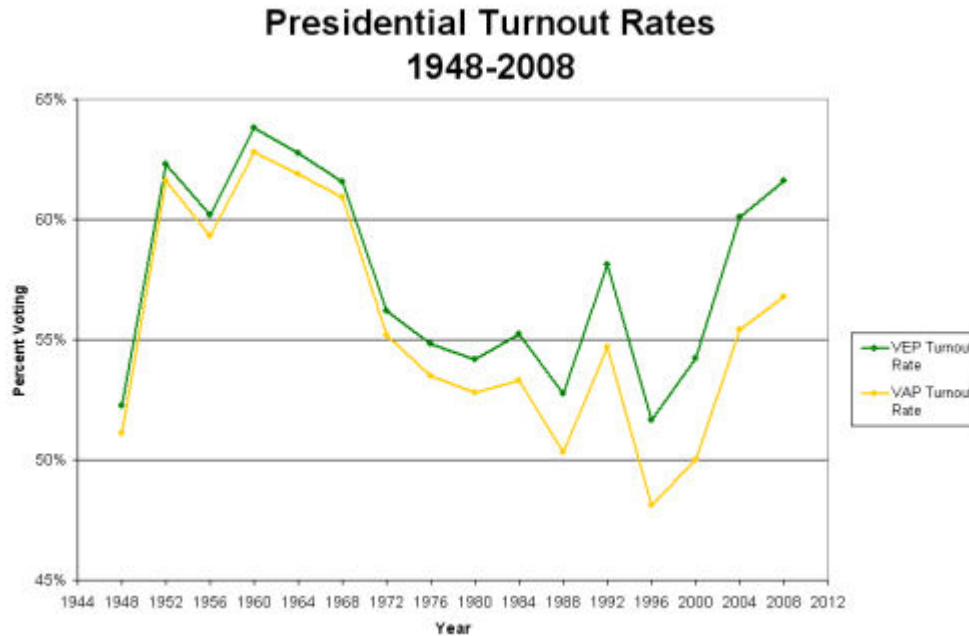


# Improving Voter Participation: Oregon Challenges and Opportunities



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August 2009**



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**Written and Produced With the  
Support of the Carol and Velma Saling Foundation**

**Organizational Note:**

**Work on this project began with grant support from the Carol and Velma Saling Foundation to Democracy Reform Oregon. Follow up activities described in this document will be done by Common Cause Oregon.**

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# IMPROVING VOTER PARTICIPATION: OREGON CHALLENGES AND OPPORTUNITIES

*What we have to do is not to improve the quality of election administration, what we have to do is be advocates for, warriors for election rights. It's making people believe they have a right to a world-class infrastructure for this democracy. To let people believe they have a right to be able to vote with ease and have their vote counted and have their officials be accountable. It's not just about public administration: it's about our freedoms, it's about our character and it's about our hopes.*

Comments by Chris Edley, Dean of the Berkeley Law School, University of California at the December 2008 Voting in America conference.<sup>1</sup>

## INTRODUCTION

The purpose of this report is to review a range of opportunities to increase and improve civic engagement and voter participation in Oregon. This means expanding the number of Oregonians who vote as well as providing more information to voters. The timing of this report is exciting, given that the 2008 election season saw voting improvements but also continued problems. For example, national voter turnout improved, particularly by some constituencies historically under-represented in vote counts. As illustrated on the cover graphic, however, national turnout hasn't returned to modern-era highs of the early 1960's.<sup>2</sup>

Oregon voter turnout was not a record high in 2008 and there are still significant registration gaps in our state. Sustaining positive momentum and addressing problems requires evaluation of opportunities to maintain gains in voter participation, build on past successes, and explore new options. Improving voter registration is a new reform that is gaining national attention. "A closer look reveals that serious problems with the infrastructure of American democracy remain. Topping the list is voter registration, which turned out to be *the* election administration problem of 2008."<sup>3</sup>

This report discusses a wide range of options to:

- Increase the numbers of registered voters,
- Keep Oregonians accurately registered, and
- Improve voter turnout.

This discussion is Oregon specific, which has several implications for this analysis. Our state's vote-by-mail balloting means that academic research and policy development efforts that focus on strategies such as insuring adequate numbers of voting machines and training poll workers may improve the voting experience in other states, but aren't applicable in Oregon. Addressing "how to" and other voter concerns is also more of a challenge in Oregon compared with the in-person opportunities for poll workers to answer questions at the precinct voting sites or voting centers found in other states. However, the Oregon Voters' Pamphlet is a significant education and information resource that is not available to voters in most other states. Also, as mandated by

the federal Help America Voting Act (HAVA), Oregon now has a toll free voter information phone line, 1-866-ORVOTES.

Early voting is a growing trend elsewhere, often taking the form of allowing permanent absentee voting. These voters in other states who are casting their ballots early and at home are analogous to Oregon voters. Voter access improvement and educational actions taken in other states that affect those voters, therefore, can provide information that can be useful in Oregon.

