



Uncounted Votes

The Racially Discriminatory Effects of Provisional Ballots

By Joshua Field, Charles Posner, and Anna Chu October 2014

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Introduction and summary

In the wake of the troubled and deeply flawed 2000 presidential election in which between 4 million and 6 million votes were not counted,¹ Congress passed the Help America Vote Act, or HAVA, to restore voters' confidence in the electoral process.² One of HAVA's reforms was the establishment of the provisional ballot process, which was originally put in place as a fail-safe measure to ensure that voters who face issues when they arrive at the polls can still cast a ballot. Despite its best intentions, the process is not without serious problems. Of the more than 2.7 million provisional ballots that were cast in 2012,³ more than 30 percent were not fully counted or rejected all together.⁴ Moreover, according to this first-of-its-kind analysis, in 16 states, the use of provisional ballots is more frequent in counties with higher percentages of minority voters.

Beyond their propensity to not be counted, provisional ballots may serve as a proxy for breakdowns in the election process because they are issued when there is some type of problem precluding a normal ballot from being cast. While voter error may be the reason for the issuance of some provisional ballots, cumbersome voter registration procedures, restrictive voting laws, lack of voter education, poorly maintained voter registration lists, and mismanagement by election officials all contribute to voters casting provisional instead of regular ballots. This report, however, does not attempt to identify the institutional root causes of why provisional ballots are issued. Instead, it is a first-of-its-kind analysis that critically evaluates the issuance of provisional ballots in counties across all 50 states during the 2012 election with specific attention to whether minority populations were more affected by the use of provisional ballots.

After controlling for population and examining county-level data in each state, we found that during the 2012 election, voters in counties with a higher percentage of minorities cast provisional ballots at higher rates than in counties with lower percentages of minorities in 16 states. Those 16 states are Arizona, California, Colorado, Kansas, Maryland, Montana, North Carolina, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, and Utah.

Our findings raise serious questions about the health and integrity of the voting process in these states. Since nearly one-third of provisional votes are eventually rejected, the finding that minority voters may be more affected by the use of provisional ballots gives rise to concerns of whether minority voices are being properly heard in these 16 states. Although there are legitimate reasons for provisional ballots to be issued—and some such ballots are properly rejected—these statistically significant correlations between provisional ballots and minority populations are deeply troubling.

Moreover, additional restrictions on voting have been enacted in a number of these 16 states during the past two years. These new restrictions may result in an increase in race-based disenfranchisement in the upcoming 2014 midterm elections that exceeds the racial disparities of the 2012 election. This report provides a road map to the states and counties where minorities may face more barriers to voting in 2014 based on 2012 voting data.

Finally, this report provides the following recommendations to address the troubling issues related to provisional ballots:

- Modernize voter registration
- Implement same-day registration
- Provide online registration
- Expand early voting
- Liberalize correct county or precinct rules

Implementing these common-sense measures will go a long way to ensure that all Americans who are eligible can vote and will have their votes counted.

The how and why of provisional ballots

During the 2000 elections, millions of votes were lost simply due to problems with state voter registration systems.⁵ The U.S. Commission on Civil Rights found that voter registration issues have a disproportionate impact on voters of color.⁶ Following the fiasco that was the 2000 presidential election, provisional balloting was introduced to help ensure that registration errors did not prevent eligible voters from casting a ballot.⁷ Specifically, the federal Help America Vote Act, or HAVA, requires states to offer provisional ballots to voters who believe that they are eligible to vote but their name does not appear on the voter registration list at their polling place or an election official asserts that they are ineligible to vote.⁸ Examples of voter registration issues include the voter's name being absent from the voter rolls, the voter not having the proper identification, or the voter's name or permanent residence not being properly recorded.⁹

HAVA sets the minimum standards for provisional balloting. Voters who are otherwise ineligible to vote must be informed that they can vote provisionally, sign an affirmation that they are registered in that jurisdiction and eligible to vote in the election, and submit a ballot.¹⁰ The provisional ballot must then be transmitted to an appropriate election official who will determine whether the voter was indeed eligible to cast a vote based on the state's voting laws.¹¹ HAVA also requires states to set up a free system that allows provisional voters to find out whether their vote was counted and, if not, the reason why.¹² States that provided Election Day registration when HAVA was passed in 2002, however, are not required to offer provisional ballots.¹³

This report examines the casting of provisional ballots because their use often reflects other problems in the election administration process, from convoluted or restrictive voter registration systems to confusion at the polls on Election Day. While the intent was for provisional ballots to act as a fail-safe measure for voters—which is better than denying voters the ability to cast any ballot—the use of provisional ballots has led to mixed results in practice. Sometimes, poll workers fail to offer provisional ballots to voters, and at other times, counties apply varying

methods for counting provisional ballots.¹⁴ The Presidential Commission on Election Administration concluded:

By identifying the reasons that provisional ballots are being cast, both those that do not count as well as those that do, jurisdictions can use the other tangential data (how a voter signed up for a permanent early voting list, where they last registered, etc.) to review statutory requirements, administrative procedures, and poll worker training curriculums, and to target outreach messages to stem the rise in costly and delayed provisional voting.¹⁵

An analysis conducted by the public policy organization Demos after the 2004 election found that nearly 50 percent of voters who cast provisional ballots were issued them due to issues with voter registration lists.¹⁶ The Demos survey noted that many voters who had voted for decades at the same location or registered in person at the election office “showed up at the polls only to find that their names were erroneously omitted from the voter rolls.”¹⁷ The analysis found that only 3 percent of the provisional ballot cases involved voter error.¹⁸ Election performance surveys conducted on behalf of the U.S. Election Assistance Commission, or EAC, found that states with statewide voter registration databases have lower levels of provisional ballots cast than states without voter registration databases, “suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.”¹⁹

Additionally, a disproportionately high number of provisional ballots may indicate polling-place confusion. For instance, when a voter arrives at the wrong polling location, election officials are supposed to direct them to their correct polling site. However, some election officials ask a voter to cast a provisional ballot instead, even if the provisional ballot may not count because the voter is in a state that rejects all ballots cast outside a voter’s designated precinct.²⁰ Other times, voters may be forced to vote provisionally through no fault of their own—simply because the voter rolls have not been updated properly²¹ or a polling place has run out of regular ballots.²²

Provisional ballot shortcomings

In addition to highlighting where other election administration problems may exist, the casting of provisional ballots is problematic because, as stated earlier, a large proportion of ballots cast provisionally are not counted.

In 2012, 2.7 million voters submitted provisional ballots²³—nearly 2 percent of all in-person ballots nationwide, up from 2.1 million provisional ballots cast in 2008.²⁴ On average, 1 out of every 41 voters who cast a ballot in a polling place did so provisionally.²⁵ Of those 2.7 million provisional ballots, 24.1 percent were rejected entirely, and 6.7 percent were only partially counted—that is, not all of the candidates and/or measures the voter selected were added to the final tabulation.²⁶ More than 38 percent of provisional ballots were rejected because the voter was not registered to vote, 19.8 percent because the voter was in the wrong jurisdiction, 5.3 percent because the voter was in the wrong precinct, and 2 percent because the voter lacked sufficient identification.²⁷ Incomplete or illegible ballots or envelopes, the lack of a signature, and the voter having already voted each accounted for less than 1.5 percent of the reasons for rejection.²⁸

One basic concern is that provisional ballots are issued improperly, regardless of the voter’s race or party affiliation. A second more disturbing concern, however, is systemic—that the voter’s race or partisan affiliation disproportionately affects the issuance of provisional ballots. Prior studies have also shown that provisional ballots are more likely to be issued in jurisdictions that favor Democratic presidential candidates,²⁹ have large Hispanic populations,³⁰ and Section 203 jurisdictions—those where more than 10,000 people or more than 5 percent of the total voting-age citizens are members of a single language minority group.³¹ A recent analysis by Arizona State University’s *Cronkite News* looked at the precinct-level voting in Maricopa County, Arizona, and found that “voters living in precincts with higher percentages of minorities had a greater chance of casting provisional ballots.”³² R. Michael Alvarez of the California Institute of Technology and Thad E. Hall of the University of Utah found that “Counties with higher White populations [had] lower provisional voting rates” in Ohio during the 2008 election.³³

