

“What do you do if the machine breaks down (on Election Day)? ... something happens with the weather? There are so many different elements. So having that standard baseline, I think, is great, and I wish we had more conversations around standardization of those things as opposed to uniformity.”

—Deirdre Reese, Executive Director of Ohio Voice, testified about the benefits of Ohio’s election administration plans at the NCVR Columbus regional hearing.



SECTION II: Voting And Election Day

Politics aside, success on Election Day may be defined differently depending on whether one is casting a ballot or counting them. For voters, a successful voting experience can include having access to a convenient polling location, getting language or other types of assistance at the polls if needed, and facing minimal hurdles to casting a ballot. For election administrators, success can mean staffing polling locations with enough well-trained election judges, having all voting machines and technology working properly and being well prepared with a backup plan for when things go wrong. Undoubtedly, for both voters and election administrators, avoiding long lines and delays would top these lists.

Long lines at the polls are not a new phenomenon, but lines that wrapped around buildings and voters that waited six or seven hours into the early morning in the last three presidential election cycles have made wait times one of the highest profile problems. During his victory speech in 2012, President Obama mentioned the need to fix the long lines and shortly afterwards set up the Presidential Commission on Election Administration (PCEA) to study the issue along with other election administration challenges.⁴² Among the many recommendations made by the PCEA was the expansion of early voting “to limit congestion on Election Day and to respond to the demand for greater opportunities to vote beyond the traditional Election Day polling place.”⁴³

The NCVR’s first report discussed the impact of long lines and early voting, detailing the ways in which minority voters disproportionately experience long lines and longer wait times than other groups, as well as the damage that reducing early voting inflicts on these communities.⁴⁴ The following section highlights NCVR hearing testimony addressing various aspects of election administration that make it easier for voters to cast their ballots, as well as factors that create roadblocks for voters on Election Day. It explores the role of Election Administration Plans in improving election administration and examines the increasing need to plan for unforeseen emergencies, the need for a highly trained and stable team of poll workers, how provisional ballots can be better administered, how innovation and technology can improve elections, and the need to upgrade voting machines.

MORE EFFICIENT ELECTION ADMINISTRATION SYSTEMS NEEDED

Election officials can do and want to do a better job administering elections. In addition to expanding early voting, state officials are exploring other policies to alleviate long lines at the polling place, including the more efficient allocation of resources. At times, however, these improvements result either from protracted battles between voters and state officials, in reaction to embarrassing system-wide problems, or in extreme cases, natural disasters.

Election Administration Plans in Ohio: Standardization, Not Uniformity

At the NCVR Columbus regional hearing in May 2014, both advocates and election administrators spoke extensively about how Election Administration Plans (EAPs) have improved the manner in which elections are planned and run in the State.

After the dysfunction of the 2004 elections in Ohio, which were plagued by malfunctioning or broken machines, confused and undertrained poll workers, voter registration problems, and wait times of up to 12 hours,⁴⁵ the Lawyers' Committee for Civil Rights Under Law represented the League of Women Voters of Ohio and other partners in a suit against Secretary Blackwell and Governor Bob Taft. The suit claimed systematic impairment of the right to vote based on failures of election administration and listed numerous problems ranging from failure to provide ballots to improper exclusion from the rolls to misallocation of voting machines.⁴⁶

The case settled under an agreement calling for the Secretary of State to streamline the election process and requiring all 88 Ohio counties to produce significant, centralized pre-election plans that ensured adequate resources at all polling places and included contingency plans for any shortages.⁴⁷ The settlement agreement also provided for extensive recruitment and training of poll workers.⁴⁸

Describing the EAPs as “the big winner”, Peg Rosenfeld, Election Specialist with the Ohio League of Women Voters, testified that,

[O]ver the last year or two, the current Secretary of State's office has come up with a template that's quite detailed that every board has to fill out, and they all screamed and yelled the first time they had to do this. But, now, they've done it a couple of times, and they realize it's terrible useful. It does prevent them from making some major mistakes. 'Oh, we didn't order the ballots in time.' So they don't make those mistakes over again.⁴⁹

Another hearing witness, Deirdre Reese, Executive Director of Ohio Voice, agreed on the overall benefits of the plans, saying,

“I would absolutely agree with that. I think it has been to the advantage of voters. It has forced county boards to be prepared. I think that is the best thing about having elections administration plans; whereas, some counties didn’t prepare for, oh, more people are going to come and ask for a paper ballot, even though there are electronic voting machines.”