Another factor is that Oregon voter turnout is already high compared to most other states. Many of the other top voter participation states allow Election Day registration. But there are other states that, like Oregon, typically have high voter turnout without this registration option. Some may look at these turnout statistics and conclude that no improvements in Oregon are necessary. A more appropriate conclusion is to realize that many factors contribute to high voter turnout.

Research is beginning to identify best practices for increasing turnout. At the same time the gains from any one voter improvement step are often relatively small. This doesn't make inaction acceptable, but rather points to the need to take many different policy steps because no one step is a "silver bullet" solution to increase participation. Multiple actions to improve voter participation are justified by the goal that underlies this report – that democracy is best served by an engaged populace and robust voter participation.

Section 1 begins with a review of academic research on why people vote and identifies possible policy directions to enhance people's varying motivations for civic engagement and political participation. Oregon and national voter turnout statistics are provided, followed by a discussion of voting gaps. Section 1 ends with a historical summary of Oregon constitutional changes pertaining to voting as well as our state's history of voting registration regulations.

Section 2 discusses options for improving voter participation. This section focuses first on opportunities to increase voter registration, then turns to strategies to increase voter turnout, including alternative election methods. Providing more information for voters and civics education are then discussed. Parallel reforms that could also increase voter participation are considered with a focus on redistricting and campaign finance reform.

Recent successes and priority next steps are summarized in Section 3.

**Striving to Realize the Potential of Democracy**

"History offers no examples of political institutions that can permanently guarantee genuine political equality. Democracy therefore must remain a project, a goal, something to be endlessly nurtured and reinforced, an ideal that cannot be fully realized but always can be pursued."<sup>4</sup>

**SECTION 1 – BACKGROUND AND HISTORY**

**Why People Vote and Research on Improving Voter Turnout**

Social scientists have long puzzled about voter turnout. Some wonder why so few American vote while others wonder why anyone votes. "Rational choice theory predicts that actors free ride and do not voluntarily contribute to the production of public goods... yet millions of citizens vote at

every election.” This has been called “the paradox that ate rational choice theory.”<sup>5</sup> In other words why do so many people vote when it seems unlikely that their one vote will affect the outcome of an election?

Analysis does show that voting increases when there is a greater probability of affecting the outcome. This indicates that people are more likely to vote when it matters.<sup>6</sup> “The close relationship of electoral competition and voter turnout at the individual level and at the system level is a frequently verified proposition, bordering upon the status of a law.”<sup>7</sup> These findings point to the value of enacting policies that facilitate electoral competition and increase the likelihood of people feeling that the election – and their vote – really matters.

Review of past turnout figures bolsters this view. “The role of competition is a major factor in whether or not a specific election within an era will have higher or lower turnout rate. For example, in 1996 most people knew that Bill Clinton would coast to victory over Bob Dole. As a result, only 52 percent of those eligible voted, the lowest turnout rate since 1924. Contrast that with the 60 percent turnout rate in 1960, which was one of the closest elections in modern history.”<sup>8</sup>

Two reasons for turnout increases linked to electoral competition or the perception that a race will be close are that voters think their vote may influence the outcome and/or increased campaigning in tight contests stimulates greater voter participation. Exit polls after the November 2008 election, for example, indicate that voter mobilization efforts increased in ten presidential battleground states with 49 percent of respondents reporting a contact by a presidential campaign compared to 25 percent in other states. Mobilization efforts, however, isn’t the only factor in 2008 turnout rates since even in battleground states many voters were not contacted. This means that individual voter motivation was also a factor.<sup>9</sup>

The 2008 election illustrates the link between motivation and participation with high national turnout, especially by young people and African-Americans, appearing to be more linked to enthusiasm about now-President Barack Obama’s candidacy than the closeness of the McCain-Obama contest. The interplay between motivation and competition in a voter’s perception of the meaningfulness of an election is seen in Oregon’s November 2008 turnout that was high but not record setting. Even though some Oregonians voted at higher rates because of excitement about Obama, Oregon was not a battleground state and there was lower turnout by older voters.

Whether or not an election is viewed as meaningful is also illustrated by a history of relatively high voter turnout in Switzerland that significantly declined on a timeline linked to the development of that country’s governing agreement where the same parties are included each year in their legislative body with a rotating prime minister regardless of electoral results.<sup>10</sup>

Whether or not an election is viewed as meaningful could also be linked to the frequency of elections. “Among advanced democracies, only Switzerland and the United States call their voters to the polls more than once a year on average, and it has often been noted that these are also the two countries with the lowest turnout.”<sup>11</sup> This has particular implications since, as will be discussed below, voting is a habit. “One might liken sleepy municipal elections to gateway drugs; by enticing so many people to abstain from voting, they weaken voting habits.”<sup>12</sup>