The provisional balloting process and state voting laws

While HAVA sets a floor for the provisional ballot process, it does not mandate procedures to verify voter eligibility, nor does it mandate whether a vote cast in the wrong precinct will count.³⁴ Thus, the viability of a vote can often depend on whether voters complied with their state’s voting laws. The ease with which a voter can cast a ballot depends on how many requirements a state imposes on its voters and how difficult it is to satisfy those requirements. With more restrictions and hurdles to voting, the number of provisional ballots also increases because voters are more likely to fail to fully meet the requirements of state voting laws.³⁵

For example, some states' voter registration requirements are easy to meet, particularly those that offer online or same-day-registration.³⁶ Other states, however, have more-limited time periods when voters may register or make changes to their registration, such as submitting a change of address, before an election. Indeed, states that had Election Day registration when HAVA passed are not required to offer provisional ballots³⁷ because any issues that would trigger a provisional ballot can be cured onsite with an updated registration. Moreover, some states add the additional hurdle of requiring an individual to show identification before voting. As of June, 33 states required voters to show identification³⁸—a process that imposes many procedural hurdles on voters and has not been proven to combat voter fraud,³⁹ a dubious claim at best.⁴⁰

Furthermore, states use the provisional balloting process for different reasons. Some states go beyond using provisional ballots as a fail safe and use them to allow people who have moved to change their address at the polling location and still cast a ballot.⁴¹ Others require individuals who are permanently registered as absentee voters to cast a provisional ballot if they show up at the polls.⁴²

State law also influences whether provisional ballots are counted. Some states require voters who vote provisionally to cure any issues that prevented them from casting a regular ballot in order for the provisional vote to count. For example, 2012 Virginia and Wisconsin laws give voters who do not bring an official form of ID to the polls three days to produce the required ID to a state official in order for their vote to count.⁴³ Pennsylvania law gives voters six days to produce an ID, and Ohio law provides up to 10 days.⁴⁴ A shorter time frame to allow individuals to cure a voting or registration issue could negatively affect the chances of their provisional ballot being counted. Additionally, some states fully reject provisional ballots cast in the improper jurisdiction, while others only reject the jurisdiction-specific votes while counting votes cast for statewide or federal candidates.⁴⁵ Tossing out provisional ballots cast in the wrong precinct heavily penalizes voters who made every effort to go to the polls to vote.

Findings

In 16 states, provisional ballots are cast at a higher rate in counties with larger shares of minorities

Were minority populations more likely to be affected by the issuance of provisional ballots than others? To answer that question, we examined U.S. Election Assistance Commission county-level data on the casting of provisional ballots from all 50 states and compared it to the most recent county-level data on demographic citizen voting-age population, or CVAP, data from the U.S. Census Bureau.⁴⁶ We omitted six states—Alaska, Georgia, Idaho, Minnesota, New Hampshire, and North Dakota—from the analysis because they lacked 2012 provisional voting data. Out of these, Georgia is the only state for which the reasons that county-level data were not submitted are unknown.⁴⁷

Of the remaining 44 states analyzed, 16 states had statistically significant correlations between county rates of provisional ballots cast and rates of minority races, ethnicities, or languages. That is, in those 16 states, voters in counties with higher minority voting-age populations cast provisional ballots at higher rates than voters in counties with lower minority populations. While the analysis does not attempt to pinpoint race or ethnicity as the cause of these outcomes, these findings demonstrate evidence of potentially discriminatory effects because nearly one-third of provisional ballots are not counted.⁴⁸

However, not every minority population was equally affected. We tested for relationships between the allocation of provisional ballots and five county-based demographic variables:

1. Percentage of CVAP that is African American
2. Percentage of CVAP that is Hispanic
3. Percentage of CVAP that is Asian
4. Percentage of CVAP that is overall minority
5. Voting Rights Act Section 203 counties—those with significant voting-age populations who speak a language other than English⁴⁹

The figure below displays the 16 states that had statistically significant positive correlations between the rate of provisional ballots cast and one or more of the variables above. Because we tested five minority groups, it includes the specific groups for which these relationships were found and the total number of significant relationships in each state.

TABLE 1
States with county-level correlations between rate of provisional ballots cast and minority populations

Variables tested: African American, Hispanic, Asian, and overall minority population rate; Section 203 counties

State	Number of significant positive relationships	Variables with significant relationships
Arizona	2	Asian Section 203
California	5	African American Asian Hispanic Overall minority Section 203
Colorado	2	Asian Overall minority
Kansas	4	African American Hispanic Overall minority Section 203
Maryland	2	African American Overall minority
Montana	2	Asian Overall minority
North Carolina	2	African American Overall minority
Nebraska	2	Hispanic Overall minority
New Jersey	3	Hispanic Overall minority Section 203

State	Number of significant positive relationships	Variables with significant relationships
New Mexico	1	Overall minority
New York	5	African American Asian Hispanic Overall minority Section 203
Ohio	2	African American Overall minority
Oklahoma	1	Hispanic
Pennsylvania	3	African American Overall minority Section 203
South Dakota	1	Overall minority
Utah	3	African American Asian Hispanic

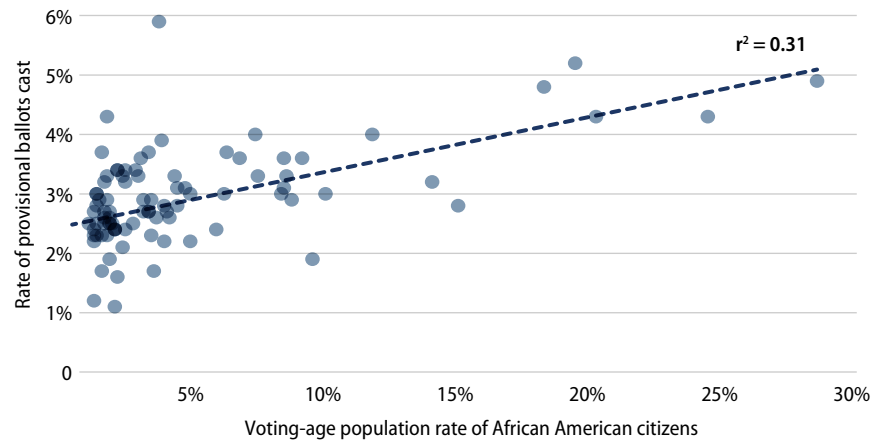
Note: An appendix to this report contains a full list that breaks down each state, each relationship, and the statistical findings of that relationship.

Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html; Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203 (U.S. Department of Commerce, 2011), available at http://www.justice.gov/crt/about/vot/sec_203/2011_notice.pdf; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

A deeper investigation of specific states' results more clearly explains what is happening. In Ohio, for example, there is a strong relationship between counties with high rates of African Americans and higher rates of provisional ballots cast.

FIGURE 1

Ohio counties with a higher percentage of African Americans have a higher rate of provisional ballots cast



Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/-data/voting_age_population_by_citizenship_and_race_cvap.html; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

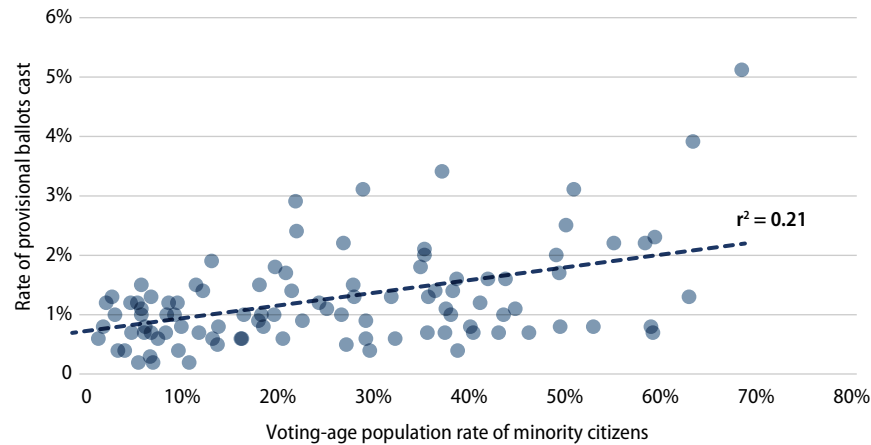
Two Ohio counties that exemplify this relationship are Cuyahoga County and Delaware County. In Cuyahoga County, more than 28 percent of the voting-eligible population are African American, and nearly 5 percent of all voters in that county cast provisional ballots in 2012. In Delaware County, meanwhile, a smaller share of the population is African American—just 3.2 percent—and only 2.6 percent of voters in that county had to vote provisionally. There are certainly outliers to this trend. But as the figure above demonstrates, our analysis of all Ohio counties found that, in general, there was a relationship between these two variables that did not occur at random. We also found a similar statistically significant relationship in Ohio for the overall minority population.⁵⁰

Therefore, out of five possible minority groups tested in Ohio, there is evidence that the use of provisional ballots affected two of these populations, including the overall minority population. This is an unfortunate trend, indicating that minority voters in Ohio are more likely to cast provisional ballots and, therefore, could be more likely to not have their vote counted.

