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## **Voting in 2008: Lessons Learned**

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Much has been made of the fact that there was no catastrophic meltdown in the election system this year. The fact that problems were not as pervasive as they might have been is due to the hard work of the voting rights community and election administrators in the months and even years before the election and the enthusiasm and persistence of voters. At the same time, thousands and thousands of voters faced unacceptable barriers to voting this year, demonstrating that much more work remains to be done.

### **LONG LINES**

While we are proud of the historic turnout on Election Day, the amount of time some Americans had to wait in order to vote was not just unfortunate,<sup>1</sup> it could have denied the right to cast a ballot for many voters. While in many precincts, voting took only a matter of minutes, in Detroit, some had to wait in line for five hours. In the St. Louis area it was six hours. In Chesapeake, VA, seven. Voters in Georgia and Florida faced unacceptably long wait times during early voting. While the commitment of so many to wait no matter how long it took was inspiring, some voters inevitably could not wait that long -- they worked for hourly wages, couldn't get that much time off or had child care responsibilities.

Why were there such long lines? The data is insufficient to say with precision, but we do know some things. We knew going into the election that there was going to be much higher turnout this year than in the past, but that in many places, especially swing states where turnout would be highest, there were simply not going to be enough voting machines to handle the capacity. As we pointed out in our report on [ten swing states](#), many states had no statewide standards on number of machines required per voter, while in other states, such as Virginia, the standard was inadequate. [From another recent Common Cause report](#), we also know that machine breakdowns and problems with electronic poll books significantly exacerbated the problem of long waits, especially where there were insufficient back up plans.

Other unnecessary confusion and controversy also likely added to wait times. For example, across the country voters arrived at the polls to find they were not on the registration list. In some places there was confusion over what voter identification was required.

In the future, we need to put the resources and planning into our distribution and preparation of voting machines so that no one has to wait in line all day to exercise his right to vote. This means not only ensuring we have enough machines but also making sure that the plan for allocating those machines is based on a set rational criteria and equity. For example, whereas Virginia law requires one voting machine for every 750 voters -- and saw some of the worst of the lines -- Ohio had early voting and the Secretary of State directed that there be one machine for every 175 voters, and there were not, by and large, very long lines. We also need to make sure to have backup plans for when voting machines break down, which they do. Federal law should require that all precincts have stocked and utilize emergency paper ballots whenever any voting machine in a polling site goes down.

We also witnessed how much of a difference early voting can make. States with early voting had far less of a problem with long lines than states that did not. For example, North Carolina, which combined same day registration and early voting and had the biggest increase in turnout in the country,<sup>ii</sup> avoided this problem in most places on Election Day, whereas Pennsylvania did not. Unless and until Election Day can be run in such a way that it is easy and quick for all voters, all states should have a window of early voting. An effective early voting system is one that includes at least one weekend, has sufficient numbers of locations and equipment so that there are not unreasonable lines during early voting either, and early voting locations must be placed strategically in a way that best meets the needs of all voters.

## **DECEPTIVE PRACTICES**

This year we once again saw the insidious types of deceptive practices that are designed to suppress voting – misinformation campaigns meant to mislead and confuse voters about whether they can vote and how, when and where to vote. In the past, this had usually taken the form of flyers and mailings, but this year, as we predicted in our [deceptive practices report](#), such activities went online as well. We heard robocalls spreading false information about voting, and we saw emails and text messages in Virginia, Missouri, Florida and at least five other states doing the same. Most of these emails said that given the high turnout expected, Republicans were to vote on Tuesday, Democrats on Wednesday. An email went to the entire student body of George Mason University that appeared to be from the provost of the school making this same claim. There were robocalls in Florida and Nevada telling people they could vote by phone and calls in Virginia fraudulently telling people the wrong place to vote. In the days prior to the election there were emails in places like Texas and Florida with misleading information about straight ticket voting and voter identification rules. The Secretary of State of Ohio's website was hacked into in the days leading to the election, causing it to be shut down for several hours.

As always, there were the more traditional flyers in the Philadelphia area telling people if they had outstanding parking tickets or traffic violations they would be arrested at the polls. And a flyer was circulated in Virginia, again with the message that Republicans vote on Tuesday, Democrats on Wednesday. Although law enforcement caught the creator of this flyer, no charges were pressed as it was deemed to have been a "joke."

