

Center for American Progress



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By Rajeev Goyle and Conor Lamb¹

Five years after the unprecedented crisis of the 2000 presidential election—and one year after an election that barely escaped the same fate—our election system remains imperiled. Unless urgent reforms are adopted at the state level, the problems in our election infrastructure could very well lead to significant national consequences in the 2006 midterm elections.

Unfortunately, national attention to the issue of election reform has been sorely lacking. Despite the passage of the Help America Vote Act (HAVA) in 2002, public opinion polls show that Americans' confidence in our election system is at an historic low. Policymakers and the media often focus on the issue only in the days preceding major elections—months after state and county election administrators have made the critical decisions that will determine how the system will perform on Election Day.

A Center for American Progress analysis of recent electoral research finds that one year before the 2006 midterm elections, **more than 90 million registered voters are exposed to serious electoral deficiencies, including low-quality voter registration databases, inadequate safeguards for purging voters from the rolls, and insufficiently tested voting machines.**² Specifically, our analysis has found:

- *13 states, representing more than 60 million voters, have not constructed voter registration databases consistent with the highest standards necessary to protect voting rights and ensure efficient election administration.* Experts agree that voter registration databases must be centrally controlled, linked to state agencies and updated in real time in order to ensure their accuracy, uniformity, and privacy. Yet seven states (AZ, OH, OK, SD, TN, TX, and WA) have opted for databases which are not centrally controlled or updated by a central office; four states (AL, CA, IL, and NY) have not selected their type of database; and two states (WI and WY) have announced that they will likely not be ready by the January 1, 2006 deadline required by federal law.
- *At least 23 states, representing more than 55 million voters, continue to allow local authorities to purge voter rolls.* Although local election officials play a critical role in managing voter rolls, a lack of statewide central authority has led to the disenfranchisement of many voters, including those caught in the faulty felon purges in Florida in 2000 and voter challenges in Ohio in 2004. The potential for abuse is heightened with partisan control of election administration across the country, exemplified by Ohio Secretary of State's J. Kenneth Blackwell's serving as chairman of the 2004 Bush-Cheney campaign while managing the state's election system.

- *Although HAVA directed the U.S. Election Assistance Commission (EAC) to improve the certification process for voting systems, the EAC continues to outsource certification to just three private firms, all of which refuse to make their testing standards public.* Concerns over untested voting systems spurred movements to require voter-verified paper trails in electronic voting machines last year and to eliminate punchcard voting machines after the 2000 election. Rigorous, transparent, and independent testing of voting hardware and software is critical to ensure accurate elections, yet the EAC has offered only voluntary guidelines for voting systems and failed to improve the certification process. Seven states used systems that were not federally certified in the 2004 election.

Although our election system suffers from many additional problems that demand immediate action, including struggles over voter identification requirements and provisional ballots, sustained attention to these three issues would dramatically improve our election infrastructure in time for the 2006 election and prevent the disenfranchisement of voters. If these problems are left unattended, our elections will become increasingly less reliable, causing more Americans to question our system's integrity and lose faith in the most basic and essential exercise of our democracy.

In light of these concerns, the Center recommends that policymakers take the following actions:

- The EAC should strengthen its position on voter registration databases and require states to adopt a centralized model. This would improve the reliability of the voter rolls for both voters and administrators.
- The EAC should immediately design and implement clear standards for purges of voter rolls, removing primary purging authority out of local hands and establishing an effective oversight mechanism at the state level. States should also strongly consider permitting independent bodies to oversee elections, or at least prevent election officials from playing active roles in political campaigns.
- The EAC should immediately improve the federal voting system certification process by establishing more than just three testing agencies. These agencies should be transparent and independent of voting system manufacturers.