However, Reese and other witnesses warned that the success of standardizing election planning did not imply that uniformity—a goal often cited by Ohio’s Secretary of State—was the most effective approach to statewide election administration. “Just in that example, Cuyahoga County versus Vinton County. They [Vinton County] just don’t have as many people, so they don’t need as many voting machines,” Reese observed. Reese further testified:

“Maybe they don’t need as many hours for early voting. It’s different when you have people in, you know, a huge city like this. If you’re traveling, you work in Dayton, so if we only have hours that are from 9:00 a.m. to 4:30 p.m., by the time I leave my job and come back, maybe pick up my children, when am I going to get to go and vote?”

The settlement requiring EAPs expired on January 11, 2015. Hearing witnesses expressed hope that election administrators would institutionalize the use of the plans beyond the settlement’s expiration.

Lessons from Superstorm Sandy: Emergency Planning and Preparedness Is Essential

One critical component of EAPs is the requirement that counties develop procedures to be used in the event of a natural disaster or other extraordinary event. Election Day contingency plans should provide detailed information about how a county will deal with failures of election equipment and ballot shortages. Contingency planning may also include backup plans in case of natural disaster or power outages at a polling place.⁵⁰ Testimony to the NCVR about Superstorm Sandy underscored the importance of this type of planning and the fallout that occurs when states and counties are not prepared.

One week before the 2012 general election, Superstorm Sandy made landfall, wreaking havoc in communities lining the East Coast and disrupting the administration of elections, especially in New York and New Jersey. Election officials in affected states scrambled to find new polling locations and poll workers and issued last minute directives that allowed voters to participate in the election a full week after Election Day.

Catherine Weiss, Chair of Public Interest at the Lowenstein Center for the Public Interest at Lowenstein Sandler, a law firm with offices in both New York and New Jersey, called these efforts “heroic.” Nonetheless, Weiss testified that Superstorm Sandy illustrated the need for laws that make it easier to cast ballots in emergencies. In describing the experience in New Jersey, she noted that,

“what mainly failed was technology ... the state’s database repeatedly crashed on election day, and when it crashed, everything that was derivative of that database, there was a text system where you can text the word “where” to a certain number in order to find where your polling place was that depended on the state database. It failed when the state database failed. And Google searches and all general search engines also were derivative of the state database, so we had blackout periods throughout the day, but we had people saying where do I vote, and we could not answer the question because they were not in their normal polling places.”

Weiss noted that the New Jersey Secretary of State’s directive to allow displaced voters to apply for mail-in and absentee ballots by fax or e-mail resulted in a deluge of requests that the system could not handle: “[t]housands, thousands and thousands of people tried to make that application. And the fax servers and the e-mail servers in all the county clerk’s offices went down.”⁵¹

In a similar response, New York’s Governor issued an emergency order that allowed registered voters to cast ballots in any precinct, but polling places were not prepared for the volume of voters and many ran out of ballots. Voters were told that more ballots were being sent to the precincts but waited for hours and “became frustrated and decided that it wasn’t worth voting that day,” according to testimony from Eric Merin, an attorney with Kirkland and Ellis LLC, which served as an Election Protection call center in New York during the 2012 elections. Merin added that the call center also took calls from nursing home staff who were calling on behalf of frustrated disabled residents who had not received their absentee ballots because of the storm.



At the New York City regional hearing, Catherine Weiss, Public Interest Chair at the Lowenstein Center for the Public Interest, testified about emergency preparedness and voting system failures after Superstorm Sandy.

