowed to complete her registration by presenting a copy of the verifying document (driver’s license or social security card) to the county election supervisor before the election. If the applicant had not presented a copy of the applicable document before Election Day, the applicant could vote by provisional ballot and present the verifying document to the supervisor of elections within two days of the election to ensure that the ballot would be counted.<sup>38</sup> In other words, even if a government official made a mistake entering a voter’s data, the voter carried the burden of further verifying the information.

By comparison, if the voter erred on his application – by transposing two numbers or entering a nickname that did not match the formal name in the database (or vice versa) – the voter was required to complete a new voter registration form before the close of registration or be prohibited from voting in the upcoming election.<sup>39</sup>

From January 2006 until September 2007, approximately 31,506 unique applications were returned to local supervisors of elections as unmatched.<sup>40</sup> As of September 30, 2007, 14,326 registration applications remained unmatched and blocked from registration.<sup>41</sup> The law had a starkly disproportionate impact on voters of color. In 2006 and 2007, 65 percent of the unmatched applicants were either Latino or African American, even though Latinos comprised only 15 percent of the applicant pool and African Americans only 13 percent of the pool. Indeed, of the voter applicants who were unmatched during this timeframe, 39 percent were Latino, and 26 percent were African American.<sup>42</sup>

### *Litigation, Early Advocacy, and Amendment of the Law*

Voting advocates and even some local election administrators opposed this law from the beginning, recognizing that it imposed a severe risk of accidentally disenfranchising eligible voters, unnecessarily burdening administrators, and causing confusion at the polls. In September 2007, Advancement Project and several other groups filed suit against the no-match law on behalf of the Florida State Conference of the NAACP, the Haitian-American Grassroots Coalition, and the Southwest Voter Registration Education Project.<sup>43</sup> The lawsuit contended that Florida’s no-match, no-vote law was preempted by HAVA, the Voting Rights Act of 1965, and other federal statutes and violated provisions of the U.S. Constitution. In December 2007, a federal district court entered a preliminary injunction against the law on the grounds that HAVA and the Voting Rights Act preempted it, finding that the law “makes it harder to vote by imposing a matching requirement that is a barrier to voter registration.”<sup>44</sup> The court also noted that Florida had transformed a record-keeping requirement into an unnecessary registration and, thus, voting barrier.<sup>45</sup>

The evidence presented during the litigation of the motion for preliminary injunction revealed the flaws and injustices of the actual matching process. State officials did not dispute that typographical errors were responsible for some of the match failures. Additionally, it became clear that voter applicants from certain ethnic groups, such as many Haitian Americans and Latinos, were at particular risk of having their application fail.

As the district court noted, people with hyphenated names or unusual spellings were at particular risk that a clerk would fail to enter the name correctly, or that there might be some unintentional variation between the name on the application and the name as it appeared in the database.<sup>46</sup>

Concluding that neither HAVA nor the Voting Rights Act preempted Florida’s no-match law, the Eleventh Circuit Court of Appeals reversed the district court’s preliminary injunction in April 2008, but recognized the unusually burdensome rules imposed by the matching rules.<sup>47</sup>

Faced with continuing litigation and the embarrassing revelations of its byzantine requirements, the Florida legislature amended the no-match law in 2008 to make it slightly less burdensome. The amendment rid the law of its most draconian provision: blocking the registration of any potential voter whose application included information that varied from that in the relevant database. In other words, if a voter had listed a nickname but the voter’s full name appeared in the database or the voter had transposed numbers on his or her form, the voter would be permitted to verify his or her actual information, even after the registration deadline.<sup>48</sup> Additionally, any non-matched voter would be permitted to cast a provisional ballot if his or her information had not been verified before Election Day, and the ballot would be counted if the voter provided verification of one of his or her numbers (regardless of which was on the application) within two days of the election.

Furthermore, as a part of the litigation, the Secretary of State assured the court that all notices sent to non-matched voters would make clear what verification was needed and that the verification could be provided in person, by fax, or through emailed copies of the applicable identification.<sup>49</sup>

While these revisions left in place a convoluted and unnecessary verification law, they did manage to rid the law of its “sudden-death” aspect – and created an opening to salvage some unmatched voter registration applications.

### *Advocacy with Supervisors of Elections to Assist Unmatched Voters on Election Day*

On September 8, 2008, just one month before the close of registration, the Secretary of State resumed enforcement of the no-match, no-vote law and announced the process by which registration applications would be reviewed.<sup>50</sup>

Advancement Project and other advocates warned that the Secretary’s decision to enforce this law was likely to disenfranchise thousands of eligible voters during the weeks before the registration deadline, when the number of applications would surge.<sup>51</sup> By requiring unmatched voters to provide a copy of their license or social security card before, or in the two days following Election Day—but not permitting voters to correct a matching deficiency by presenting a copy of their identification at the polls on Election Day—the matching regime continued to impose a substantial and unnecessary burden on these voters.

During the first ten days after enforcement of the law began, 1,000 applicants in Dade County alone were blocked from the roles.<sup>52</sup> By the end of registration, it appeared that there were approximately 11,500 non-matched voter applicants whose applications had not been verified.<sup>53</sup>

Advancement Project and other advocates began a common-sense advocacy campaign encouraging local election supervisors to allow non-matches voters to verify their registration on Election Day at the polling place. This verification procedure would eliminate the requirement that these voters have multiple contacts with their supervisor of elections. As new applications inundated local offices at the end of the registration period, it was likely that notices of unverified applications would be delayed, perhaps never being received by the applicant. Advocates intensified their campaign to educate voters and organizers of registration drives on how to check their registration status and then to provide the proper verification as necessary.

Local supervisors began to announce that they planned to allow unmatched voters to verify their information at the polls on Election Day, despite the suggestion of the Secretary of State that this would not comport with Florida law.<sup>54</sup> Because election officials were already required to check voters' identification, verifying an unmatched voter would add little burden to the poll workers or the voter. Indeed, the people with frontline responsibility for and understanding of elections and registration—staff for the supervisors of elections—felt it would be unfair to penalize unmatched voters and that an Election Day verification procedure would not disrupt voting. As a representative of the Pinellas County office said in early October: “We feel the voter isn’t in error and we don’t want to penalize [the voter]. Whether it was [an] error on our part or the state’s part - maybe a hyphenated name that wasn’t typed in - we think many of these cases aren’t the [voter’s] fault.”<sup>55</sup>

On October 13, the Florida Voters Coalition sent a letter to all 67 local supervisors asking them to allow voters to verify their registrations on Election Day at the polls. State newspapers and television stations were covering this issue intensively, particularly as early voting was getting under way. Many supervisors were concerned about turning voters away from the polls – or forcing them to vote by provisional ballot – even if they had proper identification.

About two weeks before the election, the General Counsel for the Florida State Association of Supervisors of Election issued a legal opinion advising county supervisors that they had the authority under Florida law to permit unmatched voters to verify their identity at the polling place.<sup>56</sup> Advancement Project and its co-counsel, the Brennan Center, followed that opinion with supporting letters to key supervisors of elections.

On Election Day, at least 29 of Florida’s 67 counties – including Broward, Miami-Dade, Orange, and Pinellas – reportedly allowed voters to correct the matching problem at the polls. Different counties had different solutions: Miami-Dade, for instance, reportedly allowed unverified voters to vote by regular ballot if they brought proper ID, while Broward County permitted unverified voters to vote by provisional ballot but would accept a copy of the ID so the voter did not have to return to the county supervisor’s office after casting a ballot.

At this point, it is not known how many voters were affected by this rule – or would have been disenfranchised if not for the litigation and advocacy successes. But it is clear that the partial litigation success, Advancement Project’s intense advocacy, and common sense of frontline elections supervisors averted the potential disenfranchisement of thousands of voters.

### *Restrictions on Third Party Voter Registration Drives*

In 2005, Florida enacted some of the most restrictive and punitive rules governing voter registration drives in the country. The law imposed harsh financial penalties on groups that did not submit registration cards to election officials within ten days, regardless of whether the group was at fault in the delay. In May 2006, Advancement Project, the Brennan Center, and pro bono counsel filed suit against the Secretary of State, seeking to enjoin the enforcement of this burdensome law, on behalf of six organizations that conduct voter registration drives. Not only did the law have a significant chilling effect on the ability of groups to conduct registration drives, and in some cases caused those groups to suspend voter registration altogether, it also disproportionately burdened African-American and Latino voters, who are twice as likely to register through voter regis-



tration drives as White voters.<sup>57</sup> A federal district court agreed that the law was unconstitutionally burdensome and preliminarily enjoined enforcement on August 28, 2006.<sup>58</sup>

While an appeal was pending, Florida amended the law, modifying some of its most egregious provisions, but even in its amended form, the law still exposed registration groups to the risk of significant fines. While the Secretary of State initially agreed to refrain from enforcing the new law under a standstill agreement between the parties, on March 31, 2008, the Secretary withdrew from the agreement and announced his intention to begin enforcing the law.

Advancement Project, the Brennan Center, and pro bono counsel again filed suit, on behalf of several of the plaintiffs from the previous suit, the League of Women Voters, the AFL-CIO of Florida, and an individual citizen. While that suit was pending, the Secretary agreed, again, not to enforce the law. In August 2008, a federal district court denied plaintiffs' motion for a preliminary injunction;<sup>59</sup> however, the court's opinion interpreted that statute so that it limits fines on organizations and individuals involved in voter registration activities. This ruling led plaintiffs to conclude that they could continue voter registration drives without fear of being subject to excessive fines. Additionally, the Secretary agreed to delay enforcement of the statute pending the adoption of a final rule. No rule was adopted until after the election. Thus, during the height of the voter registration drives, the burdensome rule had no effect. In December 2008, the terms of the order were included in the administrative rule adopted by the Secretary.

## POLL WORKER TRAINING CHALLENGES

Florida's front line poll workers bore the brunt of the state's registration problems and their county's eleventh-hour decision on how to deal with unmatched voter applicants. Advancement Project worked with the supervisors of elections on poll worker training in each of its counties of focus. Supervisors of elections in three counties – Duval, Hillsborough, and Osceola – adopted Advancement Project's palm card and distributed it among poll workers.

Although Florida law requires training before each election and directs the state Division of Elections to provide a training manual,<sup>60</sup> the quality of poll worker training and recruitment varied substantially from county to county. Advancement Project's close study of Broward County's poll worker training, for example, and the preliminary information on provisional ballots in Broward and other counties suggest that counties could significantly improve the quality of the training.

Because of Broward County's problems with poll worker training in past elections, as evidenced by its use of provisional ballots and poll worker comments, Advancement Project focused its advocacy on poll worker training. While attending an eight-hour poll worker training, an Advancement Project staff member observed that the material was fairly thorough, but that the instructor moved briskly through it in a Power-Point presentation. Although several potential poll workers appeared confused, few asked questions. The trainers also provided incorrect information on the use of provisional ballots and suggested that they be used as a "soothing technique." The data on provisional ballots provided after the election indicates that too many ballots were distributed to soothe a voter, rather than direct a voter to the correct polling place.

The training material failed to provide clear and accessible instructions for how to handle voters who may be in the wrong precinct, particularly for those voters whose names did not appear in the electronic voter list (EVID). The materials should have explained that such voters should be directed to their correct precincts, where they should be permitted to vote with a regular ballot. Additionally, the training materials did not provide clear instructions about how to handle a voter who is registered but has moved—i.e. that registered voters who have moved but not updated their address with election officials should present themselves to vote in their new precinct, submit a change-of-address form, and vote with a regular ballot.<sup>61</sup>

The material also failed to provide a comprehensive list of acceptable and unacceptable forms of identification, although it specified two kinds of identification that were not acceptable. This incomplete information could lead to confusion and an inconsistent application of the rules. Additionally, the manual did not give clear directions on what to tell a voter who does not present an acceptable form of identification and must vote by provisional ballot. The material also provided little guidance on how to assist voters in making sure that the provisional ballot envelopes are correctly completed. The directions were spotty and uneven, even though a provisional ballot will not count unless the provisional ballot envelope is completed.

After attending a training and closely reviewing the training materials, Advancement Project requested a meeting with the county's supervisor of elections and was eventually invited to give a presentation to the staff on the improper use of provisional ballots. Subsequent to that meeting, the supervisor of elections held additional meetings with her training staff to emphasize the correct use of provisional ballots.

Advancement Project's careful review of Broward County's provisional ballot database from the 2008 general election indicates that substantial problems with how poll workers distributed provisional ballots persist. Poll workers continued to issue provisional ballots to voters entering the wrong precinct despite their training to direct voters to the correct precinct, and to inform voters that ballots cast in the wrong precinct will not count. In Broward County, 167 voters cast provisional ballots in the wrong precinct. Another 2,731 voters cast provisional ballots because they were not located in the register by poll workers on Election Day, yet 1,096 of these voters were located and verified by the canvassing board.<sup>62</sup>

## PROVISIONAL BALLOTS

Florida distributes far fewer provisional ballots than many states: in 2008, only 35,636 ballots (or .4% of the total vote) were distributed.<sup>63</sup> Throughout the state, however, a significantly smaller percentage of the ballots are counted than in most of the country. In 2008, about 56% of the ballots statewide were not counted. Although this represented a substantial improvement from the 2004 general election when 64% of the provisional ballots were not counted,<sup>64</sup> in at least one county, Miami-Dade, the rejection rate remained quite high (66 percent). In 2008, Florida's use of provisional ballots was closely linked with its troubled registration system – the issues surrounding no-match, no-vote, the checkbox issue, and problems surrounding registration through the Department of Highway Safety and Motor Vehicles. In most counties and throughout the state, the number one reason for the rejection of ballots was that the voter was not registered in Florida.

Until Advancement Project obtains and analyzes the full 2008 data on provisional ballots, including envelopes, it is not possible to analyze thoroughly, or draw conclusions, about the state's performance on this issue.

## EARLY VOTING

Florida voters poured into early voting sites at rates that apparently caught election officials by surprise. Stories of heroically long waits dominated the news, and news photographs showed voters practically camping out in lines stretching through parking lots and along busy thoroughfares. The long lines, and voter frustration, prompted Governor Charlie Crist to accede to voter advocates' calls for an extension of voting hours in the last week before the election. By executive order, he expanded voting by four hours each weekday. At the end of the two week period, some 2,661,672 voters – a whopping 31% of those who voted in the election – had voted in early voting – and another 23% voted absentee. There is no way of knowing how many voters were dissuaded from voting by the hours-long waits, but few observers doubt that the expanded use of early voting was responsible for reducing problems on Election Day.

Florida first implemented early voting in 2004, and in each statewide election since, it has accounted for a sizeable percentage of the votes cast, providing a kind of safety net on Election Day. Many advocacy organizations and political campaigns encouraged the use of early voting in Florida so that voters could avoid the long lines and machine problems that have plagued the state on Election Day in previous elections. While early voting rates hovered between 17% and 22% in the 2004 and 2006 general elections,<sup>65</sup> few observers expected anything other than a tremendous increase in 2008, particularly as some of the political campaigns and grassroots organizations made clear they would use it as an organizing tool.

Still, in the year before the election, a number of counties began making plans to reduce voting sites to cut costs.<sup>66</sup> For instance, Pinellas County, citing budget problems, reduced the number of early voting sites from nine in 2004 to just three in 2008, and Palm Beach County also reduced its voting sites.<sup>67</sup>

Florida election law requires counties to establish early voting sites in the Supervisor of Elections office and any branch offices.<sup>68</sup> The law allows counties to establish other early voting sites at city halls and permanent public library buildings and directs that these additional sites must be located to provide all voters with an equal opportunity to cast a ballot, “insofar as it is practical.”<sup>69</sup>

Advancement Project and other allies began advocating early in the election cycle to expand the number of voting sites in certain counties and particularly in lower income and minority communities, where there had been few sites. They met with partial success in Broward County, where advocacy may have prevented the closing of several sites targeted as part of budget reduction. During the 2008 general election, Broward had seventeen early voting sites – and reported some of the longest waits in the state.

In Palm Beach County, Advancement Project and allies learned that Riviera Beach, a town with a 67% minority population, had lost its early voting site when the county reduced its early voting locations from fifteen to eight. Following meetings with election officials where advocates argued that the mostly minority voters in Riviera Beach did not have an easily accessible early voting location, the supervisor of elections agreed to offer a site in the town.

The statutory limitations on the types of locations that can be used as early voting sites contributed to the long lines in the 2008 general election and pushed lines into particularly uncomfortable locations such as along busy streets with narrow sidewalks. Had the presidential election results in Florida been closer, the long lines and questionably located voting sites would likely have generated more controversy. In advance of the 2010 federal election, the Secretary of State, and election officials in counties in which voters faced long lines during early voting, should investigate the early voting sites in which lines were lengthy and develop remedial plans to ensure that voters will not be required to wait in lines for more than 45 minutes to vote.

## GOING FORWARD

In the spring of 2009, Advancement Project and its allies successfully advocated against proposed legislation that would have imposed a range of additional burdens on Florida voters. For instance, the legislation would have imposed more stringent voter ID requirements, eliminated registered voters’ ability to update their address on Election Day and vote by regular ballot, and limited the speech of third-party voter registration groups.

Advancement Project and its broad coalition successfully fought to block the passage of this punitive bill, which would have amended 50 state statutes relating to voting. Advancement Project organized its allies to oppose these bills and went on a radio tour around the state. Although the bills failed to pass in the 2009 legislative session, Advancement Project is concerned that lawmakers may seek to reintroduce similar legislation in the 2010 session.

Although the state legislature seems bent on passing more restrictive voter laws, Advancement Project's advocacy in 2008, and the 2009 legislative session, demonstrates the power of organizing with local coalition partners to oppose and limit the impact of these laws. Following the conclusion of the 2009 legislative session, Advancement Project met with several supervisors of elections to discuss improvements to poll worker training and the administration of provisional ballots. In the fall, Advancement Project will continue its legislative advocacy by working with local partners in support of expansions to early voting.

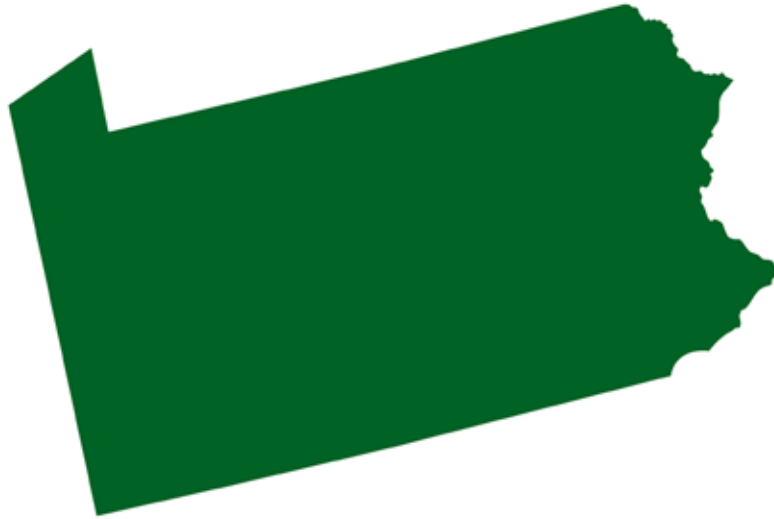
### Who runs the elections?

*Florida's appointed Secretary of State has substantial authority over elections in the state, but significant legal and political authority also rests with the 67 county election supervisors. Except for Miami-Dade County's supervisor of elections, all of the elections supervisors are elected and have their own political base. The local officials are vested with authority and discretion in organizing elections and enforcing election laws.*

### Registration

<b>Registration Deadline:</b>	<b>The 29th day before the election<sup>70</sup></b>
<b>Correction/Completion After Deadline</b>	<b>Application must be complete by deadline.<sup>71</sup></b>
<b>Change of Address</b>	<b>All registered voters may vote at new address.<sup>72</sup></b>

## Pennsylvania



High registration rates and burdened local systems, combined with the threat of last-minute partisan shenanigans such as voter intimidation and vote caging in urban areas, threatened to disrupt Pennsylvania’s Election Day. But vigorous and preemptive advocacy helped pave the way for a relatively smooth election process. Anticipating potential registration and resource issues early in the cycle, advocates worked with Commonwealth and local officials to lower registration barriers and to improve resource allocation and training. While voters in a few areas experienced long waits and there were continuing registration problems in flashpoint counties, Pennsylvania’s 2008 Election Day was relatively successful.