Setting the Stage: The Weakness of the Election Assistance Commission (EAC)

In 2002, Congress passed the Help America Vote Act (HAVA) in response to the Florida debacle of 2000. Although HAVA was a compromise measure that left some areas of election law purposefully vague, it created the U.S. Election Assistance Commission (EAC) to provide federal oversight and standards to improve the quality of national elections. From its very beginning however, the EAC has been hobbled by a lack of funding, infrastructure, and urgency. The Bush Administration failed to nominate

commissioners or provide a budget for nearly one year after the enactment of HAVA.³ The recent Carter-Baker Commission on Federal Election Reform concluded that the EAC's "weak structure...has stymied its ability to be clear or authoritative on almost any subject."⁴

Rather than use HAVA as a springboard to provide uniformity for election standards across the country, the EAC has interpreted its mandate in a narrow way, compromising its authority and effectiveness. For example, it has postponed and limited its HAVA-mandated issuance of guidance on statewide voter registration databases and voting systems, resulting in a continued patchwork of non-uniform standards, and failed to address emerging issues like paperless voting technology.⁵ In addition, the EAC has remained silent on some crucial areas of election administration, including whether partisan election officials should be allowed to control the voter rolls and oversee the election process.

Many of these problems have even prompted calls for additional federal legislation in order to reform the EAC's authority and mandate.⁶

Voter Registration Databases

Many irregularities in election administration can be traced to the poor state of the election rolls. Properly constructed databases that are centralized and real time—often referred to as "top down" systems—would eliminate the very need for provisional ballots and significantly reduce the potential for abuse of voter identification laws and alleged cases of voter fraud. Although voter rolls were historically paper-based and not centrally controlled due to a lack of computerization in state and local government, the wide availability of computers has now allowed all states to reap the benefits of modern database technology.

Congress recognized this in HAVA, requiring all states to create a "single, uniform, official, centralized, interactive, computerized" database that can be "defined, maintained, and administered at the state level."⁷ Although seemingly specific, this standard actually encompasses a wide array of databases, which, as electionline.org has noted, overlooks the "differences in control and structure [which] will dictate how interactive and comprehensive the lists are."⁸

The uncertainties in HAVA provided a critical opportunity for the EAC to offer much-needed guidance to the states. Unfortunately, the EAC has largely abdicated this role, offering limited guidance that highlights the benefits of top down systems but does not require them, and makes no attempt to exercise quality control or ensure uniformity.⁹ Compounding these substantive shortcomings has been timing. Only 15 states had databases ready for the 2004 election—the initial deadline set by HAVA—while the remaining 34 states received a two-year waiver and face a deadline of January 1, 2006.¹⁰

Currently, seven states (Arizona, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Washington), representing more than 26 million voters, have chosen to

construct non-centralized databases which do not conform to the top down model. In addition, four states (Alabama, California, Illinois, and New York), comprising more than 31 million voters, have not decided how to construct their databases, and two states (Wisconsin and Wyoming), with a total of nearly 3.5 million voters, have announced that their databases will likely not be ready by the January 2006 deadline.¹¹

All told, more than 60 million voters reside in states which could be without centralized databases during the 2006 election, increasing the likelihood of irregularities with registration data. The EAC should move to strengthen HAVA's database requirements and require the construction of state-controlled databases which can be regulated more effectively and updated more quickly.

By mandating uniform, centrally-controlled databases, the EAC could also help solve recent problems with provisional voting. In 2004, 500,000 provisional ballots (32% of all provisional ballots cast) were not counted, for reasons that varied across localities. In 28 states, provisional ballots that were cast in the wrong precinct were discounted, but in 17 states provisional ballots cast in the wrong precincts but correct county were in fact counted. HAVA declared that all voters should have the right to cast provisional ballots as a fail-safe measure, but this goal has foundered on conflicting interpretations of the statute.¹² A study by Demos has shown that 20% of all problems with provisional voting result from administrative errors before Election Day.¹³ Well-regulated, orderly databases would reduce such errors and the need for widespread provisional voting because registration data would be available statewide.

