High on the list of the noteworthy aspects of the 2008 election was the increased turnout and the prevalence of early voting. From an election reform perspective, however, it was somewhat anti-climactic. Once again, problems with voter registration captured headlines across the country. Doug Chapin, Director of Election Initiatives at the Pew Center on the States, in testimony before the U.S. House Subcommittee on Elections, put the headlines in perspective:

Problems with voter registration rightfully captured the most attention in the 2008 election. Our current voter registration rolls are rife with errors, including duplicate and invalid registrations primarily resulting from voters who recently relocated or are deceased. Despite technological advances in other aspects of the election system, voter registration data is most often handwritten, collected on paper forms and manually keyed into databases. As a result...the system is highly susceptible to human error. Compounding the problem, election offices are frequently flooded with registration forms at the end of an election cycle -- including from outside "third-party groups" whose activities were controversial during the 2008 campaign -- when resources are already strained.

This is the first installment of a three-part series on the new movement toward registration reform, a movement which has gained adherents in state capitals and in Washington, DC. This first installment will examine the rationale for, and, the history of, voter registration. The second installment will look at current efforts to expand registration and the third will review ways in which states are working to strengthen the integrity of the registration system by deterring fraud.

Why has registration become the lightning rod of election reform in 2009?

The 2008 elections marked the first time that state election officials were able to significantly leverage the power of integrated statewide voter registration databases mandated by the Help America Vote Act (HAVA). HAVA also aimed to vest primary administrative authority for registering voters with states. Despite this change, significant registration problems flared up again. Now advocacy groups from both sides of the political spectrum are pushing for "modernization" or other systemic changes. At the same time, legislatures across the country continue to search for solutions to nagging problems: eligible voters being turned away at the polls; administrative overload in weeding out fraudulent or error-ridden registrations; and damage to voter confidence.
Massachusetts enacted a voter registration law in 1801 and other states soon followed suit. Today, with the exception of North Dakota, all states require a voter to register in order to be eligible to vote in a particular election. North Dakota relies upon voter identification requirements. Voters who cannot provide identification on election day can still vote if a poll worker vouches for them or they sign a sworn affidavat. North Dakota's system begs the question, "what is the rationale for voter registration?" There are two main purposes for registration: first, as a means to determine voter eligibility and, secondly, to promote administrative efficiency in the allocation of elections personnel and equipment. The over-arching purpose of voter registration is to restrict access to the voting booth to only persons who are legally eligible. Registration laws are designed to ensure that only those people entitled to vote in a given precinct or locality can do so, and that they each vote only once. Registration lists serve other purposes. Local election officials use them to select suitable locations for polling places, the proper number of voting stations and poll workers to allocate for each polling place, and to project the number of ballots to print.

In 2001, the bipartisan National Commission on Federal Election Reform (Carter-Ford Commission) noted:

> The U.S. Constitution does not provide a right to vote. It provides that state governments shall determine who is eligible to vote in either state or federal elections, though subsequent (constitutional) amendments offer guards against discrimination in the grant or denial of the franchise.

Thus, the Qualifications Clause of Article I provides that voters in federal elections will meet the same qualifications required of voters selecting candidates for the most numerous chamber within each state legislature.

**Why has registration become the paramount issue?**

According to the United States Election Project at George Mason University, the turnout rate in 2008 was 61.7 percent. According to the American University Center for the Study of the American Electorate, that number was 63 percent of eligible voters, a 2.4 percentage point increase over 2004. Regardless of which source is used, the total number of Americans reported to have voted was at least 131 million. Although the number of Americans who voted is one measurement of overall civic engagement, the number of Americans actually registered points to a more fundamental barrier to greater participation in elections.

At the recent U.S. Senate Rules Committee hearing on voter registration, Curtis Gans, Director of the American University Center for the Study of the American Electorate (CSAE), testified that, "If one corrects for all the anomalies in official registration figures, an educated estimate of the percentage of eligible citizens who are registered is 74 percent. This, in turn, means that more than 50 million Americans are not registered and cannot vote." Those are voters who are eligible but have not become registered.

Since 2000, academic researchers have found that between 1.5 and 3 million voters are routinely "lost" as a result of registration problems in each national election. 2008 data is still being aggregated. That said, Doug Chapin addressed the scope of this problem in testimony before the House Committee on Administration, Subcommittee on Elections:

According to a new national survey focused on election administration conducted by the Massachusetts Institute of Technology (MIT) and funded by the Pew Center on the States with support from AARP and the JEHT Foundation, most Americans who voted on Election Day had an overall positive experience.... Fewer than 2 percent of voters (2 million voters) experienced registration problems, most of whom resolved the problem at their polling place and voted a regular, rather than a provisional, ballot... While 2 percent of voters experiencing a problem may seem to be a small number, it is certainly enough to affect the outcome of a close race in any election.
Mr. Chapin added, "The MIT study suggests that roughly three million registered voters did not cast a ballot at least in part because of a problem with their voter registration (13 percent of non-voters surveyed). The problems were largely concentrated among younger voters and people who recently moved. Among those who had lived in their current residence less than a year, one in four cited a problem with their voter registration as a major factor in why they did not vote."