Like many states, Pennsylvania experienced a surge in registration – particularly among minority and younger voters – and a record number of voters casting ballots. Registration across the state increased by almost 400,000 voters, from 8,366,633 in 2004 to 8,755,588 in 2008.<sup>73</sup> On Election Day, voters poured into the state’s polling places: 6,012,692 cast ballots – or 64 percent of the voting eligible population.<sup>74</sup> This is compared with already high turnout from the 2004 election when 62.6 percent of the state’s voting eligible population turned out.<sup>75</sup> Registration rates were so high that the state showed a slight dip in percentage turnout among registered voters – 68.4 percent in 2008, down from the 2004 high of 69 percent – but an overall increase in the number of voters.<sup>76</sup> Additionally, the state showed substantial increases in turnout in its most urban districts.<sup>77</sup>

The 2008 election cycle presented significant challenges for voters themselves and voter advocates, ranging from registration and database problems, to insufficient poll worker training and recruitment, and inadequate allocation of polling place resources. Pennsylvania, however, presented these challenges in a particularly complex way because of the intensely local nature of election administration and the evolving role of the Secretary of the Commonwealth through the implementation of the statewide database and other changes.<sup>78</sup> The Pennsylvania Code specifically requires that the newly created and federally mandated voter registration database (the Statewide Uniform Registry of Electors (SURE) system) “[p]reserve the power of the [local] commissions to make determinations as to the qualifications of applicants.”<sup>79</sup> The lack of statewide standards and enforcement caused problems and confusion in many key areas of election administration: voter registration, poll worker training, general resource allocation, and paper ballot distribution.

Advancement Project’s work in the 2008 cycle focused on seven key counties: Allegheny, Berks, Delaware, Lehigh, Montgomery, Philadelphia, and, in part, Chester. All of these counties have high concentrations of minority voters and had very high turnout. Additionally, Advancement Project developed a strong

advocacy relationship with the Secretary of the Commonwealth, working to shape and expand the Secretary's role in the administration of elections.

This report provides an overview of Pennsylvania's critical election administration issues in 2008 with an emphasis on the advocacy efforts of Advancement Project and its allies, including:

- Improving the HAVA matching process in the counties to ensure that unmatched voters were not being wrongly disenfranchised
- Expanding the use of, and understanding of the procedures for, emergency paper ballots
- Assisting with and improving the registration verification processes of local voter registration organizations
- Working with the state and key counties to improve poll worker training
- Advocating for improved polling place resources, particularly in minority precincts
- Improving registration, inmate education, and voting processes in Philadelphia prisons

## REGISTRATION ISSUES

Throughout the state, new voter registrations increased at historic levels. This was particularly true in counties with large minority and youth populations. In Philadelphia, for instance, 40,000 registration applications were received on the last day of the registration period.<sup>80</sup> Berks County processed a record 34,000 applications in the run-up to the general election.<sup>81</sup> Pennsylvania also had large numbers of third party registration groups, fanning out through the state, registering hundreds of thousands of voters. Overall, the state's registration increased by 4 percent, from 8,366,633 in 2004 to 8,758,036 in 2008.<sup>82</sup>

The 2008 election was the first presidential election in Pennsylvania after it implemented a statewide voter registration database, but local election officials retained the authority and responsibility to process and determine the validity of registrations. Since 2006, the counties had been using the Statewide Uniform Registry of Electors (SURE) for various aspects of voter registration and election administration. The SURE database had improved cross-county registration information sharing, but the slowness of the system and other system problems sometimes caused the registration process to take longer and have more problems than it had before SURE.

Throughout the election cycle, resolving administrative problems with registration and lowering technical barriers to registration were core parts of Advancement Project's work. Although Advancement Project successfully advocated for improved processes on several fronts and likely prevented the disenfranchisement of many voters, registration issues remained among the most reported problems on Election Day.

### *Completing, Correcting, and Verifying Registrations*

As registrations poured into local offices in 2008, Advancement Project recognized that the substantial increase in registrations was going to cause the system to be overburdened as the deadline neared, and began urging voter registration groups to verify their registrations as early as possible. Advancement Project's verification work took several forms: (1) working with county election boards to create clear and accessible procedures for completing, checking, and correcting applications; (2) educating registration



groups on the importance of verification and best practices for doing so; and (3) conducting verifications for partner organizations.

Advancement Project strongly encouraged routine verification, as a useful tool both for ensuring the voters were added to rolls and also to provide a kind of quality control for the organizers who could use verification results as a teaching tool.

Advancement Project also verified the registrations of several coalition partners who did not have the time or resources to do so themselves. Advancement Project obtained a list of all registered voters, called the “Full Voter Export List,” from the Department of State and assisted partners in the labor intensive work of verifying voter registration applications. Additionally, Berks County election officials allowed Advancement Project to verify registrations using the SURE system in the county elections office. Advancement Project also requested and received a statewide list of all rejected voter registrants, broken down by county, and circulated this data to its partner organizations. As a result, an organization could determine whether any of the voter applicants on whose behalf it had submitted an application appeared on this list, and if there were such applicants, encourage them to correct or resubmit their applications before the deadline. Advancement Project also helped coalition partners obtain access to incomplete applications in several counties for this same purpose.

This work was particularly important because the verification process uncovered large numbers of registrations submitted by applicants with Spanish surnames or nontraditional spellings of common names (in addition to many other voters) that had been rejected or were in a pending or incomplete status. Misspellings, incorrect variations of hyphenated names, or the transposition of digits or letters were often the cause of the registration failure.

Notwithstanding these barriers to registration, Pennsylvania’s intensely local elections structure, while complicating voter groups’ ability to track registration applications, sometimes worked in voters’ favor. For example, under Pennsylvania law, voters have until the fifteenth day before the election to correct and appeal a denied registration application submitted before the deadline.<sup>83</sup> For the 2008 general election, this deadline fell on October 20, 2008. As this deadline neared, however, counties had received many incomplete applications, and it was not clear how they would handle corrections and completions submitted after the deadline for corrections. In Allegheny and Lehigh counties, for instance, county election officials noted that they tentatively planned to continue processing all applications received before the deadline. In mid-October, Philadelphia announced it would extend the deadline by which timely registrations could be corrected from October 20 to October 28. Advancement Project publicized the extension through strategic communications, coalition networks, and other means, and urged other counties to follow Philadelphia’s lead and extend the deadline.<sup>84</sup>

### *Continuing Problems and Uncertainties with HAVA Matching*

In 2006, Pennsylvania's Secretary of the Commonwealth directed county election boards to match all new voter registrations against the state's driver's license database or the federal Social Security Administration database as part of the federal HAVA verification process. He further instructed them not to process the registration unless the voter's identity could be matched exactly with the information in the database.

It was immediately clear to Advancement Project and its allies that this rule was (1) not required by HAVA and possibly violated it; and (2) would result in the disenfranchisement of thousands of otherwise eligible voters. In May 2006, Advancement Project and Project Vote met with the Secretary of the Commonwealth to present their legal and policy arguments against the matching program. Advancement Project also submitted a letter detailing legal and policy arguments. After several months of continued advocacy and additional evidence of the failure of the matching process, the Secretary of the Commonwealth issued a revised directive to the county boards of elections in which he made clear that a HAVA match is not prerequisite for registration and that they should not use a failure to match as a reason to reject a registration.<sup>85</sup> This reversal in policy likely prevented thousands of voter applicants from being blocked from the rolls.

During the lead up to the 2008 election cycle, Advancement Project learned that a number of counties were continuing to place unmatched voters in a 'pending' rather than active status, under which they would not be added to the voter rolls, and would thus, not be able to vote by regular ballot. Advancement Project informed the Department of State that many counties were not adding these 'pending' voters to the rolls, and successfully advocated that the Department should issue a clear notice or directive to the counties requiring them to follow Pennsylvania law and add these voters to the rolls, provided they met all prerequisites for registration. Additionally, Advancement Project advocated with individual counties to ensure that they were complying with the directive and were not blocking unmatched voters from the rolls. Shortly before Election Day, Advancement Project requested and received data from the Department of State showing that most of the counties across the state appeared to be complying by removing unmatched voters from the 'pending lists' and, where eligible, adding them to the voter rolls.

The HAVA-matching issue was also the subject of a lawsuit brought in the weeks preceding the election by the Pennsylvania Republican Party against the Secretary of the Commonwealth and several voter registration groups. The lawsuit demanded that the Secretary produce to the counties lists of unmatched voter applicants, among other relief.<sup>86</sup> The lawsuit wrongly asserted that unmatched voter applicants were ineligible to vote, and also misunderstood the system of voter registration in Pennsylvania, under which county election officials, not the Secretary, input and compare voter data and determine voter eligibility. Advancement Project submitted an amicus brief arguing that plaintiffs' claims were not supported by HAVA nor by Pennsylvania law, and that the relief plaintiffs requested was merely an attempt to challenge and suppress the vote of low-income and minority voters, consistent with the Republican Party's historical pattern of voter suppression against these communities.<sup>87</sup> Indeed, the claims and relief sought appeared to be solely aimed at creating 'caging' lists for challenging voters. The Court denied plaintiffs' motion and the suit was dismissed. On Election Day, there was little evidence of vote caging.

## **POLL WORKER TRAINING**

The training of poll workers has long presented a serious impediment to election administration in Pennsylvania. In every recent election, including the 2008 primary election, the deficient training and support of poll workers has led to faulty administration of provisional ballots, and a constellation of other illegal polling place procedures. These problems resulted in long lines and disenfranchised voters. After intensive advocacy from Advancement Project and coalition partners at the state and local level, 2008 poll worker performance may have improved slightly but was inadequate to protect voters' rights and provide

effective Election Day administration. The structural problems with poll worker performance remain unchanged: (1) the training in most cases is voluntary and officials believe they lack the authority to make it mandatory, and (2) management of poll workers remains a purely local matter where the state has taken only an advisory role.

### *Selection Process for Election Judges and Inspectors Inhibits Training*

The complications raised by the intensely local structure of election administration affect the performance of poll workers at all levels. All precincts in Pennsylvania are run by their own local elections board, which consists of a judge of elections, a majority inspector, a minority inspector, a clerk, a machine inspector (in most cases), and, in some polling places, a bilingual translator.<sup>88</sup> The judge of elections and both inspectors are elected to serve four-year terms.<sup>89</sup> Machine inspectors and the bilingual translators are appointed by inspectors or county election officials, while the clerk is appointed by the minority inspector.<sup>90</sup> This dispersion of authority and accountability, and the election of the local election officials, raise structural barriers to enforcing training requirements.

Though poll workers' actions and inactions can make the difference between a vote counted and a vote rejected, and between a well-functioning polling place and a polling place plagued by long lines and high levels of voter frustration, few Pennsylvania counties make serious efforts to ensure their election officials receive training. Furthermore, when poll workers fail to attend trainings, election officials do not penalize them.<sup>91</sup> Many county officials take the position that they cannot require training because the highest-level poll workers are elected. As stated by a Philadelphia election official: "So we make it mandatory and they don't show up. Then what? Remember, these people are elected. We can't just replace them."<sup>92</sup> In some places, such as Philadelphia, counties offer minimal compensation to encourage attendance; however, the \$20 offered there is not enough incentive for all the poll workers to come to training.<sup>93</sup> As a result, countless untrained and unsupported poll workers work every Election Day, to the detriment of both the poll workers and the voters.

### *Recent Trainings and Flawed Information*

In the months leading up to the 2008 general election, poll worker training often failed to cover adequately the numerous tasks required of a poll worker. For example, in the fall of 2008, Advancement Project representatives attended trainings in Philadelphia that were scheduled for one hour but only lasted 30 minutes. The trainings proceeded so quickly that they failed to cover basic information, and additionally, the information they did provide was extremely difficult to digest when delivered so quickly. In 2006, the city also made available to poll workers a 30-minute video on using the voting machines but did not require poll workers to watch it.<sup>94</sup>

Additionally, many of the materials and manuals for poll workers were cumbersome and contained substantial errors and omissions. For example, Philadelphia's "Guide" is formatted as a vertical and horizontal fold newspaper with tiny type and as a result, is very difficult to use and read. Some manuals also included incomplete and inadequate representations of Pennsylvania election law. For example, none of the manuals Advancement Project examined in the spring of 2008 addressed the administration of emergency paper ballots in the event of machine failures. Only after Advancement Project advocated with county election officials, and the Secretary of the Commonwealth released a directive related to emergency paper ballots, did several counties add separate sheets relating to emergency ballots to correct this omission.

Several poll worker manuals only provided partial information about Election Day procedures, such as listing several forms, but not a complete list, of acceptable voter ID.<sup>95</sup> Other manuals supplied information contrary to Pennsylvania law, such as indicating that a poll worker may ask for ID whenever they are "unsure" of a voter's identity.<sup>96</sup>

Although the Secretary was aware of the deficiencies in training and the risks to voters imposed by those deficiencies, he did not issue any directives making improvements mandatory. The State issued memos to county election officials, encouraging improvements to poll worker training,<sup>97</sup> but there is no evidence that many counties took action to comply with these memos.

### *Advocacy led to some improvements and may pave the way for future trainings and standards*

Advancement Project recognized the serious risks to voters posed by spotty or non-existent poll worker training and organized a coalition around the issue. The coalition issued a joint statement, calling for clear, uniform, and mandatory training requirements; the establishment of qualifications for and the assessment of poll workers; and the distribution of effective, correct manuals.

At the same time, Advancement Project and coalition members engaged in direct advocacy with officials who could institute and improve the training. Advancement Project sent letters to the Department of State, several counties' board of elections and/or director of elections, and Philadelphia's mayor. Advancement Project also had extensive contacts with Philadelphia and Montgomery County officials relating to the adequacy of training and materials, and Montgomery County agreed to distribute Advancement Project's palm cards to its poll workers.

In September 2008, Advancement Project sent a letter to the Department of State's general counsel arguing that the Secretary's failure to order mandatory training and to set basic standards for that training put thousands of voters at risk of disenfranchisement. These failures could have seriously disrupted the election and probably violated federal law.<sup>98</sup> Despite Advancement Project's argument that the Secretary had the authority and responsibility to order adequate training, the Secretary continued to insist that responsibility for training rested with local authorities.

Nonetheless, Advancement Project's advocacy over the course of the election cycle significantly raised awareness of poll worker training as a serious issue for voters and encouraged some local officials to upgrade their training. For instance, Advancement Project's persistent discussions with Philadelphia officials spurred them to improve their poll worker training, including efforts to ensure that the training lasted a minimum of one hour, and, to include training materials on emergency paper ballot procedures. Additionally, Advancement Project's advocacy laid the foundation to press for statewide reforms that would require mandatory and adequate training for all poll workers.

## **POLLING PLACE RESOURCES**

Over several election cycles, the administration of and confidence in Pennsylvania's elections have been marred in places by the insufficient allocation of polling place resources, both in terms of material and human resources. Aware that this troubled system would be additionally taxed in 2008, Advancement Project began its study and advocacy on this issue early in the election cycle. From responses to public records requests and meetings with local and state officials, it was clear that some counties were likely to have under-resourced polling places, and that the state was unlikely to require the counties to add voting machines and resources as needed.

Several jurisdictions were very responsive to the need to increase such allocations. For instance, Montgomery County purchased seventy-five additional voting machines and allocated them to the precincts that were predicted to need extra resources. Philadelphia also added additional machines based on re-assessments of which precincts were most likely to need more resources. Advancement Project also pressed the Secretary of the Commonwealth to issue a directive setting minimum allocations of machines, poll workers, and other resources per precinct. Not long before the election, the Department of State issued recommended minimum allocations for each of the state's polling places.

On Election Day, it appeared that most polling places had sufficient resources and, except for a few instances, they were fairly allocated. There were several problem spots, however, mostly due to overwhelming turnout. The biggest problems were reported at polling places that served college campuses. In Pittsburgh, near the University of Pittsburgh, and in State College, near Penn State, there were reports of two to three-hour waits. At Lincoln University, a historically black college in Chester County, the waits were reported to reach six hours.

Additionally, several polling places in Delaware County with large minority populations had insufficient poll workers and voting machines, and lack of clear polling place operations, all of which caused long lines and substantial voter confusion. Advancement Project's experience in Yeadon, Delaware County, illustrates resource and training problems vividly:

- By far the largest number of calls to our command center came from Yeadon (Delaware county), Precincts 1, 4, and 7 (95% minority communities), which were all in one polling place, Bell Elementary school. Over 3,000 registered voters were assigned to this one polling place, divided into three precincts.
- From the very beginning of the day, there was mass confusion; nobody knew which line to go in, which precinct they were in. Early in the day, an official was directing voters to stand in one line, contributing to substantial delays. Pretty quickly, 2-3 hour lines developed and voters would wait in one line for hours only to find out that they were in the wrong line.
- All three precincts were under resourced in terms of poll workers and voting machines. One precinct had only 2-3 poll workers, and the other two had 3-4 poll workers. All three precincts should have had 5 poll workers at a minimum.
- We had poll monitors stationed in Yeadon all day. Our monitors got street lists from the poll workers and worked the rest of the day to direct voters to the correct line. This greatly reduced the chaos and solved the line problem. It also helped that there was not another crush of voters later in the day—most came out in the morning.<sup>99</sup>

### *Advocacy on Paper Ballots*

In addition to trying to ensure that all precincts had an adequate number of machines, Advancement Project realized early in the election cycle that many election officials were confused about how to respond when machines broke down or malfunctioned. Many simply did not know the form and number of emergency ballots that should be available at each precinct, or the circumstances under which a poll worker should issue an emergency ballot and how that differs from a provisional ballot. At the time, the Secretary of the Commonwealth had not issued any directives instructing local officials on the use of emergency paper ballots.

In April 2008, before the primary election, Advancement Project advocated that county and local election officials in its focus counties issue and follow clear rules on the use of and procedures for emergency paper ballots, in the event of machine breakdowns. Regretfully, this advocacy was unsuccessful, and during the 2008 primary election, many poll workers had no idea how to respond to machine malfunctions, including distributing and processing backup paper ballots. Different procedures applied across the state and even within counties. While some voters were provided with emergency paper ballots when they faced machine breakdowns, others were told to go home and come back later. Even in places where poll workers eventually offered voters paper ballots, the procedures and forms of these ballots varied from county to county and from precinct to precinct. Some voters were offered paper ballots, properly deposited in secure boxes and counted. But others waited for hours and were subject to, and disenfranchised

by, provisional ballot procedures not intended to apply to registered voters. Further, the majority of these reported problems occurred in precincts and census tracts with higher than average populations of people of color and people living in poverty.

In June 2008, Advancement Project met with the Department of State to advocate for clear rules on the use of backup paper ballots, including how many paper ballots must be available at each polling place, and for a directive that they must be offered when 50 percent of the voting machines in a precinct are not functioning. Working with a diverse coalition, Advancement Project also wrote letters to its focus counties explaining the legal and practical obligations of the counties to establish and enforce clear guidelines for the distribution of emergency ballots.

In late August, when the Secretary of the Commonwealth still had not issued a directive providing clear guidelines on when and how to distribute emergency ballots and how many such ballots must be available at each polling place, Advancement Project led a coalition of 25 voting rights groups to issue a public statement demanding that the Secretary of the Commonwealth issue a uniform policy on this issue. The coalition also began a public campaign urging other groups and voters to email and call the Secretary.

In response to this advocacy, on September 3, the Secretary issued a directive to the counties setting forth rules governing the administration of emergency ballots.<sup>100</sup> Just before issuing this directive, the Secretary also issued a guideline that each polling place should have emergency ballots located on site at minimum in the amount of at least 20 percent of its registered voters.<sup>101</sup> The September 3 directive only required the distribution of emergency ballots when all voting machines in a precinct had become unavailable. While this was far short of the trigger of a 50 percent machine failure that the coalition had sought, much of the coalition welcomed the clarity and consistency of the directive, particularly as it pertained to issuing and counting backup paper ballots. The ballots were to be distributed “immediately” – not after waiting for a machine to be repaired, as had previously been the policy. Additionally, the ballots were to be clearly distinguished from provisional and other ballots, and were to be counted as regular ballots, not subject to the hurdles of provisional or other ballots.

Just 10 days before the election, some coalition members, represented by Voter Action and other counsel, filed a lawsuit in federal district court asking that the Secretary be ordered to revise its directive to apply as soon as half the voting machines in a precinct fail, and that he order all counties to have emergency ballots at each polling place equal to 20 percent of the registered voters.<sup>102</sup> The lawsuit, in large part, relied on evidence collected and analyzed by Advancement Project and its partners. On October 29, less than a week before Election Day, the court granted plaintiffs’ motion for preliminary injunction and ordered the Secretary to issue the requested directive.<sup>103</sup> The court found that machine breakdowns were often responsible for long delays at voting places, which effectively disenfranchised potential voters. “[T]he polls are open for one day and one day only ... There is no rain date.”<sup>104</sup>

Many counties scrambled to comply with the directive, but some election officials suggested it would be hard to get the ballots printed in time. For instance, the Montgomery County Voter Services Director stated that he expected to comply with the order but that “80 percent” of the state’s counties did not have emergency paper ballots ready and would not be able to print them before Election Day.<sup>105</sup> According to post-election reports from the counties, few paper ballots were needed. Only 11 counties distributed any emergency ballots, and in most of those counties, only a handful were needed. In Allegheny County, however, 708 emergency ballots were used in 34 precincts. Also, according to a post-election survey of emergency ballot use, most of the counties reported that they were prepared on Election Day with such ballots, but several grumbled about the additional strain and cost of preparing the safety net, particularly at the last minute.<sup>106</sup>

## PROVISIONAL BALLOTS

The primary issue with provisional ballot distribution in Pennsylvania remains poll worker training. Historically, too many provisional ballots have been distributed because poll workers simply did not call the elections office to determine whether a voter was registered and, if so, where. This often resulted in too many provisional ballots being distributed and too few being counted or only partially counted because they were cast in the wrong location.