Another state worthy of closer examination is North Carolina. During the 2012 election, counties in North Carolina with high rates of minority voters overall also had higher rates of provisional ballots cast.

FIGURE 2

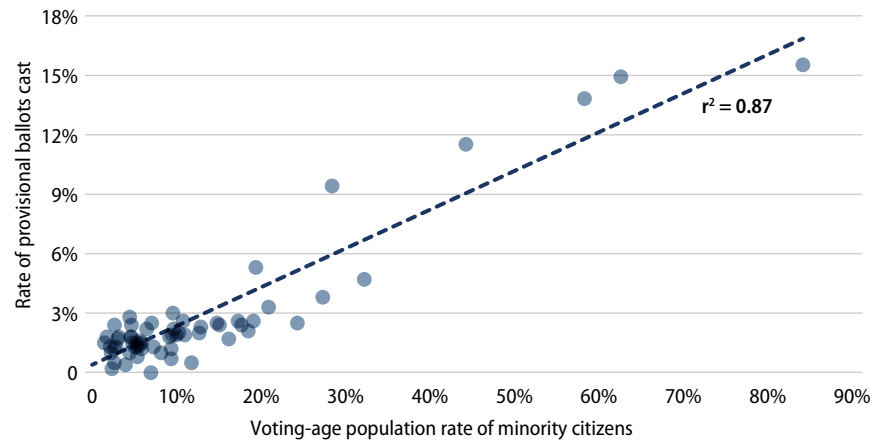
North Carolina counties with higher rates of minorities are more likely to have higher rates of provisional ballots cast



Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/-data/voting_age_population_by_citizenship_and_race_cvap.html; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

As the figure above shows, North Carolina counties with larger minority populations were more likely to issue provisional ballots than those with fewer minorities. For example, minorities account for almost 59 percent of the voting-eligible population in Warren County, and the rate of provisional ballots cast in the county was a little more than 2.3 percent. In the much larger Wake County, minorities make up 29 percent of the population, and just 0.9 percent of all ballots cast were provisional—less than half the rate in Warren County. This does not simply show that larger counties issue more provisional ballots: Wake County is 37 times larger than Warren County but has a lower rate of provisional ballots cast. Instead, it exemplifies that citizens are more likely to cast a vote provisionally in North Carolina counties where the population is less white.⁵¹

Among the 16 states, these correlations are all statistically significant—meaning they do not simply occur at random. But the strength of the relationships does vary. The figure below for New York shows the same relationship as the figure above for North Carolina, but the linear model explaining the relationship between the minority population and rate of provisional ballots cast is stronger in New York.

FIGURE 3**New York counties with higher rates of minorities are more likely to have higher rates of provisional ballots cast**

Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/-data/voting_age_population_by_citizenship_and_race_cvap.html; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

In Kings County, New York, minorities make up nearly 59 percent of the voting population, and 13.8 percent of all ballots cast in 2012 were provisional. Compare that with Albany County, which has a much lower minority population rate of 18.4 percent, where just 2.4 percent of all ballots cast in 2012 were provisional. That means Kings County voters were almost six times more likely to have cast a provisional ballot than Albany County voters.⁵²

The correlation between race and provisional ballot issuance in New York goes beyond this one variable: The Empire State had positive correlations for all five minority groups tested. It is important to mention that Hurricane Sandy could account for why New York had some of the highest rates of provisional ballots issued and rejected and provide an underlying explanation for these trends: Voters displaced by the storm were permitted to cast provisional ballots at any polling location in the state.⁵³

Our analysis of Section 203 counties offers another view of how minority populations can potentially have a harder time getting their votes counted and their voices heard because of the provisional balloting system.

FIGURE 4

Counties with big language-minority populations in California cast provisional ballots at nearly twice the rate of other counties

Average rate of provisional ballots cast

Section 203 counties

6.7%

Nonsection 203 counties

3.8%

Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/-data/voting_age_population_by_citizenship_and_race_cvap.html; Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203 (U.S. Department of Commerce, 2011), available at http://www.justice.gov-/crt/about/vot/sec_203/2011_notice.pdf; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

In California, 6.7 percent of all ballots were cast provisionally in Section 203 counties. In counties without those language barriers, the rate was just 3.8 percent. For example, San Joaquin County has a large enough population of non-English speakers for the U.S. Department of Justice to categorize it as a Section 203 county. Its provisional ballot rate was 8.8 percent. Meanwhile, Sonoma County, which has a similar total voting population, has fewer non-English speakers and is not Section 203. Its rate of provisional ballots cast was three times smaller, just 2.8 percent. Regardless of the cause for this discrepancy, these findings indicate that voters in those Section 203 counties are more likely to cast a provisional ballot and, therefore, could be less likely to have their votes counted.⁵⁴

As mentioned previously, these results only show correlation, not causation. The results highlight the close relationships in many cases between counties that have higher minority populations and counties in which voters cast more provisional ballots. The results do not, however, prove that race is the only—or even the primary—reason for these issues. Nor do they implicate or fault county election administrators, who often lack the necessary resources to address problems or are simply following laws that require them to issue provisional ballots in certain defined circumstances.

No matter the causes, this analysis demonstrates that there are states that issue more provisional ballots in counties with larger minority populations. Because nearly one-third of provisional ballots are not counted, it is less likely that citizens in those counties—disproportionately nonwhite and non-English-speaking citizens—will have their vote counted.

For the more statistically inclined, the appendix to this report contains full information for all of our results, including the results for states that were not statistically significant and therefore not discussed in the body of this report.

State profiles: 2012 election facts at a glance

Arizona

- Provisional ballots cast: 7.89 percent⁵⁵
 - Provisional ballots rejected: 18 percent⁵⁶
 - Top reasons for rejection: voter not registered (38 percent); voter registered but wrong precinct (33 percent); incomplete or illegible envelope or ballot (7.6 percent)⁵⁷
 - Provisional ballot cast in wrong jurisdiction: full rejection⁵⁸
- Registration options
 - Online registration: yes⁵⁹
 - Same-day registration: no⁶⁰
- Percentage of ballots cast during early voting: 0 percent⁶¹
- Percentage of ballots cast as absentee: 66.3 percent⁶²
- Percentage of voters signed in using electronic poll books: 6.19 percent⁶³

Arizona had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: Asian population and Section 203 counties. For example, Coconino County is a Section 203 county because of its high population of non-English speakers, and its rate of provisional ballots cast was 10.5 percent. Cochise County, which has a similar total voting population, is not a Section 203 county, and 4.8 percent of its ballots were provisional—less than half the rate in Coconino County.⁶⁴

According to the Brennan Center for Justice, Arizona has not passed any restrictive or expansive voting-related legislation since the 2012 election.⁶⁵

California

- Provisional ballots cast: 8.13 percent⁶⁶
 - Provisional ballots rejected: 16.7 percent⁶⁷
 - Top reasons for rejection: voter not registered in state (64 percent); failure to provide sufficient identification (2.6 percent); no matching signature (2.68 percent)⁶⁸
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct⁶⁹
- Registration options
 - Online registration: yes⁷⁰
 - Same-day registration: no⁷¹
- Percentage of ballots cast during early voting: 0.37 percent⁷²
- Percentage of ballots cast as absentee: 40.4 percent⁷³
- Percentage of voters signed in using electronic poll books: 1.10 percent⁷⁴

California had a statistically significant correlation between issuing provisional ballots and all five of the demographic variables tested: African American population, Asian population, Hispanic population, overall minority population, and Section 203 counties. For example, Imperial County has a minority population rate of 78.5 percent, and its rate of provisional ballots cast was 11 percent. On the other hand, Placer County's minority population comprises 17.7 percent of the total voting-eligible population, and just 3.7 percent of voters cast provisional ballots in 2012.⁷⁵

According to the Brennan Center for Justice, California has not passed any restrictive or expansive voting-related legislation since the 2012 election.⁷⁶