Purges and Partisan Control of Election Administration

HAVA has done little to correct the problems associated with partisan control of election administration, most notably the lack of standards for ensuring the fairness and uniformity of purges. Only four states that responded to a June 2005 electionline.org survey conducted purges at the state level, while 23 states—comprising more than 55 million voters¹⁴—allowed local administrators to erase voters from the rolls at their own discretion.¹⁵ Three years after HAVA was meant to clear up electoral confusion, there remain no federal standards for purges, and many states do not offer minimum criteria either.¹⁶ The EAC should immediately design and mandate standards for voter roll purges, a relatively simple measure that would significantly reduce voter disenfranchisement.

Purging of voters occurred most egregiously in Florida in 2000, when local election officials made wildly disparate decisions in using flawed data provided to them by state election officials, erroneously purging thousands of legitimate minority voters mistaken for felons. And because reinstatement decisions were left in the hands of those same local election officials, a significant portion of these voters were still not restored to the rolls *two years later* in 2002.¹⁷

Although standards for purging are necessary regardless of the composition of election administrators, the prevalence of partisan elected officials who are in control of

their election systems increases the potential for abuse. This was most prominently illustrated in Ohio in 2004, where Secretary of State J. Kenneth Blackwell served as the co-chair of the Bush-Cheney campaign while simultaneously overseeing the state's presidential election. The Democratic staff of the House Judiciary Committee found that tens of thousands of voters were potentially disenfranchised by Blackwell's decisions restricting the use of provisional ballots and questioning the validity of registration forms for new voters.¹⁸ Similar concerns have been raised in Florida, where Secretary of State Glenda Hood (a 2000 Bush elector) attempted to utilize a faulty purge list and restricted the use of provisional ballots; in Michigan, where Secretary of State Terri Lynn Land (Bush-Cheney 2004 state co-chair) restricted access to provisional voting and failed to take action against voter intimidation; and in Missouri, where then-Secretary of State Matt Blunt (Bush-Cheney 2004 state co-chair) restricted access to provisional voting and approved an insecure voting system.¹⁹

Election administration should not be subject to the influences of one particular campaign official. In two weeks, Ohio's voters will decide if they want to wrest control of election administration from Secretary Blackwell and turn it over to an independent, bipartisan commission, thanks to the efforts of a progressive, grassroots organization called Reform Ohio Now that forced the initiative onto the ballot.²⁰

The EAC has remained largely silent on this issue, but states should strongly consider allowing independent bodies to oversee elections, or at least prevent their election officials from playing active roles in political campaigns.

Voting Machine Standards

The lack of adequate standards in election administration is gravely apparent when it comes to states' voting machines and the woefully inadequate system used to certify their reliability and accuracy. As voting technology expert Dr. Michael Shamos of Carnegie Mellon University observed in 2004, "The system that we have for testing and certifying voting equipment in this country is not only broken, but is virtually non-existent. It must be re-created from scratch or we will never restore public confidence in elections."²¹

The dysfunctional state of voting system testing and certification stems directly from the lack of attention paid to the certification process during the last two decades. This resulted in three private companies—all of which refuse to share with the public the standards they use to evaluate machines—possessing sole authority for certifying the machines on which every American votes.

HAVA required the EAC to step into this breach and provide for the testing, certification, decertification, and recertification of voting systems.²² Hopes were high that the EAC would issue stringent, up-to-date, and scientifically sound federal standards for states to follow, but the EAC's delayed start and budget constraints hampered its ability to offer guidance on this issue.²³ Moreover, despite a requirement for the EAC to establish a roster of competent laboratories to test voting systems, the EAC has admitted

that its primary advisory body on the issue, the National Institute of Standards and Technology, will not recommend a list of such labs until the spring of 2007.²⁴ In the meantime, *the EAC is relying on the same three private companies that predated HAVA.*²⁵ These “Independent Testing Agencies”—Wyle Laboratories and Ciber, Inc. of Hunstville, AL, and SysTest Labs, LLC of Denver—have refused to discuss possible flaws in the voting systems they certify due to the confidentiality of their contracts with the machines’ manufacturers.²⁶