Currently, the Department of Justice does not believe there is a federal statute that explicitly criminalizes this activity. This needs to change. We need reform at the federal and state level

that not only criminalizes deceptive practices, but puts in place a mandatory procedure for law enforcement and election officials working with community and voting rights organization to debunk the false information and disseminate the correct information rapidly. Law enforcement should also put in the energy and resources it needs to pursue the perpetrators. As we discussed in our deceptive practices report, there are already a number of laws on the books that could be used to go after the people responsible for these tactics given a prosecutor with the will to do it.

## **REGISTRATION**

Issues around the voter registration process were the most controversial of this election year. Untold numbers of voters registered to vote but were not on the registration list when they came to vote and had to cast a provisional ballot.

Across the country, there were overblown charges against ACORN and other voter registration organizations regarding voter registration fraud. This led to Republican demands and litigation seeking the names and other information of all voters who had been registered by ACORN, such as in Pennsylvania, presumably so they could be investigated and/or challenged.

In Florida Secretary of State Kurt Browning insisted that the information on voters' registration forms *exactly* match the information in state and federal databases in order for that registration to be processed, even though we know that processing errors, typos, variations on names and the like constitute the overwhelming majority of "mismatches." This led to over 22,000 voters having their voter registration initially blocked. As of Election Day, some 10,000 of these voters had yet to take the extra, unnecessary step of resubmitting an ID and their vote was thus in jeopardy. Similarly, the GOP sued the secretary of state of Ohio demanding that 200,000 voters who had a discrepancy between their voter registration information and information in other databases be flagged and likely forced to vote provisionally. The secretary of state in Georgia similarly flagged tens of thousands of voters and challenged the citizenship of thousands of eligible voters based on "mismatches." In Colorado, the secretary of state rejected voter registration form for picayune technical omissions and was found by a federal judge to have purged voters from the rolls in violation of federal law.

All of these incidents underscore the need to completely rethink how we do voter registration in this country, unique in that it places almost the entire burden on citizens to register to vote and make sure they stay registered throughout their lives.

The government needs to take a more pro-active role in this process so that we have in the end a system of universal registration. This means the expansion of same day registration from nine states to all 50. Once again, the states with the highest turnout were states such as Minnesota, Wisconsin, Iowa and North Carolina, which all allow eligible citizens to register to vote on Election Day. North Carolina instituted Election Day registration this year during early voting for the first time, and had the biggest increase in turnout in the country. We should also institute pre-registration of 16- and 17-year-olds in high school and automatic registration of citizens who interface with the government in any number of ways, including with Departments of Motor Vehicle (DMV) public assistance agencies, and upon completion a term of incarceration and finalization of the naturalization process.

Elections officials could update registrations of existing voters whenever they move within state based upon data readily available from U.S. Postal Service change of address databases, DMV databases, the Civil Service board, Social Security, Medicare, Medicaid, and state and federal income tax databases. Citizens would receive notices that their registration would be automatically updated to their new location unless they responded, to provide for those who may not wish to change their registrations, such as college students or those in the military who are only temporarily relocating and wish to vote at the permanent address.

## **CAGING AND CHALLENGES**

Early on in the fall election season, state Republican officials were reportedly planning on using lists of people whose homes had been foreclosed as a basis for mounting challenges to their right to vote at the polls. In Michigan, this led to the Democratic Party suing for an injunction prohibiting challenges on the basis of being in foreclosure. In Ohio and other states, election administrators sent out directives and statements that foreclosure was not a legitimate basis for a challenge. The Montana Republican Party challenged the eligibility of 6,000 registered voters in six counties that historically are Democratic strongholds. A lawsuit by the state Democratic Party forced the Republicans to shut the operation down.

In addition, as noted, the allegations regarding fraudulent and “nonmatch” registration forms led to serious concerns that the lists of those who had discrepancies or were registered through a third party organization would be challenged at the polls.