Colorado

- Provisional ballots cast: 2.42 percent⁷⁷
 - Provisional ballots rejected: 15.7 percent⁷⁸
 - Top reasons for rejection: voter not registered in state (51 percent); voter registered but wrong jurisdiction (26 percent)⁷⁹
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct⁸⁰
- Registration options
 - Online registration: yes⁸¹
 - Same-day registration: no⁸²
- Percentage of ballots cast during early voting: 9.67 percent⁸³
- Percentage of ballots cast as absentee: 72.1 percent⁸⁴
- Percentage of voters signed in using electronic poll books: 44.33 percent⁸⁵

Colorado had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: Asian population and overall minority population. For example, Las Animas County has a minority population rate of 41.8 percent, and its rate of provisional ballots cast was 3.6 percent. On the other hand, Boulder County’s minority population comprises 12.5 percent of the total voting-eligible population, and just 1.8 percent of voters cast provisional ballots in 2012.⁸⁶

According to the Brennan Center for Justice, Colorado passed laws that expand access to voting since the 2012 election, including expanding language access for voters who speak a language other than English and a broad-based modernization of the voter registration process that includes Election Day registration, portable registration, and preregistration of eligible 16- and 17-year-old citizens.⁸⁷

Kansas

- Provisional ballots cast: 3.5 percent⁸⁸
 - Provisional ballots rejected: 34.7 percent⁸⁹
 - Top reasons for rejection: voter registered but wrong jurisdiction (45 percent); voter not registered in state (28 percent); failure to provide sufficient identification (3.9 percent)⁹⁰
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct⁹¹
- Registration options
 - Online registration: yes⁹²
 - Same-day registration: no⁹³
- Percentage of ballots cast during early voting: 16.9 percent⁹⁴
- Percentage of ballots cast as absentee: 12.7 percent⁹⁵
- Percentage of voters signed in using electronic poll books: 48.0 percent⁹⁶

Kansas had a statistically significant correlation between issuing provisional ballots and four of the demographic variables tested: African American population, Hispanic population, overall minority population, and Section 203 counties. For example, Seward County has a minority population rate of 38.6 percent, and its rate of provisional ballots cast was 7.3 percent. On the other hand, Crawford County's minority population comprises 7.3 percent of the total voting-eligible population, and just 4.9 percent of voters cast provisional ballots in 2012.⁹⁷

According to the Brennan Center for Justice, Kansas has not passed any restrictive or expansive voting-related legislation since the 2012 election.⁹⁸

Maryland

- Provisional ballots cast: 2.92 percent⁹⁹
 - Provisional ballots rejected: 14 percent¹⁰⁰
 - Top reasons for rejection: Voter not registered in state (83.4 percent); no signature (5.9 percent); failure to provide sufficient identification (4.6 percent)¹⁰¹
 - Provisional ballot cast in wrong jurisdiction: can vote statewide races¹⁰²
- Registration options
 - Online registration: yes¹⁰³
 - Same-day registration: no¹⁰⁴
- Percentage of ballots cast during early voting: 15.75 percent¹⁰⁵
- Percentage of ballots cast as absentee: 5.6 percent¹⁰⁶
- Percentage of voters signed in using electronic poll books: 100 percent¹⁰⁷

Maryland had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: African American population and overall minority population. For example, Prince George's County has a minority population rate of 80 percent, and its rate of provisional ballots cast was 4.3 percent. Carroll County's minority population, on the other hand, comprises only 6.7 percent of the total voting-eligible population, and just 1.3 percent of voters cast provisional ballots in 2012.¹⁰⁸

Since the 2012 election, Maryland passed laws that expand early voting and establish same-day registration during that early-voting period, according to the Brennan Center for Justice.¹⁰⁹

Montana

- Provisional ballot cast: 1.13 percent¹¹⁰
 - Provisional ballots rejected: 4.8 percent¹¹¹
 - Top reasons for rejection: no signature (44.8 percent); no matching signature (17.5 percent); voter already voted (10.1 percent)¹¹²
 - Amount of time to cure identification issues: If the voter's signature on the provisional ballot affirmation matches the signature on the voter's registration record, the ballot is counted.¹¹³
 - Provisional ballot cast in wrong jurisdiction: has Election Day registration¹¹⁴
- Registration options
 - Online registration: no¹¹⁵
 - Same-day registration: yes¹¹⁶
- Percentage of ballots cast during early voting: 0 percent¹¹⁷
- Percentage of ballots cast as absentee: 58.4 percent¹¹⁸
- Percentage of voters signed in using electronic poll books: 0 percent¹¹⁹

Montana had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: Asian population and overall minority population. For example, Roosevelt County has a minority population rate of 57.1 percent, and its rate of provisional ballots cast was 1.6 percent. On the other hand, Lincoln County's minority population comprises only 5.1 percent of the total voting-eligible population, and just 0.2 percent of voters cast provisional ballots in 2012.¹²⁰

According to the Brennan Center for Justice, Montana voters will consider a referendum in the 2014 election to repeal Election Day registration.¹²¹ Other than that, Montana has not passed any restrictive or expansive voting-related legislation since the 2012 election.¹²²

Nebraska

- Provisional ballots cast: 1.86 percent¹²³
 - Provisional ballots rejected: 21.5 percent¹²⁴
 - Top reasons for rejection: voter registered but in wrong precinct (26.2 percent); incomplete or illegible envelope or ballot (6.5 percent)¹²⁵
 - Provisional ballot cast in wrong jurisdiction: full rejection¹²⁶
- Registration options
 - Online registration: no (will begin in 2015)¹²⁷
 - Same-day registration: no¹²⁸
- Percentage of ballots cast during early voting: 0 percent¹²⁹
- Percentage of ballots cast as absentee: 25.6 percent¹³⁰
- Percentage of voters signed in using electronic poll books: 0 percent

Nebraska had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: Hispanic population and overall minority population. For example, Dakota County has a minority population rate of 25.1 percent, and its rate of provisional ballots cast was 2.7 percent. On the other hand, Gage County's minority population comprises only 2.7 percent of the total voting-eligible population, and just 1 percent of voters cast provisional ballots in 2012.¹³¹

According to the Brennan Center for Justice, the voting-related legislation passed in Nebraska after the 2012 elections is a mixed bag. On one hand, it increases access to voting by establishing electronic registration at Nebraska Department of Motor Vehicles locations and online registration.¹³² Unfortunately, Nebraska also passed laws that shorten the early-voting period by five days¹³³ and prohibit voters from casting an early-voting ballot the same day they register to vote.¹³⁴

New Jersey

- Provisional ballots cast: 2.65 percent¹³⁵
 - Provisional ballots rejected: 13.4 percent¹³⁶
 - Top reasons for rejection: insufficient data¹³⁷
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct¹³⁸
- Registration options
 - Online registration: no¹³⁹
 - Same-day registration: no¹⁴⁰
- Percentage of ballots cast during early voting: 0 percent¹⁴¹
- Percentage of ballots cast as absentee: 8.0 percent¹⁴²
- Percentage of voters signed in using electronic poll books: 0 percent¹⁴³

New Jersey had a statistically significant correlation between issuing provisional ballots and three of the demographic variables tested: Hispanic population, overall minority population, and Section 203 counties. For example, Essex County has a minority population rate of 61.3 percent, and its rate of provisional ballots cast was 4.3 percent. On the other hand, Gloucester County's minority population comprises only 15.7 percent of the total voting-eligible population, and just 1.2 percent of voters cast provisional ballots in 2012.¹⁴⁴

When Hurricane Sandy hit, voters displaced by the storm were permitted to cast provisional ballots at any polling location in the state, which could account for why New Jersey had some of the highest rates of provisional ballots issued and rejected.¹⁴⁵

According to the Brennan Center for Justice, New Jersey has not passed any restrictive or expansive voting-related legislation since the 2012 election.¹⁴⁶

New Mexico

- Provisional ballots cast: 0.97 percent¹⁴⁷
 - Provisional ballots rejected: 31.8 percent¹⁴⁸
 - Top reasons for rejection: voter not registered in state (21 percent); voter registered but wrong jurisdiction (19 percent)¹⁴⁹
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct¹⁵⁰
- Registration options
 - Online registration: no¹⁵¹
 - Same-day registration: no¹⁵²
- Percentage of ballots cast during early voting: 41.77 percent¹⁵³
- Percentage of ballots cast as absentee: 8.3 percent¹⁵⁴
- Percentage of voters signed in using electronic poll books: 55.5 percent¹⁵⁵