Given the fact that the EAC relies on such a small number of unaccountable firms, the slowness of the certification process in places like Pennsylvania for example, a battleground state in recent elections, is hardly surprising. There, county officials are still waiting for approval of their new HAVA-mandated voting machines, and there is no indication their needs will be met in time for the January 2006 deadline.²⁷ These delays have led some states to ignore the voluntary federal guidelines and simply do their own testing or order uncertified machines.²⁸ In 2004, seven states (with a total of nearly 20 million voters) utilized machines which were not federally certified.²⁹

Congress should provide the EAC with the resources it needs to improve the federal voting system certification process by establishing more than just three testing agencies. These agencies should be transparent and independent of manufacturers so that the public, and scientific experts, can evaluate the standards used to determine the machines selected by the states.

Conclusion

Our survey of electoral research reveals a broad consensus on many aspects of reform. Improving databases, election administration, and machine certification are simple, easy ways that lawmakers could improve elections before November 2006. Unfortunately, their response to these issues has been muted, and it is here that grassroots efforts like those in Ohio may offer their greatest lesson. We applaud the efforts of Reform Ohio Now, and we encourage progressive groups in other states to follow their lead.³⁰ A similar effort is underway in Massachusetts, where the League of Women Voters has persuaded state legislators to address election administration issues.³¹

Initiatives like those in Ohio and Massachusetts will not solve the nation’s electoral problems in time for the next election. They can, however, raise awareness and increase political pressure on state and federal lawmakers to address electoral reform urgently. While it seems clear that lawmakers’ response to election reform has been weak, it seems equally clear that progress is essential.

As former President Jimmy Carter and former Secretary of State James Baker have written, elections are “the heart of our democracy” and “the instrument for the people to choose leaders and hold them accountable.”³² If elected officials are hesitant to make the process by which they arrive in office more secure, transparent, and fair, citizens must demand action. The effectiveness and integrity of our government depend on it.

¹ Rajeev Goyle is the Senior Domestic Policy Analyst at the Center for American Progress. Conor Lamb is a research assistant at the Center.

² The analysis presented here is based on a review of relevant news stories, Election Assistance Commission activity, and reports on election reform, including the Commission on Federal Election Reform chaired by Jimmy Carter and James Baker. Voter registration calculations are derived from U.S. Census data.

³ Elizabeth Weinstein, "Push for Voting Changes May Not Cure All Ills," Wall Street Journal, Apr. 22, 2004.

⁴ The Commission on Federal Election Reform, Building Confidence in U.S. Elections, American University, Center for Democracy and Election Management, Sept. 2005, p. 4.

⁵ U.S. Election Assistance Commission, Fiscal Year 2004 Annual Report, Jan. 2005, p. 5.

⁶ Building Confidence, p. ii.

⁷ Help America Vote Act, P.L. 107-252, Sec. 303.

⁸ Electionline.org, Assorted Rolls: Statewide Voter Registration Databases Under HAVA, June 2005, p. 1.

⁹ U.S. Election Assistance Commission, Voluntary Guidance on Statewide Implementation of Voter Registration Lists, July 2005, available at

http://eac.gov/docs/Statewide_Registration_Guidelines_072605.html; Testimony of Wendy R. Weiser before the Election Assistance Commission, April 26, 2005; Building Confidence, pp. 9-15.

¹⁰ Electionline.org, Election Preview 2004: What's Changed, What Hasn't and Why?, Oct. 2004, p. 23.

¹¹ Electionline.org, Statewide Voter Registration Database Status (updated Oct. 4, 2005), available at <http://electionline.org/Default.aspx?tabid=288>; Greg Borowski, "What's the holdup on voter lists? Depends whom you ask," Milwaukee Journal-Sentinel, Oct. 7, 2005; Joan Barron, "New Voting System May Miss Deadline," Casper Star-Tribune, Sept. 29, 2005. Voter registration data from the U.S. Census Bureau, available at <http://www.census.gov/population/socdemo/voting/cps2004/tab04a.xls>.