At least two secretaries of state have observed that the 2008 elections made it clear that our system relies too heavily on outside groups to register voters and places considerable burdens on individuals seeking to register or update their registration. In looking back at the 2008 election, press accounts have also focused on the growing incidence of registration abuse by so-called "third-party" organizations such as the Association of Community Organizations for reform Now (ACORN). These revelations have prompted some legislatures to take a hard look at existing safeguards to deter fraud. In response to compounding convictions in these cases, legislatures have increasingly focused attention on the registration system as the first line of defense to prevent fraud. At the same time, Members of Congress have proposed new mandates and potentially greater federal involvement in the registration process.

Parts II and III of this series will expand upon current legislative efforts to expand registration outreach and to curtail fraud. It is important to briefly note here, however, the vast number and range of proposals taken up by legislatures this year. A flurry of proposals circulating in state capitals and Congress could reconfigure the state-driven registration system that was envisioned by HAVA. For example, U.S. Representative Zoe Lofgren has introduced the Voter Registration Modernization Act of 2009 (HR 1719). This federal bill would "direct the states to ensure the availability of the Internet for online voter registration and requires states to consider an applicant to have provided a valid voter registration form if he or she has provided all necessary information to demonstrate eligibility to vote."

At the same time, in at least nine states, bills were introduced to authorize online voter registration. Legislatures in Utah and Indiana have already enacted online registration bills: Utah SB 25 and Indiana HB 1346.

This year in at least five states (Hawaii, Minnesota, New Jersey, New York, and Texas) universal registration legislation was introduced. In general, these bills would provide that anyone applying for motor vehicle registration be simultaneously added for voter registration purposes. Public advocacy organizations such as the Brennan Center for Justice are pushing Congress to introduce a bill to create universal voter registration. This legislation could require states to register all eligible citizens; provide permanent voter registration; and offer Election Day registration.

U.S. Senate Rules and Administration Chairman Charles Schumer has indicated that he plans to introduce a bill later this year to federally reshape voter registration. In March, Schumer announced the results of an MIT study detailing that as many as 3 million registered voters were prevented from voting due to a range of administrative mishaps. In April, the Senator called on the Justice Department to sue states that fail to comply with the National Voter Registration Act ("motor voter" law) governing how voter registration materials are disseminated. "The 1993 NVRA requires agencies that administer food stamps and unemployment benefits to also hand out voter registration materials," Schumer wrote in a letter to U.S. Attorney General Eric Holder, "but many fail to do so." While the devil is in the details as to what the elements of this legislation will be, "this action by Senator Schumer alone shows that voter registration is high on his agenda," noted J. Gerald Hebert, executive director of the Campaign Legal Center. The Canvass will continue to track Senator Schumer's committee deliberations on these proposals and will report any updates in forthcoming issues.
EAC Promotes Cost-Saving Practices for Election Management

On April 15, 2008, in Denver, Colorado, the United States Election Assistance Commission held a public meeting and workshop entitled “Cost-Saving Practices for Election Management.” The EAC public meeting preceded a national training conference for local election officials given by the Election Law Center.

Background: It is no surprise that in the midst of a dampened economic climate, with financially strapped states searching for election solutions that keep costs down, "stretching the dollar" has taken on new meaning for legislatures and election officials.

Cost has always been a key issue for local election officials. The 2002 Report of the National Commission on Federal Election Reform (the Carter-Ford Commission) aptly dubbed the recent history of elections financing as a "pattern of neglect." The report noted:

The costs of election administration are borne almost entirely by the level least able to afford them: county and city governments. These elections compete against police and fire protection or solid waste management. It is commonplace to find local budgets that spend ten times more on parks and recreation, or on solid waste, than on running elections.

The Commission's report also pointed out that, in the 2000 elections, the national average of county operating expenditures for elections, per capita, was about $10. Rural counties (less than 25,000 in population) spent anywhere from $2 to $32 per voter -- a large proportion spent more than $15 to $20 per voter to provide the needed service. Data submitted to the Commission by Caltech and MIT indicated further that one-third of the operating costs of administering elections goes to voter registration, another one-third goes to administrative overhead, and the remainder is split about equally between equipment costs and actually running the elections on Election Day. With the creation of statewide registration systems, much of the cost of voter registration should shift to the state level (emphasis added).

Funding elections remains a thorny issue for election officials as well as legislatures grappling with election reform in the midst of an historic fiscal crisis.

The Hearing: EAC Chair Gineen Bresso Beach opened the meeting by indicating that the EAC chose national Tax Day (April 15, 2009) -- a day when Americans are reminded of the actual cost of government -- as an appropriate day to review cost savings practices in election administration. Noting that local election officials are daily facing tighter budgetary restrictions such that many cannot attend conferences such as the one sponsored by the Election Law Center in Denver, she expressed the EAC's commitment to widely disseminate best practices to help election officials deliver high quality election services that meet their budgets.