PHOTO CREDIT: CHRIS FIELDS

Among the Weiss' recommendations were:

- Written emergency plans by all election officials in the country.
- Laws and rules that allow provisional balloting in any state polling place by people displaced by emergency, and extended use of absentee ballots, extended hours for voting, and early in-person voting to relieve the pressure of one-day voting systems.
- Implementation of a plan to educate voters about emergency election administration through both high- and low-tech systems of communications.
- Legislation to preserve the right to vote for emergency first responders, regardless of where they are deployed.⁵²

In another response to the widespread reports of election problems related to Superstorm Sandy, the National Association of Secretaries of State's Task Force on Emergency Preparedness issued a report in 2014 that outlined ideas and best practices for election officials to prepare for and respond to emergency situations. Among its many recommendations, the report stressed the importance of contingency planning to address communications to voters, the provision of ballots in the event of power failures or machine breakdowns, poll worker shortages and polling place relocations.⁵³

Poll Workers: A More Stable and Well-Trained Workforce Needed

Well trained poll workers play an essential role in ensuring a well-run election. According to the 2014 U.S. Election Assistance Commission survey of state election officials, 730,930 poll workers were hired and deployed on Election Day.⁵⁴ The thousands of temporary poll workers

who serve our country at every election, working long hours with mostly low pay, deserve great appreciation and respect. However, staff-ing the nation's polling places continues to be a challenge for many jurisdictions⁵⁵ and many voters, including witnesses at NCVR hearings, continue to cite problems with poorly trained poll workers as a main obstacle to voting.

In response to complaints, innovative election administrators have undertaken new tactics to recruit and train poll workers. Recruiting students, including high school students, is a best practice. Today, half of all states allow 16- and 17-year-olds to work at the polls.⁵⁶ As Matt Crane, Clerk and Recorder for Arapahoe County, Colorado told the NCVR at the Denver regional hearing in January 2014:

“We have a student judge program here in Colorado where we can use high school kids 16 years and older. We actively recruit our high schools for that because kids aren't afraid of technology. We've had some college kids show up. But in all honesty, they're not as reliable as high school kids, right? Because, you know, college they get up when they get up and they do their things. Whereas high school kids, their moms grab them by the ear and say, you got to get there. We've had a lot of luck with high school.”⁵⁷

Macomb County Deputy Clerk Todd Schmitz told the NCVR at the Michigan state hearing that recruiting young people provides longer term benefits to that workforce:

“Election law allows you to place students in a polling place as long as they're supervised by an adult election worker. And, so, in our situation, we're able to put two students in the polling places, a half a day each. We're training a whole new generation of poll workers. We're also putting a generation of poll workers who have some technology smarts in the polling places. And, so, that's a win-win all the way around. That's something that could be duplicated in a serious role throughout the state, as well.”⁵⁸

A handful of states have also passed laws to make recruitment easier and training more consistent. For example, in Nebraska, a state often cited as a laboratory for poll worker management, jurisdictions are permitted to “draft” poll workers “in the same fashion that courts select jury members... The election officials draw from a randomized pool of registered voters and send out notice for them to appear. The person can postpone his or her duty, but can't decline.”⁵⁹

Despite all of these efforts, this is an area in which our election system still confronts a number of challenges. NCVR hearing witnesses described problems arising from the lack of consistency in poll worker training and performance.

Cathy Woodson, an organizer with Virginia Organizing, spoke of the feedback her organization received about poll worker confusion about current voter requirements. As Woodson testified, this confusion led some workers to give voters incorrect information:

“Virginia has an election every year so every election is important to us. So you have an example of workers having the lack of knowledge about voter ID. Lots of confusion around what is needed and what is considered a valid voter ID. And now we’re about, of course, to implement the new law of photo ID. One particular example from the South Hampton Roads area was one person, a worker ... had been working the precinct for years and years and years and she never accepted anything except a photo ID. Never, ever. Would ask people to leave, go back and get a photo ID. Another example... Voters said, ‘Well, I went to vote, I was on my lunch hour, machines were down and nobody seems to know what to do.’”⁶⁰

Woodson stressed the importance of establishing a standardized training program for all election workers to minimize worker confusion and give registrars the ability to better evaluate the work.

Cathy Woodson of Virginia Organizing discussed the challenges surrounding voter ID requirements at the NCVR Virginia state hearing.