The higher turnout in the 2004 presidential election compared to the 2000 race, even though both campaigns were quite competitive, illustrates the role of political activities in influencing voter turnout. “The 2004 campaign saw a massive effort to get out the vote by supporters of both George W. Bush and John Kerry, dwarfing what was done in 2000.” This explanation for higher turnout, however, goes hand in hand with electoral competition as contributing to more people voting. “High turnout results from an intensive get out the vote effort, which in turn is most likely to be effective when and where an election goes down to the wire.”<sup>13</sup>

Field trials on get out the vote strategies primarily help inform campaign strategies, but some findings from this category of research can influence development of voter participation policies. For example, simply reminding voters of Election Day is not an effective technique to increase turnout. Personal contacts that make voters feel wanted at the polls have been found effective. Phone conversations are next best while mailings or calling with a phone script don’t typically work well. Building on previous expressions of voting interest can help increase turnout. Nonvoter participation will increase if they think that others are watching. The theme in these findings is that “the decision to vote is strongly shaped by one’s social environment” and personalized contact contributes to increases in turnout.<sup>14</sup>

Preliminary indications are that nonpartisan advertising to increase voter turnout can be effective at least in some situations. For example, radio ads highlighting the importance of local elections and naming all mayoral candidates showed some positive effect on turnout. A weaker but still positive impact on turnout occurred in response to two TV ads designed to portray voting as a patriotic responsibility.<sup>15</sup> The cost effectiveness of such an advertising campaign as a government effort, however, would only work if aired as a public service. As a PSA, however, such advertising’s effectiveness could be diminished if not aired frequently enough and at suitable times.

Electoral reforms could increase electoral competition in ways that have a more significant effect on voter turnout. The catch is the political difficulties of achieving those reforms. “Perhaps presidential elections could be made more competitive at the state level by eliminating the Electoral College and moving to a purely proportional electoral system, although to say that this change is currently infeasible is to risk a gross understatement.”<sup>16</sup> There may be more politically viable electoral reforms, though, such as a state-based plan requiring use of the Electoral College to reflect the national popular vote as well as state and local alternatives.

The need to not surrender to the cynical view that election system reforms are not viable is also indicated by concern that “elected politicians have no strong reason to love competitive elections” and the troubling potential for politicians to “rig the system.”<sup>17</sup> Examples cited include redistricting decisions in the United States or the government agreement between political parties described above in Switzerland. Indeed, the power of electoral reform is illustrated by Malta’s voter turnout, one of the world’s highest, that increased on a timing linked to independence so that its legislative decisions were no longer subject to ratification by a British-appointed governor.<sup>18</sup>

Having an effect on electoral outcome is not the only factor in an individual’s decision of whether or not to vote. For example, other researchers conducted an analysis demonstrating that voting is rational even in large elections when the likelihood of a vote decreases because people vote to improve the well being of others.<sup>19</sup> This finding points to the value of information that

focuses less on an individual's self-interest and more on the impact of a candidate or an issue on the community as a whole. Similarly, "the altruism theory of voting suggests that there is an interaction effect between a citizen's concern for others and her perception that one of the election outcomes will benefit others more than some other outcome."<sup>20</sup>

Other research focuses on the strong relationship between "political expressiveness" and voting, especially in large elections where the decisiveness of one vote is reduced. "Individuals vote because they are expressing themselves about the candidate(s) and/or issue(s), not because they expect to alter the outcome of the election. The act of expression has inherent value to the individual."<sup>21</sup> This research finding highlights the value of enacting policies that expand options for political expression.

Analysis by another political scientist identifies the role of voters looking backwards and making decisions based on a candidate's record as well as past experience with having voted for a particular candidate. This speaks to the value of providing voters information. In addition, however, it identifies the habit-forming nature of voting.<sup>22</sup> Some researchers prefer the term *consuetude*, which though defined as a habit or custom, does not have the potential negative connotations of those terms.<sup>23</sup>

"Virtually all major works on turnout have concluded that voting behavior is, in part, a gradually acquired habit." Terminology used by different researchers vary but "there is a longstanding agreement that voting behavior is habitual."<sup>24</sup> This points to opportunities to increase the level of civic engagement and voter participation by assisting young people in developing the habit of voting.

"As young citizens confront their first election, all of the costs of voting are magnified: they have never gone through the process of registration, may not know the location of their polling place [In Oregon this would mean that they don't know the importance of keeping elections officials updated with address changes], may not have yet developed an understanding of party differences and key issues. Moreover, their peer group consists almost entirely of other nonvoters: their friends cannot assure them that voting has been easy, enjoyable, or satisfying."<sup>25</sup>

Why previous voting experience or voting *consuetude* makes such a difference is a topic of ongoing research. Green and Shachar, however, discuss three possible explanations. One is that voters receive more attention during campaign season than nonvoters. In other words, voting is self-reinforcing because political parties, candidates, and interest groups focus on active voters. Another possibility is that continued voting increases the voters "internal efficacy," and feelings of civic duty and political interest. A third explanation is that continued voting is a matter of growing comfortable with the act of voting. Their research, however, indicates doubts about the adequacy of these explanations and they identify the question of why *consuetude* as an important topic for additional research.<sup>26</sup>