The Commission then heard from a panel of three distinguished local election officials with extensive experience in cost-saving practices.

Connie Schmidt, a retired Election Commissioner from Johnson County, KS, testified that the budget parameters of elections are unique within local governments. Costs are not as predictable as in other governmental services. Unlike other public sector budgets, year-to-year allocation comparisons do not reflect the actual priorities and efforts at work in elections management. Ms. Schmidt offered the following best practices:
Partnerships with:

- Local media and other organizations that offer unpaid publicity, e.g., community newsletters, school districts, chambers of commerce, and home owner associations.
- Civic and school organizations that might be willing to "adopt" or staff a polling place.
- City and county employees outside the elections office, who can serve as poll openers and closers, e.g., information technology, corrections and maintenance employees.

Technology and Automation to reduce printing, sorting and staff time costs:

- Paperless automation through scanning technology.
- Global Imaging Systems (GIS) software, bar coding, and electronic poll books have resulted in savings (though system updates can be costly and require extensive budget and financial planning).
- Consolidation of polling places.

**Jill LaVine**, Registrar of Voters, Sacramento County, California, noted that her upcoming budget will be cut by at least 26%. As a result, she will not be able to comply with all of the state and federal mandates that regulate her operations. She will also likely need to eliminate 10 of her 38 FTEs.

"We all want the money and there's only so much to give," said Ms. LaVine.

Ms. LaVine requested $9.2 million for her FY 2009-10 budget, but the County's Executive's Office proposed only $5 million. This means the Voter Registration and Elections Department would have to cut $4.2 million by the end of June. Ms. LaVine categorized her cost saving measures as: 1) website and online services; 2) automation; 3) GIS; 4) Ballot-on-Demand (BOD) and 5) grants.

Printing costs remain the greatest fixed cost. While punch-card ballots typically cost 3 cents each to print, individual optical scan ballots can cost 49 cents. To contain printing costs, she is increasingly using ballot-on-demand (BOD) equipment, which allows a poll worker to enter the voter's registration information to locate the proper ballot and then print the correct ballot from another computer. However, as her comfort level is not ready to completely rely on BOD equipment during an election, she still needs to prepare by printing two ballots in advance for most voters to give each the option of voting in person in addition to voting by mail. Ballot-on-demand equipment has enabled her to reduce the number of leftover ballots from last year's primary and general elections --799,000 in total. She estimated potential savings from BOD implementation to be $297,710.

Streamlining the verification of poll book registration data and the selection of ballot type for each voter would reduce costs and staff time, but the secretary of state does not permit the integration of those two databases as a security measure. As a result, a poll worker has to make a separate entry to generate the correct ballot type.

She noted that Help America Vote funds were used to purchase automated equipment from Pitney Bowes, which has saved the county $500,000 in the costs associated with hand-sorting vote-by-mail (VBM) ballots to precinct polling places. Ms. LaVine also noted that a bilingual ballot is much less expensive for her county than printing separate ballots for English and Spanish voters. With her Board's approval, she is also advocating for legislation to permit an all mail ballot election similar to those allowed in Washington state.

**Scott Doyle**, Larimer County, Colorado, Clerk and Recorder is a pioneer in the concept of vote centers -- offering "super-precinct" satellite polling sites where any county voter can cast a ballot. He aptly noted that in his county, "There's no such thing as a wrong place to vote." Mr. Doyle outlined the advantages of vote centers although he could not point to cost savings as that data has not yet been fully aggregated. Based on his personal observations, however, he estimated that the costs are comparable to precinct-based voting.
The difference is that voters prefer early voting with vote centers. He added that a Rice University study has pointed to an increase of 7% in turnout that is attributable to vote centers.

All three officials suggested that online poll worker training can help to reduce costs. At the same time, they all concurred that the greatest unpredictable variable in funding elections is the ever-rising costs associated with printing of ballots.

**Legislative Update:** State legislatures are responding to changing budget realities by looking for ways to eliminate waste of resources on printing and postage. For example, in New Jersey, Assemblyman Joseph Cryan has sponsored legislation that would eliminate the required mailing of sample ballots to inactive voters in each county (those who do not respond to confirmation notices). Assembly Bill 3214 is projected to save $1,205,820 per year over the next three fiscal years. On March 16, Cryan's legislation passed unanimously in the Assembly and was reported to the Senate Committee on State Government, which approved it, as amended, on June 11. New Jersey is also considering legislation (Assembly Bill 714) to eliminate primary elections in races when there is only one candidate running for a particular office or party office nomination—the bill remains pending in the Assembly State Government Committee. New Jersey is one of a growing number of states to consider legislation to streamline election dates or eliminate costly special elections. Idaho enacted HB 372 to limit most state and local elections to the last Tuesday in May and the first Tuesday in November. Similarly, Virginia recently enacted House Bill 1771, which would eliminate certain special elections to fill vacancies for county constitutional offices.