Overall in the 2008 general election, 32,898 provisional ballots were cast in Pennsylvania, and 44 percent of those were rejected. Pennsylvania's provisional ballot rate (.5 percent of the ballots cast) is very low compared with other states, but the casting of provisional ballots, and their rejection, reveal trouble spots in the election process. Notably, Philadelphia stands out for a high percentage of provisional ballots cast – about 1.7 percent of the ballots cast – which may be attributable to problems and omissions it had with its supplemental voter lists this election. Nevertheless, Philadelphia rejected only 33 percent of those ballots, a far lower percentage than the rejection rates of Advancement Project's other focus counties.

Advancement Project's ongoing analysis of the casting and counting of provisional ballots in the 2008 primary and general elections reveals that far too many votes are disqualified simply because the provisional ballot envelope was incomplete.<sup>107</sup> In Allegheny County, for instance, 27 percent of the provisional ballots cast in the primary, and 16 percent of those cast in the general election, were not counted because the envelope was not complete. This is purely a poll worker training problem which should be easily correctable. After the election, Advancement Project sent letters to Allegheny, Dauphin, and Delaware counties advocating for proper counting procedures and monitored some of the counting in Philadelphia and Montgomery counties.

## GOING FORWARD

Pennsylvania is poised to continue making substantial improvements to its administration of elections. The 2008 election established the foundation to begin making those improvements. Nevertheless, because the diffuse and regionalized structure of authority over elections continues to be an obstacle to reform, Advancement Project will continue to urge the Secretary of the Commonwealth to assert more control and direction over the local election officials, particularly in areas of poll worker training, resource allocations, and registration. In instances where statutory reform is unlikely but necessary, Advancement Project will advocate with the Secretary for the development of incentives for improvement and standardization.

Advancement Project stands ready to work with state and local officials to continue improving Pennsylvania's elections. Already in 2009, Advancement Project has opposed a proposed bill to impose photo ID requirements for all voters and continues to work with a broad coalition advocating for enforcement of NVRA requirements, early voting, increased access for jail-based voters, and improving and standardizing poll worker training.

## Jail-based registration and voting

Pennsylvania is one of the few states that allow prisoners to register and vote while in jail. Under Pennsylvania law, pretrial detainees, citizens incarcerated on misdemeanors, and all individuals under house arrest are entitled to register regardless of the nature of the underlying offense.<sup>108</sup> Only those currently serving time in prison for conviction of a felony are not allowed to vote.<sup>109</sup> Pretrial detainees and other incarcerated individuals are required to register and vote absentee at their last residence before incarceration.<sup>110</sup>

Many prisoners and those with convictions, as well as prison employees, are unaware of prisoners' rights to register and vote, due to changes in the laws and lack of public awareness and education on these issues. Additionally, many counties and prison officials resist allowing advocates, or prison employees, to assist prisoners in registering and casting an absentee ballot. Because of the isolation of jails, frequent language and literacy challenges, inadequate institutional knowledge and an unwillingness to educate prisoners about their voting rights and procedures, voting in prison can be quite difficult without the assistance of advocates.

Recognizing this, Advancement Project helped create a jail-based advocacy and action coalition that included a broad range of groups involved with prisoners, including formerly incarcerated individuals. As part of the coalition, Advancement Project helped pave the way for increased voter protection and registration work in jails and prisons. For instance, Advancement Project began working with corrections officials well before the election to establish procedures for access and held trainings in correctional facilities starting in 2007 and continued to work with groups doing trainings and registration drives throughout the election season.<sup>111</sup>

Many prisoners need help completing forms and navigating the complications of absentee ballots. Additionally, county boards of elections usually communicate with registrants by mail or telephone – neither of which is reliable for prisoners. Advancement Project has advocated with prison wardens to allow advocates to provide prisoners with in-person, on-site assistance and thus, reduce the number of errors and omissions on voter registration and absentee ballot forms.

Prisons that allowed advocates to provide assistance on site had a significantly better registration and voting rate than those that did not. In 2008, Advancement Project's prison voting coalition met with prison and election officials in Philadelphia to examine then current voter registration and voting procedures, which were resulting in relatively low levels of voter participation among prisoners. As a result of Advancement Project's advocacy and the efforts of the coalition, prison and election officials agreed to improve these processes. Initial reports indicate that the efforts and advocacy paid off: registration and voting drives were very successful, with many more incarcerated individuals casting ballots from Philadelphia prisons than in previous elections. In addition, the Allegheny County Jail in Pittsburgh allowed almost 50 volunteers, working in conjunction with Advancement Project partners, to register voters and assist with absentee ballot applications in the week before the registration deadline. In a two-hour session, the volunteers registered more than 400 voters and received 700 absentee ballot requests.<sup>112</sup>

Building on the improvements in 2008, Advancement Project and other advocates are working on additional improvements to and expansion of registration and voting procedures for inmates and released prisoners as a top priority in Pennsylvania in 2009.

<b>Registration Deadline:</b>	<b>The 30th day before the election<sup>113</sup></b>
<b>Correction/Completion After Deadline</b>	<b>May complete or correct up until the 15th day before the election<sup>114</sup></b>
<b>Change of Address</b>	<b>Registered voter moving within a county may vote at either old or new address but must provide written affirmation of new address<sup>115</sup></b>
	<b>Registered voter moving to a new county may vote at old address<sup>116</sup></b>

## Ohio



After several troubled election cycles and a history of election administration that many viewed as deeply politicized, Ohio entered the 2008 cycle already in the spotlight. Campaigns to register more than 250,000 new voters were well underway in late 2007, and challenges to those efforts began soon afterward. The new Secretary of State, Jennifer Brunner, announced ambitious plans to win back public confidence and to improve the administration of the voting process. It was clear that the state was likely to be a battleground yet again in a closely fought, politically divisive election year.

By early 2008, another confidence-rattling election seemed to be on its way. Partisan groups filed lawsuits in an effort to challenge some voters. Other groups filed lawsuits to remove barriers to the voter rolls. There were noisy threats of vote caging – that is, efforts to challenge voters at the polls. Rumors of problems with the registration process percolated around the state. Partisan groups attacked as illegal an early voting period during which voters could register and vote at the same time. Additionally, as recently as a May 2006 primary election, Ohio’s largest county experienced significant malfunctions in its electronic voting machines. The new Secretary of State placed the county under administrative oversight in early 2007. Just weeks before the 2008 general election, hackers broke into the Secretary of State’s Web site, freezing access and shaking confidence during a critical period.<sup>117</sup>

At the closing of the polls on Election Day, there was a consensus sigh of relief: Ohio’s 2008 general election was a major improvement over past years. The sense of relief was likely made possible by the margin error in the election results: about 240,000 votes separated the leading presidential candidates (or 4.5 percentage points) as opposed to 110,000 votes and 1.9 percentage points in 2004.<sup>118</sup> Thanks partly to the increased availability of early voting, even Ohio’s most troubled polling places did not have significantly long lines. Furthermore, the proactive Secretary of State and voting rights advocates such as Advancement Project were able to identify trouble spots and mitigate their effects before Election Day.

Advancement Project entered the 2008 election cycle ready to face these challenges. Already working with a diverse coalition of local and state groups and building strong relationships with new state officials and local officials, Advancement Project was able to identify and begin resolving the most serious issues likely to interfere with Ohio’s voters well before Election Day. Advancement Project focused its voter protection advocacy on the six counties that had the largest minority populations and histories of election administration problems: Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit. Advancement Project also worked closely with the Secretary of State’s office to improve administration at the state level.

Because the state had a new Secretary of State, Jennifer Brunner, who seemed eager to protect the rights of voters, Advancement Project's role often involved being an advisor and advocate to preempt problems—rather than a flat out adversary as in past elections. On several key issues, Advancement Project used its legal expertise to encourage and then support the secretary's decisions related to key registration issues and early voting. That expertise and Advancement Project's advocacy were also effective in improving poll worker training and encouraging a better allocation of resources at polling places.

This report focuses on several key flashpoints during the 2008 election that illustrate the evolving status of election administration in Ohio and the importance of vigilant advocacy. The report covers several registration issues including the statewide database and voter caging concerns, poll worker training, continuing problems with provisional ballots, and the success of early voting.

## Registration and Voter Database Problems

Ohio was a hotbed of registration activity. Voter registration groups began organizing almost a full year before the election and poured resources into Ohio. The Secretary of State announced that between January 2008 and the close of registration for the 2008 general election, roughly 665,900 active voters had been added to the voter rolls.<sup>119</sup>

The intense registration activity unquestionably taxed the system, including the state voter registration database, which the Secretary of State has called “poorly constructed.”<sup>120</sup> The statewide database and local offices were flooded with registrations. As the election approached, it became clear that significant flaws in the database or in the data entry had put thousands of voters at risk of being disenfranchised. On Election Day, registration problems were the number one issue reported to nonpartisan voter hotlines. The Secretary of State's post-election task force identified increasing the reliability of the state's voter registration database as one of the most important reforms for improving Ohio's election administration.<sup>121</sup>

While this section touches on the nuts and bolts of registration issues, such as the construction and maintenance of the database, it focuses on the contentious and highly politicized efforts to knock voters off the roles. These battles, involving the potential challenge of hundreds of thousands of voters, provide powerful evidence of the state's need for a transparent and stable statewide voter database. These battles also demonstrate the critical role advocates can play when government officials have discretion in how they implement laws and establish procedures relating to voter registration.

### *60-Day Notices and a Pushback against Challenges and Caging*

In 2005, Ohio passed a law requiring county boards of elections to mail non-forwardable notices to all registered voters 60 days before an election.<sup>122</sup> As the 2008 election neared, the critical question on the implementation of this law was whether a notice returned as undeliverable could be used as the sole support for canceling a voter's registration. Because the new law allowed challenges to registrations without notice to the voter, it created a substantial risk that voters would be challenged as part of a ‘caging’ campaign. Under existing Ohio law, any voter could obtain the names of voters whose notices were returned,<sup>123</sup> giving groups the ability to prepare lists for voter challenges twenty days prior to Election Day.

Through an investigation and open records requests, Advancement Project discovered that before the March 2008 primary, at least 600,000 notices were returned in the counties where Advancement Project was focusing its pre-election efforts. This suggested that well over one million notices were likely to be returned throughout the state before Election Day. These returned notices were far more likely to affect voters in poor and minority neighborhoods and college students than people living in more affluent areas. In addition, the non-forwardable notices were often returned for reasons unrelated to a voter's eligibility, such as a hold on a voter's mail during a vacation, a data entry error at the board of elections, or a mail delivery error.<sup>124</sup> Furthermore, there was no question that these notices raised the potential of serious disruption and disen-

franchisement on Election Day and during early voting – while providing little in the way of registration integrity. In previous election cycles, ‘vote caging’ was attempted when a political party sent non-forwardable notices to voters that, when returned to the political party, alerted the party to voters who may be vulnerable to challenges to their right to vote.<sup>125</sup> Particularly in minority and low-income areas, ‘vote caging’ caused a significant disruption at the polls.

Advancement Project’s 2008 research and past experience fighting ‘vote caging’ in Ohio in 2004 put it in a strong position to argue for rules that would block the use of these returned notices for caging lists.<sup>126</sup> Advancement Project advocated vigorously for Secretary of State Jennifer Brunner to issue a directive prohibiting the challenge of Ohio voters whose names appeared on returned mailings or any other caging list. This remedy would have permitted county boards to comply with the statutorily required mailing,<sup>127</sup> while ensuring that no voter would be challenged on residency grounds, based solely on the unreliable evidence of returned mail.

Following Advancement Project’s advocacy, Secretary Brunner issued a directive in September 2008 making clear that no voter could be challenged based on the returned mailing alone. Critically, Secretary Brunner also directed county boards of election to provide every challenged voter with notice and the opportunity to be heard at a public hearing before Election Day. In her directive, she made clear that failure to provide such notice would be unconstitutional and impractical, advising the boards that providing due process on challenges to voter registrations would diminish the likelihood of election lawsuits and other potential disruptions.<sup>128</sup>

Advancement Project’s advocacy on this issue, by encouraging the Secretary’s directive and achieving early public scrutiny for potential challenges,<sup>129</sup> served as a significant deterrent to Election Day (and early voting) challenges. Indeed, there were few reports of challenges in Ohio in 2008.

### *Potential Challenges Based on HAVA Matching and the Statewide Database*

The Help America Vote Act (“HAVA”) requires Ohio, and all other states, to maintain a uniform, interactive statewide voter registration database that serves as the state’s central resource on voter registration information.<sup>130</sup> It also requires states to establish the means by which information on voter registration applications may be matched against the federal Social Security database and the state driver’s license database.<sup>131</sup> HAVA does not require states to cancel or reject a registration application because of a mismatch and allows states to construct their own parameters on matching.<sup>132</sup>

Ohio has not legislated procedures to implement the so-called ‘HAVA matching requirements.’ Instead, the Secretary of State instituted a process by which state election officials would try to match information from an application against the social security database or the driver’s license database depending on which number had been provided on the form. If a match could not be confirmed, the county board of elections would be notified and the individual would be registered but listed as “unconfirmed.”<sup>133</sup> Voter applicants were not to be denied registration because of a match failure. At some point, the Secretary of State may have stopped notifying counties of registrations that could not be matched.<sup>134</sup>

In keeping with the contentious and highly politicized nature of recent Ohio elections, the state’s HAVA matching regime and statewide database came under fire just weeks before the election when the Ohio Republican Party (“ORP”) filed a lawsuit against the Secretary of State. The ORP claimed that the Secretary of State had intentionally and illegally disabled a matching function, violating HAVA and allowing fraudulent registrations to remain in the database.<sup>135</sup> The Republican Party demanded that the Secretary of State identify any mismatches (up to 200,000) to county officials so those names could be removed from voter registration lists unless further verified.<sup>136</sup> It appeared, too, that the Republican Party wanted the list of unmatched voters to facilitate pre-Election Day challenges.

Notably, the “matching mechanisms” challenged by the Republican Party had been in place “at least as early as 2007,” yet they were only challenged weeks before the election.<sup>137</sup> But as the rushed litigation revealed, it simply was not clear what protocol the Secretary of State was using to confirm the registrations entered into the state database.<sup>138</sup> The Secretary’s own handbook on the database was not clear, and evidence presented on both sides of the case was somewhat muddled. It is clear, however, that quite in keeping with HAVA, the Secretary did not use mismatches between the databases to deny or cancel registration applications. Nor did she send lists of registrations with mismatched information to county election officials.<sup>139</sup> At some point during the election cycle, the protocol for matching between the voter registration database and the Bureau of Motor Vehicles was suspended.<sup>140</sup>

Although the database was revealed to be flawed and poorly constructed, the litigation also demonstrated that the failure to verify mismatched registrations was unlikely to result in any significant voter fraud. Most potential mismatches were not the result of fraud but of database errors and other human errors – both on the state voter registration side and the Bureau of Motor Vehicles side.<sup>141</sup> It is well known that matches routinely fail – up to 30 percent of the time – for reasons unrelated to a voter’s eligibility even when databases are well designed and maintained.<sup>142</sup> Further, Ohio counties have a variety of tools at their disposal, including the voter identification requirement, to ensure that a flawed registration application does not result in a fraudulent vote. Moreover, as the initial appeals court panel found, an eleventh hour programming change could trigger a glitch that would cause “validly registered voters to be inadvertently purged from the poll book.”<sup>143</sup>

After a flurry of appeals, conflicting opinions, and an emergency order from the U.S. Supreme Court, the election went forward without the Secretary’s having generated lists of unmatched voter applicants, nor having provided those lists to the counties.<sup>144</sup> It is critical to note that despite repeated allegations of registration fraud and the potential for voter fraud before the election, there were no significant claims of fraud after the election. Furthermore, county officials, those most directly involved with the election process, have been unanimous in stating that mismatches alone should not be used to block people from voting, though officials in some counties expressed interest in obtaining lists of unmatched voter applicants in order to perform further checks.<sup>145</sup>

The conflicts in Ohio during the 2008 election cycle illustrate one of the core potential problems with HAVA’s requirement of matching and the establishment of statewide voter databases: a lack of transparency even in voter-friendly administrations may create deep suspicions, undermine voter confidence, and open the door to obstructive litigation.

## EARLY VOTING AND GOLDEN WEEK

In 2005, Ohio amended its absentee voting law to allow voters to vote an absentee ballot by mail or in person without excuse.<sup>146</sup> This expansion of absentee voting – including the so-called golden week during which voters could register and vote at the same time – represents one of the biggest changes, and improvements, to Ohio’s election administration in years. A record 30 percent of all votes, or 1,744,753 votes, were cast absentee in 2008.<sup>147</sup> That is about three times the number of absentee ballots cast in 2004. Additionally, some 12,800 voters registered to vote and then voted at same time during golden week.<sup>148</sup> Early voting is credited by almost all election officials and advocates as a key element in the smooth, mostly successful administration of the 2008 elections, particularly because it was effective in reducing long lines on Election Day.

There were, however, two areas of conflict around in-person absentee voting. First, some locations experienced very long lines as Election Day neared. Second, the overlap of early voting and voter registration periods came under attack from the Ohio Republican Party and some local officials, illustrating, yet again, the contentious and partisan culture of election administration in Ohio.

Under Ohio law, in-person absentee voting may take place at only one location in each county.<sup>149</sup> This limitation, combined with the newly relaxed rules on voting absentee and the high interest in this election, caused very long waits in several counties, including Cuyahoga and Franklin counties. On the days leading up to the election, waits were sometimes four or five hours long.<sup>150</sup> Indeed, in Franklin County, on the weekend before the election, lines averaged five hours, and some voters had to wait until well past midnight to vote.<sup>151</sup>

Ohio's relatively new golden week became the subject of intense partisan wrangling as many voters and advocacy groups jumped at the chance to take advantage of the five-day overlap between the absentee voting period and the close of voter registration. Although there had long been a brief overlap between the beginning of the 35-day absentee voting period and the close of registration, this was the first Presidential Election held since the institution of no-excuse absentee voting. For the first time, many new voters were encouraged to take advantage of the overlap. In August 2008, Secretary Brunner, apparently recognizing the need for a consistent rule, directed local election officials to allow voters to register (or update their registration) and vote absentee at the same time during the overlap period.<sup>152</sup> She directed each local board of elections to "develop procedures to immediately register the applicant and issue an absentee ballot . . ."<sup>153</sup>

On September 12, 2008, two weeks before the early voting period, the Ohio Republican Party filed lawsuits to block the concurrent registering and voting during golden week. Their initial lawsuit in the Ohio Supreme Court claimed that Secretary Brunner violated Ohio law by allowing voters to register and vote absentee in one stop. On September 29, the Ohio Supreme Court refused to order Secretary Brunner to change her directive and found that her directive comported with Ohio law.<sup>154</sup> While that challenge was pending, the ORP filed a lawsuit in federal court, claiming that Directive 2008-63 violated state law. Following the Ohio Supreme Court's decision, the federal court adopted its interpretation and declined to enjoin the law on that ground.<sup>155</sup>

Golden week voting proved to be contentious at a local level as well. In Hamilton County, the county prosecutor sought to quarantine all 671 votes cast during golden week so that his office could scrutinize the voter's eligibility.<sup>156</sup> The prosecutor then subpoenaed 300 of the ballots for further scrutiny. Although the prosecutor released the ballots after several press conferences claiming unsubstantiated fraud, the Hamilton County Board of Elections chose to sequester the ballots until Election Day.

On October 29, Advancement Project, on behalf of the Cincinnati branch of the NAACP, sent a letter to the board requesting that these votes be processed immediately or that the board provide a reason for the sequestering. At an early morning meeting the following day, Advancement Project's letter was distributed to the board members and the board decided to begin processing all but one of the ballots cast during golden week.

## POLL WORKER TRAINING

Despite the efforts of the Secretary of State and groups like Advancement Project, the 2008 election demonstrated yet again that poll worker performance remains one of the state's biggest hurdles to ensuring that no eligible voter is disenfranchised. Poll worker confusion relating to provisional ballots, identification requirements, locating names in the database, and, simply, properly assisting voters was one of the most reported problems on Election Day. This confusion resulted in too many voters being issued provisional ballots and the likely invalidation of those ballots. It also resulted in delays in voting.