Poll worker staffing and performance varies from polling site to polling site, leading to very different experiences for voters.⁶¹ Indeed, there are no national standards regarding numbers, payment or training of poll workers, and usually there are not even state standards. Only 30 states require poll worker training.⁶²

Provisional Ballots: Misused and Misunderstood

For many voters, the recount controversy during the 2000 presidential elections is the first thing that comes to mind when thinking about problems during elections. However, provisional balloting also rose to the forefront during that election cycle as a major voting issue. At that time, only half of the states permitted voters to cast a “provisional” or “affidavit” ballot in such situations.⁶³ In the remaining states, including Florida, if a prospective voter’s name did not appear on the registration roll, the voter was simply turned away, even in instances in which the voter was certain he or she had properly registered. The passage of the Help America Vote Act (HAVA) in 2002 sought to address this problem by requiring states to provide “provisional ballots” when a voter’s name could not be found on the registration rolls. It was thought this would ensure that no voter was wrongly disenfranchised as a result of an administrative error – but it did not quite turn out that way.

While HAVA requires states to offer voters a provisional ballot, it leaves the decision of whether – and under what circumstances – to count those ballots to the states. As a result, today there are widely different provisional ballot practices, not only by state, but also by county. Instances when provisional ballots might be offered include, but are not limited to: when the voter does not have proper ID, when a voter has moved within the county and has not reregistered, and when a voter has requested an absentee ballot but then wanted to vote in person. Yet, while more than 892,202 provisional ballots were cast in 2014, 19.2 percent of them were rejected, and therefore not counted in the final election tallies.⁶⁴

Witnesses at NCVR hearings discussed the problems that often arise in the administration of the varied provisional ballot laws. Matt Crane, Clerk and Recorder of Arapahoe County, Colorado, described how poor training at one polling location resulted in faulty decision-making about how and when to issue provisional ballots:

“[W]hen the judges were going through and they saw the lines of people, and people waiting in lines, when they’re there a long time sometimes they get a little upset. So what I think the judges did ... especially at Center Point where I was at, they would try to look somebody up but if they didn’t find them on the first pass they would say, Okay, I don’t see you. You’re going to have to vote provisional. Instead of following their training where they said—I’m in the system as Matthew Crane, but if I come in and sign as Matt Crane, the system wouldn’t find me that way. So you have to take more time and search, use a few different search functions. So I think that was a lot of it. It’s definitely a training issue that we’ll continue to hammer home in the 40 hours we’ll spend with them this year.”⁶⁵

There was also testimony about the overuse of or confusion about when to offer provisional ballots. Gregory Mendoza, former Governor of the Gila River Indian Community in the Phoenix metropolitan area described how the issue affects his community:

“It is common within my tribe for voters to change addresses between election cycles... And many of our tribal citizens do not have street addresses. Thus, completing the necessary paperwork may be challenging. There must be a better way to allow our tribal members to vote that doesn’t rely on them having these updated address on file or use provisional ballots... And a voter who votes a provisional ballot leaves the ballot box never knowing if their actual vote was actually counted or will be counted.”⁶⁶

Law professor and NCVR National Commissioner Patty Ferguson-Bohnee, who runs the Indian Law Clinic at the Sandra Day O’Connor School of Law, agreed. Working the Native Vote hotline on Election Day, Ferguson-Bohnee said she heard from many Native Americans who live in rural areas facing potential disenfranchisement or discouragement from voting because of the lack of street addresses.



Gregory Mendoza, former Gila River Indian Community Governor, testified about the impact and nuances of provisional voting in his tribal community at the NCVR Arizona state hearing. PHOTO CREDIT: MIKE ELLER

“And at Gila River, a lot of people have some physical address, but it’s not a given physical address or street address, and so people use their P.O. boxes. And under state law, the counties are supposed to provide both your physical and your street address on the voter roster. And we received a lot of calls from Gila River from people who were being turned away because they didn’t have both addresses. So their ID might have been a physical address, which is put down, but the voter roster had their P.O. box or vice versa. And so they were told that their IDs didn’t match.”⁶⁷

In Ohio, Carrie Davis, Executive Director of the Ohio League of Women Voters, cited the recent history of protracted litigation and partisan battles in Ohio over how and when provisional ballots should be used and counted, and warned about the potential impact of legislation that would create more requirements for casting a provisional ballot. Of Senate Bill 205, which has been signed by the Governor, Davis said:

“It adds additional fields for what must be filled out and if they are not filled out completely, which is what the statute says ‘completely’ then it’s rejected. That... violates provisions of the Civil Rights Act which says you can’t reject voting paperwork for immaterial errors. That aside, it’s almost in essence a de facto literacy test.”⁶⁸