David E. Campbell identifies two motivations – one civic and the other political – for why people vote and links these motivations to community characteristics. "In places characterized by partisan and/or ideological consensus, public engagement has a civic flavor and is thus motivated by a social norm. In places marked by conflict, engagement is more likely to be politically motivated and thus directed at influencing public policy."<sup>27</sup>

Campbell also suggests serious consideration of “possible gains in turnout from enhancing American’s civic motivations for voting” and outlines his vision of the result of an effective balance between the civic and political motivations for voting:

What we want is an electorate in which, because of voters’ sense of civic obligation, turnout to vote is the default option. Rather than deciding to vote only when they see an overt threat to their interests, voters would make voting a habit. Knowing that they were coming to the polls would then lead them to weigh their options carefully. Interest-driven voters ask themselves: Do I need to vote in this election to defend my interests? Instead, we would hope that duty-driven voters ask: Given that I am going to vote in this election, which candidate best represents my preferences? In the interest-driven case, the electorate is composed only of people who care enough about a particular issue (or issues) to get off their couches and vote. Under this condition, voters will be out of step with the mainstream almost by definition, because people who care deeply about an issue typically have extreme views. There are not many passionate moderates. A duty-driven electorate, on the other hand, will have more voters from the moderate middle, since their primary motivation for coming to the polls is a sense of duty, not a passionate opinion. Duty-driven voters, in other words, serve as a moderating influence in the political environment.<sup>28</sup>

On the basis of his comprehensive analysis of voter turnout in many different countries, however, Franklin believes that any declines in participation are not due to a decline in civic virtue. “Turnout is not something about the way people approach elections but something about how elections appear to people.” This contributes to Franklin’s opposition to calls for mandatory voting. “In low turnout countries elections are not serving the function of holding politicians accountable ... to institute compulsory voting in a low-turnout country would be to ‘shoot the messenger.’”<sup>29</sup>

Franklin and Campbell agree on the role of young people in turnout declines and the value of facilitating development of social norms that encourage youth to develop the habit of voting. Campbell cites U.S. Census data indicating “it is not only that young people vote less than their elders” but that “young people today vote at lower rates than young people in the past.”<sup>30</sup> Franklin links turnout declines to lowering the vote age. Because turning 18 is a time of transition for young people, Franklin advocates lowering the age of suffrage. “Given the vote at fifteen, most children would face their first election while still in high school. They could then learn to vote in the context of a civics class.”<sup>31</sup> Campbell’s focus is on improving the effectiveness of schools in building community norms for political participation, including voting. “The challenge, therefore, is to build that sense of “we” within our schools in order to nurture civic norms, including the encouragement of voting as a civic obligation.”<sup>32</sup>

Nurturing voting as a social expectation and habit on the part of young people can take time. “The transition between unengaged and established [voting habits] appears to happen during the first three elections that people are exposed to as voting-age adults.”<sup>33</sup> This means that increased youth turnout nationally during the 2008 presidential election shouldn’t be seen as meaning that concerns about low youth voter participation are over. “Fostering civic norms among adolescents will not have an immediate participatory payoff. But it is an investment that has the potential to pay large dividends over the long term. It is time that we made it.”<sup>34</sup>

One indication that educating young people about voting pays off, however, is that participants in a First-time Voter Program had turnout rates of approximately 9 percentage points higher than a control group.<sup>35</sup> This program is described in more detail in the civic education discussion on page 40.

A final note given the role of ballot measures in Oregon politics is that political scientists cite a growing consensus that ballot measures stimulate turnout in lower profile midterm elections. One factor may be the role that ballot measures play in increasing political interest considered “a critical building block for all other forms of political engagement and participation.”<sup>36</sup> Research based on 2002 midterm elections data indicate that “the positive impact of ballot initiative exposure on an individual’s probability of voting remains even after controlling for traditional media use, the frequency of political discussions, efficacy and political interest.”<sup>37</sup>

These turnout increases are statistically significant but not massive. The role that ballot measures play, at least in lower profile elections, may contribute to Oregon’s higher voter turnout ranking compared to other states. This conclusion, however, is undermined by the frequency with which California and other western states with ballot measure activity do not appear in the top voter turnout rankings among states. This underscores the complexity of evaluating what contributes to Oregon’s high voter turnout.

In general, political science research on voter motivation helps identify ways in which voter participation can be enhanced. This discussion is not intended to be exhaustive but does provide background on policy possibilities that reflected in the next sections.