The Secretary of State worked closely with willing local boards to develop good training tools and developed an on-line training program that was accessible to all poll workers. Additionally, the state and local

boards more actively recruited poll workers. Unlike many other states, Ohio has fairly clear rules on how much training is required: all poll workers must be retrained every three years and election judges every other year.<sup>157</sup>

The four-hour Cuyahoga County training attended by Advancement Project was thorough and allowed for substantial hands-on practice. All of this represented a substantial improvement for poll workers – and thus, voters – over the experiences described following the 2006 election, when poll workers complained that training left them confused, and, in addition, caused mistakes in their learning how to use voting technology.<sup>158</sup>

Despite these efforts and improvements, Ohio’s poll workers were faced with a complicated and shifting legal landscape and continually changing voting technology. Poll workers were expected to understand and apply 13 circumstances under which a voter must cast a provisional ballot. Additionally, poll workers had to enforce new and complex voter identification laws. Furthermore, changing voting technology and the increased use of backup paper ballots provided another set of complications for the poll workers and their supervisors. Because of these complications, even the most experienced poll workers were not fully prepared on Election Day.

The improved attention to training and recruitment was probably effective but it could not overcome challenges created by the statutory requirements poll workers are expected to master and apply. Simplifying provisional ballot rules and identification requirements is essential to improving poll worker performance.

## POLLING PLACE RESOURCES

In 2004, Ohio was meltdown central for polling resource misallocation. On Election Day and the day after, the news was filled with stories of Cuyahoga and Franklin counties’ record long lines and of voters turned away. Among many voters, there was a sense that the unequal long lines may have been decisive in that close election. Indeed, in the 2004 election, African Americans reported waiting in line to vote three times as long as white voters – fifty-two minutes to eighteen minutes.<sup>159</sup> In the four years following the 200 election, a number of key counties moved from the flawed punch-card system to optical scan, and others also purchased more machines.

In early 2008, Advancement Project conducted a thorough study of polling place resource allocations for 2004 and 2008 in its six counties of focus and began to advocate for a more equitable distribution of polling place resources. Its analysis demonstrated that several counties were not prepared to handle the expected turnout for 2008 and that the misallocation of machines and poll workers was likely to have a negative impact on polling places that served minority communities.<sup>160</sup> Although the problems did not appear to be as severe as they had been in 2004, there was still a significant likelihood of an election disruption.

During preparations for the 2008 election, Secretary Brunner issued directives to the local boards providing guidelines on the number of voting machines and backup paper ballots that each precinct should have. She also required local boards to provide precinct level information on machine allocations.

After the publication of Advancement Project’s *End of the Line* report, Secretary Brunner issued a press release describing additional steps taken to improve polling place resources:

- Issuing additional guidelines for voting machine allocation and distribution to minimize long lines
- Requiring backup paper ballots in counties using touch-screen voting machines and reimbursing counties for the cost of paper ballots

- Requiring implementation of two voter lines in larger precincts with touch screen voting
- Establishing statewide poll worker training curriculum and providing each poll worker a ‘quick reference guide’ similar to Advancement Project’s palm cards

On the morning of Election Day, a few polling places reported long lines, but by noon, they were almost all gone. The improved allocation of resources and the move away from punch-card voting combined with the success of early voting resulted in shorter lines and a smoother election day.

## PROVISIONAL BALLOTS

In the 2008 election, Ohio continued to rely on provisional ballots more than most states, distributing a comparatively high percentage of the ballots but also counting a higher percentage of those ballots. The state’s provisional ballot practices and policies remain overly complex, confusing, and fraught with controversy. In the months before the election, Advancement Project pressed hard and with some success for clearer rules that would protect voters. Yet, as the events of the 2008 election illustrate, the laws and practices on when to distribute and when to count a provisional ballot remained somewhat unclear throughout the election process.

### *Ballots Cast and Counted*

The number and rate of provisional ballots cast in Ohio rose in 2008 from the 2004 election. Ohio voters cast 206,859 provisional ballots in 2008 – or approximately 3.5% of 5,775,369 ballots cast were provisional ballots.<sup>161</sup> By way of comparison, in 2004, 158,642 provisional ballots were cast – or approximately 2.7% of the 5,722,443 ballots cast.<sup>162</sup>

This increase in the use of provisional ballots raises some concerns because provisional ballots are often not counted. Indeed, Advancement Project has referred to them as “trapdoor to disenfranchisement,” because the distribution and administration of provisional ballots eat away at poll worker time and attention due to their complexity. Additionally, large urban counties have much higher rates of provisional voting than the rest of the state, which are likely to have an impact on voters of color.

A higher percentage of provisional votes were counted in 2008 than in 2004 – 81% versus 78% -- suggesting that advocacy around certain rules and a more responsive election administration had an impact.

### *Why Are Provisional Ballots Distributed?*

Ohio law requires the use of a provisional ballot when (1) a voter declares he or she is registered but his or her name does not appear on the voter roll; (2) an election official “asserts that the individual is not eligible to vote,” (3) a voter does not have or does not provide proper identification; (4) a voter is shown to have voted by absentee ballot; (5) a voter’s registration notification was returned as undeliverable; (6) a voter changed address; (7) a voter changed his or her name; or (8) a voter was challenged without resolution.<sup>163</sup> The most common reason for provisional voting appears to be the “change of address” rule. Voters who move but do not update their address with election officials must vote a provisional ballot if they have moved to a new precinct.<sup>164</sup> Some counties, particularly urban counties, distribute provisional ballots at a much higher rate than others. Without additional study, it is not possible to know whether the differences are a product of different social and demographic factors in the counties – such as a more mobile population – or administrative differences, or both. There is also a possible link between provisional balloting and other election practices – such as a county’s use of multi-precinct polling places and differing ways of organizing those polling places. The variation and lack of clarity do suggest that there is a need for strong administrative control at the state level to bring consistency and to ward off equal protection problems.

### *The Tangled Knot: When are Provisional Ballots Counted - Lessons in Advocacy and Persistence*

The two reasons the substantial majority of provisional ballots are rejected are (1) the voter was not registered and (2) they were cast in the wrong precinct. For instance, in Cuyahoga County, of the 7,410 provisional ballots rejected, 3,238 were rejected because the voter was not found to be registered, and 3,423 were rejected because the vote was cast in the “wrong county or precinct.”<sup>165</sup> Similarly, in Hamilton County, of the 4,007 ballots rejected, 1,905 were rejected because the voter was not found to be registered and 1,766 were rejected because the ballot was cast in the “wrong county or precinct.”<sup>166</sup> Statewide, 14,335 were not counted because of the wrong precinct rule.<sup>167</sup>

Well before the 2008 election, Advancement Project had identified the “wrong precinct” issue as a significant problem, particularly for voters in urban areas, and began an intense advocacy campaign to change the way the law was interpreted and applied.<sup>168</sup> While Ohio law disqualifies ballots cast in the wrong precinct, it also requires election officials to direct provisional voters to the correct precinct and to inform them that their ballot will not count if it is cast in the wrong precinct.<sup>169</sup> In many cases, the correct precinct is in the same polling place – literally steps away. Indeed, in Ohio’s largest counties, 35% of the provisional ballots cast in the wrong precinct in the 2006 general election were cast in the right polling place. Yet, thousands of voters are disenfranchised each election by voting at the wrong precinct.

Following the 2008 primary and evidence that increasing numbers of voters were being directed to the wrong precinct to vote by provisional ballot, Advancement Project redoubled its efforts to change the wrong precinct rule. Its thorough legal analysis demonstrated that, under Ohio law, provisional ballots cast in the wrong precinct due to poll worker error should not be disqualified; however, Advancement Project’s research also indicated that not all Ohio counties followed this rule.

Working with its partner SEIU, Advancement Project met with Secretary Brunner to convince her to issue a directive that would at least clarify the rule that provisional ballots cast in the correct polling place but wrong precinct should be presumed to be the result of poll worker error and counted. Advancement Project also met with the Ohio Attorney General on this issue. While not explicitly rejecting Advancement Project’s interpretation, Secretary Brunner declined to issue the directive.

In late October 2008 in a loosely related case, SEIU argued that under Ohio law, no eligible voter should be disenfranchised due to poll worker error – and the court agreed.<sup>170</sup> In the week before the election, Secretary Brunner issued two directives relating to the counting of provisional ballots and other matters that were involved in the litigation.<sup>171</sup> Directive 2008-101, issued October 24, 2008, provided detailed directions to the local election boards relating to the processing and counting of provisional ballots and reiterated that ballots cast in the wrong precinct are not to be counted.<sup>172</sup>

Four days and one court order later, the Secretary issued another directive, clearly instructing the local elections boards: “[P]rovisional ballots may not be rejected for reasons that are attributable to poll worker error . . . .”<sup>173</sup> The directive, however, did not provide guidance on how to determine if there had been poll worker error.

This last-minute flurry of directives left many county boards confused about what constituted poll worker error and how to apply the directives to ballots cast in the wrong precinct. For instance in Cuyahoga County, one board member wanted to count all ballots cast in the wrong precinct but right polling place but was outvoted by the other three members. At this point, it is still not clear what rules were applied across the state.

After the election, Advancement Project has continued its advocacy on this issue and is working with the Secretary of State, local partners, legislators, and the Secretary’s post-election summit group in an effort to craft clear rules on how to process provisional ballots.

## Going Forward in Ohio

The complications and partisan wrangling of election administration in Ohio demonstrate the continuing need for vigorous advocacy on behalf of voters. After the election, Secretary Bruner engaged the issue of continuing reform by convening a task force composed of all the players in the Ohio election process – party members, local election officials, representatives of voter constituencies, voter advocates, and academics with a specialty in voting issues. Advancement Project participated on a panel related to provisional ballots. Following the summit, the Secretary issued a report that included several of Advancement Project’s recommendations:

- Improve the technology, reliability, and transparency of the statewide voter registration database – while specifying that a database mismatch cannot, on its own, form the basis for disenfranchising a voter;
- Expand in-person absentee voting and shorten the time-period; and
- Reform and simplify provisional ballot procedures and ID requirements<sup>174</sup>

### Who runs elections in Ohio?

#### Ohio Elections Structure

*The Ohio Secretary of State is the state’s chief election official, and her office wields considerable power over the administration of elections in the state. There are 88 local boards of elections, which are responsible for administering elections at the local level. These bipartisan boards are appointed by the Secretary of State; local party leaders traditionally have considerable influence over who is named to the local boards. Traditionally, Ohio election administration has been viewed as highly partisan and contentious.*

*The Secretary of State has primary authority over the statewide voter database but counties also maintain voter registration lists.*

*As an illustration of the extent of the Secretary’s power over elections in Ohio, Secretary Bruner put the Cuyahoga Board of Elections under agency oversight in 2007 after its mismanagement of several elections.*

#### VOTER TURNOUT

*After substantial voter registration efforts and the generally intense interest in the election, a record 5,775,369 people voted in 2008. Turnout, however, was actually slightly lower than in 2004. 69.69% of the registered voters turned out to cast a ballot in 2008, compared with 2004, when 71.77% of the registered voters (or 5,722,443 voters) turned out.<sup>175</sup> The slight decrease in turnout was a bit of a surprise; some officials had predicted a turnout as high as 80%.<sup>176</sup>*

#### House Bill 3

*H.B. 3, in part, requires voter information mailings and amends Ohio’s challenge statutes. In particular, it requires that county boards of election mail all Ohio registered voters a non-forwardable notice 60 days before the election. Each board compiles a list of any notices that are returned as undeliverable. These lists, in turn, are available as public records to any individual or group seeking to use the list as a ‘caging list’ to challenge voters.*

*The amended challenge law no longer requires the county boards to provide Ohio voters with notice that they are being removed from the voting rolls or a hearing for them to defend themselves of a challenge. Rather, the Ohio law permits the boards to review their own records and make a determination to the validity of the challenge.*

*Curiously, the law was drafted so that it would sunset January 1, 2009.*

## Missouri



From the experience of recent elections when some St. Louis voters waited well into the night to cast their ballot and thousands of other voters found that their registrations had disappeared, Missouri’s electoral process called out for study and repair in the 2008 election. Missouri was once again a Presidential “battleground” state – with the final statewide vote differential at one-tenth of one percent – and the focus of energetic registration drives and partisan attentions. As Election Day approached, it became clear that efforts to professionalize and standardize the state’s election process were likely to improve the process and confidence of many voters. But in some of the state’s urban counties, severe registration problems and training failures threatened to produce another Election Day of painfully long lines and disappointed voters with failed registrations.

In much of the state, Election Day went smoothly. The state’s 24,000 poll workers, many newly trained for this election cycle, moved a record 2.9 million voters through polling places and ensured that most people cast their ballot in an efficient manner. But several of the state’s urban districts, particularly St. Louis County, continued to suffer from major administration failures that flared up on Election Day. One St. Louis County polling place was reported to have the longest waits in the country, where voters waited more than seven hours to cast their ballot because of a combination of management failures and voter registration problems.<sup>177</sup> The state and local patchwork system of managing voter registration, including a cumbersome matching process under HAVA, created unnecessary barriers and may have disenfranchised voters.

Increases in registration and high turnout in the state’s urban areas, which include large numbers of minority voters, strained county election offices. Statewide, 180,000 additional ballots were cast in 2008 than in 2004, representing a turnout rate of 68.2 percent of the voting eligible population.<sup>178</sup> Turnout among African Americans was very high: in 2004, only eight percent of Missouri’s voters were African American, while in 2008, thirteen percent were African American.<sup>179</sup> In St. Louis City, whose population is more than 50 percent African American, turnout increased by 10 percent over 2004.<sup>180</sup> In Kansas City, whose population is more than 30 percent African American, turnout increased by more than 8 percent.<sup>181</sup>

The election statistics from St. Louis County, however, suggest potential flaws in election administration in that county, from registration failures to mismanagement of polling places. In St. Louis County, a county whose population is 21 percent African American,<sup>182</sup> turnout actually dropped almost four percentage points from 2004 to 2008. While approximately 12,000 more voters casts ballots in 2008 than in 2004, the county’s voting rolls bulged with an increase of 63,088 voters (from 736,709 to 796,797) even though the county has a declining population.<sup>183</sup> Without further investigation, it is not possible to pinpoint the

reasons for these surprising statistics, but it underscores the need for intensive investigation and possible reform in St. Louis County.<sup>184</sup>

As these statistics suggest, Missouri is a state in flux. This was the first recent presidential election to be conducted under a Secretary of State who was making significant efforts to professionalize and standardize the state's election administration, particularly as it related to voter registration, the database, and poll worker training. Yet the state's patchwork registration system, unduly restrictive registration matching rules, and localized administration structure impeded these efforts in 2008. Advancement Project and other groups worked intensively with the state and a number of local officials to help resolve some of these structural challenges.

In addition to the wide-ranging problems facing St. Louis County, Missouri's key election issues in 2008 included:

- A registration system burdened by a combination of local and state rules and procedures, unclear lines of authority, a cumbersome, obscure matching process, and 340,000 new registrations;
- A continuing pattern of insufficient poll worker training and recruitment that over the years had effectively disenfranchised thousands of voters because of unbearably long lines, missed registrations, improper requests for identification, and inappropriate distribution of provisional ballots;
- A practice in some counties of excessive use of provisional ballots and a failure to train poll workers on how to assist voters casting provisional ballots to increase the likelihood that such ballots would count;
- A continuing failure in some jurisdictions to allocate machines and other polling place resources properly.

This report analyzes these election challenges and others with a focus on the advocacy efforts of Advancement Project and others to improve administration and voter access. Within Missouri, Advancement Project targeted the St. Louis and Kansas City metropolitan areas, but also worked statewide with the Secretary of State Robin Carnahan and the state legislature. Advancement Project developed and worked with a diverse coalition of groups with an interest and significant stake in voter protection.

Advancement Project staff developed strong and positive working relationships with election officials in the targeted jurisdictions and with officials in the Secretary of State's office. These relationships, developed through several years of demonstrating on-the-ground knowledge and legal expertise in a changing landscape, gave Advancement Project a strong position from which to identify potential problems and begin pressing for solutions in time to affect voter access during the election.

## VOTER REGISTRATION CHALLENGES

In Missouri, as in most states, voter registration is the gateway for securing the right to vote, and in Missouri, varied local and state procedures surrounding the processing of voter registration applications and use of databases raised significant hurdles for many would-be voters. Registration issues were the most common problem reported to the Secretary of State on Election Day.<sup>185</sup> Similarly, registration and related problems topped the reported issues and inquiries to poll monitors and a nonpartisan Election Day hotline coordinated by Advancement Project and its coalition partners on Election Day.<sup>186</sup>

Missouri had a surge in voter registration in 2008. The Secretary of State reported that 340,000 new voters were added to the rolls,<sup>187</sup> of which 150,000 were between 18 and 24. In Kansas City and St. Louis City,

over 50 percent of the new registrants were between 18 and 24. Perhaps because of list maintenance, however, Missouri's net voter registration grew by only about 10,000 voters from 2004 to 2008 – from 4,194,196 voters to 4,205,774.<sup>188</sup>

Whatever the final numbers, an unmistakable burst of registration activity in urban areas taxed Missouri's system, which relies on local election administrators to enter data into the state database and process registrations. St. Louis County and Jackson County also maintained their own databases. Important issues with the transparency and reliability of database management in Missouri complicated oversight and gave rise to rumors of pre-election purges. These concerns support the need for substantial process reform and standardization within the state.

Notably, Missouri's voter registration process is burdened by a handful of unnecessary rules, in addition to its problematic state-local database system. One such rule is that voter registration is not portable under Missouri law. A registered voter who moves from an address within one of Missouri's 116 election authorities to a new voting jurisdiction must re-register to vote before the registration deadline.<sup>189</sup> In the 2008 cycle, 500,000 registered voters updated their registration with a change of address or name, but an untold number of registered voters who were unaware of this requirement were turned away from the polling place.<sup>190</sup> With the statewide database in operation, such a restriction serves little purpose; the database should enable previously registered voters to change their address at the polls. Another unnecessary hurdle to registration in Missouri is the refusal of some counties to permit applicants who have timely submitted incomplete applications to correct or complete such applications after the registration deadline, up to and including on Election Day. For example, while St. Louis City permitted corrections to timely submitted applications, St. Louis County did not.<sup>191</sup>

Also, the Secretary needs to continue taking a more active role in managing and maintaining the statewide voter database. The state's failure to do so was challenged by the U.S. Department of Justice in a 2007 case in which the Department alleged that the state had not adequately purged its voter rolls in violation of the NVRA. The case, which the Justice Department ultimately dropped, revealed that the state's local election authorities retained primary control of the database.<sup>192</sup> The continued problems with registration in 2008 suggest that they still have too much control.

Well aware of these practical problems and complexities, Advancement Project worked closely with coalition partners, conducting voter registration drives to educate voters and those registering about the importance of these rules. Advancement Project also conducted trainings on best practices for verification for coalition partners in St. Louis and Kansas City during the summer of 2008. As discussed below, Advancement Project also did substantial public education around confirming voter registration applications. In particular, Advancement Project held numerous meetings with local election officials and engaged in advocacy related to their procedures for processing voter registration applications and facilitated meetings between election officials and voter registration groups.

This section focuses on several aspects of the registration process, which helps illustrate the problems faced during the 2008 election cycle--two of those problems involve the evolving role of the statewide database and its lack of transparency.

### *A Story of Delays and Administrative Failures: St. Louis County*

The surge of voter registrations created significant backlogs in processing voter registration forms in some of the larger election districts. As the registration period neared its end, St. Louis County, the state's largest election jurisdiction, was processing applications that it had received one month earlier and it had thousands of backlogged applications. As a result, there were significant delays in notifying voters of the status of their applications, notwithstanding a Missouri law that requires election officials to process applica-

tions and notify applicants of the status of their applications within seven days of receiving the registration applications.<sup>193</sup> These delays in notice in turn triggered a delay in voters' ability to correct and complete their applications, if needed, and likely caused the submission of many duplicate applications by voter applicants who had not been notified of their registrations. Both St. Louis County and Jackson County, the state's two largest election jurisdictions, reported large numbers of duplicate applications in meetings with Advancement Project.

In St. Louis County, several factors may have caused the severe delays in notifying applicants of the status of their applications. First, the county had at least 50,000 new registrants in 2008, and many of the applications were received toward the end of the registration process, including many duplicate applications submitted by voters who re-registered after they had not received notice concerning their previous application.<sup>194</sup>

Second, St. Louis County neglected to hire additional temporary staff to enter voter registration data, despite vigorous advocacy from Advancement Project and the apparent intense interest in this election. Only in October, less than a month before the election, did the county bring in temporary staff to enter data. In notable contrast, St. Louis City hired approximately 20 temporary staff members who began working in the summer to process new registrations and did not face any significant processing delays.

Finally, St. Louis County continued to maintain its own voter database and manually entered voter registration information into two databases: its own followed by the state voter registration database. This contributed to the delay in notifying applicants of the status of their applications because the notices were generated from the state database.<sup>195</sup> Moreover, this process delayed the appearance of voters' registration information on the online database available on the Secretary of State's website, where voters were encouraged to check the status of their registrations and learn their polling place locations.