Executive Director of the Ohio League of Women Voters Carrie Davis spoke about the negative effects of Ohio’s provisional ballot requirements at the NCVR Columbus regional hearing. PHOTO CREDIT: JIMMY MCEACHERN



USING INNOVATION AND TECHNOLOGY TO IMPROVE ELECTIONS

A growing number of the over 10,000 election jurisdictions around the country have been reallocating resources to modernize their voting systems or piloting innovations with the goal of making it easier for a voter to cast a ballot. Below are additional examples of election innovations described by witnesses to the NCVR.

Voting with iPads: Increasing Access and Efficiency

A key HAVA provision requires that voters with a full range of disabilities, including the blind and visually impaired, be given an equal opportunity to cast their ballots with the same access, privacy, and independence as any other voter.⁷² In 2011, Oregon became the first state to use iPads to allow voters with disabilities to vote with more ease and privacy. Election officials in Denver followed suit the following year. At the NCVR Denver regional hearing, Amber McReynolds, Director of Elections for the City of Denver, lauded her city's iPad Accessibility Pilot Project or iAPP, which was piloted with HAVA funding. The project helps voters living in group residential homes, including nursing homes, assisted living homes, and homes for persons with disabilities, to mark their mail-in ballots with an iPad. McReynolds gave specific examples in her testimony of the iPad's usefulness:

“There’s language accessibility. They can use the headphones. They can use the touch technology that enables them to, if they have a disability or difficulty using their hands, they can sort of use the back of their hand if needed... We set up voting booths so they have privacy screens while they complete the voting process, so they are solely independent.”⁷³

Amber McReynolds, Director of Elections for the City of Denver, Colorado, discussed the successes of the city's iPad Accessibility Pilot Project at the Denver regional hearing. PHOTO CREDIT: CHRIS FIELDS



The ballots are not cast on the internet, but once marked and approved, they are printed face down to ensure privacy and then submitted to election officials on site.

Because they are using technology with readily available information, McReynolds added, they can “facilitate on the iPads updates in the voter registration...immediately identify what ballot style the voter needs to get, and then we can facilitate the voting process.”⁷⁴ Denver is expanding the program to have iPad voting available at all voting centers in Denver in time for November 2015 elections.

Vote Centers: Breaking Precinct Boundaries, but Concerns About Closures

An alternative to neighborhood precinct voting that has attracted growing interest from state and local election administrators is vote centers. Vote centers consolidate polling locations and allow eligible voters to cast ballots at any voter center location, regardless of whether it is in the voter’s precinct or not. Testimony to the NCVR included both support for vote centers and concerns about the potential impact on voter access.

Roman Montoya, Deputy Clerk of Bernadillo County, New Mexico, testified about the advantages that vote centers have had, not only on the overall voter experience, but also on election administration. With precinct voting, Montoya said, “registered voters at the wrong location get provisional ballots which may not have their correct candidates. At VCC (vote centers) the voters cannot go to the wrong location, so they always will get their correct ballots.” Before the implementation of vote centers, Montoya said his office was flooded with calls from voters confused about where they were supposed to vote or upset that polling locations had moved. In 2012, the year voting centers were introduced, the number of calls decreased significantly and officials were able to reduce the hotline staff “to four people, and we got to reassign the other 16 people to other election duties,” said Montoya.⁷⁵

Montoya did point out that although it was expected that the overall number of provisional ballots would decrease significantly at voting centers, that was not the case:

“A lot of it had to do with ... poll workers not looking up the correct name and not finding somebody, and giving up too soon and issuing provisional ballots. A lot of those might’ve been data entry things... and instead of putting Matthew they were putting Matt. Or could have been a human error, transposed on our side when we entered the registration in the first place.”⁷⁶

In addition to New Mexico, 13 states have passed legislation to either roll out pilot projects for voter centers in targeted areas, or allow the use of voter centers statewide.⁷⁷

Yet because of their complex requirements—including newer technology, higher efficiency to accommodate more voters per hour, and more specialized poll worker training—more planning and preparation is needed for vote centers to be established effectively. In addition, there is some evidence that changing polling locations can impact voter turnout, so a large scale public information campaign to alert voters of new vote center locations would be a necessary part of implementation.⁷⁸

