The Election Season Gets Longer and Longer

For some people, watching elections is all about who won, what initiatives passed, or where was the most egregious Election Day “oops!” Others—we’ll call them election gurus—watch to see how well the elections are conducted: Were they fair? Efficient? Accurate? Timely?

I asked two of these gurus what jumped out at them from the 2010 election, and it was definitely that the “canvass” of votes is taking longer to complete with each election cycle.

Everyday people are familiar with canvas, that heavy-duty fabric popular with old-time sailors. Others may understand that “canvass” can mean gathering opinions, as in, “we’d better canvass the members before deciding.” Political activists know that “canvass” is what campaigns do when they knock on voters’ doors. But the noun, “the canvass,” is a term of art in the context of election law, with a very specific meaning: it is the determination of the validity of votes, which then leads to the certification of election results. In other words, it’s the third of three phases in every election.

Phase One: The campaign, which seems to be getting longer and longer all the time.

Phase Two: The voting, which is also getting longer because in some places ballots can be cast for as long as six weeks, and because the federal MOVE Act requires that overseas ballots be sent out at least 45 days before Election Day.

Phase Three: The canvass, which is also taking longer every time.

Until 2000, most Americans thought that elections ended on Election Night—but that’s not so any longer. This year, on the morning after Election Day, we still didn’t know the winner in at least three governors’ races, and the election for U.S. senator in Alaska would not be determined for weeks. In legislatures, several races, and majority control in three chambers, were undetermined for a couple of weeks or even longer.

From an election observer’s perspective, these delayed election results are beginning to seem normal, now that a decade has gone by since the nation waited 36 days until Vice President Al Gore conceded the presidential election to future president George Bush.

Doug Chapin, the founding director of electionline.org, a program of the Pew Center on the States, says we see “a demand for greater accuracy and fewer mistakes—right along with an exactly opposite demand for speedy results.” In other words: We ask our election officials to be accurate AND fast.

Paul Gronke, director of the Early Voting Information Center at Reed College, in Portland, Ore., wonders: “Why does it bother people, if the results are right but not quick? We all know that you can get a burger in five minutes or in 15. We know, too, that the 15-minute one is going to taste better.” Being correct is of course essential, but there is also a need for citizens and the candidates to find out who won and who lost in a timely manner. The winners need to start planning their transition into governance. Prolonged vote counting can put new leaders at a disadvantage because they lose precious limited time.

continued on page 2
That begs the question: Why is it so much harder now than previously to get the right count done expeditiously? Chapin and Gronke agree on two causes:

First, the electorate in many places is very evenly divided politically, so more elections are being decided by razor-thin margins. These close races mean that declaring a winner on the basis of partial returns is a risky business. Every vote must be counted (including provisional ballots and mail-in ballots) before a winner is absolutely certain. (It’s no surprise, then, that the prayer of election administrators is “Please let the winner win by a landslide.”) Keep in mind that every vote is always counted in the final canvass, but typically the losers have long since conceded and the winners are preparing to govern.

Secondly, all the non-traditional ways of voting (early voting, absentee voting, vote-by-mail, vote centers and provisional ballots) may be convenient for citizens—but can be supremely inconvenient for election officials.

In fact, according to Gronke, virtually everything new in the election world has worked to slow the process down. Voter ID laws, for instance, have led to more provisional ballots that need special handling. Security concerns with voting technology have moved us toward requiring a paper trail, but, as Gronke points out, “paper is slower than electronics.” Absentee ballots, while convenient, are also more prone to errors.

The canvass does finally end, however; every state has an election certification deadline. Dates can be as far as six weeks from Election Day (the latest date this year is Dec. 17, in Arkansas). A summary of all 50 states’ procedures for the canvass and certification can be found at the National Association of Secretaries of State (PDF file).

What does the slow canvass mean for state legislatures—other than that the leaders have to wait to know who’s in and who’s out? Says Chapin, “election administration traditionally has been a crisis-driven field.” If the crisis this year has been slow counts, we can expect proposed legislative remedies. In 2011, states may start turning attention to the laws that govern the canvass.

“If you have no legal standard [for the canvass] you’re going to get in trouble,” Gronke says. “And if you do have a legal standard, and ballots are going to be inspected, plan on it taking time” to do it right.