---

### 2009 Election Legislation Update
June 15, 2009

#### By the Numbers:
**2009 State Election Legislation**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislatures in session</td>
<td>17</td>
</tr>
<tr>
<td>Election bills introduced</td>
<td>2,268</td>
</tr>
<tr>
<td>Election bills pending</td>
<td>994</td>
</tr>
<tr>
<td>At the governor's desk</td>
<td>41</td>
</tr>
<tr>
<td>In house of origin</td>
<td>844</td>
</tr>
<tr>
<td>In second house</td>
<td>107</td>
</tr>
<tr>
<td>In conference committee</td>
<td>2</td>
</tr>
<tr>
<td>Election bills enacted</td>
<td>140</td>
</tr>
<tr>
<td>Election bills vetoed</td>
<td>3</td>
</tr>
<tr>
<td>Failed bills</td>
<td>775</td>
</tr>
<tr>
<td>Bills carried over to 2010</td>
<td>355</td>
</tr>
</tbody>
</table>

---

### Adjournments
Legislatures have adjourned this month in Connecticut, Maine, Nevada and Texas.

Legislatures will likely adjourn or recess by the end of June in Arizona, Delaware, Illinois, Louisiana, Michigan, New Hampshire, Oregon, Rhode Island and Tennessee.
Legislative Highlights

Recently Enacted Legislation:

- Photo ID at the polling place: Utah (HB 126), Oklahoma (SB 692 - requires voter approval)
- Electronic voter registration: Colorado (HB 1160), Indiana (HB 1346), Utah (SB 25)
- Post-election audits: Montana (SB 155), New Mexico (SB 72), Virginia (SJ 328 - study bill)
- Electronic voting for military/overseas voters: Colorado (HB 1205), Indiana (HB 1346), Montana (SB 367), New Mexico (SB 685), Oklahoma (SB 458), Virginia (HB 1881)
- Repeal presidential primary/caucus: Arkansas (HB 1021), South Dakota (SB 2307)
- National Popular Vote: Washington (SB 5599)
- Split shifts for poll workers: Alabama (HB 36), Wyoming (HB 35)
- Top-two primary: California (SCA 4 - requires voter approval)
- Mail ballot elections: Colorado (HB 1015), Nebraska (LB 501), New Mexico (HB 583 and SB 685), West Virginia (HB 3134)
- Fill U.S. Senate vacancies by special election: Connecticut (SB 913)
- Proof of citizenship to register to vote: Georgia (SB 86)
- Early voting: Maine (LD 129 - pilot program), Maryland (HB 1179)
- Permanent absentee status: Maine (LD 150 - pilot program)

Vetoed:

- Minnesota, HF 1053 - automatic registration to vote of applicants for a driver's license, identification card, or instruction permit
- Minnesota, SF 1331 - omnibus election reform bill
- Oklahoma, SB 4 - requires voter identification

Pending Gubernatorial Action:

- Illinois, SB 2022 - no-excuse absentee voting
- Texas, HB 551 - provides for electronic submission of federal postcard application
- Texas, HB 719 - vote centers
- Texas, SB 1134 - youth poll workers

For more information on these and other election bills, please visit NCSL's Election Legislation Database or contact Jennie Drage Bowser in NCSL's Denver office at 303-364-7700 ext. 1356.
Newly-Enacted State Laws

Georgia Enacts Proof of Citizenship Legislation

In early May, Georgia enacted SB 86, which will require new voters to provide proof of their United States citizenship when registering to vote beginning in 2010. If SB 86 is approved by the U.S. Department of Justice under section 5 of the federal Voting Rights Act, Georgia will become the second state to require proof of citizenship in order to register to vote. Arizona was the first state to enact such a requirement.

Satisfactory proof of citizenship includes the following:

- A Georgia driver's license or identification card number or a photocopy of a driver's license of identification card from another state
- A birth certificate
- A U.S. passport
- Naturalization documents or alien registration number
- Other documents or methods of proof that are established pursuant to the federal Immigration Reform and Control Act of 1986
- A Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number

In early June, the U.S. Department of Justice (DOJ) denied Voting Rights Act Section 5 pre-clearance of Georgia's already implemented administrative voter verification program to screen out non-citizen registrants within the Georgia statewide voter registration database. The Supreme Court of the United States is currently considering arguments on the constitutionality of Section 5 of the Voting Rights Act, which requires federal approval of all changes to election law in Georgia and 15 other states with a history of discriminatory Jim Crow-era voting practices. A three-judge federal panel in October ordered the state to seek Justice Department pre-clearance. The May 29 denial by DOJ noted that the state failed to establish the absence of a discriminatory effect as applied to minority voter registration applicants. Although the DOJ letter points to "statistically significant" differences of treatment, the Department declined to release the underlying statistical data referenced as proof of discriminatory effect.