Noting concern about precinct consolidation, attorney Ellis Jacobs testified to the NCVR in Columbus, Ohio, about its impact on voters without cars:

“If you reduce the number of precincts in white areas and African-American areas equally, the impact isn’t equal because not everybody has a car... The numbers are, nationwide, 19 percent of African-Americans live in households without a single car, compared to 4.67 percent of whites. And, so, if you now—instead of being able to walk down to the neighborhood polling place, you have to go a mile and a half to a polling place, and, that is, in fact, what is happening in the city of Dayton. We have polling centers for Election Day. You’ve got to drive there. If you don’t have a car, it is much less likely that you are going to go.”⁷⁹

Electronic Proof of Residency: Helping Voters Avoid Delays

In 2012, the Wisconsin Government Accountability Board, which administers the state’s elections, unanimously approved the use of smart phones, computers and tablets to confirm voter residency, making Wisconsin the first state in the country to implement such a policy.⁸⁰ Analiese Eicher, of the One Wisconsin Institute, testified to the NCVR about the importance of the program to young voters:

“The ability of young voters on university campuses to use utility bills, bank statements or other approved documents on their smartphones to meet the residency requirements... was a historic move towards fully harnessing the power of our technology to expand access to the polls. The fall 2012 Presidential Election was the first election where this electronic documentation was permitted... it was noted that it was of tremendous assistance in the voting process and actually made the process faster for many people registering to vote on Election Day.”⁸¹

Electronic Poll Books: More Training Needed to Expand this Administrative Capacity

The poll book is the primary information source for administering elections at polling locations. Traditional paper poll books used to manually verify a voter's eligibility have been increasingly replaced across the country by electronic poll books with expanded administrative capabilities and efficiencies. According to the Election Assistance Commission, 30 states reported using some form of electronic poll books in 2014.⁸² Jurisdictions using electronic poll books today are able not only to verify eligibility, but also to update a voter's address, process Election Day registrations, and update an individual's voting record which may be uploaded to the statewide voter registration system.

At the NCVR Virginia state hearing, Donald Palmer, then-Secretary of the Virginia State Board of Elections, pointed to the use of electronic poll books as one of several key technological approaches that make the Virginia voting experience more expedient and efficient. As Palmer testified,

Polling place and line management, again, these are some fundamentals that we need to focus on...that means that electronic pollbooks, using technology versus paper, training our poll workers or officers of elections to be fully involved with electronic pollbooks to make that process with the voter, that interaction streamlined and as quick as possible, reduce those lines. So use of pollbooks and new technology that allows scanning of IDs or looking up an individual to see what their status is to make sure they're in the right line, the right polling place... will ensure that that line moves quickly, that the individual stands in one line and one line only.⁸³

Yet concerns about electronic poll books remain, including questions around data security, signature matching, poll worker training and lack of information around the technology. For example, in a 2014 research report on electronic poll books commissioned by the Government Accountability Board for the State of Wisconsin, over half of the municipal clerks surveyed responded that they preferred paper to electronic poll books. However, a third of clerks indicated that they did not have enough information to form an opinion. The majority of respondents also said they believed their poll workers would respond negatively to using electronic poll books.⁸⁴

Lida Rodriguez-Taseff, partner at the law firm Duane Morris and Guest Commissioner at the NCVR Florida state hearing, described witnessing the challenges of teaching poll workers to navigate the new poll book system at a poll worker training: "[t]hey are going to have a really

difficult time typing in the names, getting the right information and providing the right data to that voter on Election Day.”⁸⁵

She also voiced concern about the potential difficulties of signature matching. At polling locations with electronic poll books, a voter signs an electronic signature pad or directly onto the screen of the device, which is then compared to the signature either on file or on a voter’s ID. Rodriguez-Taseff testified that,

“I as a poll worker have the ability to reject your signature if it doesn’t match the ID, if the ID signature does not match the signature on the electronic poll book. Now we are trying to create all sorts of checks to prevent poll workers from doing that, but guess what, the training is very amorphous and it will happen. It absolutely will happen. That’s the number one problem with the electronic poll books.”⁸⁶