New Mexico had a statistically significant correlation between issuing provisional ballots and one of the demographic variables tested: overall minority population. For example, McKinley County has a minority population rate of 87.3 percent, and its rate of provisional ballots cast was 3.1 percent. On the other hand, Eddy County's minority population comprises 41.5 percent of the total voting-eligible population, and just 0.2 percent of voters cast provisional ballots in 2012.¹⁵⁶

According to the Brennan Center for Justice, New Mexico passed an expansive law that automated voter registration at New Mexico Motor Vehicle Division offices since the 2012 election.¹⁵⁷

New York

- Provisional ballots cast: 6.89 percent¹⁵⁸
 - Provisional ballots rejected: 28.6 percent¹⁵⁹
 - Top reasons for rejection: voter registered but in wrong jurisdiction (72.9 percent)¹⁶⁰
 - Provisional ballot cast in wrong jurisdiction: polling place must be correct¹⁶¹
- Registration options
 - Online registration: yes¹⁶²
 - Same-day registration: no¹⁶³
- Percentage of ballots cast during early voting: 0 percent¹⁶⁴
- Percentage of ballots cast as absentee: 5.2 percent¹⁶⁵
- Percentage of voters signed in using electronic poll books: 0 percent¹⁶⁶

New York had a statistically significant correlation between issuing provisional ballots and all five of the demographic variables tested: African American population, Asian population, Hispanic population, overall minority population, and Section 203 counties. For example, Kings County has a minority population rate of 58.9 percent, and its rate of provisional ballots cast was 13.8 percent. On the other hand, Albany County's minority population comprises only 18.4 percent of the total voting-eligible population, and just 2.4 percent of voters cast provisional ballots in 2012. That means Kings County voters were almost six times more likely to have to cast a provisional ballot than Albany County voters.¹⁶⁷

When Hurricane Sandy hit, voters displaced by the storm were permitted to cast provisional ballots at any polling location in the state, which could account for why New York had some of the highest rates of provisional ballots issued and rejected.¹⁶⁸

According to the Brennan Center for Justice, New York has not passed any restrictive or expansive voting-related legislation since the 2012 election.¹⁶⁹

North Carolina

- Provisional ballots cast: 1.13 percent¹⁷⁰
 - Provisional ballots rejected: 54.4 percent¹⁷¹
 - Top reasons for rejection: voter not registered in state (72.1 percent); failure to provide sufficient identification (2.5 percent)¹⁷²
 - Provisional ballot cast in wrong jurisdiction: full rejection¹⁷³
- Registration options
 - Online registration: no¹⁷⁴
 - Same-day registration: yes¹⁷⁵
- Percentage of ballots cast during early voting: 56.33 percent¹⁷⁶
- Percentage of ballots cast as absentee: 4.8 percent¹⁷⁷
- Percentage of voters signed in using electronic poll books: 100 percent¹⁷⁸

North Carolina had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: African American population and overall minority population. For example, Warren County has a minority population rate of 58.9 percent, and its rate of provisional ballots cast was 2.3 percent. On the other hand, Wake County's minority population comprises 29.4 percent of the total voting-eligible population, and just 0.9 percent of voters cast provisional ballots in 2012.¹⁷⁹

After the 2012 election, North Carolina passed sweeping legislation that dramatically restricts access to voting. According to the Brennan Center for Justice, this includes requiring a photo ID to vote, reducing the early-voting period, and eliminating same-day registration and preregistration for 16- and 17-year-old citizens.¹⁸⁰

Ohio

- Provisional ballots cast: 3.69 percent¹⁸¹
 - Provisional ballots rejected: 16.5 percent¹⁸²
 - Top reasons for rejection: voter not registered in state (58.6 percent); voter registered but in wrong jurisdiction (27.6 percent); no signature (5.9 percent)¹⁸³
 - Provisional ballot cast in wrong jurisdiction: full rejection¹⁸⁴
- Registration options
 - Online registration: limited online registration¹⁸⁵
 - Same-day registration: no¹⁸⁶
- Percentage of ballots cast during early voting: 10.66 percent¹⁸⁷
- Percentage of ballots cast as absentee: 22.7 percent¹⁸⁸
- Percentage of voters signed in using electronic poll books: 20.24 percent¹⁸⁹

Ohio had a statistically significant correlation between issuing provisional ballots and two of the demographic variables tested: African American population and overall minority population. For example, Cuyahoga County has an African American population rate of 28.1 percent, and its rate of provisional ballots cast was 4.9 percent. On the other hand, Delaware County's African American population comprises 3.2 percent of the total voting-eligible population, and just 2.6 percent of voters cast provisional ballots in 2012.¹⁹⁰

After the 2012 elections, Ohio passed overwhelmingly restrictive voting-related legislation. According to the Brennan Center for Justice, a series of bills were passed this year that prohibit individuals who lack identification or a Social Security number from voting provisionally, reduce early voting, and abolish same-day registration by eliminating the so-called golden week, during which voters could simultaneously register to vote and cast a ballot early and in person.¹⁹¹

Oklahoma

- Provisional ballots cast: 0.40 percent¹⁹²
 - Provisional ballots rejected: 67.6 percent¹⁹³
 - Top reasons for rejection: voter not registered in state (52.61 percent); voter registered but wrong precinct (42.44 percent); failure to provide sufficient information (4.57 percent)¹⁹⁴
 - Provisional ballot cast in wrong jurisdiction: full rejection¹⁹⁵
- Registration options
 - Online registration: no¹⁹⁶
 - Same-day registration: no¹⁹⁷
- Percentage of ballots cast during early voting: 8.39 percent¹⁹⁸
- Percentage of ballots cast as absentee: 4.8 percent¹⁹⁹
- Percentage of voters signed in using electronic poll books: 0 percent²⁰⁰

Oklahoma had a statistically significant correlation between issuing provisional ballots and one of the demographic variables tested: Hispanic population. For example, Texas County has a Hispanic population rate of 19.4 percent, and its rate of provisional ballots cast was 2.6 percent. On the other hand, Cleveland County's Hispanic population comprises 4.5 percent of the total voting-eligible population, and just 0.6 percent of voters cast provisional ballots in 2012.²⁰¹

According to the Brennan Center for Justice, Oklahoma passed legislation that expands access to absentee ballots for voters living on tribal lands and makes its existing photo ID law less restrictive since the 2012 election.²⁰²

Pennsylvania

- Provisional ballots cast: .85 percent²⁰³
 - Provisional ballots rejected: 41.3 percent²⁰⁴
 - Top reasons for rejection: voter not registered in state (74.3 percent); voter registered but in wrong jurisdiction or precinct (22.1 percent); incomplete or illegible envelope or ballot (3.2 percent)²⁰⁵
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct²⁰⁶
- Registration options
 - Online registration: no²⁰⁷
 - Same-day registration: no²⁰⁸
- Percentage of ballots cast during early voting: 0 percent²⁰⁹
- Percentage of ballots cast as absentee: 4.5 percent²¹⁰
- Percentage of voters signed in using electronic poll books: 0 percent²¹¹

Pennsylvania had a statistically significant correlation between issuing provisional ballots and three of the demographic variables tested: African American population, overall minority population, and Section 203 counties. For example, Philadelphia County has a minority population rate of 57.3 percent, and its rate of provisional ballots cast was 3.9 percent. On the other hand, Allegheny County has nearly the same voting-eligible population as Philadelphia County, but just 15.6 percent are minorities. In Allegheny County, just 0.6 percent of voters had to vote provisionally during the 2012 elections.²¹²

Philadelphia County, the EAC notes, has acknowledged that it experienced acute problems in 2012 that led to a high number of provisional ballots being issued. In a thorough review, the county concluded that it issued roughly four times more provisional ballots than it should have. This example demonstrates how problems in the election administration process, especially pertaining to poll books, can have a major impact on Election Day.²¹³

According to the Brennan Center for Justice, Pennsylvania has not passed any restrictive or expansive voting-related legislation since the 2012 election.²¹⁴

South Dakota

- Provisional ballots cast: 0.12 percent²¹⁵
 - Provisional ballots rejected: 77.8 percent²¹⁶
 - Top reasons for rejection: voter not registered in state (29.2 percent); voter registered but in wrong jurisdiction (9.3 percent)²¹⁷
 - Provisional ballot cast in wrong jurisdiction: full rejection²¹⁸
- Registration options
 - Online registration: no²¹⁹
 - Same-day registration: no²²⁰
- Percentage of ballots cast during early voting: 4.1 percent²²¹
- Percentage of ballots cast as absentee: 9.4 percent²²²
- Percentage of voters signed in using electronic poll books: 6.65 percent²²³