While it is hard to quantify the impact of delayed notifications on voters, that issue may account in part for the voter registration problems and inquiries faced by poll workers and voters alike on Election Day. If all voter applications had been timely processed, and voters had been able to verify their registration status in a timely manner and correct any problems before Election Day, some of the registration problems that arose on Election Day might have been avoided. Indeed, St. Louis County had at least 27 polling sites where voters experienced multi-hour delays in casting their ballots,<sup>196</sup> including one, Velda City Hall, where the wait reached seven hours by mid-afternoon, resulting in legal advocacy and the threat of litigation by Advancement Project. Several precincts in Kansas City, which, like Velda City Hall, served predominantly African-American voters, also had long voter lines.

Additionally, St. Louis County's relatively high number of provisional ballots (2,306, 30% of those cast in the state) and the large number of those not counted because they were cast in the wrong polling place or due to registration failure are other likely results of the registration backlog.

In short, the lack of registration consistency with dueling, duplicating databases and spotty local processes – as illustrated by the problems in St. Louis County – undermined registration administration in the state and created unnecessary hurdles for voters.

### *The Unclear HAVA Matching Practices Disenfranchised Qualified Voters*

The 2008 election cycle represented the first statewide election since Missouri had fully implemented its statewide voter database and instituted the matching process of the federal Help America Vote Act ("HAVA"). Despite substantial efforts on the part of Advancement Project throughout 2008 to clarify exactly how the state implemented the matching process, it remains obscure exactly what standards and procedures were applied in the 2008 cycle and how many voters were blocked from voting because of the

rule. This lack of clarity likely flows from the bottom-up management of the state database, where local officials exercise so much control. What is clear, as explained below, is that at almost every step of the registration and matching process, Missouri's HAVA matching practice disenfranchised qualified voters.

In brief, Missouri law, following HAVA, requires each new voter registration application to include the applicant's state driver's license number (if he or she has a license) or the last four digits of the applicant's social security number.<sup>197</sup> According to the practice developed by the Secretary of State for validating the registrations in the central voter database ("MCVR"), any 'unmatched' registrations were often given a pending or incomplete status in the MCVR, even if their application was not technically incomplete.<sup>198</sup>

The issue, then, is what happened to voter applications designated as "pending/incomplete." According to the Secretary of State, local election authorities were supposed to send each such voter a notice letter informing the voter of his or her incomplete status,<sup>199</sup> but the form of the letter varied significantly from jurisdiction to jurisdiction. The sample notice letter, apparently based on a model produced by the Secretary of State, typically requested the "missing information" and warned: "If this information is not received in thirty (30) days, your application will be denied, and you will need to submit a new application in order to register to vote."<sup>200</sup> Some counties (e.g. Jackson County) asked for information but did not threaten rejection, though the consequences of failing to "complete" the information were unclear. Kansas City, on the other hand, demanded the information within 15 days and threatened rejection, but reportedly did not, in fact, reject such applications. Likewise, although St. Louis City followed the Secretary's model letter, it also reported that it did not actually reject such applications.<sup>201</sup> Instead, it classified the applications as "incomplete" and did not add the applicants to the voter rolls.

Although Missouri law seems to bar completion or correction of registration applications after the registration deadline,<sup>202</sup> local election authorities generally had different practices on whether and for how long they permitted voters to complete applications.<sup>203</sup> Thus, as they were inconsistent in applying the general rule for completing incomplete applications after the registration deadline, the local jurisdictions were similarly inconsistent in their treatment of HAVA mismatches. It remains unclear how they handled these voters on Election Day, but the state insisted that the MCVR allows only registered voters to appear on precinct rosters, and thus "pending/incomplete" applicants who had not completed their applications and had their registration activated would not be listed on the precinct registers used on Election Day.<sup>204</sup>

Because of this rule, Advancement Project began an intensive advocacy campaign to prevent the otherwise complete, unmatched applications from being designated incomplete. Under Missouri law, Advancement Project argued, most of these registrations were timely and complete registrations that should be included on the precinct registers, regardless of a matching problem. Following advocacy, including a demand letter from Advancement Project, the Secretary of State declined to change the policy during the 2008 election cycle in large part because of the impending presidential election and because, the Secretary argued, the authority to determine whether an application is complete rested with local election officials.

Advancement Project focused on advocating directly with county election officials to allow these voters to complete/verify their registrations after the deadline, until Election Day. This was effective in several of the key counties. For example, St. Louis City allowed voters to correct their applications after the registration deadline as long as the application was timely submitted.

At this point, it is impossible to know how many voters were caught in this net and unable to vote by regular ballot.<sup>205</sup> First, it is not clear how many applications were rejected after the applicant failed to respond in the notice period. Second, notices sent to voters who submitted otherwise valid applicants likely deterred eligible voters from participating in the election, due to their assumption that their applications had been rejected. Third, it is not clear how many of the unmatched applicants went to the polls, learned

their name did not appear on the precinct list, and were turned away or given a provisional ballot, perhaps for the wrong precinct, after a harried poll worker did not call the election board headquarters to verify eligibility.

Advancement Project's advocacy on this issue may have saved the registration of hundreds of voters who were given a chance to 'verify' their application. Nevertheless, Advancement Project's advocacy and analysis revealed significant systemic issues that must be addressed going forward. For instance, the lack of clarity in the operation of the database itself—i.e., that complete but unmatched applications cannot be easily distinguished in the database from incomplete applications—and the different roles of the local election authorities and the Secretary of State make it very hard for voters to know and trust that their registrations are being processed fairly and properly. Similarly, the apparent absence of exact standards and protocols for HAVA matching – and who oversees this process – creates a significant problem with accountability. Moving forward, the Secretary could go a long way toward eradicating these problems by allowing the database to differentiate unmatched applications from incomplete applications and ensuring that all applicants with complete applications are placed on precinct rosters.

Finally, the divisions between the local election authorities and the state open the door to deep confusion in practice and, given the differing standards on correction and completion, clearly subject voters in different counties to different registration and voting regimes.

## **POLL WORKER TRAINING PROBLEMS CONTINUE TO DISENFRANCHISE AND FRUSTRATE VOTERS**

Leading up to the 2008 election, the Secretary of State took a leadership role in improving poll worker training. In conjunction with the University of Missouri Extension, the Secretary of State developed and provided new training materials to local election authorities, provided funding to local election authorities for recruitment and training of poll workers, and conducted a thorough survey of poll workers from the 2006 election. She also actively campaigned for more poll workers. Since 2006, the Secretary's poll worker recruitment initiative has identified more than 5,200 potential poll workers for local election authorities, including, through a partnership with over 60 institutions of higher education, over 1,700 students who served as poll workers in 2008. And, at the suggestion of Advancement Project, the Secretary distributed palm cards entitled "Ten Things Every Missouri Poll Worker Should Know," modeled on Advancement Project's poll worker palm card, to all 24,000 poll workers statewide.

But the 2008 election demonstrates that significant work on poll worker training and recruitment remains to be done, particularly in some urban jurisdictions. Advancement Project's preparatory study, advocacy, and attempts at oversight revealed stark disparities in the quality of training and the actual performance of the poll workers on Election Day. Notably, in keeping with the Secretary of State's efforts, additional state oversight and participation in training appear necessary; however, Missouri law leaves local election authorities in charge of poll worker recruitment and training.<sup>206</sup>

Despite significant advances in training since the 2004 election and continued advocacy by Advancement Project, the performance of Missouri's 24,000 poll workers in the 2008 general election illustrated several deficiencies in training and supervision. The most pervasive challenges involved the linked problems of how and when to issue provisional ballots, how to process a voter whose registration could not be readily verified (i.e., the voter's name did not appear on the precinct list), and what to do when a voter had moved but did not update his or her address with election officials. Additionally, many poll workers had problems accurately applying identification requirements.

### *Training Improvements and Continued Problems*

Poll worker recruitment and training is the province of local officials. Missouri law is silent on the quantum and content of the training. Thus, the amount and quality of training vary substantially from county to county – from a county that requires a basic training of four hours (and a specialist training of eight hours), including several interactive components, to one that requires only two hours and has somewhat disorganized materials.<sup>207</sup> In 2006, poll workers complained that the training sessions were ineffective and lacked clarity (“One short session with the teacher reading the manual to us definitely did not prepare us,” responded one worker in a survey.). Following the 2006 election, the Secretary of State pushed local election authorities to improve poll worker training and actively encouraged the use of standard training materials and videos provided by her office. She also actively pressed for additional funding to assist local election authorities in compensating and training poll workers.<sup>208</sup>

Early in the election cycle, Advancement Project pressed the Secretary of State and local authorities to improve training and the materials available to poll workers. The Secretary and some of the local jurisdictions welcomed Advancement Project’s advocacy and suggestions. For instance, working closely with Advancement Project on content, the Secretary of State substantially adopted the poll worker palm card drafted by Advancement Project and distributed copies of it to the local election authorities. 30,000 cards were printed and distributed to all of Missouri’s 116 election districts. The availability of concise and accessible information on core areas relating to the poll workers’ duties represented a critical advance in the support of poll workers.

Advancement Project attended poll worker trainings in each of the four targeted jurisdictions and provided local officials with assessments of the training and materials. For instance, Jackson County’s training materials included incorrect information on voter identification. Following a demand letter from Advancement Project, the county re-wrote its training materials and provided poll workers with a list of acceptable forms of identification. While confusion over identification requirements continued to plague poll workers statewide during the 2008 general elections, the Secretary of State noted that reported incidents of wrongful identification requirements were reduced by 50% from 2006.<sup>209</sup>

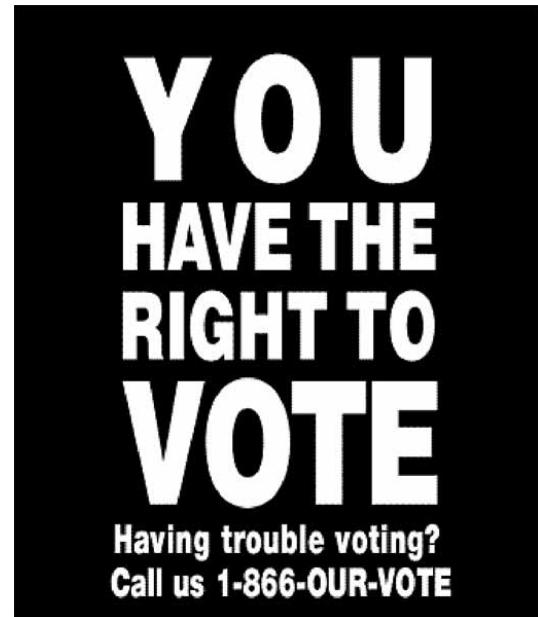
The trainings also revealed flaws that advocacy was unsuccessful in remedying. Most notably, during training in Kansas City, an instructor handed out candy and told the trainees that provisional ballots were a “lifesaver” to be used anytime “something is wrong”— such as when a voter’s name does not appear in the precinct book or when a poll worker is unable to reach election board headquarters. Trainees were continually told that provisional ballots are a “way to make voters happy.” In response to Advancement Project’s concerns about the training, a deputy director with the Kansas City local election authority refused to clarify the training related to provisional ballots, explaining that trainers intentionally do not inform poll workers that ballots cast in the wrong polling place will not count because that information, if conveyed to voters, would likely upset the voters.<sup>210</sup>

Overall, while poll worker challenges remain, training appeared to improve in 2008. Nearly half of poll workers surveyed after the 2008 elections felt their training to be sufficient, though an additional thirty-three percent reported that they would have liked more training, and many reported difficulty in contacting local election authorities on Election Day.

### *Election Day*

Calls to the *OURVOTE* hotline and incidents reported directly by voters to poll monitors and lawyers organized by Advancement Project and its coalition partners on Election Day showed that training problems persisted; there were numerous reports that poll workers had difficulty determining a voter’s registration status, provided misinformation, and sometimes directed voters to the incorrect polling place.

In St. Louis County, where some of the longest lines in the country occurred, there were also numerous reports that poll workers failed to direct voters to their correct polling site, and, instead, instructed them to cast provisional ballots. In his post-election report to the Board of Election Commissioners, the St. Louis County Election Board Director admitted that many of the provisional ballots cast could have been avoided had poll workers used the palm pilots provided to search for the voter's polling place.<sup>211</sup> Poll workers reported not knowing that provisional ballots cast in the wrong polling place would not count, and other reports revealed that, too often, poll workers refused or were unable to contact election headquarters to verify a voter's registration, resulting in overuse of provisional ballots. In addition, on Election Day, upon threat of litigation, Advancement Project convinced St. Louis County election officials to allow voters who had requested, but not cast an absentee ballot, to vote by regular ballot – after reports that several poll workers had refused such requests. Finally, the extremely long lines at 27 precincts in St. Louis County were caused, at least in part, by the failure of poll workers to supervise the election process properly.



On Election Day, poll workers in St. Louis County reported that it was very difficult to verify a voter's registration if the voter's name did not appear in the precinct book: the palm pilots did not work, or the phone lines to election headquarters were jammed, or there was simply an excessive delay in getting a response. As a result, many poll workers handed the voter a provisional ballot.

## POLLING PLACE RESOURCES

Because of long-standing problems with the fair allocation of polling place resources, Advancement Project began its study and advocacy on this issue early in the election cycle. Responses to massive public records requests and meetings with local officials demonstrated that some jurisdictions, in particular, St. Louis City, Jackson County, and Kansas City, had taken steps to provide additional resources, based on careful projections of increased registration and turnout. For instance, St. Louis City officials installed additional phone lines and computer terminals and provided a technical specialist at each of its 120 polling sites. Jackson County reallocated poll workers and added poll workers to sites with large numbers of registered voters. Additionally, Jackson County ensured that an election assistant with access to the voter registration database was inside or nearby all polling sites.

While St. Louis County added 23 phone lines and provided palm pilots containing the county-wide registration list to each polling site, its preparation for Election Day came up short.<sup>212</sup> Advancement Project's review, based on records produced by the county, demonstrated that the county was not prepared to meet voter turnout at many polling places. Indeed, Advancement Project's analysis indicated that under even moderate voter turnout and voting time estimates, a number of the county's polling places would run out of paper ballots and be unable to process all voters during the 13-hour Election Day.

Advancement Project began a multi-pronged advocacy strategy to press the county to increase the number of paper ballots at each polling site and to expand opportunities for voting on paper ballots by providing more privacy booths and even allowing voters to vote on a clipboard. In meetings with county officials, a demand letter, a public presentation to the Election Board, and outreach to the media, Advancement Project argued that the county could not discount the number of paper ballots based on expected votes on the electronic voting machines ("DRE").

Although the county did not agree to change its formula for allocating ballots, it did agree to provide more paper ballots at 80 polling places, to provide more privacy booths, and to allow voters to cast paper ballots without using the privacy booth.

Notwithstanding this agreement, on Election Day, some of the county's sites refused to allow voters to cast their paper ballot without using a privacy booth, thus contributing to long voter lines. The OURVOTE hotline and local command center overseen by Advancement Project received numerous complaints from St. Louis County voters about insufficient machines and privacy booths, and about the polling sites' failure to organize voters in line. On Election Day, after significant pressure from Advancement Project, the county began to require the most crowded polling places to permit voters to vote on paper without using a privacy booth. This simple action helped voters move through the line so that by the end of the voting day, few polling locations had significant wait times.

## ABSTENTEE BALLOT CHALLENGES

Missouri law does not provide for early voting or no-excuse absentee voting. But during a several-week period before Election Day, Missouri allows in-person absentee voting.<sup>213</sup> Many jurisdictions were simply unprepared to handle the enormous increase in in-person absentee voting in the 2008 general election. St. Louis County and Kansas City reported multi-hour waits by in-person absentee voters in the days leading up to Election Day. St. Louis County only allowed absentee voting to occur on one of just a handful of electronic voting machines at election board headquarters, resulting in multi-hour delays that would have been averted if voters had been given the option of a paper ballot, as was the practice in St. Louis City. Kansas City, which attempted to expand access by opening satellite absentee voting sites, also failed to account for the rise in in-person absentee voters. Officials allocated two touch screen machines to each site. Paper ballots were not made available because the satellite locations were not equipped to produce precinct specific paper ballots for voters. Consequently, when hundreds of absentee voters showed up at the satellite locations, voters were forced to wait for four or more hours to vote absentee. Election officials attempted to reduce wait times by busing willing voters to the Kansas City Election Board where precinct specific paper ballots could be produced.

Advancement Project subsequently engaged in advocacy in Kansas City on this matter. In response, Advancement Project's local advocate stationed herself at an absentee voting site until late in the evening, provided information to confused voters and poll workers, and coordinated with election officials.

## PROVISIONAL BALLOTS CONTINUE TO BE A FLASHPOINT FOR KEY ELECTION PROBLEMS

Analysis of the administration of provisional ballots has become one of the means by which problems with registration and poll worker training become clear. Although Missouri does not have the large numbers of provisional ballots seen in Ohio and a few other states, the statistics show that provisional ballots cast by eligible voters are being rejected, largely because of poll worker error and registration list failures that are not the fault of the voter.

Notably, Missouri law provides that provisional ballots will be rejected if cast in the wrong polling place,<sup>214</sup> but it appears that under past practice, some election officials had refused to count ballots cast in the correct polling place but wrong precinct. In population-dense jurisdictions, it is not uncommon for multiple precincts to be housed within a single polling place, and it is most likely that in those circumstances, poll worker or ministerial error may cause provisional ballots to be cast in the wrong precinct.

Advancement Project advocated with the Secretary of State to direct local officials to count ballots cast in the right polling place but wrong precinct and to include information relating to provisional ballots on poll worker palm cards. The Secretary agreed to direct officials to count votes cast by provisional ballot in the wrong precinct, but correct polling place, as to all contests for which the voter was eligible to vote.

Despite this directive from the Secretary of State and persistent advocacy from Advancement Project, some jurisdictions did not train poll workers on the importance of directing voters to the right polling place before giving them a provisional ballot. As discussed above, trainers in Kansas City told poll workers that provisional ballots are a “life-saver” to be given anytime “something is wrong,” such as when a voter’s name does not appear on the roster or when a poll worker is unable to reach election board headquarters to verify a voter’s eligibility.<sup>215</sup> Poll workers were intentionally not told that provisional ballots cast in the wrong polling place would not be counted, despite that Missouri law provides that a “voter shall be directed to the correct polling place or a central polling place” before being given a provisional ballot.<sup>216</sup> A deputy director of the Kansas City Election Board explained that voters would be upset if they knew their ballots might not count.<sup>217</sup> None of the training manuals reviewed by Advancement Project in each of the four targeted jurisdictions explained that provisional ballots cast in the wrong polling place would not be counted under Missouri law.

Although the number of provisional ballots distributed on Election Day dropped from 2004, reports show that too many ballots are still being rejected for reasons other than registration and eligibility – such as wrong polling place or incomplete ballot envelope – that can be attributed largely to poll worker error. In St. Louis County, for example, 300 provisional ballots were rejected for reasons other than the voters’ eligibility or registration. Statewide, a relatively low percentage of provisional ballots were counted, and the vast majority of ballots were rejected because the voter was deemed ineligible or unregistered. After the election, Advancement Project requested that the Secretary of State direct local election officials to count provisional ballots cast in the wrong polling place where there was no evidence that poll workers had fulfilled their statutory duty to direct the voter to the correct polling place. Unfortunately, the Secretary denied this request based on her view that local election authorities had sufficient discretion to determine whether to count a provisional ballot.

Jurisdiction	Provisional Ballots Cast	Rejected incorrect polling place	Rejected voter not registered/eligible	Rejected voter voted another ballot	Rejected incorrect info on ballot envelope	Total rejected provisional ballots	Total counted provisional ballots
Jackson County	201	12	133	0	2	147	54
Kansas City	593	98	377	0	11	486	107
St. Louis City	1025	46	600	0	11	657	368
St. Louis County	2360	155	1306	71	147	1679	681
Statewide	6943	430	4421	77	244	5172	1771

## GOING FORWARD

Missouri is in a strong position to improve its election administration because of the commitment of the Secretary of State and dedication of many local officials. However, as the registration problems from the 2008 election demonstrate, the state must sort out the registration roles between state and local jurisdictions and ensure that voter applicants whose information cannot be ‘matched’ with information in the state driver’s license or federal social security databases are not denied access to the voter rolls. Additionally, it is critical that the state make the maintenance of the registration database more transparent.

Finally, the continuing problems with elections in St. Louis County suggest that the Secretary of State and other government officials must investigate the county’s election administration and demand improvements.

### Basic Registration Information

<b>Registration Deadline:</b>	<b>The 4th Wednesday prior to the election<sup>218</sup></b>
<b>Correction/Completion After Deadline</b>	<b>General rule is that application must be complete before deadline but practice varies from county to county.</b>
<b>Change of Address</b>	<p><b>If moving to a new county before the deadline, must re-register (by deadline) to vote full ballot<sup>219</sup></b></p> <p><b>If moving to a new county after the deadline, may cast a federal and statewide ballot from new jurisdiction.<sup>220</sup></b></p> <p><b>If moving within jurisdiction, may change address and vote at new precinct upon affirming new address.<sup>221</sup></b></p>

### Government Structure

#### Who runs elections?

Missouri’s Secretary of State is the chief election official, and the Secretary of State’s Election Division is responsible for administering statewide elections and making known rules governing elections and circulating initiative petitions. The Secretary of State also has the responsibility for maintaining the state voter registration database and ensuring compliance with the Help America Vote Act and the National Voter Registration Act.