AGING MACHINES AND NO FEDERAL FUNDING ON THE HORIZON

In spite of these new developments in voting technology, there are still many states and counties struggling to maintain an aging election infrastructure. Passed in 2002, HAVA appropriated \$3.9 billion for states to upgrade voting equipment, and that amount has not yet been fully disbursed. Since that time, however, no further federal funding has been allocated for elections, and there is little prospect of any additional resources on the horizon. While there is no shortage of ideas from researchers, advocates and politicians about improving elections, they almost all cost money.⁸⁷ The Presidential Commission identified this as a particular problem when it comes to the inevitable need to replace the voting machines initially purchased with HAVA funds.⁸⁸

Aging and malfunctioning machines were frequently cited at the NCVR hearings as one of the main reasons for long lines at the polls. At the Michigan state hearing, Jan BenDor, State Coordinator for the Michigan Election Reform Alliance, said failing vote tabulators were a “very serious threat to your right to vote.”⁸⁹ BenDor, who has worked as an election judge and poll worker trainer, conducted research on the inaccuracies of the machines, which were purchased in 2003 and 2004.

“They can be as much as two percent off. The first congressional district in 2012 was decided by .46 percent. So, it—you can’t trust them with a close election. These are prone to malfunction, they jam, they’re not secure, they’re easily compromised, and we’ve been able to demonstrate how easy it is to hack them. And they’re already beyond their recommended service life.”⁹⁰

Donald Palmer of Virginia testified that, “[n]ew technology is out there. It’s coming to Virginia. We’ll be testing it, but the localities don’t have the resources to buy the newest accessible equipment.”⁹¹

Similarly, at the NCVR Columbus regional hearing, Bill Anthony, Director of the Franklin County, Ohio Board of Elections, spoke of the tough choices counties have to make when deciding on technological upgrades.

“Counties cannot pay for elections and the equipment and the new technologies without some federal assistance. Right now, most counties use the old-fashion way of a poll book where you look for a person’s signature, and they sign it, and those have to be printed. An electronic poll book would make that process a lot easier and streamline it, and it will probably make it more ADA accessible for a lot of folks. But without the EAC [Election Assistance Commission] being fully funded, that’s not going to happen... for Franklin County to buy electronic poll books, it’s \$4 million. We have roughly \$12 million tied up in DRE’s. (direct recording electronic machines). We don’t have \$12 million to buy new equipment, or more. It may be more now. That’s talking 2005.”⁹²

IMPACT OF RESTRICTIVE VOTER ID REQUIREMENTS

As explained in the first NCVR report, one of the most controversial developments around voting has been the proliferation of voter identification laws across the country. Thirteen states passed restrictive voter ID laws between 2011 and 2014, and nine of the states require specified government-issued photo identification.⁹³ These laws have been and continue to be the subject of litigation in a number of states and have been struck down by the courts in some cases. In a significant recent ruling, the 5th Circuit Court of Appeals found that the Texas voter ID law has a discriminatory effect on minorities and violates Section 2 of the Voting Rights Act.⁹⁴ As the NCVR noted in its first report, racial minorities are less likely than whites to have the most common forms of government-issued photo ID. While about 11 percent of Americans do not have a driver’s license or non-driver’s government ID, African Americans, Latinos, immigrants, Native Americans and the poor disproportionately lack the required documentation.⁹⁵

Witnesses to the NCVR remarked on the additional burdens that the identification laws impose on voters. Tennessee State Representative Brenda Gilmore, who worked with the NAACP and the Council of Negro Women to help seniors get IDs after the passage of the



At the NCVR Nashville regional hearing, Tennessee State Representative Brenda Gilmore described the challenges seniors face when obtaining IDs. PHOTO CREDIT: JOSEPH GRANT

voter ID law in that state, cited the transportation challenges that many seniors face in order to get acceptable identification:

“Most of the driver’s license centers are located on the outskirts of town. A majority of these seniors live in the urban core and are concentrated in high-rises. The bus systems do not go to these locations or involve ... maneuvering a bus system that requires them to change bus lines to get to their final destination. Some of the rural areas do not have driver’s license centers at all and require people to take a day off from work to travel to a nearby city where a center is located.”⁹⁶