Under orders from two federal courts, the Georgia system was used last year in preparation for the 2008 general election after consultation with DOJ. The Georgia secretary of state responded by stating that, "DOJ completely disregarded Georgia's obvious and direct interest in preventing non-citizens from voting, instead siding with the ACLU and MALDEF (Mexican American Legal Defense and Educational Fund). Georgia will also need to obtain pre-clearance of new regulations to implement S.B. 86. Jim Galloway of the Atlanta Journal Constitution suggests this decision may have far-reaching implications: "This is the first Obama administration judgment on an election law passed by a Republican-dominated General Assembly. It could be an indication of how the Justice Department will react to S.B. 86," he said, which requires proof up front of citizenship rather than administrative database verification. In addition, a challenge to the Georgia verification program is currently before a U.S. District Court in Georgia. The Canvass will continue to track this multi-faceted issue.
Maryland Passes Early Voting

After the Maryland General Assembly adjourned, Governor Martin O'Malley signed HB 1179 into law establishing an early voting program. It marks the end of a years-long effort to bring early voting to the state. In 2005, the legislature passed an early voting bill and even overrode a veto by then-Governor Ehrlich, only to have early voting declared unconstitutional by the state court of appeals.

In November 2008, Maryland voters approved a measure referred to the ballot by the legislature that amended the state constitution to pave the way for early voting.

Early voting will be available beginning with the 2010 Maryland primary and general election. It will begin on the second Friday before the election and end on the Thursday before the election, with early voting sites open between 10 a.m. and 8 p.m..

Utah Enacts New Voter ID Law

Utah governor Jon Huntsman recently signed HB 126, which requires voters to show identification prior to voting. This brings the total number of states that require voter I.D. at the polls to 25.

Under the new law, a voter may either present a single form of identification showing the voter's name and photograph, or two forms of identification showing the voter's name and current address. Voters who are unable to provide suitable identification will be permitted to vote on a provisional ballot, and will be required to present valid identification at the county clerk's office within five days after the election in order to have the ballot counted. The law also provides for the issuance of identification cards without a fee to any person whose income falls below the federal poverty guideline.
On Wednesday, June 10, the U.S. House of Representatives House Committee on House Administration marked up several election reform bills that could impact states. The following bills passed out of Committee.

**H.R. 1604 – The Universal Right To Vote By Mail Act of 2009**

The “Universal Right to Vote by Mail Act of 2009” (HR 1604) is sponsored by Rep. Susan Davis (D-CA). HR 1604 would require states to permit any eligible voter the ability to vote by no-excuse absentee ballot by mail in all federal elections by 2012. The bill states that if an individual in a state is eligible to cast a vote in an election for federal office the state may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote by mail, except to the extent that the state imposes a deadline for requesting a ballot. H.R. 1604 is the same bill as last Congress’ H.R. 281 and both passed out of Committee with an amendment introduced by Rep. Kevin McCarthy (R-CA) requiring the state to have the voter’s signature on file before the absentee ballot is sent out and that the signatures of those voters be verified by the state upon their return.

H.R. 1604 preempts laws in at least nineteen states and does not take into account that some of these nineteen have voting processes in place (such as early voting) that accomplish the same ends as the proposed legislation. The signature verification requirement also preempts laws and policies in those states that have no excuse absentee voting, but do not require signature verification.

NCSL conducted a survey of states that do not currently maintain a no-excuse absentee voting by mail system. The results can be found on the NCSL website and vary widely reflecting the unique solutions each state has created to reflect its own constituency.


H.R. 2510, also introduced by Rep. Susan Davis (D-CA) and cosponsored by Rep. Kevin McCarthy (R-CA) was the only bipartisan bill before the Committee at the markup. H.R. 2510 proposes a reimbursement program to states that voluntarily choose to establish an absentee ballot tracking program that tracks and confirms the receipt of absentee ballots in elections for federal office. This voluntary program proposes that voters can track their ballots by checking a website or by calling a toll-free number. Information available shall include whether the ballot cast was counted and if not, the reason(s) for not counting it.


The purpose of H.R. 2393 is to ensure that absentee ballots of uniformed overseas service voters are expeditiously processed and accurately tracked in all federal elections. A federal elections official, designated by the President shall establish guidelines for these absentee ballots and supervise their timely delivery to the proper state official before the date for receipt of absentee ballots the various states has expired. The Presidential designee shall report back to Congress on the efficacy of the program and oversight issues. For more information on this bill, please see Military and Overseas Voting Legislation Advances on the next page.
State Military and Overseas Voting Legislation Advances

State legislatures are actively working to make voting more accessible, user-friendly, and efficient for military and overseas citizens. Thus far in 2009, over 85 bills have been introduced, whereas in the entire 2008, only 34 were introduced. In Colorado, **HB 1205**, signed into law on June 2, would establish a pilot program to study the feasibility of Internet voting for military and overseas voters. It would also allow ballots cast by military voters outside the country to be received up to eight days after an election to be counted. This strongly bipartisan piece of legislation passed in the House 62-1 and 33-0 in the Senate. HB 1205 was sponsored by Colorado Representative Marsha Looper. "While our troops are protecting our democracy, it is important that we do everything possible to protect their right to vote," said Looper. Representative David Balmer, a lead cosponsor of the legislation and a Lt. Colonel in the U.S. Army Reserve who served deployments in both Afghanistan and Bosnia added:

"Soldiers have difficulty voting in a combat zone, due to the arbitrary voting procedures we have in place," said Balmer. "We owe it to our soldiers to have a process in place where their votes will be counted."