But, across the state, 116 local election authorities administer elections and manage registration as well as poll worker recruitment and training within their districts. In the state’s four major urban areas – Kansas City, Jackson County, St. Louis City, and St. Louis County – and two other jurisdictions, elections are administered by a board with bipartisan commissioners and professional staff directors appointed by the governor. In practice, the boards are controlled by the governor’s political party. In the other 110 jurisdictions, elections are administered by the county clerks, who are elected.

Even though the Secretary of State has responsibility under federal law for the voter database and maintains it, local election authorities actually do most of the maintenance – such as adding new voters and removing duplicates, the deceased, and convicted felons.<sup>222</sup>

**Voter Turnout Chart**

County	Nov. 2008 Registered Voters	2008 Turnout	% voter turnout	Nov. 2004 Registered Voters	2004 Turnout	% voter turnout
St. Louis County	796,797	554,893	69.6%	736,709	542,983	73.7%
St. Louis City	257,442	158,077	61.4%	281,316	144,638	51.4%
Jackson County	244,570	185,632	75.9%	236,269	174,570	73.9%
Kansas City	230,897	152,595	66.1%	244,068	141,423	57.9%
State	4,205,774	2,925,205	70%	4,194,146		65%

### Verification Work

Advancement Project’s work assisting coalition partners in verifying voter registration forms revealed significant problems with registration processing in several counties. In some jurisdictions, verification was made more difficult by election authorities’ refusal to disclose pending and rejected voter registration applications. Some jurisdictions provided this information electronically, others only allowed local advocates to view the applications in the election office, and others provided only minimal data at all. After reviewing files or databases of pending and rejected applicants in Kansas City, Jackson County, St. Louis City, and St. Louis County, Advancement Project realized that many voters were submitting more than one application because they were not receiving timely notice of the registration – and that many were “incomplete” because of a possible HAVA matching failure. Advancement Project pressed local election officials to allow “incomplete” or “pending” registrants to complete their registrations on Election Day.

## VIRGINIA



Virginia entered the 2008 general election new to being a battleground state. In many ways, it simply was not ready for the surges in registration, turnout, and scrutiny. Historically, Virginia has had one of the lowest voter registration and voter turnout rates in the country. The 2008 election cycle introduced Virginia election administrators to a new world of voter involvement and attention from advocacy groups. Voter registration across the state increased by more than 10 percent – that is by 500,000 voters. The Virginia State Board of Elections described it as an “onslaught of new voter registrations.”<sup>223</sup> Interest and registration were much higher in the state’s urban areas and communities of color.<sup>224</sup> There was an incredible early surge in minority registration; by January 2008, 37% of Virginia’s registered voters were minorities, compared with just 24% in the previous election cycle.<sup>225</sup>

On Election Day, turnout increased by 6.7 percent among the voting eligible population from 2004 (compared with 1.6 percent nationwide).<sup>226</sup> That represents a 3 percent increase in turnout of registered voters – or 530,000 additional voters casting ballots in the 2008 general election than in the 2004 general election. In minority and urban communities, the turnout was even higher. For instance in Richmond, which is 53 percent African American,<sup>227</sup> 19,084 additional voters cast ballots in 2008 than in 2004, representing a 25 percent increase in the number of voters.<sup>228</sup> On Election Day, these surges in registration and turnout translated into a heavy strain on Virginia’s voting systems in urban and minority communities.

Indeed, Virginia’s key election administration problems involved the voting experience itself. Across the state, voting machine breakdowns were widely reported by 7 a.m., long lines formed outside polling places as rain drenched voters, wet ballots jammed machines, and electronic poll books failed. Some communities in the state were simply not prepared for the crush of voters. Polling places did not have enough machines, supplies, or knowledgeable poll workers.

Although Virginia experienced voter registrations problems, particularly relating to student registration, and problems stemming from insufficient poll worker training, this report primarily focuses on the state’s problems with polling place resources and Advancement Project’s broad-based advocacy to make the allocation of resources at polling places more equitable – including the litigation captioned Virginia NAACP v. Kaine, which charged that misallocation of polling places resources could disenfranchise large numbers of voters, particularly in minority communities.

### Registration

Despite substantial increase in registration, Virginia experienced few obvious problems with processing and registering voters preceding Election Day. Virginia has had a statewide database for years, and, thus,

unlike many other states, was not faced with running an almost untested system at a time of unprecedented registration. Additionally, Virginia was exempt from implementing HAVA's verification requirements in part because it already requires, by law, the listing of an applicant's full Social Security number on registration applications.<sup>229</sup> Thus, Virginia may have avoided some the technical problems that triggered registration problems in many other states.

With one-third of the problems reported by voters on Election Day being registration related, Virginia was on par with the national average. The types of complaints, however, suggest possible gaps in the registration process. Numerous callers reported that they had registered at the Department of Motor Vehicles but were not on the rolls on Election Day. Others who had registered through voter drives reported the same problem.

Several Virginia municipalities also resisted student registration. In Norfolk, for instance, the registrar sent rejection letters to at least fifteen Norfolk State University students for not stating the name of their dormitory, even though a physical and mailing address is sufficient to complete registration. Additionally, a number of localities insisted that students take extra steps to register – including answering a questionnaire about whether their parents still claim them as dependants on tax returns. In the weeks just before the registration deadline, the State Board clarified the registration rules for students. Notably, however, the State Board of Elections web page for student voting includes a questionnaire, purportedly for the student's own use, that asks detailed questions, including questions about tax status, to help determine residency.<sup>230</sup> The State Board is currently in the process of promulgating interpretive regulations, in response to recent legislative changes following the 2008 election that were designed to clarify the issue of residency qualifications for voting purposes. The goal of the regulations is to create more uniform standards that do not discriminate against student voters.

## Polling Place Resources

Virginia law sets a floor for the allocation of voting equipment that is clearly insufficient: one machine for every 750 registered voters at each precinct and one voting booth for each 425 voters in a precinct using optical scan.<sup>231</sup> This standard has not been revised since most of Virginia moved to DRE systems, despite the state's awareness of the limitations of these systems.<sup>232</sup> Ohio, by comparison, mandates one machine for every 175 registered voters.<sup>233</sup> Indeed, most Virginia localities provide far more machines than the law requires, but, remarkably, no official guidelines other than the insufficient statutory requirement dictate the allocation of voting machines.

The 2004 election, a year of high but not remarkable turnout, demonstrated that voting machines and other resources were not distributed fairly throughout the state or within particular localities. Voters in Richmond, Norfolk, and Virginia Beach experienced long waits to cast their ballot in the presidential election, while voters in much of the rest of the state experienced minimal waits. The waits were particularly long at polling places that served predominately African-American communities in those cities.

Between 2004 and 2008, Virginia played catch-up in acquiring voting machines: The number of machines increased from 5,989 machines to 10,600. The average number of voters per machine also dropped substantially from 757 voters per machine to 474.<sup>234</sup> These numbers, however, remained quite high compared with other states. Significant disparities also continued to exist between jurisdictions and within jurisdictions. For instance, in Norfolk, some precincts had a low of 196 voters per machine while others had 496 voters per machines. Such variations were true in Richmond and Virginia Beach as well.<sup>235</sup> The surge in registration, Virginia's antiquated guidelines for allocation, and the history of misallocation prompted Advancement Project to begin investigating the resource allocations for polling places throughout Virginia in the early summer of 2008. Advancement Project obtained public records and other information on precinct-level allocation of voting machines and poll workers in Alexandria, Fairfax County,

Newport News, Norfolk, Richmond, and Virginia Beach. The initial analysis revealed that many precincts would be overwhelmed on Election Day and many precincts with a majority of voters of color would have insufficient polling place resources.<sup>236</sup>

In Richmond, for instance, the analysis showed that the number of voters per machine would range from 216 to 380 and that precincts with a high minority population (more than 70 percent) had twenty percent more voters per machine than precincts in low minority populations.<sup>237</sup> In Virginia Beach, there would likely be 11 percent more voters per machine in higher minority precincts.<sup>238</sup>

As the impact of the data became clear, Advancement Project and its allies began pressing state and local officials to meet about the findings and possible solutions. Despite Advancement Project's evidence and proposed solutions (reallocation of voting equipment and paper ballots), state and local officials refused to meet and insisted that they were prepared for the turnout.

In the weeks before the election, it became clear that the numbers of voters were likely to overwhelm some precincts. Advancement Project pressed again for meetings with officials and publicly urged the state to help some localities purchase more machines and assign more poll workers to certain precincts. Still, local and state officials refused to meet with Advancement Project on this issue.

On Oct. 27, following an intensive review of the available data, Advancement Project filed a lawsuit, on behalf of the Virginia State Conference of the NAACP, against Governor Tim Kaine and top Commonwealth and local election officials for the unconstitutional allocation of polling place resources. The lawsuit focused on the misallocation of voting resources in Norfolk, Richmond, and Virginia Beach and sought a number of remedies: (1) an adequate number of machines be allocated to each precinct to prevent excessive wait times to vote; (2) a reallocation of the existing machines and poll workers to ensure equitable distribution across precincts within each jurisdiction; (3) an option of voting by paper ballot if a voter had been waiting in line for longer than 45 minutes; and (4) extended voting hours, to 9 p.m., on Election Day.

Advancement Project presented evidence of substantial variations in the number of voters per machine and the number of voters per poll worker across these cities. Additionally, Advancement Project's expert found that the average level of voters per machine in Norfolk and Virginia Beach had changed little since 2004 when many voters in those cities experienced long waits to cast a ballot.<sup>239</sup>

Critically, too, Advancement Project's expert found that in Richmond's precincts with the highest percentage of African-American voters, there would be 18 percent more voters per machine than in precincts with the lowest percentage (317 voters per machine to 269). In Virginia Beach, precincts with higher percentages of African-American voters would have 14 percent more voters per machine than those with the lowest percentage (354 voters per machine to 310). This striking disparity in machine allocations showed that in Richmond and Virginia Beach there would more "lost voters" in districts with a high proportion of African Americans.<sup>240</sup> Such disparities in effect imposed a "higher cost of voting" on citizens in those precincts.<sup>241</sup>

On the eve of the election, November 3, the court denied plaintiffs' requests but recognized the threat posed by long lines. The judge ordered the state to publicize "curbside voting," which allows disabled and elderly voters to cast their ballot without waiting in line, and to make clear that if voters were in line by 7 p.m. they could vote.

Come Election Day, many Virginia voters faced long waits to cast their ballots – while others waited only a few minutes in line. As suggested by the statistics discussed above, some precincts appeared to have insufficient machines to allow voters to cast their ballots in a timely fashion. In others, electronic poll books failed and the precincts either did not have paper poll books as backups or the poll workers did not use

them.<sup>242</sup> In some Richmond precincts, voters waited as long as three hours – partly because there were no paper ballots on hand.<sup>243</sup> In many precincts that used optical scan machines, damp ballots jammed machines and left voters waiting while poll workers decided what to do. Across the city of Chesapeake, voters waited for hours; in one precinct, voters waited seven hours to vote.<sup>244</sup>

## Poll Worker Training

Virginia requires at least three poll workers per precinct but only two of those workers – the chief election officer and the assistant – must be trained.<sup>245</sup> The law also requires that at least one member of each local board attend the annual training provided by the State Board of Elections, which generally covers changes in election laws and other updates.<sup>246</sup> Beyond these requirements, the state does not mandate the length or content of poll worker training.<sup>247</sup>

Across the state, training is uneven. In Alexandria, for instance, poll workers received three hours of training, and the local board assigned two voter education specialists to each polling place. Virginia Beach also requires poll workers to complete three hours of training.<sup>248</sup> In Arlington, training is mandatory and runs about two hours for general workers.<sup>249</sup> In other districts, little training is required or offered.

As the 2008 election approached, the State Board of Elections pushed to improve and standardize training. For instance, the Board allowed Advancement Project to review training materials before they were distributed. Advancement Project found instances of ambiguous or unclear language and drafted new language that accurately reflects federal and state voting laws.

On Election Day, however, inadequate poll worker training on the use of electronic poll books (e-poll books) was one of the culprits responsible for the long lines across Chesapeake. At least 12 precincts had significant delays because poll workers did not know how to use the e-poll books, which caused ‘glitches’, and then did not know to switch to paper poll books when e-poll books were inoperable.<sup>250</sup>

Virginia sets a floor of \$75 per day for compensating poll workers.<sup>251</sup> Workers in Arlington are paid \$150.<sup>252</sup> In Chesapeake, by contrast, they are paid \$98.25 for the 15-hour work day and another \$25 for attending one training.<sup>253</sup>

## GOING FORWARD

There is little question that Virginia must revise its method of allocating voting machines and other resources. The state standard is far too low – and opens the door to localized discrimination in allocations. The state is in transition from the DRE machines to optical scan (counties and cities are not prohibited from purchasing additional DRE machines), but it could be years before the transition is complete.

Advancement Project will continue to advocate for more equitable distribution of machines and resources. In addition, Advancement Project will push for revisions in the way paper ballots are distributed – particularly in counties where DRE machines still dominate.

Finally, Advancement Project will continue to work with the state to improve poll worker training across the state.

## Election Administration Structure

Virginia’s election administration is several steps removed from public accountability, with all election administrators being appointed. The State Board of Elections is appointed by the Governor. The 134 local boards of elections are appointed by the judges on the local circuit court, who are elected by both houses of the General Assembly and serve eight-year terms. The local boards then name the general registrar. The State Board maintains the statewide voter database, known as the Virginia Voter Registration System “VVRS,” promulgates rules, and holds training sessions for local board members.

### Virginia Registration Information:

<b>Registration Deadline:</b>	<b>The 29th day prior to the election)<sup>254</sup></b>
<b>Correction/Completion After Deadline</b>	<b>General rule is that application must be complete before deadline.<sup>255</sup></b>
<b>Change of Address</b>	<b>A voter who has moved to a new precinct within the state, but has not transferred registration, is entitled to vote at the old precinct.<sup>256</sup></b>

### ABSENTEE

Virginia does not provide for no-fault absentee voting, but as the 2008 general election neared, the State Board issued a press release that encouraged anyone, who was eligible, to vote absentee and, thus, avoid lines on Election Day. Voters at offices around the state endured long waits to cast an in-person absentee ballot. Indeed, the federal judge in *Virginia State Conf. of the NAACP v. Kaine* noted that he had waited more than two hours to vote absentee.

The number of votes cast absentee more than doubled from 2004 to 2008 – without any corresponding change in the law. In 2008, 465,962 voters cast absentee ballots, and in 2004, the number was only 222,059.<sup>257</sup>

## Conclusion: 2008 and Beyond

The historic presidential election of 2008 and the substantial margin of victory for President Barack Obama caused the media to avoid providing intense scrutiny of electoral problems and lost votes. Nevertheless, significant problems remained to disenfranchise millions of voters throughout the country in 2008. In fact, Advancement Project documented scores of unnecessary administrative barriers to voting that continued to weaken the nation's democracy in the run-up to the election.

Among the problems and solutions Advancement Project identified in the run-up to the election were:

- Many states had inadequately trained poll workers who were expected to navigate lengthy and complicated election rules and polling place manuals under pressure on Election Day, often resulting in long lines, errors, and voting delays. Advancement Project encouraged officials, in the states where it worked, to improve poll worker training and assisted by developing palm cards in 20 states, which explained the 10 most common problems poll workers were likely to face on Election Day and ways to resolve them.
- Many states had severely under-resourced precincts and substantial disparities in resources between and within jurisdictions. Advancement Project's analysis showed that many voting precincts—in communities of color in Michigan, Missouri, Ohio, Pennsylvania and Virginia—could expect far more voters per machine and poll workers, and insufficient paper ballots in case of voting machine malfunction, than precincts with higher percentages of white voters.
- Poll workers frequently failed to direct voters to the correct precinct, or worse yet affirmatively directed them to the wrong precinct, where they were issued a provisional ballot. In most states, provisional ballots cast in the wrong precinct are fully rejected, even if cast by registered voters. Advancement Project worked to devise procedures for poll workers to identify a voter's correct precinct and direct the voter to the precinct in order to minimize the use and rejection of provisional ballots.

A comprehensive list of Advancement Project's proposed reforms follows:

- *Prohibit needless barriers to voter registration:* National Voter Registration Act (NVRA) and the Help America Vote Act of 2002 (HAVA) should be clarified to prohibit the imposition of unnecessary and burdensome restrictions on voter registration that are unrelated to eligibility or duplicative of other evidence supplied by a voter applicant to establish his or her eligibility. In particular, HAVA should be amended to clarify that its matching processes may not be used to delay or deny a voter applicant's registration. Further, the NVRA should be amended to make clear that a voter registration form cannot be rejected based on an omission of nonessential information that does not pertain to eligibility requirements under state law.
- *Prohibit sweeping list maintenance procedures:* The NVRA should be clarified and strengthened to prohibit unwarranted removal of eligible voters from the voter rolls. These reforms should include specifying that states may not purge new registrants based solely on returned voter registration cards, or based on matches with other state databases, without giving voters notice of their removal and an opportunity to reverse it if the removal was erroneous.
- *Minimize the use and rejection of provisional ballots:* HAVA should be amended to prohibit states from requiring registered voters who have moved intrastate to vote by provisional ballot. Instead, voters who update their address up to or on Election Day, present themselves to vote in the correct precinct for their current address, and present current and valid identification in accordance with

state law, should be permitted to cast regular ballots. HAVA should also be amended to require the counting of provisional ballots cast by voters who appear to vote in the wrong precinct for all federal election contests in which the voters are eligible to vote. Finally, to promote transparency of provisional balloting and foster robust public oversight, HAVA should be amended to permit the public inspection and copying of all provisional ballot envelopes with the signature of the voter, month and day of birth, and (if applicable) full Social Security number or driver's license redacted.

- *Reduce the burden that long voter lines place on voters:* States in which voter lines were longer than 45 minutes in the 2008 general election should be required to submit a remedial plan to reduce wait times. Local election officials should be required to offer backup paper ballots to voters as soon as at least half of the voting machines in a precinct are not functioning, or the wait time to vote in a precinct exceeds 45 minutes; they should be clearly distinguished from provisional ballots, and once voted, should be deposited in a secure receptacle; and they should be treated and counted as regular (not provisional) ballots. Finally, all states should be required to offer in-person, early voting.
- *Establish federal standards for poll worker training:* National standards for poll worker training and support should be established to make training mandatory for all poll workers; require that training include hands-on training and role playing; require that poll workers receive compensation for their attendance of training sessions; and require assessment of poll workers at the completion of their training.
- *Prevent voter "caging":* Congress should enact legislation to outlaw the voter challenge device known as "caging" that has been used to target voters of color. Political parties and other private parties should be prevented from challenging voters based on returned mail or a foreclosure list. In addition, challengers should be required to set forth specific grounds for a voter's purported ineligibility under penalty of perjury, and Election Day challenges to a voter's eligibility should be prohibited to prevent chaos and voter intimidation at the polls.
- *End disenfranchisement of people who have served their sentences for felony convictions:* People with felony convictions who have fully served their sentences should be permitted to vote in all federal elections.
- *Promote voter registration modernization and Election Day registration:* Congress should enact legislation requiring states to modernize voter registration by automatically registering all eligible voters to vote and permitting eligible voters who do not become registered automatically to register to vote on Election Day.