Melinda Sheldon, Deputy Director of Georgia Equality, testified about the unique obstacles these laws place on transgendered people and cited research by the Williams Institute, a think tank at UCLA Law School:

“For many transgendered people, acquiring a photo ID that reflects their preferred name and gender identity can be difficult or even impossible. In Georgia, 39 percent of transgender voting eligible population have no photo ID that accurately reflects their gender identity. A transgender voter may be challenged by a poll worker and required to fill out a provisional ballot until that eligibility is confirmed ... But just being challenged can have an emotional impact on any voter. When presenting ID, 41 percent of transgender voters reported being harassed. 15 percent report being asked to leave the polling place. And 3 percent of transgender voters report actually being assaulted at a polling place.”⁹⁷

In Pennsylvania, advocates including the Advancement Project, ACLU of Pennsylvania, Public Interest Law Center of Philadelphia (PILCOP) and the law firm Arnold & Porter filed suit under state law seeking a permanent injunction to block enforcement of Act 18, Pennsylvania's voter ID law. At the Pennsylvania state hearing, Ben Geffen, a staff attorney with PILCOP, recounted numerous examples of voters denied the vote because of the confusion created by the ID law, including the example of disabled grandmother and voter, Mary Baker:

“Even though the state was preliminarily enjoined from enforcing the law in the November 2012 election, a poll worker told Mrs. Baker on Election Day that she wouldn't be able to vote in the next election if she still didn't have an ID card. Sadly, Mrs. Baker stayed home from the poll in the May 2013 primary election because of the inaccurate information that she heard from the poll worker.”⁹⁸

PennDOT, the state agency which was required by law to provide free IDs to people who would need them to vote, also misinformed voters. Geffen said,

“At the trial, we heard testimony from a long-time voter...who testified that she was turned away when she went to PennDOT and asked for a voter ID because she asked for an ID and they said it cost \$13.50. She offered \$13.50 in cash and they told her, no, it's got to be check or money order so she went home empty-handed... So the overall lesson there is that poll workers may not be receiving adequate training and supervision to accurately administer the voter ID law.”⁹⁹

The Pennsylvania ID law was ultimately struck down after the court concluded, “[v]oting laws are designed to assure a free and fair election, the Voter ID law does not further this goal.”¹⁰⁰

In summary, states have an enormous opportunity to make Election Day a successful and enjoyable experience for both voters and administrators. Planning rigorously for the administration of elections, improving the recruitment processes and training of poll workers, re-allocating scarce resources to invest in new technologies that expand access to the ballot, and passing laws that remove barriers and encourage full electoral participation are among the reforms that states should explore.

CASE SPOTLIGHT

Michigan and The Citizenship Checkbox Controversy

In her testimony to the NCVR, Director of the Michigan Election Coalition Sharon Dolente discussed the history of Senate Bill 803, which she described as an example of efforts “to disenfranchise voters in Michigan.”¹⁰¹ S.B. 803 proposed a citizenship verification checkbox on applications to vote (which a voter must fill out at her polling place in order to receive a ballot) in Michigan. Shortly after the bill was introduced in the legislature, the Michigan Secretary of State issued a notice to all county and local clerks directing them to add a citizenship question to all applications to vote at polling locations and to absentee ballot applications. Subsequent guidance directed officials to challenge voters who refused to respond to the citizenship question, and to not give them a ballot if they continued to refuse to answer a question about their citizenship.

Although Governor Snyder vetoed S.B 803 in July 2012 after it passed the legislature, the Secretary of State continued to require the citizenship checkbox on applications to vote in the August primary elections, Dolente said. In response, several of individuals and community organizations, including the Service Employees International Union Michigan State Council, Latin Americans for Social and Economic Development and ACLU of Michigan, filed suit, challenging the Secretary of State’s authority to impose the checkbox requirement.¹⁰²

In addition, numerous county clerks decided not to include the citizenship question on the forms they ordered for the November 2012 general election. In October 2012, a federal judge blocked implementation of the checkbox requirement, finding, as summarized by Dolente, that “the citizenship checkbox requirement, as implemented and inconsistently administered by the Secretary of State, unjustifiably burdened the fundamental right to vote of Michigan citizens.”¹⁰³