South Dakota had a statistically significant correlation between issuing provisional ballots and one of the demographic variables tested: overall minority population. For example, Dewey County has a minority population rate of 72.4 percent, and its rate of provisional ballots cast was 1.8 percent. On the other hand, Codington County’s minority population comprises 3.5 percent of the total voting-eligible population, and just a tiny fraction—0.02 percent—of voters cast provisional ballots in 2012.²²⁴

According to the Brennan Center for Justice, South Dakota has not passed any restrictive or expansive voting-related legislation since the 2012 election.²²⁵

Utah

- Provisional ballots cast: 5.23 percent²²⁶
 - Provisional ballots rejected: 19.1 percent²²⁷
 - Top reasons for rejection: voter not registered in state (63.7 percent); voter registered but in wrong precinct (19.8 percent); failure to provide sufficient identification (11.7 percent)²²⁸
 - Provisional ballot cast in wrong jurisdiction: county or city must be correct²²⁹
- Registration options
 - Online registration: yes²³⁰
 - Same-day registration: no²³¹
- Percentage of ballots cast during early voting: 23.86 percent²³²
- Percentage of ballots cast as absentee: 0.3 percent²³³
- Percentage of voters signed in using electronic poll books: no data²³⁴

Utah had a statistically significant correlation between issuing provisional ballots and three of the demographic variables tested: African American population, Asian population, and Hispanic population. For example, Weber County has a Hispanic population rate of 9.2 percent, and its rate of provisional ballots cast was 6.7 percent. On the other hand, Summit County's Hispanic population comprises 3.5 percent of the total voting-eligible population, and just 3.5 percent of voters cast provisional ballots in 2012.²³⁵

According to the Brennan Center for Justice, Utah passed expansive legislation that establishes a pilot program for Election Day registration and expands voter registration options since the 2012 election.²³⁶

Anticipating the 2014 midterm elections

Since the 2012 elections, voting has been a major focus in state legislatures and in the nation's courts. Voting rights took a strong hit in 2013 when the U.S. Supreme Court struck down Section 4(b) of the Voting Rights Act, or VRA, in its *Shelby County v. Holder* ruling.²³⁷ As a consequence, many states got to work passing restrictive voting laws that make it harder for eligible voters to cast their ballots.

According to a Brennan Center analysis, “at least 83 restrictive bills were introduced in 29 states whose legislatures have had floor activity in 2014.”²³⁸ Conservative legislatures and secretaries of state have imposed laws and regulations that require strict and costly ID requirements, limit early voting, or manipulate the ballot and registration process.

In response, the U.S. Department of Justice, aggrieved voters, and affected non-governmental organizations have fought back against discriminatory state voting laws by bringing lawsuits under Sections 2 and 3 of the VRA.²³⁹ To successfully use a Section 2 lawsuit to overturn restrictive voting laws, a plaintiff must prove that state voting-related action has discriminatory effects on racial or language minorities.²⁴⁰ Section 3 of the VRA requires plaintiffs to prove that voting-related state action was taken because of discriminatory intent, a much more difficult hurdle to clear.²⁴¹ If a plaintiff can prove a Section 3 violation, however, violating states and/or political subdivisions become “bailed in” and must clear all changes to voting laws with a federal court.²⁴²

As the 2014 midterm elections approach, Section 2 and 3 lawsuits have been filed in several states regarding restrictive voting laws that would negatively affect voters come November. Those lawsuits include:

- **North Carolina:** The state passed sweeping voting legislation that cuts early-voting days and imposes strict photo identification standards, among other restrictions.²⁴³ On October 1, the 4th U.S. Circuit Court of Appeals temporarily blocked North Carolina from ending same-day voter registration and out-of-precinct voting.²⁴⁴ About one week later, the U.S. Supreme Court overturned the 4th Circuit decision, which means the restrictive measures will be in effect during the 2014 election.²⁴⁵
- **Ohio:** On September 12, the 6th U.S. Circuit Court of Appeals blocked Ohio's reduction of early-voting days by a full week and the elimination of same-day registration. Ohio filed an emergency petition to the Supreme Court, and on September 29, the Court decided in a 5 to 4 vote—divided along partisan lines—to allow Ohio to impose the voting restrictions just 16 hours before early-voting polling places were set to open.²⁴⁶ The Court's order means that Ohio voters were unable to participate in the state's so-called "golden week," which permits voters to register to vote and cast their ballots on the same day.²⁴⁷
- **Texas:** On October 9, a U.S. District Court judge struck down Texas' strict photo ID law, likening it to a poll tax and finding that it "creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans, and was imposed with an unconstitutional discriminatory purpose."²⁴⁸ Five days later, the 5th U.S. Circuit Court of Appeals gave Texas permission to enforce the strict voter ID law for the 2014 election.²⁴⁹ Less than one week later and two days before early voting was set to begin in Texas, the Supreme Court did not intervene,²⁵⁰ allowing the law—which the trial court believes will disenfranchise approximately 600,000 mostly black and Latino voters who lack the proper identification²⁵¹—to go into effect.
- **Wisconsin:** On October 9, the Supreme Court stopped Wisconsin's voter ID law—which even the state admits could affect 10 percent of eligible voters in 2014²⁵²—from going into effect.²⁵³

In this current batch of litigation, the U.S. Department of Justice's Section 2 lawsuits rely heavily on demographic statistics to argue that procedural burdens associated with new restrictive voting laws will make it more difficult for minority populations to cast a ballot in upcoming elections.²⁵⁴ Our analysis is different because it investigates one aspect of voting in the previous election. It does not attempt to determine a cause for the findings and is also limited to just one of many parts of the voting experience and of the election administration system. But by uncovering potentially discriminatory effects for minority populations in some states, it could add another factor for consideration in these lawsuits.

Looking toward the 2014 election, it is important for election administrators to do what they can to ensure that voter registration lists are up to date and voters are properly educated about how to register, where to vote, and what to bring when they head to the polls. For their part, poll workers must learn how provisional ballots should be used and take the time to ensure that they are doing all they can to help voters cast their ballots before issuing a provisional ballot.

Since the 2012 election, some of the 16 states identified in this report have passed laws that expand voting access and make it easier for eligible voters to cast their votes. Others have dramatically restricted access to the voting booth. Once 2014 election data can be analyzed, voting performance in these two types of states—those that expanded access and those that made it harder to vote—should be compared and contrasted to determine if new state laws result in discriminatory voting outcomes.

Recommendations: How policy could affect provisional balloting

The fact that counties with higher populations of minorities have higher rates of provisional ballots cast in 16 states raises troubling issues related to the provisional ballot process in those states and presents broader implications for minority voting access. There are, however, a number of solutions that would help address these concerns, including modernizing voter registration, implementing same-day registration, providing online registration, expanding early voting, and liberalizing county and precinct voting rules.

Modernize voter registration

The need for provisional ballots and the subsequent issues related to administering provisional ballots are a few of the many problems that stem from the nation's antiquated voting process. The nation's voter registration process—requiring voters fill out and send in paper registration forms to an unwieldy bureaucracy charged with processing registrations—is outdated, inefficient, and costly. To address these challenges, voting rights advocates have suggested ways to modernize the voter registration process, including:

- Register all consenting citizens when they interact with any of a wide range of government agencies
- Make registration permanent, regardless of where voters move
- Create fail-safe measures so that voters can still cast a ballot even if they encounter registration-related problems at the polls²⁵⁵

Modernizing voter registration would have significant benefits: It would improve the integrity of the voter rolls and reduce the need for provisional ballots; expand access to voting; and save election officials time and money.

The current voter registration system is prone to human error. Paper registration forms can be lost, mishandled, or even entered into the system incorrectly. This may sometimes cause voters to face issues at the polls, even if they have done everything right. Registering all consenting citizens automatically when they interact with certain government agencies and making registration permanent no matter where voters live would significantly reduce many of the issues that prevent voters from casting a regular ballot.

Modernizing the voter registration system would also greatly simplify the voting process and significantly expand access to voting. Nearly 35 percent of the voting-eligible population was not registered to vote in 2012.²⁵⁶ In comparison, countries such as Sweden, Austria, Germany, France, Belgium, and Canada that use government-generated databases to develop voter lists all have voter turnout rates far higher than the United States.²⁵⁷ In fact, when the United States is lined up against other countries in the International Institute for Democracy and Electoral Assistance, or IDEA, database and rated on voter participation rates, the United States ranks 120th of 169 countries.²⁵⁸

In addition to expanding access to voting, automatic voter registration would save time and money for election administration officials and improve the integrity of voter rolls. Between 2006 and 2008, states received more than 60 million voter registration forms, mostly on paper.²⁵⁹ It takes an incredible amount of resources to process these forms. For example, a study by the Pew Center on the States found that voter registration cost the state and local governments in Oregon more than \$8.8 million in 2008, or \$4.11 per active voter.²⁶⁰

Implement same-day registration

Short of modernizing the entire voter registration system, providing same-day registration would also go far to reduce the need for provisional ballots and to improve access to voting.