## Endnotes

- 1 <http://www.fec.gov/pubrec/2000presgeresults.htm>.
- 2 Fla. Dep't of State, Div. of Elections, *2004 Election Results*, <http://election.dos.state.fl.us>.
- 3 <http://www.cnn.com/ELECTION/2008/results/president/>.
- 4 Fla. Dep't of State, Div. of Elections, *2008 Election Results*, <http://election.dos.state.fl.us>.
- 5 <http://www.cnn.com/ELECTION/2008/results/president/>.
- 6 See, e.g., *The 2008 Election: A look back on what went right and wrong: Hearing Before the Subcomm. on Elections of the H. Comm. on House Administration*, 111th Cong. (2009) (testimony of Doug Chapin, Director of Election Initiatives, Pew Center on the States), available at [http://cha.house.gov/UserFiles/202\\_testimony.pdf](http://cha.house.gov/UserFiles/202_testimony.pdf) (noting that system "worked better than anticipated").
- 7 R. Michael Alvarez et al., *2008 Survey of the Performance of American Elections: Executive Summary 5* (Mar. 1, 2009), available at <http://www.vote.caltech.edu/drupal/node/231>.
- 8 *Id.*
- 9 Although HAVA required states to comply with its statewide voter registration list requirements by January 1, 2004, it also permitted states to obtain a waiver of that deadline "for good cause" and if granted, the applicable deadline would be January 1, 2006. 42 U.S.C. § 15483(d)(1).
- 10 Nat'l Comm'n on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* 29 (2001).
- 11 42 U.S. C. § 15483(a)(5)(B)(I). This subsection provides:  
The chief State election official and the official responsible for the State motor vehicle authority. . . shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on an application for voter registration.
- 12 See 42 U.S.C. §§ 15483(a)(5)(A)(iii), 15485.
- 13 Last year, the Eleventh Circuit Court of Appeals took a contrary view. See *Florida State Conf. of the NAACP v. Browning*, 523 F.3d 1153 (11th Cir. 2008) (reversing preliminary injunction enjoining enforcement of Fla. Sta. § 97.053(6) and holding that HAVA did not preempt § 97.053(6)).
- 14 See, e.g., Nathan Cemenska & Sarah Cherry, *Key Questions for Key States; Executive Summary* 10-11 (2008), <http://moritzlaw.osu.edu/electionlaw/maps/documents/50QsforExecutiveSummarywithlinks.pdf>.
- 15 See Cemenska & Cherry at 11.
- 16 Advancement Project, *Poll Worker Training: Is Your State Complying with the Law?* (Sept. 2008), available at <http://www.advancementproject.org/pdfs/vpp/pollworkertrainingbrief.pdf>.
- 17 Advancement Project, *The End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election* (Oct. 2008), available at <http://www.advancementproject.org/pdfs/vpp/PollingPlaceResourcesReport.pdf>.
- 18 R. Michael Alvarez et al., *2008 Survey of the Performance of American Elections: Final Report* 42 (Mar. 1, 2009), available at <http://www.vote.caltech.edu/drupal/node/231>.
- 19 42 U.S.C. §§ 15481-82.
- 20 See Advancement Project, *Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement* (Sept. 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf>.
- 21 Damien Cave, *Election Day in Florida May Look Familiar*, *N.Y. Times* (Apr. 28, 2008) (citing experts at Pew's Electionline.org and others), available at [http://www.nytimes.com/2008/04/28/us/politics/28voting.html?\\_r=1&partner=rssnyt](http://www.nytimes.com/2008/04/28/us/politics/28voting.html?_r=1&partner=rssnyt).
- 22 See U.S. Elections Project, *2008 General Election Voter Registration Statistics* (updated Mar. 6, 2009), [http://elections.gmu.edu/Registration\\_2008G.html](http://elections.gmu.edu/Registration_2008G.html).
- 23 Compare Florida Dep't of State, Div. of Elections, *2008 County Voter Registration by Race*, with *2004 County Voter Registration by Race*, available at <http://election.dos.state.fl.us/voter-registration/>

- statistics/elections.shtml#2008.
- 24 See U.S. Elections Project, *Voter Turnout*, [http://elections.gmu.edu/voter\\_turnout.htm](http://elections.gmu.edu/voter_turnout.htm).
- 25 Florida Dep't of State, Div. of Elections, *2004 Election Results*, <http://election.dos.state.fl.us>.
- 26 *Id.* at *2008 Election Results*.
- 27 Fla. Dep't of State, Div. of Elections, *2008 General Election Facts*, <http://election.dos.state.fl.us/reports/index.shtml#2008gef>.
- 28 *Id.*
- 29 Since 2004, Advancement Project has represented voter groups and individual voters in four lawsuits relating to voter registration in Florida: (1) *Diaz v. Cobb*, 475 F. Supp.2d 1270 (S.D. Fla. Feb. 27, 2007); 541 F. Supp.2d 1319 (S.D. Fla. 2008) (challenging the registration form's unnecessary check boxes and the burdensome registration correction deadlines; the claim against the checkbox was dismissed in 2007 and judgment was entered in favor of the state as to the other claim in 2008); (2) *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006) (preliminarily enjoining enforcement of third party registration laws as unconstitutional) (3) *League of Women Voters v. Browning*, 575 F. Supp.2d 1298 (S.D. Fla. 2008) (refusing to preliminarily enjoin amended laws governing third party registrations); and (4) *NAACP v. Browning*, 523 F.3d 1153 (11th Cir. 2008) (challenging HAVA matching requirements).
- 30 Fla. Stat. § 97.053.
- 31 *Id.* § 97.055; see also *Diaz v. Cobb*, 541 F. Supp. 2d 1319 (S.D. Fla. 2008) (rejecting claim that registration correction rules were unconstitutional).
- 32 Fla. Stat § 97.055(1).
- 33 *Id.* § 97.053(6) (enacted 2005 and amended in 2007 and 2008).
- 34 *Id.* § 101.043(1).
- 35 42 U.S.C. § 15483(a)(5).
- 36 See Nathan Cemenska, *HAVA's Matching/ID Requirement: A Meaningless Tale Told By ... Congress*, 12 *Richmond Journal of Law & the Pub. Int.* 31 (2008) (describing the likely compromise between legislators who wanted to use verification as an anti-fraud measure and those who wanted to protect against unnecessary disenfranchisement).
- 37 Fla. Stat. § 97.053(6).
- 38 See *id.*; see also, *NAACP v. Browning*, 523 F.3d 1153, 1157 (11th Cir. 2008) (describing application of law).
- 39 See *NAACP v. Browning*, 523 F.3d at 1157 n. 4 (describing impact of rule if voter made mistake).
- 40 *NAACP v. Browning*, 2008 LEXIS 62723 \*18 (N.D. Fla. June 24, 2008) ("Browning II").
- 41 See *NAACP v. Browning*, 1163 F.3d at 1163 n.12.
- 42 See *Browning*, 523 F.3d at 1176, n.4 (Barkett, J., concurring in part and dissenting in part).
- 43 Advancement Project's co-counsel are the Brennan Center for Justice at NYU School of Law, Project Vote and the law firms, Paul, Weiss, Rifkin, Wharton and Garrison, and Greenberg Traurig.
- 44 *Browning I*, No. 07-00402-CV-1-SPM (slip op. at 10) (N.D. Fla. Dec. 2007).
- 45 *Id.* at 12.
- 46 Slip op. at 16-17; see also *Browning*, 523 F.3d at 68 (Barkett, J., concurring in part and dissenting in part).
- 47 *NAACP v. Browning*, 523 F.3d 1153 (11th Cir. 2008).
- 48 Under Florida law, voter registration applications generally cannot be corrected or completed after the voter registration deadline, which is 29 days before the election. See *Browning II*, 2008 LEXIS at \*25 (discussing general Florida rule). Thus, the amendment made an exception for voters caught in the 'no-match' dragnet.
- 49 *Browning II*, 2008 LEXIS at 25.
- 50 Memo from Donald Palmer, *Verification/Override Procedures Pursuant to 97.053(6)*, to Supervisors of Elections (Sept. 5, 2008) (on file with Advancement Project).
- 51 See, e.g., Alvaro Fernandez, *Remove the Voting the Barrier*, *Orlando Sentinel*, Sept. 26, 2008.
- 52 See, e.g., Letter from U.S. Representatives Corrine Brown, Kathy Castor, Alcee Hastings, Debbie

- Wasserman Schultz, and Robert Wexler to Gov. Charlie Crist, Oct. 6, 2008.
- 53 See, e.g., Alex Leary, *Some New Voters Cut Out*, St. Petersburg Times, Oct. 10, 2008.
- 54 Florida law does not allow voters to complete or correct applications after the end of registration, “book closing.” Fl. Stat. § 97.055(1). But unmatched applications may be neither incomplete nor incorrect.
- 55 <http://miamiherald.typepad.com/nakedpolitics/2008/10/pinellas-elex-c.html>.
- 56 Memorandum from Ronald Labasky, General Counsel, Re: Unverified Voters, to Florida State Association of Supervisors of Elections (FSASE) (Oct. 21, 2008) (on file with Advancement Project).
- 57 See Letter from Renee Paradis, Brennan Center, to John K. Tanner, Voting Section, U.S. Department of Justice (Sept. 6, 2007) (on file with Advancement Project).
- 58 See *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006).
- 59 See *League of Women Voters v. Browning*, No. 1-08-cv-21243 (S.D. Fla. Aug. 6, 2008) (slip. op.).
- 60 Fla. Stat. § 102.104.
- 61 *Id.* at § 101.045(2).
- 62 Additionally, another 285 provisional ballot envelopes were simply left blank, suggesting some level of poll worker error in instructing the voter.
- 63 <http://doe.dos.state.fl.us/reports/#2004gef>.
- 64 By contrast, in the 2006 midterm elections, approximately 73 percent of the provisional ballots cast were counted.
- 65 <http://doe.dos.state.fl.us/reports/#2004gef>.
- 66 Bill Cotterell, *Early Voting Not As Effective As Hoped*, Tallahassee Democrat, Nov. 22, 2007, available at <http://www.tallahassee.com/apps/pbcs.dll/article?AID=2007711220355> (last accessed Nov. 26, 2007); Steve Bousquet, *Early Voting to Slim Down*, St. Petersburg Times, July 15, 2007, available at [http://www.sptimes.com/2007/07/15/State/Early\\_voting\\_to\\_slim\\_.shtml](http://www.sptimes.com/2007/07/15/State/Early_voting_to_slim_.shtml) (last accessed Oct. 10, 2007) (county supervisors of elections were closing early voting sites due to budget reductions).
- 67 In 2007, a Florida State Senate committee recommend against any expansion of early voting. See Florida Senate Comm. on Ethics & Elections, *The Effect of Early Voting on Voter Turnout in Florida Elections*, Interim Project Report 2008-124 (Nov. 2007).
- 68 Fla. Stat. § 101.657(1).
- 69 *Id.*
- 70 Fla. Stat. § 97.055.
- 71 *Id.* § 97.055(1). Voter applicants whose registration information failed the HAVA matching standards have some leeway to provide verifying information. See *id.* § 97.053(6).
- 72 *Id.* § 101.045(2).
- 73 Pa. Dep’t of State, Registration Statistics, <http://www.dos.state.pa.us/elections/cwp/view.asp?A=1310&Q=446974>.
- 74 See U.S. Elections Project, 2008 General Election Turnout Rates (updated on Apr. 26, 2009), [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html).
- 75 *Id.*
- 76 This dip has been largely attributed to a drop in turnout in largely Republican districts. See Nonprofit Voter Engagement Network, *Voter Turnout Brief: Pennsylvania 2008*, available at <http://everybodyvoteneeds.com/2009/02/05/by-the-numbershowd-we-do/> (“Voter Turnout in Pennsylvania” link).
- 77 See *id.*
- 78 The Secretary of the Commonwealth in Pennsylvania is appointed by the Governor and, historically and institutionally, has exercised limited authority over the management of elections in the state. That job has rested with the counties. Over the last five to ten years, however, the Secretary’s authority over election administration has gradually expanded. Nonetheless, county election officials still retain much control over local systems and procedures.
- 79 25 Pa. Cons. Stat. § 1222.
- 80 Decl. of Robert Lee, Jr., submitted in *NAACP of Pennsylvania v. Cortes*, No. 08-5048 (E.D. Pa.

- Oct. 29, 2008), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Cortes-Declaration2-10-27-08.pdf>.
- 81 Decl. of Deborah Oliveri, Director of Elections, Berks County, submitted in *Moyer v. Cortes*, No 497 M.D. 2008 (Pa. Commw. Ct.), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Moyer-Memo-10-29-08.pdf>.
- 82 U.S. Elections Project, *2008 General Election Voter Registration Statistics* (updated on Mar. 6, 2009), [http://elections.gmu.edu/Registration\\_2008G.html](http://elections.gmu.edu/Registration_2008G.html).
- 83 25 Pa. Cons. Stat. § 1330(a).
- 84 See, e.g., Advancement Project, *Voter Advocacy Group Makes Plea To Philadelphia Voters With “In complete” Or “Rejected” Registration Applications: “You Can Still Vote! Take Advantage Today Of The Extended Deadline To Correct Your Recent Applications”* (Oct. 27, 2008) (on file with Advancement Project).
- 85 Pennsylvania Dep’t of State, *Alert Re: Driver’s License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)*, 5 (Aug. 9, 2006), available at [http://www.dos.state.pa.us/elections/lib/elections/090\\_election\\_administration\\_tools/dl\\_ssn\\_policy\\_change\\_alert.pdf](http://www.dos.state.pa.us/elections/lib/elections/090_election_administration_tools/dl_ssn_policy_change_alert.pdf).
- 86 *Moyer v. Cortes*, 497-MD-2008 (Pa. Commw. Ct. 2008) (litigation documents available at <http://moritzlaw.osu.edu/electionlaw/litigation/moyerv.cortes.php>). The lawsuit also sought to force the production of lists of all voters registered by ACORN and other groups.
- 87 The Ohio Republican Party also brought a lawsuit related to ‘matching’ in the weeks leading up to the election. See *Ohio Republican Party v. Brunner*, Case No. 2:08-cv-913 (S.D. Ohio 2008) (litigation documents available at <http://moritzlaw.osu.edu/electionlaw/litigation/ohiorepublicanpartyv.brunner.php>).
- 88 25 Pa. Cons. Stat. §§ 2671, 3013.
- 89 *Id.* § 267.
- 90 *Id.* § 2674.
- 91 Additionally, on Election Day, if a board member does not report for work, the election officials may, if necessary, fill vacant positions through “curbside” recruitment of a member of the public to fill the spot. *Id.* § 3048. Obviously, such a newly recruited worker would have received little or no training.
- 92 See Advancement Project, *Plight of the Poll Worker: Efforts to Improve Training and Support for Poll Workers in Ohio, Pennsylvania, Maryland, Florida, and Michigan* 4 (2006) (quoting Commissioner Edgar A. Howard), available at <http://www.advancementproject.org/pdfs/PollWorkerIssueBrief.doc>.
- 93 *Id.*
- 94 See *id.*
- 95 Compare Montgomery County’s Poll Worker Training Manual, *Election Officials Step by Step Guidelines* 7 (May 2007) (on file with Advancement Project), with 25 Pa. Cons. Stat § 3050.
- 96 Compare Allegheny County’s Poll Worker Training Manual, *Elections Officers Reference Manual* 12 (2008) (on file with Advancement Project), with 25 Pa. Cons. Stat § 3050.
- 97 See, e.g., Memorandum from Harry A. VanSickle, Pa. Dep’t of State, *Overview of General Primary Preparation Discussions with W.P.E.P.A.* (Mar. 3, 2008) (on file with Advancement Project).
- 98 Letter from Advancement Project to Albert Masland, Chief Counsel, Dep’t of State Re: Poll Worker Training (Sept. 8, 2008).
- 99 See Memo from Kathryn Boockvar to Advancement Project Re: Election Day in Pennsylvania, Nov. 4, 2008 (Nov. 13, 2008) (on file with Advancement Project).
- 100 Pennsylvania Dep’t of State, *Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by County Boards of Elections* 3 (Sept. 3, 2008) (on file with Advancement Project).
- 101 Pennsylvania Dep’t of State, *Emergency Paper Ballots* (Aug. 2008), available at [http://www.dos.state.pa.us/elections/lib/elections/090\\_election\\_administration\\_tools/emergency\\_paper\\_ballots.pdf](http://www.dos.state.pa.us/elections/lib/elections/090_election_administration_tools/emergency_paper_ballots.pdf).
- 102 Plaintiffs later dropped the latter part of their request, thus limiting their request for injunctive relief to requiring emergency ballots when at least fifty percent of the voting machines were not functioning.

- 103 See *NAACP of Pennsylvania v. Cortes*, 591 F. Supp. 2d 757, 766 (E.D. Pa. 2008).
- 104 *Id.* at 765.
- 105 Margaret Gibbons, *Montco Scrambles to Comply with Order*, Philadelphia Intelligencer (Nov. 2, 2008), available at <http://www1.phillyburbs.com/pb-dyn/news/113-11022008-1614928.html>.
- 106 Survey on file with Advancement Project.
- 107 Certain counties had a very high provisional ballot rejection rate in the 2008 primary. In Allegheny, Berks, Lehigh, and Montgomery counties, more than 70% of the voted provisional ballots were rejected in full. In Dauphin and Delaware counties, more than 60% were rejected in full. A large percentage of these were rejected because they were voted in the “incorrect political party” – the party for which the voter was not registered.
- 108 See Commonwealth of Pennsylvania, Dep’t of State, *Voting Rights of Felons, Convicted Misdemeanants and Pretrial Detainees* (explaining the voting rights of incarcerated and convicted individuals in Pennsylvania and providing instructions on how to register and vote from within a penal institution), available at [http://www.dos.state.pa.us/dos/lib/dos/20/convicted\\_felon\\_brochure\\_website.pdf](http://www.dos.state.pa.us/dos/lib/dos/20/convicted_felon_brochure_website.pdf).
- 109 Although Pennsylvania statutes provide that a person convicted of a felony and incarcerated within the past five years is not eligible to vote in the Commonwealth, the Supreme Court of Pennsylvania ruled that the five-year waiting period is unconstitutional. *Mixon v. Commonwealth*, 759 S.2d 442 (Pa. Commw. Ct. 2000), *aff’d* 783 A.2d 763 (Pa. 2001). Accordingly, individuals who have served time for a felony are eligible to register and vote upon release.
- 110 See Commonwealth of Pennsylvania, Dep’t of State, *Voting Rights of Felons, Convicted Misdemeanants and Pretrial Detainees* available at [http://www.dos.state.pa.us/dos/lib/dos/20/convicted\\_felon\\_brochure\\_website.pdf](http://www.dos.state.pa.us/dos/lib/dos/20/convicted_felon_brochure_website.pdf).
- 111 See, e.g., *Philadelphia Jails Candidates and Voting Rights Forum*, Riverside Correction Facility (Apr. 10, 2007) (flier announcing conference and training on voter registration), available at <http://www.advancementproject.org/vpp-newsletter/pdfs/0407/ForumProgram.pdf>.
- 112 Gabrielle Banks, *Volunteers register county jail inmates to vote*, Pittsburgh Post-Gazette, Sept. 27, 2008, available at <http://www.post-gazette.com/pg/08271/915556-85.stm>.
- 113 25 Pa. Cons. Stat. § 1326(b)(2).
- 114 *Id.* §1330(a)(7).
- 115 *Id.* §1902(a)(1), (2).
- 116 *Id.* §1902(b).
- 117 [http://www.computerworld.com/action/article.do?command=viewArticleBasic&taxonomyName=it\\_in\\_government&articleId=9117644&taxonomyId=69&intsrc=kc\\_top](http://www.computerworld.com/action/article.do?command=viewArticleBasic&taxonomyName=it_in_government&articleId=9117644&taxonomyId=69&intsrc=kc_top).
- 118 *Compare Results for 2008*, available at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/pres110408.aspx>, with *Results for 2004*, available at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2004ElectionsResults/04-1102PresVicePres.aspx>.
- 119 Stephen Majors, *Roughly 666,000 New Ohio Voters Registered in 2008*, Assoc. Press., Oct. 8, 2008, available at <http://www.ohio.com/news/ohiocentric/30627849.html>.
- 120 <http://www.twine.com/item/11lv4h04w-mg/new-registrations-check-for-fraud-could-crash-entire-voter-database-ohio-secretary-of-state-jennifer-brunner-says-cleveland-com> (citing <http://www.cleveland.com/news/plaindealer/index.ssf?/base/news/1225441996268580.xml&coll=2>).
- 121 Ohio Sec’y of State, *Elections Enhancements for Ohio: A Report to the Governor and General Assembly* (Apr. 22, 2009), available at <http://www.sos.state.oh.us/sos/upload/news/20090422postconference.pdf>.
- 122 H.B. 3. This provision expired on January 1, 2009 and is no longer in effect.
- 123 Ohio Rev. Code Ann. § 3503.15(G).
- 124 Ohio Sec’y of State, *Secretary Brunner Clarifies Challenge Laws to Protect Voters*, Sept. 5, 2008 (press release), available at <http://www.sos.state.oh.us/PressReleases/2008%20Press%20Releases/20080905.aspx>.
- 125 *Id.*
- 126 In 2004, the year the national election hinged on results from Ohio, the Ohio Republican Party

intended to challenge 35,000 voters based on returned mail from the GOP's own reminder notices. From 2004 to 2006, Republicans challenged 77,000 voters this way nationwide. A consent decree issued in a case captioned *Democratic National Committee v. Republican National Committee* in 1982, and amended in 1987, enjoins the GOP from instituting "ballot security programs" that target minority voters. See <http://www.miller-mccune.com/politics/update-ohio-removes-vote-caging-possibility-662> for general discussion.

Four days before the 2004 presidential election, Advancement Project filed a motion to intervene and reopen the *DNC v. RNC* case on behalf of an Ohio voter, Ebony Malone. *Democratic National Committee v. Republican National Committee*, Civ. Action No. 81-3876 (Oct. 27, 2004) (Complaint in Intervention for Preliminary and Permanent Injunctive and Declaratory Relief). A flurry of other lawsuits were filed with mixed success in the courts; nevertheless, there were very few reports of challenges on Election Day.