#### **Fundamental Right to Vote – Not an Academic Exercise**

“The right to vote is not given its due when it is judged by its “instrumental value” or capacity for determining an outcome, nor when it is honored as a “badge” or other mark of citizenship or of inclusion within the body politic, considered within a largely subjective dimension. Reconceiving the right to vote must be part of the work of election reform in this next phase [of post-2008 election reform discussions].”<sup>38</sup>

### **Oregon Voter Turnout**

Election administrators and the press typically calculate voter turnout as total votes cast as a percentage of registered voters. For example, in Oregon’s November 2008 general election turnout was 85.7 percent with 1,845,251 ballots cast out of 2,153,914 registered voters. Political scientists, however use other methods to calculate voter turnout that are called Voting Eligible Population (VEP) and Voting Age Population (VAP) methods. This report will label the method used by election administrators as Voting Registered Population or VRP.

$$\text{Oregon 2008 general VRP Turnout Rate} = \frac{\text{Total Ballots Cast}}{\text{Total Registered Voters}} = \frac{1,845,251}{2,153,914} = 85.7\%$$

Calculating turnout based on Voting Age Population is done by the U.S. Census Bureau as well

as long time voting researcher Curtis Gans of the Center for the Study of the American Electorate (CSAE) at American University.<sup>39</sup> This method calculates turnout as a percentage of total ballots divided by the voting age population.

George Mason University political scientist, Dr. Michael McDonald, however, has pioneered the Voting Eligible Population method for turnout calculations and use of the VEP approach is growing.<sup>40</sup> The first adjustment made by Dr. McDonald is to add overseas voters to the voting age population, though until 2008 state level data on the number of overseas Americans by state wasn't available and McDonald only made this adjustment in national VEP calculations. Subtracted from that figure are those who are not eligible to vote because they are non-citizens or ineligible due to a felony conviction. In Oregon only those incarcerated in state prison are ineligible to vote. Adjustments to VAP for recent movers, the mentally incompetent, and the census undercount cannot be made because figures aren't available.

Dr. McDonald's 2008 general election figures for Oregon indicate a voting age population of 2,998,611, which is 2,935,131 plus 63,480 Oregonians living overseas. Based on these figures Oregon's turnout rate is 61.5 percent.

$$\text{McDonald Oregon 2008 VAP Turnout Rate} = \frac{\text{Total Ballots Cast}}{\text{Total Voting Age Population}} = \frac{1,845,251}{2,998,611} = 61.5\%$$

Since 2008 is the first year that McDonald's data includes state level overseas residents data, when Oregon's VAP is calculated just based on the 2,935,131 voting age residents living in the state that turnout calculation increases to 62.9 percent. This figure is more comparable with historical VAP data from McDonald.

A June 2008 report on voter registration from the U.S. Election Assistance Commission (EAC) provides an Oregon voting age population estimate of 2,922,000. Using this figure, Oregon's VAP is 63.2 percent.<sup>41</sup>

$$\text{EAC Oregon 2008 VAP Turnout} = \frac{\text{Total Ballots Cast}}{\text{Total Voting Age Population}} = \frac{1,845,251}{2,922,000} = 63.2\%$$

McDonald's 2008 calculation of voting eligible population is 2,695,058. Based on this denominator, Oregon's turnout rate is 68.5 percent. This is still a considerable drop off from the VRP method's figure of 85.7 percent, but not as large a decline as when turnout is calculated using voting age population.

$$\text{McDonald Oregon 2008 VEP Turnout Rate} = \frac{\text{Total Ballots Cast}}{\text{Total Voting Eligible Population}} = \frac{1,845,251}{2,695,058} = 68.5\%$$

The Secretary of State's estimate of eligible Oregon voters for the November 2008 election is 2,796,210, yielding a VEP of 66.0%, less than the VEP result using Dr. McDonald's figures.

$$\text{Secretary of State Oregon 2008 VEP Turnout} = \frac{\text{Total Ballots Cast}}{\text{Total Voting Eligible Population}} = \frac{1,845,251}{2,796,210} = 66\%$$

The Secretary of State estimate above is based on deducting 2.5 percent from the VAP population of 2,867,908 that, in turn, is based on 2007 figures provided by Portland State’s Center for Population Research and Census.<sup>42</sup>

The Election Assistance Commission’s 2008 report shows an estimated citizen voting age population of 2,711,000. This population is similar to the VEP estimates noted above and would result in a 68.1 percent turnout, closer to McDonald’s VEP 2008 estimate for Oregon.

Oregon general election turnout calculations from 1980 through 2008 are summarized below in chart 1. The 2008 figures are based on EAC data VAP and Secretary of State VEP percentages. Data for previous years are from Dr. McDonald.