Same-day registration refers to the ability of citizens to register to vote and cast their ballots on the same day. This would dramatically reduce the need for provisional ballots because voters who run into registration issues at the polls can just reregister to vote and cast a regular ballot.²⁶¹ In Iowa, the number of provisional ballots cast fell 67 percent after same-day registration was adopted.²⁶² Similarly, after same-day registration was adopted in North Carolina, there were 23,000 fewer provisional ballots.²⁶³

Additionally, same-day registration improves voter turnout. In 2012, the average voter turnout rate was more than 10 percentage points higher in states with same-day registration.²⁶⁴

Provide online registration

Allowing online registration would also reduce the need for provisional ballots, while improving access to voting and reducing cost.

Replacing the antiquated paper registration system would do two important things. First, it would cut down on the administrative errors associated with the paper registration system. Second, it would allow voters to more easily update their voter registration records. This would potentially eliminate some of the registration issues voters face at the polls and thus reduce the number of provisional ballots cast.

Moreover, online voter registration systems save taxpayers money. Overall, state election officials spent approximately one-third of their annual budget on registration costs, including printing fees, mailing fees, and processing costs.²⁶⁵ After Arizona adopted online registration in 2002, Maricopa County alone saved more than \$450,000 in 2008.²⁶⁶ Paper registration in Arizona cost about \$0.83 per registration, compared with \$0.03 per online registration.²⁶⁷

Expand early voting

Expanding early-voting hours and days could also reduce the use of provisional ballots. As discussed above, voters may sometimes be asked to cast a provisional ballot because of confusion at the polling location. During the crunch of Election Day, when lines get long and polling locations get crowded, poll workers may ask voters who arrive at the wrong polling location to cast a provisional ballot instead of directing them to their correct polling location. Expanding early-voting hours and days could help ease the pressure on Election Day, which would in turn reduce the use of provisional ballots and provide a better overall voting experience.

Liberalize correct county or precinct rules

The rejection of provisional ballots cast in the wrong county or precinct is another problem tied to the provisional voting process. Currently, 22 states reject ballots cast in the wrong precinct or county.²⁶⁸ This needlessly penalizes voters who are otherwise registered to vote in the state. In 2012, 25.1 percent of provisional ballots were not counted because they were cast in the wrong jurisdiction or precinct.²⁶⁹ Removing this arcane rule would ensure that more ballots from registered voters are counted.

Conclusion

Provisional ballots are an important fail-safe mechanism to ensure that voters who show up at the polls are allowed to cast a ballot even if they run into certain registration issues. However, the finding that 16 states had statistically significant correlations between county rates of provisional ballots cast and rates of minority races, ethnicities, or languages raises serious questions about the election administration system. But this is not a problem without a solution. Rather, there are a multitude of options that states can and should take to reduce the use of provisional ballots and increase access to democracy for all.

Methodology

There are many ways to approach the analysis of voting data. This report aims to use a method of statistical analysis that meets a solid baseline of rigor to demonstrate meaningful relationships but does not attempt to be more than a relatively simple analysis. It is our hope that the findings highlight a problem for policymakers to act upon and serve as a call to action for other researchers to continue analyzing provisional ballot data and other voting data to discover additional relationships, trends, and implications.

Using data from the U.S. Bureau of the Census and the U.S. Election Assistance Commission,²⁷⁰ we tested to see whether there are statistically significant correlations between minority races, ethnicities, or languages and the rate of provisional ballots cast in the November 2012 election at the county level within each of the 50 states. For example, if a county in Arizona has a larger population of Hispanics, was it also more likely have high rates of provisional ballots cast?

Earlier in the report, we explain why we look at provisional ballots, which can be an important measure of how well elections are administered and one aspect of citizens' access to the polls. It is important to note that the rate of provisional ballots controls for the voting population, calculated by dividing the number of provisional ballots cast by the total votes cast in the county, including absentee and early votes.

We omitted several states from our analysis for the following reasons:

- **Alaska** only has one election jurisdiction as reported to the EAC.
- **Idaho, Minnesota, North Dakota, and New Hampshire** do not report any provisional ballot data to the EAC because they are not required to under HAVA by virtue of having Election Day registration, basically eliminating the need for provisional ballots.
- **Georgia** did not report any county-level provisional voting data to the EAC for unknown reasons.

For each state, we compared the rate of provisional ballots cast to several independent variables related to race, ethnicity, or language to determine if there is a statistically significant relationship:

- Percentage of citizen voting-age population that is Hispanic
- Percentage of CVAP that is African American
- Percentage of CVAP that is Asian
- Percentage of CVAP that is overall minority
- Section 203 counties under the Voting Rights Act

Some states have multiple election jurisdictions for each county and report election administration data by those instead of by county. For those states, we used Federal Information Processing Standards, or FIPS, codes to translate those jurisdictions into county-level numbers.

We ran three linear regression models. Each was a fully interacted model with a categorical state variable to account for each state. Model one was a test for overall minority population rate, with minority defined as the total CVAP minus white CVAP. Model two tested the African American, Hispanic, and Asian racial subgroups together. Model three tested the categorical variable Section 203 counties. In testing the potential relationships, we found the simple correlation coefficient and marginal effect, as well as the p-value to determine statistical significance. If the relationship was significant to 95 percent confidence, we included it in our findings of the states with statistically significant correlations.

We also used EAC data for our state-by-state snapshots. The data in EAC’s “2012 Election Administration and Voting Survey: A Summary of Key Findings” report,²⁷¹ is based on responses it receives from state and local governments via its biennial Election Administration and Voting Survey, or EAVS.²⁷² The sources and calculations that make up our state-by-state profiles are:

- Provisional ballots cast: The Pew Charitable Trusts’ Elections Performance Index: “Provisional Ballots Cast”²⁷³
- Provisional ballots rejected: EAVS report, Table 34: “Provisional Ballots Submitted: Disposition of Ballots”
- Top reasons for rejection: EAVS report Tables 35A–35B: “Provisional Ballots: Reasons for Rejection”
- Percentage of ballots cast during early voting: EAVS report Table 28: “Ballots Cast by Means of Voting”
- Percentage of ballots cast as absentee: The percent of domestic civilian absentee ballots plus the percent of Uniformed and Overseas Citizens Absentee Voting Act, or UOCAVA, absentee ballots as noted in Table 28 of the EAVS report.
- Percentage of voters signed in using electronic poll books: The number of voters included in the jurisdictions using electronic poll books to sign in voters— noted as “sign voters in”: “yes”—divided by the total number of ballots for each state— noted as “total of voters participating”—in Table 36 of the EVAS report.

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Appendix

TABLE A1

Statistical results of 50-state analysis of relationship between rate of provisional ballots cast and minority populations

Note: Alaska, Georgia, Idaho, Minnesota, New Hampshire, and North Dakota are not included in the analysis due to lack of provisional ballot data. See Methodology for more details.