- 127 County boards of election were to indicate on a voter's record if the mailing had been returned so that the voter could provide identification or information proving his eligibility.
- 128 Ohio Sec'y of State Directive 2008-79, *Required Procedures in Administering Voter Challenge Statutes*, R.C. 3503.24 and 3505.19 (Sept. 5, 2008), available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-79.pdf>.
- 129 In the summer of 2008, Advancement Project took out radio spots encouraging voters to check their registration and warning of caging efforts.
- 130 42 U.S.C. § 15483(a).
- 131 *Id.* § 15483(a)(5)(B).
- 132 *Id.* § 15485 ("The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State."). Advancement Project and other voting rights advocates contend that HAVA preempts state laws that require the rejection of voter registration applications due to a matching failure.
- 133 This procedure was explained to Advancement Project by Gus Maragos, Ohio Statewide Voter Database Coordinator, on January 4, 2008.
- 134 See *Ohio Republican Party v. Brunner*, 544 F.3d 711, 713-15 (6th Cir. 2008) (en banc) (summarizing matching confirmation practices).
- 135 See *id.*
- 136 Mark Niquette, *Brunner Disallows Mismatch Challenges*, Columbus Dispatch, Oct. 23, 2008, available at [http://www.dispatch.com/live/content/local\\_news/sotires/2008/10/23/no\\_challenge\\_ART\\_ART\\_10-23-08\\_B1\\_E3BM90B.html?sid=101](http://www.dispatch.com/live/content/local_news/sotires/2008/10/23/no_challenge_ART_ART_10-23-08_B1_E3BM90B.html?sid=101).
- 137 See *ORP v. Brunner*, 544 F.3d at 713-15 (summarizing testimony on database).
- 138 Unlike some states, Ohio did not legislate its database matching requirements.
- 139 See *ORP v. Brunner*, 544 F.3d at 713.
- 140 See Ohio Sec'y State, *Statewide Voter Registration Database (SWVRD) Manual* (Jan. 2008) (noting in a parenthetical that the Bureau of Motor Vehicles confirmation "process is currently turned off").
- 141 See *ORP v. Brunner*, 544 F.3d at 731 (en banc) (dissenting op.).
- 142 "Most states that adopted matching schemes have done away with them. For example, after implementing matching schemes, several states . . . abandoned those registration schemes after thousand of eligible voters were being denied the right to vote." *Fla. State Conf. of NAACP*, 522 F.3d 1153, 1176 n. 1 (11th Cir. 2008) (Barkett, J., concurring in part, dissenting in part).
- 143 *ORP v. Brunner*, 543 F.3d 357, 362 (6th Cir. 2008), *rev'd en banc*, 544 F.3d 711 (6th Cir. 2008).
- 144 The Supreme Court ruled that the ORP did not have standing to sue for violations of HAVA, but expressly declined to rule on the merits of whether Secretary Brunner was complying with HAVA. See *ORP v. Brunner*, 129 S. Ct. 5 (2008).
- 145 Ohio Sec'y of State, *Elections Enhancements for Ohio: A Report to the Governor and General Assembly* (Apr. 22, 2009), available at <http://www.sos.state.oh.us/sos/upload/news/20090422postconference.pdf>.

- 146 Ohio Rev. Code § 3509.02 (H.B. No. 234, effective Jan. 27, 2006).
- 147 See Ohio Sec’y of State, 2008 Election Results, *available at* <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults.aspx>.
- 148 Ohio Sec’y of State, *Secretary Brunner announces 1.46 Million Ohioans request absentee ballots*, Oct. 27, 2008 (press release), *available at* <http://www.sos.state.oh.us/SOS/PressReleases/2008%20Press%20Releases/20081028.aspx>.
- 149 Ohio Rev. Code Ann. § 3501.11(Z).
- 150 See Adam Levine, *Excitement, Frustration as Early Voters Brave Long Lines*, CNN politics.com, Nov. 2, 2008, <http://www.cnn.com/2008/POLITICS/11/02/early.voting/index.html>.
- 151 *Id.*
- 152 Ohio Sec’y of State, Directive 2008-63, *Processing Voter Registration Applications Received the Week Immediately Preceding a Voter Registration Deadline*, Aug. 13, 2008, *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-63.pdf>.
- 153 *Id.*
- 154 See *State ex rel Colvin v. Brunner*, 896 N.E.2d 979, 982 (Ohio 2008).
- 155 *Ohio Republican Party v. Brunner*, No. 2:08-cv-00913, 2008 U.S. Dist. LEXIS 86065, at \*10 (S.D. Ohio Oct. 16, 2008) (declining to rule on issue before Ohio Supreme Court in *State ex re Colvin v. Brunner*).
- 156 Notably, the prosecutor, Joe Deters, was also a chair of the McCain campaign. See [http://www.buckeyestateblog.com/hamilton\\_county\\_gop\\_voters\\_are\\_presumed\\_fraudulent\\_until\\_we\\_prove\\_other\\_wise](http://www.buckeyestateblog.com/hamilton_county_gop_voters_are_presumed_fraudulent_until_we_prove_other_wise).
- 157 Ohio Rev. Code Ann. § 3501.27 (A), (B), (C).
- 158 Advancement Project, *Plight of the Poll Worker: Efforts to Improve Training and Support for Poll Workers in Ohio, Pennsylvania, Maryland, Florida, and Michigan* 3 (2006), *available at* <http://www.advancementproject.org/pdfs/PollWorkerIssueBrief.doc>.
- 159 Advancement Project, *The End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election* 6 (Oct. 2008), *available at* <http://www.advancementproject.org/pdfs/vpp/PollingPlaceResourcesReport.pdf>.
- 160 *Id.* at 19-20.
- 161 <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults.aspx>.
- 162 <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2004ElectionsResults.aspx>. In 2006, approximately 3.6% of the ballots cast were provisional ballots.
- 163 Ohio Rev. Code Ann. § 3505.18, 3505.181.
- 164 *Id.* § 3503.16.
- 165 <http://www.sos.state.oh.us/sos/upload/elections/2008/gen/provisionals.pdf>.
- 166 *Id.*
- 167 *Id.*
- 168 The wrong precinct rule was upheld against a facial challenge brought pursuant to HAVA in 2004. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).
- 169 Ohio Rev. Code Ann. § 3505.181(C)(1).
- 170 *The Northeast Ohio Coalition for the Homeless v. Brunner*, No. C2-06-896 (S.D. Ohio Oct. 27, 2008) (“*NEOCH v. Brunner*”), *available at* <http://moritzlaw.osu.edu/electionlaw/litigation/documents/NEOCH-Order-10-27-08.pdf>.
- 171 The lawsuit in question, *NEOCH v. Brunner*, No. C2-06-896 (S.D. Ohio), was filed in 2006 against the previous Secretary of State, Kenneth Blackwell, and primarily argued that Ohio’s new voter identification laws had a disproportionate impact on the homeless and resulted in significant numbers of homeless voters casting provisional ballots.
- 172 Ohio Sec’y of State, Directive 2008-101, *Guidelines for Determining the Validity of Provisional Ballots*, Oct. 24, 2008, *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-101.pdf>.
- 173 Ohio Sec’y of State, Directive 2008-103, *Directive Issued Pursuant to Court Order*, Oct. 28, 2008,

- available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-103.pdf>.
- 174 Ohio Sec'y of State, *Secretary Brunner Makes Elections Recommendations in New Report*, Apr. 22, 2009 (press release), available at <http://www.sos.state.oh.us/SOS/PressReleases/2009/20090422.aspx>; Ohio Sec'y of State, *Elections Enhancements for Ohio: A Report to the Governor and General Assembly*, Apr. 22, 2009, available at <http://www.sos.state.oh.us/sos/upload/news/20090422postconference-report.pdf>.
- 175 See Ohio Sec'y of State's Website for 2008 and 2004 results: <http://www.sos.state.oh.us/SOS/elections/electResultsMain/>.
- 176 <http://www.sos.state.oh.us/SOS/PressReleases/2008%20Press%20Releases/20081028.aspx>.
- 177 See Alex Walker, *Seven-hour waits reported in Missouri city*, CNN, Nov. 4, 2008, <http://politicalticker.blogs.cnn.com/category/voter-problems/>.
- 178 Compare U.S. Elections Project, *2008 General Election Turnout Rates* (updated on Apr. 26, 2009), [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html) with *id.* at *2004 General Election Turnout Rates* (updated on Oct. 3, 2008), [http://elections.gmu.edu/Turnout\\_2004G.html](http://elections.gmu.edu/Turnout_2004G.html).
- 179 <http://www.cnn.com/ELECTION/2008/results/polls.main/>.
- 180 [http://www.sos.mo.gov/elections/s\\_default.asp?id=results](http://www.sos.mo.gov/elections/s_default.asp?id=results).
- 181 *Id.*
- 182 U.S. Census Bureau, *State and County Quick Facts*, <http://quickfacts.census.gov/qfd/states/29000.html>.
- 183 [http://www.sos.mo.gov/elections/s\\_default.asp?id=results](http://www.sos.mo.gov/elections/s_default.asp?id=results).
- 184 Had the national election been closer and Missouri's electoral votes been in play, it is likely that the state, particularly the problems in St. Louis County, could have been seen as 'another Florida.' John McCain carried the state by one tenth of one percent, fewer than 5,000 votes – fewer than the number of provisional ballots cast statewide – and many exit polls showed Barack Obama leading. <http://www.cnn.com/ELECTION/2008/results/individual/#MOP00>.
- 185 Missouri Secretary of State, *Voters First: An Examination of Missouri's 2008 State and Federal Elections*, 7 (Apr. 2009) ("Voters First"), available at <http://www.sos.mo.gov/elections/VotersFirst/2008/VotersFirst2008final.pdf>.
- 186 Missouri OURVOTE Live: Registration Problems (173 of 511 calls).
- 187 See *Voters First* at 7.
- 188 U.S. Election Project, *2008 General Voter Registration Statistics* (updated on Mar. 6, 2009), [http://elections.gmu.edu/Registration\\_2008G.html](http://elections.gmu.edu/Registration_2008G.html).
- 189 Mo. Rev. Stat. § 115.135.
- 190 *Voters First* at 8 (reporting calls from voters who were unaware of the requirement of re-registering).
- 191 See Advancement Project, *Voter Registration Alert: Voter Verification and Completion, Missouri* (2008) (St. Louis City and St. Louis County election officials reported applying different rules) (on file with Advancement Project).
- 192 Tony Messenger, *DOJ drops federal voting lawsuit against Robin Carnahan*, St. Louis Post-Dispatch, Mar. 10, 2009, available at <http://www.stltoday.com/blogzone/political-fix/political-fix/2009/03/doj-drops-federal-voting-lawsuit-against-robin-carnahan/>.
- 193 Mo. Rev. Stat. § 115.155(3),(4).
- 194 St. Louis County showed a substantial increase in registered voters, while the state as whole and other local jurisdictions reported only modest gains or even reductions.
- 195 In August 2008, when the number of voter registration applications surged, St. Louis County was forced to dedicate resources to a recount in a primary race for attorney general.
- 196 See Alex Walker, *Wait times reach 4 to 6 hours in St. Louis area*, CNN, Nov. 4, 2008, <http://politicalticker.blogs.cnn.com/category/voter-problems/>.
- 197 Mo. Rev. Stat. § 115.158.5 (tracking HAVA by requiring agreements with agencies for database access that will allow verification but not specifying matching procedures).
- 198 Conversations between Advancement Project and Elections Counsel to Missouri Secretary of State (June-July 2008).

- 199 Mo. Rev. Stat. § 115.155(3), (4).
- 200 A copy of the letter produced by the Secretary of State's office is on file with Advancement Project.
- 201 Telephone calls between Advancement Project and local election authorities.
- 202 See, e.g., Mo. Rev. Stat. § 115.155(4) (permitting completion only if voter failed to check citizenship box). *But see id.* § 115.151.2 (providing that mail-in registrations are deemed registered as of the date the application is postmarked, as long as it ultimately is not rejected by the election authority). Thus, some jurisdictions allowed voters to complete registrations as long as the registrations were postmarked by the voter registration deadline.
- 203 Advancement Project, *Voter Registration Alert: Voter Verification and Completion, Missouri* (2008) (St. Louis City and St. Louis County election officials reported applying different rules) (on file with Advancement Project).
- 204 Telephone conversations between Advancement Project and local election authorities (2008); telephone conversation between Advancement Project and Ben Hovland, counsel to the Secretary of State (Sept. 25, 2008).
- 205 As of July 23, 2008, as many as 5,704 voters with unmatched applications were coded "pending/incomplete" in the MCVR.
- 206 Mo. Rev. Stat. § 115.087.
- 207 The Secretary of State has reported that the local trainings range from two to eight hours. See *Voters First* at 16.
- 208 *Voters First* at 17.
- 209 *Id.* at 22.
- 210 Meeting between Advancement Project and Kansas City Election officials (July 22, 2008).
- 211 Unfortunately, poll worker logs from the February 2008 presidential primary election show that poll workers reported numerous malfunctions with the palm pilots, noting that "the palm pilot was of no use to us. Every time we used it there was no information on it," and that the palm pilot "did not respond to prompts," and "did not work, period." See St. Louis County Poll Worker Comment forms (on file with Advancement Project).
- 212 As mentioned above, many poll workers apparently did not use the palm pilots to check registration.
- 213 § 115.277. Persons eligible to vote absentee
- 214 Mo. Rev. Stat. § 115.430.2(3).
- 215 Poll Worker Training Session, Kansas City, July 22, 2008.
- 216 Mo. Rev. Stat. § 115.430.2(1).
- 217 Meeting between Advancement Project and Kansas City election directors (July 22, 2008).
- 218 Mo. Rev. Stat. § 115.151(1).
- 219 *Id.* § 115.135.
- 220 *Id.* § 115.277.
- 221 *Id.* § 115.277(4).
- 222 Missouri Secretary of State, *Voters First: An Examination of Missouri's 2008 State and Federal Elections* 9 (2009), available at <http://www.sos.mo.gov/elections/VotersFirst/2008/VotersFirst2008final.pdf>.
- 223 Press Release, Virginia State Board of Elections, *Record Number of Registered Voters Ready to Vote in November*, Oct. 17, 2008, available at [http://www.sbe.virginia.gov/cms/Media/Press\\_Releases/ELIECTION-OFFICIALS\\_PREPARE\\_FOR\\_HIGH\\_VOTER\\_TOURNOUT.html](http://www.sbe.virginia.gov/cms/Media/Press_Releases/ELIECTION-OFFICIALS_PREPARE_FOR_HIGH_VOTER_TOURNOUT.html).
- 224 For instance, registration in Richmond City increased by more than 20 percent in the calendar year and in Norfolk City by almost 20 percent. [http://www.sbe.virginia.gov/cms/documents/2008\\_Statistics/Dec/Statewide\\_Statistics\\_by\\_Locality.pdf](http://www.sbe.virginia.gov/cms/documents/2008_Statistics/Dec/Statewide_Statistics_by_Locality.pdf)
- 225 See Advancement Project, *End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Elections*, Oct. 2008, at 9, available at <http://www.advancementproject.org/pdfs/vpp/PollingPlaceResourcesReport.pdf>.
- 226 Compare U.S. Elections Project, *2008 General Election Turnout Rates* (updated on Apr. 26, 2009), [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html) with *id.* at *2004 General Election Turnout Rates* (up

- dated on Oct. 3, 2008), [http://elections.gmu.edu/Turnout\\_2004G.html](http://elections.gmu.edu/Turnout_2004G.html).
- 227 U.S. Census Bureau, *State & County QuickFacts*, <http://quickfacts.census.gov/qfd/states/51/51760.html>.
- 228 Because of the large increase in registered voters, that is about a 7 percent increase in turnout among registered voters. Compare results for Richmond in 2008, [https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/96\\_s.shtml](https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/96_s.shtml) and 2004 with results for Richmond in 2004, [http://www.sbe.virginia.gov/ElectionResults/2004/Nov2004/elec\\_loc\\_turnout.html](http://www.sbe.virginia.gov/ElectionResults/2004/Nov2004/elec_loc_turnout.html).
- 229 See Virginia State Board of Elections, *Help America Vote Act of 2002 Virginia State Plan* (adopted July 2003, amended July 2006), available at [http://www.sbe.virginia.gov/cms/documents/HAVA/Hava\\_State\\_Plan\\_Amendment\\_2006.pdf](http://www.sbe.virginia.gov/cms/documents/HAVA/Hava_State_Plan_Amendment_2006.pdf).
- 230 [http://www.sbe.virginia.gov/cms/Voter\\_Information/Registering\\_to\\_Vote/College\\_Student.html](http://www.sbe.virginia.gov/cms/Voter_Information/Registering_to_Vote/College_Student.html).
- 231 Va. Code Ann. § 24.2-627.
- 232 Virginia localities are also barred from acquiring any more DRE machines and are likely to begin moving to optical scan. *Id.* § 24.2-626.
- 233 See Ohio Rev. Code Ann. § 3506.02; Ohio Secretary of State Directive 2008-64.
- 234 See Virginia State Board of Elections, *Updated Fact Sheet: The 2008 General Election At a Glance*, Nov. 3, 2008, available at [http://www.sbe.virginia.gov/cms/documents/Public\\_Notices/General\\_Election\\_Fact\\_Sheet-Final-PDF.pdf](http://www.sbe.virginia.gov/cms/documents/Public_Notices/General_Election_Fact_Sheet-Final-PDF.pdf).
- 235 These statistics were derived from comparisons of the jurisdictions' resource allocation plans for the 2008 general election and the polling place statistics available from the State Board of Elections.
- 236 *End of the Line*, 13.
- 237 *Id.* at 13-14.
- 238 *Id.*
- 239 See Amended Expert Decl. of Walter Richard Mebane, submitted in support of Plaintiffs' Motion for Preliminary Injunction in *NAACP-VA v. Kaine*, No. 3:08 CV 692 –RLW (E.D. Va. Oct. 31, 2008).
- 240 *Id.* at ¶ 19.
- 241 *Id.*
- 242 See, e.g., Mike Saewitz, *Poll Book Problems Blamed for Slow Voting at 12 Chesapeake Precincts*, PilotOnline.com, Nov. 4, 2008, <http://hamptonroads.com/2008/11/pollbook-problems-blamed-slow-voting-12-chesapeake-precincts>.
- 243 Seth Colter Walls, *Virginia Voting: Broken Machines, No Paper Ballots*, The Huffington Post, Nov. 4, 2008, [http://www.huffingtonpost.com/2008/11/04/virginia-voting-broken-ma\\_n\\_140897.html](http://www.huffingtonpost.com/2008/11/04/virginia-voting-broken-ma_n_140897.html).
- 244 Mike Saewitz, *Chesapeake's electronic poll books were voting-delay villains*, PilotOnline.com, Nov. 6, 2008, <http://hamptonroads.com/2008/11/chesapeakes-electronic-poll-books-were-votingdelay-villains>.
- 245 Va. Code Ann. § 24.2-115.
- 246 *Id.* § 24.2-106.
- 247 Additionally, the Code sets a floor for precinct officers. Each precinct must have at least three of ficers, but, as with the voting machine allocations, the board may add officers. *Id.* § 24.2-115.
- 248 <http://www.vbgov.com/vgn.aspx?vgnextoid=d7081bda9e402110VgnVCM100000190c640aRCRD&vgnnextchannel=7459fd67f3ad9010VgnVCM100000870b640aRCRD&vgnnextfmt=default>.
- 249 <http://www.arlingtonva.us/Departments/VoterRegistration/eo/VoterRegistrationEoTraining.aspx>.
- 250 See Mike Saewitz, *Poll Book Problems Blamed for Slow Voting at 12 Chesapeake Precincts*, PilotOnline.com, Nov. 4, 2008, <http://hamptonroads.com/2008/11/pollbook-problems-blamed-slow-voting-12-chesapeake-precincts>.
- 251 Va. Code Ann. § 24.2-116.
- 252 <http://www.arlingtonva.us/Departments/VoterRegistration/VoterRegistrationJobs.aspx>.
- 253 <http://www.chesapeake.va.us/services/depart/vot-reg/precincts.shtml#workers>.
- 254 Va. Code Ann. § 24.2-416 (beginning in 2010 registration will end on the 22nd day before the election – i.e., books will be closed for twenty-one days before the election).

255 *Id.* § 24.2-422(B),(C).

256 *Id.* § 24.2-401.

257 Jeff Zeleny & Elisabeth Bumiller, *Nominees Pack in Visits to G.O.P.-Leaning States as Campaign Closes*, Nov. 3, 2008, [http://www.nytimes.com/2008/11/04/us/politics/04campaign.html?pagewanted=2&\\_r=1&sq=Nominees%20Pack%20In%20Visits%20to%20G.O.P&st=cse&scp=1](http://www.nytimes.com/2008/11/04/us/politics/04campaign.html?pagewanted=2&_r=1&sq=Nominees%20Pack%20In%20Visits%20to%20G.O.P&st=cse&scp=1).