<b>Chart 1 – Oregon General Election Voter Turnout Calculations – based on total votes cast</b>						
<b>Year</b>	<b>VRP Turnout</b>	<b>VAP Turnout</b>	<b>VEP Turnout</b>	<b>VEP National Rank*</b>	<b>Unregistered as % of VEP</b>	<b>Numbers of eligible not registered</b>
2008	85.7%	63.2%	66%	10	23.0%	642,296
2006	70.8%	48.4%	53.2%	7	24.8%	652,268
2004	86.5%	66.8%	72.6%	4	16.1%	409,638
2002	69.1%	47.2%	51.8%	4	25.0%	623,124
2000	79.8%	59.1%	65.9%	5	17.4%	410,396
1998	59%	44.2%	49%	10	17.1%	404,400
1996	71.3%	56.3%	60.6%	7	15%	346,896
1994	68.4%	52.1%	56.3%	5	17.8%	396,468
1992	84.4%	65.3%	69.9%	7	17.2%	369,451
1990	76.7%	52.1%	55.1%	4	28.2%	581,333
1988	80.8%	58.5%	62.3%	11	22.9%	453,877
1986	72.4%	53.2%	56.4%	5	22.1%	426,558
1984	78.7%	62.5%	66.4%	5	15.6%	298,187
1982	70.2%	53.5%	56.1%	8	20%	379,117
1980	77.1%	61.4%	64.3%	11	16.6%	311,641

\* The VEP national ranking column is based on turnout calculations based on votes cast for highest office holder because not all states have VEP data based on total votes cast. All other figures are based on total votes cast.

### **Voting Gaps**

Oregon is consistently in or close to the top ten VEP turnout states in general elections from 1980 through 2008 as shown above in Chart 1. In other words, once Oregonians register to vote they turn out at a higher rate than most other states. But significant numbers of Oregonians aren’t registered to vote even though they are eligible to do so.

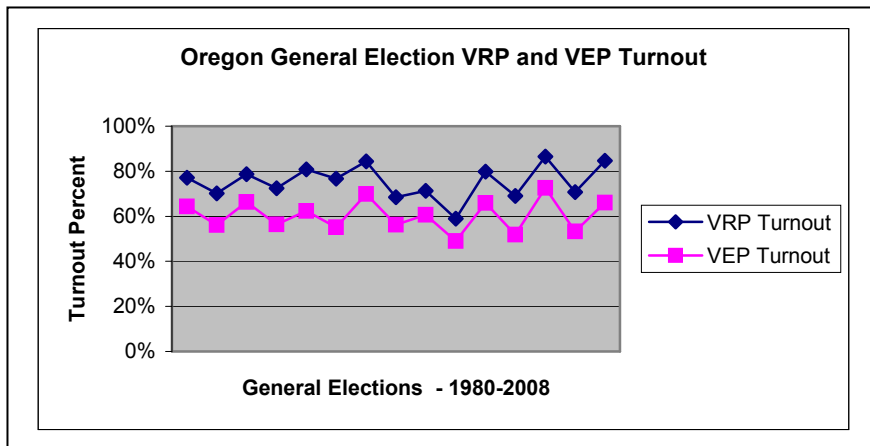
The two columns on the right side of Chart 1 above indicates what percentage of the voting eligible population is unregistered and the numbers of Oregonians who could register but have not done so. In 1984, for example, 298,187 people could have registered to vote, representing 15.6 percent of the voter eligible population in that year’s general election. These numbers increased to slightly more than 650,000 people in November of 2006 and 642,296 individuals in 2008’s general election.

One reason Oregon voter turnout in 2008 was lower than voter participation in 2004 is that the number unregistered voters, as a percent of VEP in the Kerry-Bush race was 409,638 people. In

other words over 230,000 more Oregonians were registered in the pool of eligible voters in 2004 compared to 2008. Presumably this reflects more extensive voter registration efforts in 2004 when Oregon was more of a presidential swing state than was the case in 2008. Regardless of the reason, however, these figures illustrate the ebbs and flows of registration status of many Oregonians, shifts that can be used to identify election reform opportunities.

The gap between turnout based on registered voters rather than the voting eligible population are illustrated below in Chart 2 and Figure 1 below.

<b>Chart 2 – Oregon Voter Registration Gap</b>			
<b>Year</b>	<b>VRP Turnout</b>	<b>VEP Turnout</b>	<b>Gap between VRP and VEP</b>
2008	85.7%	66%	19.7%
2006	70.8%	53.2%	17.6%
2004	86.5%	72.6%	13.9%
2002	69.1%	51.8%	17.2%
2000	79.8%	65.9%	13.9%
1998	59%	49%	10.1%
1996	71.3%	60.6%	10.7%
1994	68.4%	56.3%	12.2%
1992	84.4%	69.9%	14.5%
1990	76.7%	55.1%	21.7%
1988	80.8%	62.3%	18.5%
1986	72.4%	56.4%	16%
1984	78.7%	66.4%	12.3%
1982	70.2%	56.1%	14%
1980	77.1%	64.3%	12.8%



**Figure 1**

Concern about individuals not registering to vote or not voting when they are registered would be minimized if research showed that there were few differences between voters and nonvoters. However, there are significant differences between these groups. For example, Figure 2 below shows the difference in votes cast by different age groups as a percentage of Oregon’s voter eligible population.