Variable tested: Minority citizen voting-age population rate

State	Marginal effect	Standard error	p-value
Alabama	0.005	0.006	0.409
Arizona	0.002	0.012	0.873
Arkansas	0.001	0.006	0.888
California	0.115	0.007	0
Colorado	0.016	0.008	0.04
Connecticut	0.003	0.038	0.936
Delaware	0.005	0.074	0.945
Florida	0.005	0.008	0.534
Hawaii	0.010	0.064	0.877
Illinois	-0.002	0.009	0.859
Indiana	0.009	0.015	0.545
Iowa	0.030	0.028	0.281
Kansas	0.077	0.010	0
Kentucky	0.000	0.016	0.981
Louisiana	0.004	0.008	0.619
Maine	-0.016	0.178	0.929
Maryland	0.051	0.009	0
Massachusetts	0.029	0.025	0.249
Michigan	0.001	0.012	0.906
Mississippi	0.012	0.007	0.091
Missouri	0.006	0.011	0.59
Montana	0.035	0.008	0
Nebraska	0.034	0.013	0.008

State	Marginal effect	Standard error	p-value
Nevada	0.037	0.028	0.187
New Jersey	0.052	0.012	0
New Mexico	0.021	0.009	0.025
New York	0.200	0.007	0
North Carolina	0.022	0.005	0
Ohio	0.076	0.015	0
Oklahoma	0.014	0.011	0.193
Oregon	-0.006	0.026	0.827
Pennsylvania	0.040	0.012	0.001
Rhode Island	0.009	0.059	0.879
South Carolina	-0.006	0.008	0.439
South Dakota	0.017	0.004	0
Tennessee	0.002	0.008	0.822
Texas	-0.000	0.003	0.932
Utah	-0.001	0.017	0.954
Vermont	-0.003	0.245	0.991
Virginia	0.004	0.004	0.307
Washington	0.004	0.017	0.816
West Virginia	-0.033	0.044	0.452
Wisconsin	-0.000	0.010	0.992
Wyoming	0.001	0.036	0.985

Variable tested: African American citizen voting-age population rate

State	Marginal effect	Standard error	p-value
Alabama	0.005	0.006	0.46
Arizona	-0.358	0.254	0.158
Arkansas	0.001	0.006	0.879
California	0.176	0.036	0
Colorado	0.014	0.039	0.713
Connecticut	0.006	0.212	0.978
Delaware	Insufficient data	Insufficient data	Insufficient data
Florida	0.008	0.011	0.436
Hawaii	0.102	1.338	0.939
Illinois	0.000	0.012	0.97
Indiana	0.006	0.026	0.815
Iowa	0.039	0.074	0.596

State	Marginal effect	Standard error	p-value
Kansas	0.072	0.027	0.008
Kentucky	-0.000	0.022	0.986
Louisiana	0.004	0.008	0.609
Maine	-0.015	1.303	0.991
Maryland	0.056	0.010	0
Massachusetts	0.026	0.070	0.705
Michigan	0.001	0.017	0.963
Mississippi	0.014	0.008	0.079
Missouri	0.004	0.014	0.782
Montana	-0.099	0.501	0.844
Nebraska	0.086	0.069	0.211
Nevada	-0.027	0.115	0.811
New Jersey	0.040	0.022	0.068
New Mexico	-0.078	0.116	0.498
New York	0.127	0.031	0
North Carolina	0.018	0.005	0
Ohio	0.073	0.020	0
Oklahoma	0.008	0.028	0.785
Oregon	0.018	0.224	0.935
Pennsylvania	0.046	0.023	0.042
Rhode Island	0.112	0.653	0.864
South Carolina	-0.004	0.009	0.611
South Dakota	-0.078	0.287	0.786
Tennessee	0.002	0.009	0.805
Texas	0.008	0.008	0.326
Utah	1.195	0.579	0.039
Vermont	0.005	2.168	0.998
Virginia	0.003	0.004	0.476
Washington	0.033	0.168	0.846
West Virginia	-0.019	0.062	0.752
Wisconsin	0.000	0.050	0.999
Wyoming	0.002	0.532	0.998

Variable tested: Asian citizen voting-age population rate

State	Marginal effect	Standard error	p-value
Alabama	0.079	0.344	0.819
Arizona	1.692	0.584	0.004
Arkansas	0.003	0.236	0.989
California	0.117	0.018	0
Colorado	0.287	0.129	0.026
Connecticut	0.012	0.542	0.983
Delaware	Insufficient data	Insufficient data	Insufficient data
Florida	0.157	0.121	0.192
Hawaii	0.014	0.261	0.956
Illinois	-0.015	0.092	0.868
Indiana	0.070	0.197	0.721
Iowa	0.000	0.188	1
Kansas	0.258	0.177	0.145
Kentucky	0.013	0.288	0.965
Louisiana	0.223	0.254	0.381
Maine	-0.051	0.969	0.958
Maryland	0.015	0.107	0.887
Massachusetts	0.023	0.125	0.854
Michigan	0.010	0.155	0.949
Mississippi	0.129	0.430	0.764
Missouri	0.073	0.225	0.746
Montana	1.394	0.588	0.018
Nebraska	0.224	0.188	0.233
Nevada	0.079	0.167	0.638
New Jersey	0.040	0.053	0.45
New Mexico	-0.054	0.253	0.831
New York	0.424	0.046	0
North Carolina	-0.137	0.128	0.286
Ohio	0.236	0.206	0.252
Oklahoma	-0.109	0.192	0.571
Oregon	-0.009	0.134	0.949
Pennsylvania	0.056	0.152	0.714
Rhode Island	0.291	2.483	0.907
South Carolina	0.191	0.348	0.583

State	Marginal effect	Standard error	p-value
South Dakota	-0.189	0.330	0.567
Tennessee	0.047	0.243	0.848
Texas	0.053	0.044	0.225
Utah	1.027	0.386	0.008
Vermont	-0.002	1.358	0.999
Virginia	0.021	0.052	0.684
Washington	0.005	0.106	0.965
West Virginia	0.080	0.627	0.899
Wisconsin	-0.004	0.153	0.98
Wyoming	0.006	0.902	0.995

Variable tested: Hispanic citizen voting-age population rate

State	Marginal effect	Standard error	p-value
Alabama	-0.028	0.180	0.875
Arizona	-0.020	0.012	0.095
Arkansas	0.000	0.068	0.999
California	0.097	0.009	0
Colorado	0.014	0.008	0.087
Connecticut	-0.002	0.214	0.994
Delaware	Insufficient data	Insufficient data	Insufficient data
Florida	-0.004	0.012	0.723
Hawaii	0.230	3.289	0.944
Illinois	-0.003	0.038	0.931
Indiana	0.011	0.067	0.866
Iowa	0.035	0.051	0.494
Kansas	0.065	0.015	0
Kentucky	0.002	0.125	0.986
Louisiana	0.023	0.109	0.837
Maine	-0.005	1.873	0.998
Maryland	0.017	0.181	0.924
Massachusetts	0.034	0.059	0.564
Michigan	0.005	0.076	0.946
Mississippi	0.222	0.233	0.341
Missouri	-0.002	0.073	0.975
Montana	-0.041	0.127	0.747

State	Marginal effect	Standard error	p-value
Nebraska	0.077	0.026	0.004
Nevada	0.049	0.052	0.345
New Jersey	0.067	0.027	0.013
New Mexico	-0.007	0.010	0.512
New York	0.196	0.027	0
North Carolina	0.084	0.064	0.195
Ohio	0.015	0.066	0.817
Oklahoma	0.089	0.026	0.001
Oregon	-0.009	0.040	0.83
Pennsylvania	0.024	0.044	0.582
Rhode Island	-0.092	0.605	0.879
South Carolina	-0.030	0.193	0.878
South Dakota	0.185	0.144	0.199
Tennessee	-0.059	0.144	0.682
Texas	-0.000	0.002	0.881
Utah	0.376	0.088	0
Vermont	-0.003	0.905	0.997
Virginia	0.027	0.045	0.546
Washington	0.002	0.019	0.9
West Virginia	-0.187	0.316	0.553
Wisconsin	-0.000	0.117	0.998
Wyoming	0.002	0.074	0.981

Variable tested: Section 203 counties

States with an insufficient number of Section 203 counties to perform the analysis are omitted

State	Marginal effect	Standard error	p-value
Arizona	0.013	0.005	0.009
California	0.029	0.002	0
Colorado	0.003	0.005	0.527
Florida	0.000	0.003	0.894
Hawaii	0.000	0.009	0.982
Illinois	-0.000	0.005	0.941
Kansas	0.026	0.005	0
Maryland	0.005	0.009	0.558
Nebraska	0.004	0.005	0.501
Nevada	0.006	0.009	0.496

New Jersey	0.015	0.004	0
New Mexico	0.006	0.004	0.122
New York	0.091	0.004	0
Pennsylvania	0.015	0.005	0.004
Texas	-0.001	0.001	0.517
Utah	0.015	0.009	0.109
Virginia	0.002	0.009	0.812
Washington	0.000	0.005	0.919

Source: Authors' analysis based on data from the Bureau of the Census, Voting Age Population by Citizenship and Race: 2008–2012 American Community Survey 5-year estimates (U.S. Department of Commerce, 2014), available at https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html; Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203 (U.S. Department of Commerce, 2011), available at http://www.justice.gov/crt/about/vot/sec_203/2011_notice.pdf; and Election Assistance Commission, "2012 Election Administration and Voting Survey Report Tables" (2013) available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

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