In addition, the specter of “caging” -- challenging a prospective voters’ right to vote -- arose once again. In Ohio, a state law that required election administrators to send out a mailing to all voters 60 days in advance of the election raised concerns that those pieces of mail that were returned as undeliverable would be used as a basis for challenges – a practice that had been utilized repeatedly over the last 40 years. Secretary Brunner issued a directive that a piece of undeliverable mail could not be the sole basis for a challenge. In Florida, Democrats brought a lawsuit asking the court to clarify what types of challenges were legitimate because of information they had that Republicans in that state were engaged in caging.

That caging and challenges declined in 2008 compared to 2004 is a testament to the publicity that voting rights advocates have brought to the perniciousness of the process, and a result of the pre-election litigation victories voting rights lawyers had to prevent it. Nonetheless, the fear of caging and challenges to voting rights should not longer be a part and parcel of every election as it has been since the 1960s.

We need federal legislation banning caging, such as the bill introduced in the United States Senate. The proposed Caging Prohibition Act prohibits challenges to a person’s eligibility to register or vote based solely on returned mail or a caging list, and mandates that anyone who challenges another person’s right to vote must set forth the specific grounds for their alleged ineligibility, based on first-hand knowledge, under penalty of perjury.

In addition, states must establish fair standards for challenges. All states should have uniform challenge procedures characterized by transparency and fairness; such procedures must be

designed in a way that prevents disenfranchisement or voter deterrence. On Election Day, only poll workers should have the legal authority to challenge a voter – not another voter or a poll watcher. States should enact stringent requirements for when someone can make a challenge at the polls, and the bases upon which such challenges can be made must be narrowly defined. Such challenges should be based on personal knowledge and documentary evidence of lack of eligibility. States should also require pre-election challenges to be filed well ahead of Election Day, and similarly be based on very particularized charges and on personal knowledge and/or documentary evidence. The Justice Department should also actively pursue vote caging and polling place challenges clearly based on race or ethnicity.

### **VOTER FRAUD – MICKEY MOUSE DIDN'T VOTE**

In states across the country, Republicans charged the community organizing and voter registration organization ACORN of massive voter registration fraud. The McCain campaign for a period of time made this a centerpiece of its stump speeches. The campaign charged the organization was a criminal enterprise and threatened to destroy the fabric of democracy. As has been well documented, these charges were overblown. During this tumult, voting advocates repeatedly reminded the public that “voter registration fraud” while problematic and illegal, does not lead to vote fraud at the polls. It never has. This episode was just another in the continuing effort of some to lead the American people to believe that there is massive voting fraud in this country when there is not in order to pass restrictions and erect unnecessary barriers to voting.

Once again, in the days now passed since Election Day, there has not been a single charge, not a single allegation of fraud at the polling place. As predicted, the name Mickey Mouse might have appeared on a registration form because someone was too lazy to do the hard work of voter registration, but Mickey Mouse never made it on to the official voter rolls and of course he DID NOT VOTE. Despite all the usual overheated rhetoric about the potential for massive vote fraud, none of this has materialized.

This underscores the need to continue to fight barriers to voting that are premised on false charges of vote fraud, such as strict voter identification requirements and requiring proof of citizenship in order to register to vote. Increasingly states have been passing such measures and we can expect that to continue in 2009. Such laws are wholly unnecessary and serve only to disenfranchise, especially minorities, young people, the elderly, the poor and people with disabilities. This was demonstrated this past Election Day in places like Indiana, which has the strictest identification law in the country, where students were turned away at the polls because they lacked the proper identification.

### **CONCLUSION**

The truth is, if this election had been much closer, the outcry over the problems enumerated would be huge. If, for example, the presidential election had hinged on Indiana, where it was extremely close, there would have been microscopic inspection of that state's election system and problems undoubtedly revealed. Litigation would likely have ensued. We dodged that

bullet. But that does not mean our great democracy is everything it should be. The effort to make our system one in which every American citizen is able to easily vote and have his vote counted is far from over.

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<sup>i</sup> It should be noted that while the turnout was historic at between 62 and 63 percent, we must at the same time wonder what kind of system breakdown would ensue should we ever achieve the turnout levels that are routine in most countries around the world where participation rates are in the 75-94% range. See <http://www.idea.int/publications/vt/upload/Voter%20turnout.pdf>

<sup>ii</sup> "Much-hyped Turnout Record Fails to Materialize," American University, November 7, 2008