The top line in Figure 2 is general election voter turnout from 1978 through 2008 for Oregon voters aged 30 and above. The bottom line shows voter turnout by voters between 18 and 29

year-olds. This data is from the Center for Information and Research on Civic Learning, CIRCLE and is based on voter eligible population.<sup>43</sup>

Oregon turnout of eligible voters aged 18-29 in November of 2008 was second only to the turnout of this age group in 1992. It is likely no coincidence that each of these years involved a presidential candidate, Bill Clinton in 1992 and Barack Obama in 2008, who particularly appealed to younger voters. The gap between voters between 18 and 29 and voters older than 30 in 2008 was a record low 10.3 percent and a significant reduction from the 23.9 percent gap in November of 2004. However, a decline in turnout by older voters between 2004 and 2008 was a bigger factor in shrinking this gap than the increase in turnout by younger voters. A larger than expected number of older people who didn't vote was also cited as a factor in lower turnout rates in other non-battleground states.<sup>44</sup>

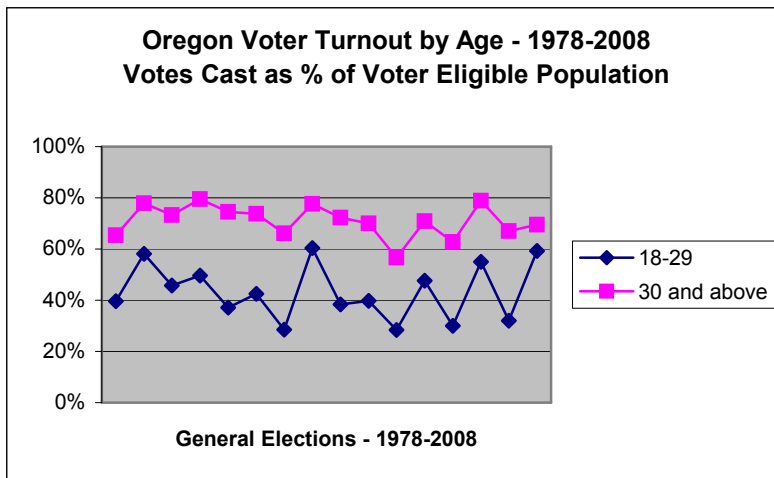


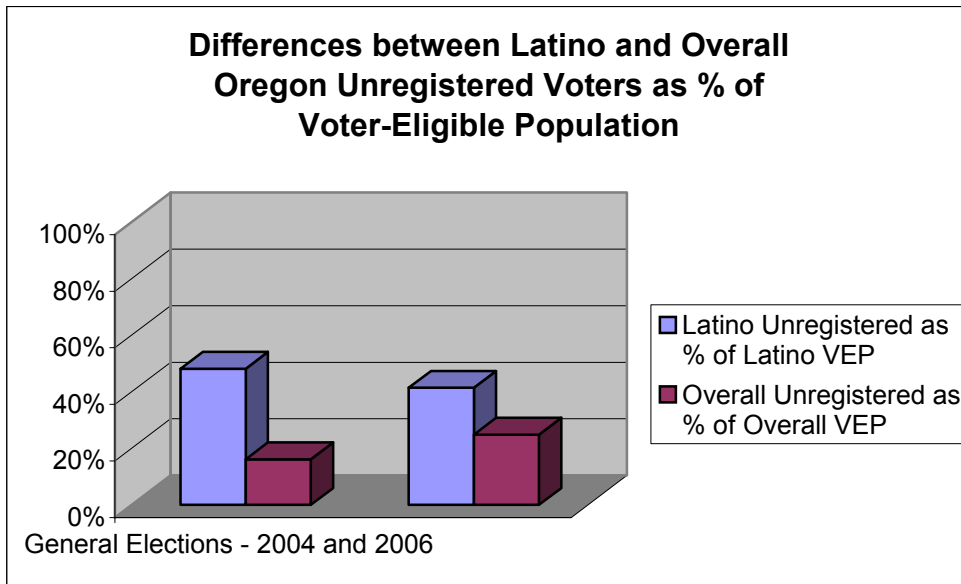
Figure 2

There is also a turnout gap for Latino voters in Oregon as illustrated by Latino population and voting statistics from the Almanac of Latino Politics.<sup>45</sup> In 2004 the Latino voting age population was 165,000 while the voting eligible population of this community was 79,000 Oregonians. Only 52 percent of eligible Latino voters, 41,000, were registered compared to an 84 percent registration of all Oregon eligible voters in 2004. Once registered Latino voters cast ballots at a higher percentage than overall VRP turnout in the 2004 general election. But the gap between Latino VRP and VEP turnout calculations is 42.2 percent compared to the 13.9 percent gap (see chart 2) in overall 2004 VRP and VEP turnout rates. Another way to illustrate the difference between the Latino turnout gap is that in 2004 the number of unregistered Latino voters was 48.1 percent of that community's VEP. For all Oregon voters in 2004, the number of unregistered voters was 16.1 percent of the state VEP. (See chart 1.)