HB 1205 takes effect on August 5, 2009.

In Oklahoma, the legislature adopted **Senate Bill 692** -- a bill that will extend the registration deadline for military members who are not registered to vote and return from overseas service after the registration deadline. Any military personnel who return home within ninety days of an election will be allowed to cast a provisional ballot, without being registered to vote prior to the deadline. The law applies to the service member and their spouse. On May 28, Oklahoma also enacted **Senate Bill 458**, which authorizes counties to receive absentee ballot requests by e-mail and to transmit blank balloting materials for any election to an electronic mail address held by a qualified Uniformed Overseas Citizens Absentee Voting Act (UOCAVA) voter. Oklahoma now joins a growing number of states including Arizona, Florida, Minnesota, Montana, Oregon and Wisconsin that authorize blank ballots to be e-mailed to a qualified overseas voter.

On the federal front, congressional hearings have been held in both the U.S. **House** and **Senate**, though no floor action has been taken this year on any bill to assist voters covered by the Uniformed Overseas Citizens Absentee Voting Act (UOCAVA). However, on the House side, U.S. Representatives Kevin McCarthy (CA) and Dan Boren (OK), reintroduced H.R. 2393, the Military Voting Protection Act on May 13, which would allow military voters to send back their voted ballots using express mail with tracking numbers to ensure their ballots are received and counted in as little as four days. Congressman McCarthy recently stated that he is also working with colleagues on legislation to require the Department of Defense to update forwarding addresses of military service members at their request and to require U.S. DOD to implement improved voting assistance resources for military voters on DOD’s secure intranet system. H.R. 2393 currently has 27 cosponsors and is the companion to Senate Bill 1026. On June 10, the House Administration Committee passed H.R. 2393 and reported it to the full House for floor consideration. S. 1026 passed by unanimous consent on Oct. 1, 2008 in the 110th Congress, though it did not reach consideration in the House before adjournment. S. 1026 (Cornyn-TX) also has strong bipartisan support in its 16 cosponsors.

Also of note, U.S. Representative Carolyn Maloney (NY) has reintroduced her legislation, The Overseas Voting Practical Amendments of 2009, **H.R. 1739**. The bill would amend the Uniformed and Overseas Citizens Absentee Voting Act to prohibit States from refusing to accept balloting materials solely because the materials are generated through the use of a computer program, are not printed on a specific type of paper, or do not otherwise meet other peripheral requirements which are not “clearly necessary to prevent fraud in the conduct of elections, and for other purposes.” According to the Congressional Research Service, this bill was designed in part to facilitate the acceptance by states of faxed versions of the Federal Write-In Absentee Ballot, which might violate state guidelines governing color and weight ballot specifications. H.R. 1739
currently has 8 cosponsors and has been referred to the Committees on Government Reform and Oversight, Foreign Affairs and House Administration.

Finally, on May 19, the U.S. Election Assistance Commission (EAC) recently held the first of two announced public hearings on Military and Overseas Citizens. Military and Overseas Citizens: Counting Their Votes -- Part I examined best practices for serving military and overseas voters and the status of state laws concerning the uniformed and overseas citizen population. Panelists testifying were Brad King, Co-Director of the Indiana Election Division, Carye Blaney, Monongalia County Clerk, West Virginia, and Tom Intorcio, NCSL policy specialist.

In her opening statement, Chairwoman Gineen Bresso Beach pledged that helping states ensure that ballots cast by military and overseas voters are reliably counted is one of the Commission's top priorities. To that end, a second hearing is tentatively scheduled for fall 2009 to review the results of the EAC's UOCAVA voter survey.

-----------------------------------

Texas Case Involving Straight-Ticket Voting Goes Before Three-Judge Panel

A federal district court has dismissed part of a lawsuit that the Texas Democratic Party brought against Dallas County over the use of an electronic voting machine called iVotronic.

As reported in the last issue of The Canvass, in the Texas House District 105 race last fall, Republican Linda Harper-Brown defeated the Democratic challenger Robert Romano by 19 votes, allowing Republicans to maintain a 76-74 majority in the Texas House. The Texas Democratic Party later sued, claiming vote-counting procedures used by Dallas County violated portions of the federal Voting Rights Act of 1965. Subsequently, the party abandoned its complaint about the results of the District 105 race, allowing Rep. Harper-Brown to retain her seat.

In his decision, U.S. District Judge Jorge Solis dismissed portions of the plaintiffs' claim concerning whether Dallas County's vote-counting procedures denied or abridged any voter's right to vote based on race, color or membership in a language minority group. The court also dismissed the claims brought by the two individual plaintiffs against Dallas County. The court declined to dismiss a more procedural claim dealing with whether Dallas County had cleared its election procedures with the Department of Justice, as required by Section 5 of the Voting Rights Act. A three-judge panel will review that component of the case.