And what will that “legal standard” look like? State officials can refer to the U.S. Election Assistance Commission’s booklet, “The Quick Start Management Guide: Canvassing and Certifying Elections” (PDF file) for tips. And then they can determine, by legislation or regulation:

• Whether absentee ballots need to be postmarked by, or arrive by, Election Day.
• The standards for counting write-in ballots (courts have routinely used “voter intent” as the standard, but states can be more specific).
• Where ballots can be dropped off.
• Where votes are counted—at the precinct, or at a central location.
• The “chain of custody” for ballots, from the polling place to their final resting place.
• The procedures for post-election audits.

That’s a significant laundry list; if a state wants just one piece of advice, Gronke suggests that they create provisions so that everything that can be done before Election Day is done before Election Day.

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**What They’re Saying**

• “It’s an old joke that election reform is something proposed by people who lose elections. For people who won, the system works for them, and they like to keep it the way it is.” —Matthew Dunlap, secretary of state in Maine, in the Kennebec Journal, Nov. 10, 2010.

• “I’ve learned that legislation is an evolving process.” —Connecticut Secretary of State Susan Bysiewicz, in the Connecticut Post, Nov. 16, 2010. Bysiewicz is leaving office in January after serving 11 years.

• “Many people seem to assume that the topic of how to count misspelled write-ins is new, but it’s not. It’s as old as the country.” —Richard Winger, publisher of Ballot Access News, about the challenges to misspelled write-in votes for U.S. Senator Lisa Murkowski of Alaska.

• For a bit of elections-based humor, check out this satirical cartoon, “How to Use New Touch-Screen Voting Machines,” from [The Onion](https://www.theonion.com).
Through the initiative and referendum process, a total of 160 statewide questions were presented to voters around the nation on Nov. 2. A small number of those had to do with how we vote. These election and administration measures did not garner the same national attention as did medical marijuana or tax cuts. And yet they deserve at least 15 minutes of fame. (Visit NCSL’s Prop*50 for more details on all the “I and R.”) And so … The Canvass presents this year’s election highlights:

Oklahomans approved a requirement that voters show photo identification at the polls, becoming the 27th state to require some form of identification and the ninth to require a photo; similar legislation will be on the ballot in Mississippi next year. See NCSL’s report on Voter ID Requirements for details on the other 26 states.

Vermonters voted to allow 17-year-olds to vote in primary elections — if they will be 18 by the general election; 11 other states have similar provisions.

Voters in Kansas approved a constitutional amendment prohibiting any jurisdiction from passing a law that restricts the right to vote for people with mental illness.

Illinois citizens voted to create a process to recall the governor, making it the 19th state with that option. (Not surprising, given that Governor Rod Blagojevich was removed from office two years ago by the state Senate for corruption and misconduct.) See NCSL’s overview of recall procedures.

The diversity of these successful ballot initiatives hint at what may come before state legislatures in 2011. Most likely, elections bills will be so varied they’ll be virtually un-categorizable.

Last year, state lawmakers focused on complying with the federal Military and Overseas Voters Empowerment (MOVE) Act. This year, however, no specific issue or theme is likely to dominate new election legislation. Instead, we may see more about allowing 17-year-olds to vote in primaries and requiring new kinds of voter identification, both of which are slowly but surely becoming more common. Lawmakers are also likely to look at “modernizing” the election process by experimenting with online registration; replacing traditional precinct-based voting with vote centers; creating voter-verifiable paper trails; allowing election-day registrations; expanding all-mail elections; improving post-election audits; and more as legislative sessions open. NCSL has information on most of these topics to share with legislators or staff, so please feel free to send questions to thecanvass@ncsl.org.

NCSL’s Federal Update on Elections Legislation

The U.S. House of Representatives passed H.R. 512, the Election Integrity Act of 2010, on Sept. 29, 2010. It amends the Federal Election Campaign Act to prohibit chief state election officials from actively managing or participating in election campaigns for federal office unless the official, or his/her immediate family member, is the candidate for federal office. The Senate, however, has not taken up the bill. At least six states have recently restricted state and local election officials from engaging in political campaign activity: Georgia, Colorado, North Carolina, Ohio, Texas and Virginia.