¹² Balancing Access and Integrity: The Report of the Century Foundation Working Group on State Implementation of Electoral Reform, July 2005, pp. 31-38; Help America Vote Act, Section 302.

¹³ Demos, Continuing Failures in Fail-Safe Voting: A Preliminary Analysis of Provisional Voting Problems in the 2004 Election, Dec. 2004, pp. 2, 5.

¹⁴ These states are: Arizona, Connecticut, Delaware, Georgia, Idaho, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming. Voter registration data from the U.S. Census, available at <http://www.census.gov/population/socdemo/voting/cps2004/tab04a.xls>.

¹⁵ Assorted Rolls, pp. 15-24.

¹⁶ Assorted Rolls, p. 14; Balancing Access, pp. 47-48.

¹⁷ Ted Kissell, "Felon Follies: A problem that marred the 2000 ballot is back," New York Times, Oct. 31, 2002.

¹⁸ House Judiciary Committee Democratic Staff, Preserving Democracy: What went wrong in Ohio, Jan. 5, 2005, pp. 4-9.

¹⁹ Matthew Waite, "Florida scraps felon vote list," St. Petersburg Times, July 11, 2004; Jimmy Carter, "Still Seeking a Fair Florida Vote," Washington Post, Sept. 27, 2004; Associated Press, "Michigan, Democrats must file arguments by Tuesday in provisional ballot case," Oct. 25, 2004; "Is Michigan Next?" The Nation, Sept. 23, 2004; Kelly Wiese, "Judge rules for state in voting case," Associated Press, Oct. 12, 2004; "The Pentagon's Troubling Role," New York Times, Aug. 31, 2004.

²⁰ www.reformhionow.org.

²¹ Testimony of Michael I. Shamos, Distinguished Career Professor, School of Computer Science, Carnegie Mellon University, at a hearing before the Subcommittee on Environment, Technology, and Standards, Testing and Certification for Voting Equipment: How Can These Processes Be Improved?, U.S. Congress, House Committee on Science, 108th Cong., 2nd session, June 24, 2004, available at <http://www.house.gov/science/hearings/ets04/jun24/shamos.pdf>. Dr. Shamos' testimony provides additional recommendations regarding improved certification procedures.

²² Help America Vote Act, Sec. 231.

²³ Election Assistance Commission, Voluntary Voting Systems Guidelines, available at http://guidelines.kennesaw.edu/vvsg/guide_toc.asp.

²⁴ U.S. Election Assistance Commission, EAC Voting System Certification and Laboratory Accreditation Programs, adopted Aug. 23, 2005, EAC Public Meeting, Denver, CO, *available at* http://www.eac.gov/VSCP_082305.htm.

²⁵ *Ibid.*

²⁶ Testimony of Michael I. Shamos, Testing and Certification for Voting Equipment; Bill Poovey, “Secretive Testing Firms Certify Nation’s Vote Count,” Associated Press, Aug. 23, 2004; National Association of State Election Directors, General Overview for Getting a Voting System Qualified, *available at* <http://www.nased.org/ITA%20Information/NASEDITAProcess.pdf>.

²⁷ Kelly Monitz, “Local counties waiting for voting machine certification,” The Standard-Speaker, Oct. 15, 2005.

²⁸ Poovey, “Secretive Testing Firms Certify Nation’s Vote Count.”

²⁹ Electionline.org, Securing the Vote, Election Reform Briefing Number 7, Apr. 2004. Voter registration data from the U.S. Census Bureau, *available at* <http://www.census.gov/population/socdemo/voting/cps2004/tab04a.xls>.

³⁰ Darrel Rowland, “Dispatch Poll: Statewide Election Proposals Fare Well,” Columbus Dispatch, Oct. 1, 2005.

³¹ Samantha Smikle, “Voter groups propose fair election practices,” The Daily Free Press, Oct. 12, 2005.

³² Building Confidence, p. i.

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Center for American Progress
1333 H Street, NW, 10th Floor
Washington, DC 20005
Tel: 202.682.1611 • Fax: 202.682.1867
www.americanprogress.org