Coincidentally, on April 29, the U.S. Supreme Court heard oral arguments in Northwest Austin Municipal Utility District Number One v. Eric Holder, Jr., Attorney General, et al. The case involved the constitutionality of Section 5 of the Voting Rights Act of 1965, the same section that is at issue in the remaining portion of the Dallas County case. On June 22, at press time, the Supreme Court issued an 8-1 decision in favor of the Northwest Municipal Utility District No. One -- allowing it to opt out of the advance approval requirement in making changes to polling locations and procedures. The decision reverses the lower court's opinion in the case and clears the way for cities, towns and other small jurisdictions to qualify for an exemption from the long-mandated federal oversight.

"The Voting Rights Act permits all political subdivisions, including the district in this case, to seek relief from its pre-clearance requirements," Chief Justice Roberts wrote. However, the larger issue of whether dramatic civil rights gains means the advance approval requirement is no longer necessary "is a difficult constitutional question we do not answer today," he noted. Justice Clarence Thomas, in a lone dissent, said he agreed with the court on the bailout provision, but that he would nonetheless hold that Section 5 is unconstitutional. "The violence, intimidation and subterfuge that led Congress to pass Section 5 and this court to uphold it no longer remains," Justice Thomas wrote.
New Study Examines Public Attitudes on State Election Law and Reform

Researchers at the University of Missouri recently completed a detailed study entitled *Public Attitudes on State Election Administration, Goals and Reforms* as part of the Cooperative Congressional Election Study (CCES). Taking a subset of those surveyed in the CCES, the Missouri research team directed questions to 780 participants. Those questions covered four approaches to election reform: election day registration, vote by mail, early voting and photo identification. The survey results for each approach are analyzed individually and collectively in the context of two overarching policy goals -- increasing turnout and minimizing fraud.

In regard to turnout, "nearly two thirds of respondents thought that state government should do more to increase voter participation, while about 20 percent did not think that the state needed to do more." With respect to minimizing fraud, the survey asked respondents to choose maximizing turnout or minimizing fraud as the more important goal. A strong majority of the U.S. public (60%) indicated that limiting fraud was the more important goal, with 36% arguing that it was their top priority. Less than 20% indicated that maximizing turnout was preferable. The report observed:

In sum, while the U.S. public clearly expresses a desire for state election administrators to take actions to increase voter turnout, they also want state officials to minimize fraud.

Some other highlights of the report:

- **Election Day Registration:** About 40% of the respondents expressed approval while 44% expressed disapproval; about 16% were undecided.

- **Vote by Mail:** Approximately 43% of respondents approved. 33% disapproved and 23% were undecided.

- **Early Voting:** 68% approved; 17% disapproved; 15% undecided.

- **Photo Identification:** 77% approved; 9% disapproved; 14% undecided.

The report concludes that, "the public views increasing turnout as a laudable goal, but they do not support efforts to increase voter participation if they also will increase fraud. For the full 3-page report, follow this [link](#). For a recent list of publications by the University of Missouri Institute of Public Policy go [here](#).
U Conn. Post-Election Audit of Optical Scan Memory Cards Reveals Concerns

The Voting Technology Research Center ("VoTeR") at the University of Connecticut recently conducted a post-election audit of memory cards in the November 2008 elections. The audit was performed at the request of the secretary of state.

The cards were used in AccuVote Optical Scan (AV-OS) tabulators. The AV-OS is manufactured by Premier Elections Solutions, formerly Diebold, Inc. According to Election Data Services (EDS) of Virginia, AccuVote Optical Scan systems were used in 346 counties nationwide or 11.1% nationally. EDS estimates that 18.78 million registered voters used the AV-OS to cast their ballot in November 2008.

The primary goal of the post-election audit was to perform an integrity check of the contents of the memory cards that were used in the elections. Aside from containing the data and ballot layout for the elections, the memory cards used in AV-OS voting terminals also store the tally of the ballots cast and report the results of the election. In this sense, the memory cards are the electronic version of a physical ballot box.

The audit examined 462 cards in total, although only 279 were actually used in the elections. The 279 represented 30% of all election districts. The auditors found that 273 of the cards were properly formatted and contained good data. Three cards were properly formatted and contained good data, but also included a few "specks", that is a few isolated bytes with unexpected values. Because of their sequential location, these "specks" did not pose an integrity risk. One card contained a different candidate name. One card contained a single letter difference in the district designation, but the discrepancy was explained. One card contained another anomaly, which had no effect on the programming and usage of the card.

With respect to the 20 problem cards, researchers found that some poll workers had prematurely turned off the OS machines during the printing of results after the election was closed. The report recommended that poll workers should be better trained in end-of-night procedures to, e.g., allow the printing of results to complete before turning off the OS machines. "Any problems should also be promptly reported to the secretary of state's office."

Of the total 462 cards audited, 41 (8.9%) were unusable cards, containing "junk data."

These cards are unreadable by the tabulators and easily detected. None of the 41 could have been used in the election. Although this does not present a security risk, this is a high percentage of faulty cards. ... this issue has to be resolved in the future (additional analysis is in progress to determine the cause).