— from Susan Parnas Frederick, NCSL’s Washington, D.C., expert on elections issues

What Else to Expect in 2011?

• “Election clean-up bills,” which are direct responses to problems faced on Nov. 2. While these bills often are intended to be purely administrative, the details can easily have policy implications as well. It’s almost a sure bet that Connecticut, for instance, will see legislation introduced to require a ballot be printed for every registered voter—as a response to a ballot shortage in Bridgeport.

• A focus on at least one of these goals: preventing fraud, improving voter access or saving money. Virtually all sides want the same things: fair and fraud-free elections, with equal access to the ballot box, at a price the states can afford. Meeting these goals may be like finding a contractor—you can have the right price, great timing, or high quality work, but it’s hard to find all three at once. Which of the three is most valuable depends on whom you ask.

• A greater number of election-based bills in total. Since 2000, when NCSL began tracking election law, more bills have been introduced in legislative sessions right after elections than in the following sessions (right before the next election). 2010—one of the “off” years—saw more than 2,000 election-related bills introduced. Next year, we may see closer to 2,500.
In October, a federal appeals court overturned the part of Arizona’s controversial immigration law that required people to prove their citizenship when registering to vote. The court said the requirement was inconsistent with the 1993 National Voter Registration Act. The law also required all Arizona voters to show an ID (not necessarily with a photo) when they vote; this remains intact.

• The District of Columbia experimented with online voting this year with a pilot program for a few hundred voters. The system was hacked almost immediately by a team of computer scientists from the University of Michigan, and perhaps from international sources as well.

Connecticut’s largest city, Bridgeport (and a few other Connecticut communities), ran out of ballots long before the polls closed on Nov. 2. Officials responded by photocopying ballots and keeping the polls open late. It’s too early to know what legislation may be introduced based on this, but some ideas may be to require counties to print a ballot for every registered voter (even though 50 percent of voter turnout is considered high); share the cost of printing ballots among the state and the counties; or provide additional oversight by state and local registrars.

• This summer’s report, “Hope and Experience: Election Reform through the Lens of the AEI-Brookings Election Reform Project,” is the final product of five years of collaboration between the think tanks, the American Enterprise Institute and the Brookings Institution. Newcomers to election law will find it offers a short and to-the-point history of reform efforts from 2000 onward, and priorities for continuing fine-tuning of election law and processes.

• NCSL has created an elections resource list of who is doing what in terms of research and advocacy in the realm of elections. The list now includes 14 university-based centers, seven think tanks, eight advocacy groups and a handful of elections cats and dogs. This resource (link yet to be added) may prove helpful to legislators and legislative staff who strive to craft legislation based on the latest in election research and “best practices.” Please think of this as a draft—and send any additions or comments on the list to thecanvass@ncsl.org.

• Some states have found that a good time to register first-time voters is at naturalization ceremonies for new citizens. Michigan Secretary of State Terrie Lynn Land, set up a table for the newly naturalized to register to vote right after the ceremony on Nov. 18.

From NCSL’s Election Team

Welcome to the November 2010 issue of The Canvass. Here’s what this newsletter is not: all-encompassing, partisan or academic. Here’s what (we hope) it is: timely, motivating, to-the-point, and maybe even fun from time to time.

The Canvass is written specifically for state legislators and legislative staff who are involved in crafting law and policy that govern how elections are conducted. The readership of The Canvass includes many of the nation’s “election geeks.” (Admit it: If you’re reading this, you probably are one.) We would like to get The Canvass onto the screens of anyone who is interested in the elections process. We need your help in two ways:

• First, please forward The Canvass to your compatriots who also care about election law.

• Second, send us the topics you’d like more information on, reports on your own election-related work, or ideas on what you’d find helpful in The Canvass. Or, for that matter, send us anything you’d like dealing with elections.

Even if you don’t have anything earth-shattering to say, we’d like to know that you get The Canvass, and that you read it! Send your thoughts (and especially any election-related humor) to thecanvass@ncsl.org. And, if you feel The Canvass just isn’t for you, let us know and we’ll remove you from our list. Thanks!

—Wendy Underhill, Tim Storey and Jennie Drage Bowser