Low batteries were one possible cause of the faulty memory cards in the voting terminals. The cards are supposed to detect drained batteries, but they may have failed. The study also found that pre-election procedures were not followed uniformly and that cards "continue to be duplicated" at the local level, which is prohibited. Accordingly, it recommended a stronger policy statement covering the handling of the cards. For the full 11-page report in PDF format, go here. At least one voter advocacy group's critique of the report views the data as a step in the right direction, but still insufficient insofar as it was "not conducted independently, lacked transparency, and involves cards that were registrar-selected, not randomly selected." Connecticut is the only state in New England that requires post-election audits. Vermont gives discretion to its secretary of state to determine if a random audit shall be conducted. In 2008, four polling places were audited in the Green Mountain State. ☩
“I just learned from the Mayor of Inglewood, the Honorable Roosevelt Dorn, of a particular situation that seems to clearly constitute voter fraud and therefore now seek your immediate assistance. According to Mayor Dorn, the United States Post Office recently delivered two packages to the Mayor’s office. The first contained 176 absentee ballot requests … another package contained 4 absentee ballot requests; none of the ballot requests were signed and none had postage stamps for them to be delivered….I appears that the Mayor has uncovered a scheme where certain individuals request absentee ballots through the unauthorized use of voter names. The absentee ballot requests are mailed out as if they will be used by the named voters but are instead held by certain individuals until election night when the absentee ballots are then cast by unauthorized individuals. … I believe this matter must be investigated at the federal level to determine the extent of this scheme and to end it as expeditiously as possible... then the perpetrators should be prosecuted to the full extent of the law.”

Congresswoman Maxine Waters (CA-35)
In an April 2 letter to Attorney General Eric Holder requesting a U.S. DOJ probe into allegations of voter fraud in Inglewood, CA, located within her district, five days before that city’s local elections.

"It's unacceptable that the current delivery time for ballots sent home from overseas takes three weeks. Express Mail delivery established by the federal government could shorten that time to four days ... [it] will reduce the need for faxed ballots which force the military voter to give up the secrecy of the ballot."

FROM THE EDITORS' DESK:

An Underrepresented Constituency: While we have already profiled the obstacle course facing the estimated 6.25 million military and overseas voters and the recurring problems with mailed absentee ballots, we would like to highlight a few practical and consensus-based solutions that are emerging to help these voters in time for 2010.

1. Absentee ballots should be mailed 60 days before they are due back. The Chief of the Military Postal Service agency recommends this minimal lead time. Such a change may necessitate that a state amend its election calendar to move up its primary elections or allow for UOCAVA ballots to be received after election day.

2. Simplification of the process by which military and overseas voters request an absentee ballot: Moving away from mailed paper forms in favor of online or e-mail completion, if piloted, should make the process less prone to failure and less of a burden, especially for over-extended military personnel.

3. Give local elections officials the authority to pilot test solutions involving paperless electronic technology similar to the Operation Bravo Project in Florida.

4. Bipartisan legislation is currently pending in Congress to establish a national express mail delivery system for overseas military voters that will return voted ballots to state/local elections officials in 4 days instead of the three weeks or longer it now takes with standard mail. (H.R. 2393 and S. 1026) S. 1026 passed in the Senate by unanimous consent before the 110th Congress adjourned last year. Express mail tracking will reassure UOCAVA voters that their ballots will be received and counted.

These are just a few of the proposed solutions that can have an immediate impact. It is also important to note that the U.S. Department of Defense Federal Voting Assistance Program, led by its newly appointed director, Robert H. Carey, will need to ratchet up its efforts to remove administrative barriers. It will also need to promote the Federal Write-In Absentee Ballot (FWAB), which provides an emergency back up ballot when the state absentee ballot is late on arrival. Retired Marine Gunnery Sergeant Jessie Jane Duff recently testified before the Committee on House Administration that during her 20 years of service, she was never provided information on the FWAB. "This is an appalling fact considering the FWAB was created by a law (UOCAVA) enacted in 1986," she said.

Tempus Fugit (Lt.): "Time flies" ... In April 2008, NCSL launched The Canvass to gather elections data, legislative practices and insight from the 50 states and U.S. territories in an executive summary for legislators and key staff. 2008 was an extraordinary elections year to cover. We hope that our reporting and analysis have been valuable to you in your legislative work. We truly appreciate your comments, opinions, and suggestions. As we embark on our second year, we remain committed to providing you with thoughtful news and analysis on state election law and legislation.

P.S. Visit us online at NCSL's new and interactive web site. If you have The Canvass bookmarked, please reset it to reflect our new URL:


As always, feel free to call us at (303) 364-7700 ext. 1379 or send us an e-mail with any questions.  Ω
NCSL is the forum for America's ideas. For state legislators and legislative staff, we provide unmatched core services. Learn how we can help....

...Advance Your Ideas through information requests, research and personal contact.

...Bring You the Latest Ideas through our publications, Web site and consulting services.

...Promote the Exchange of Ideas through meetings and networking opportunities.

...Take Your Ideas to Capitol Hill by lobbying the administration and Congress on behalf of states.