In 2006 the Latino voting age population increased to 169,000 while the voting eligible population of this community had a bigger jump to 99,000 Oregonians. More of these people were registered than in 2004, 58,000 but this is still only 59 percent of eligible Latino voters compared to an 75 percent registration of all Oregon eligible voters in 2006. Latino voters cast ballots at a higher percentage than overall VRP turnout. Though the gap between Latino VRP and VEP turnout calculations in 2006 declined to 30.7 percent, there was still a 17.6 percent gap (see chart 2) between Latino and overall 2006 VRP and VEP turnout rates. Another demonstration of the difference between the Latino turnout gap in 2006 is that the number of

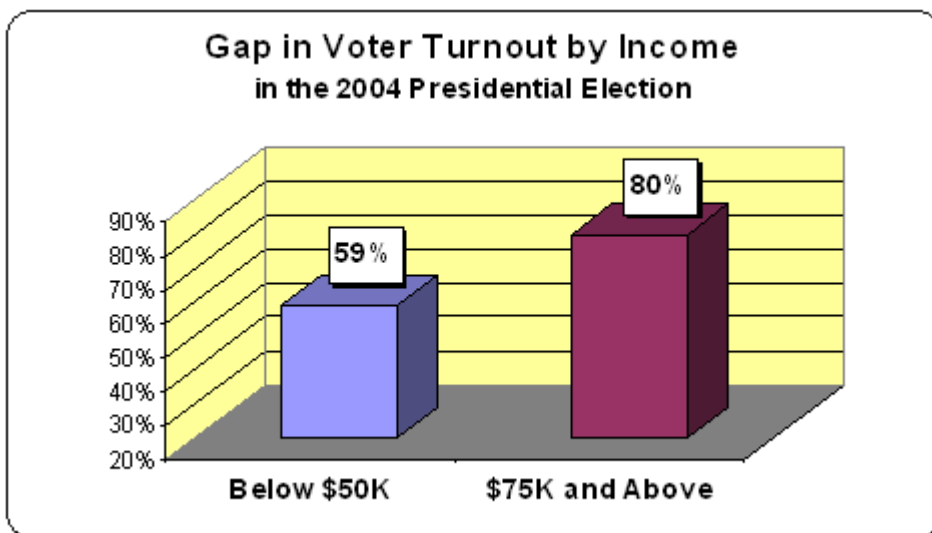
unregistered Latino voters was 41.4 percent of that community’s VEP. For all Oregon voters in 2006 the number of unregistered voters was 24.8 percent of the state VEP. (See chart 1.)

Figure 3 summarizes the differences between level of Latino voter registration as a percentage of that community’s voter-eligible population in both 2004 and 2006 general elections compared to this data for all Oregon voters. If Oregon followed national patterns Latino voter registration increased in 2008 but detailed analysis of most recent election data regarding this community’s voting participation is not yet available.



**Figure 3**

Other voting gaps from national general election data related to the 2004 presidential race (or where noted a range of presidential contests) from the U.S. Census Bureau as compiled by the Nonprofit Voter Engagement Network are summarized below in Figures 4 through 7.<sup>46</sup> The Census Bureau survey data from the 2008 election cycle was released in July 2009, but the analysis needed to add to these figures has not yet been completed..



**Figure 4**

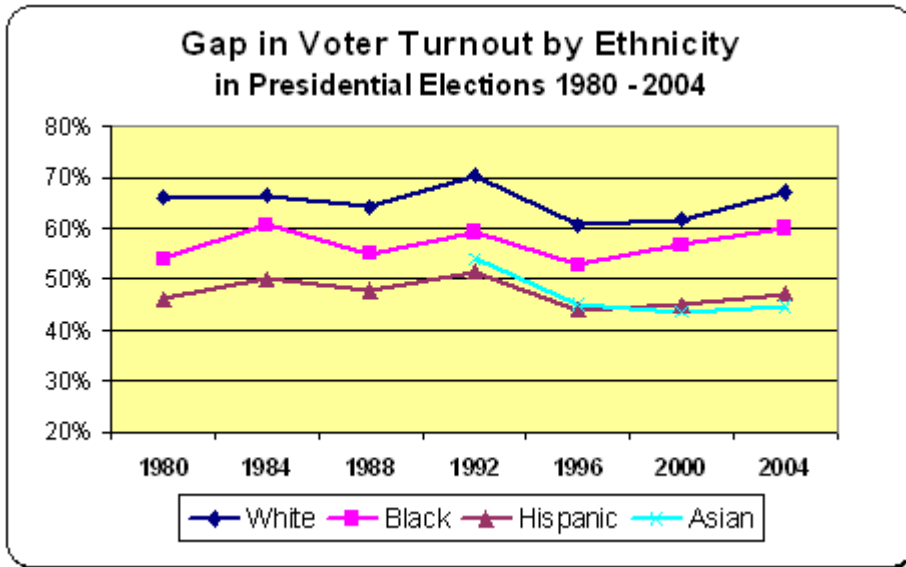


Figure 5

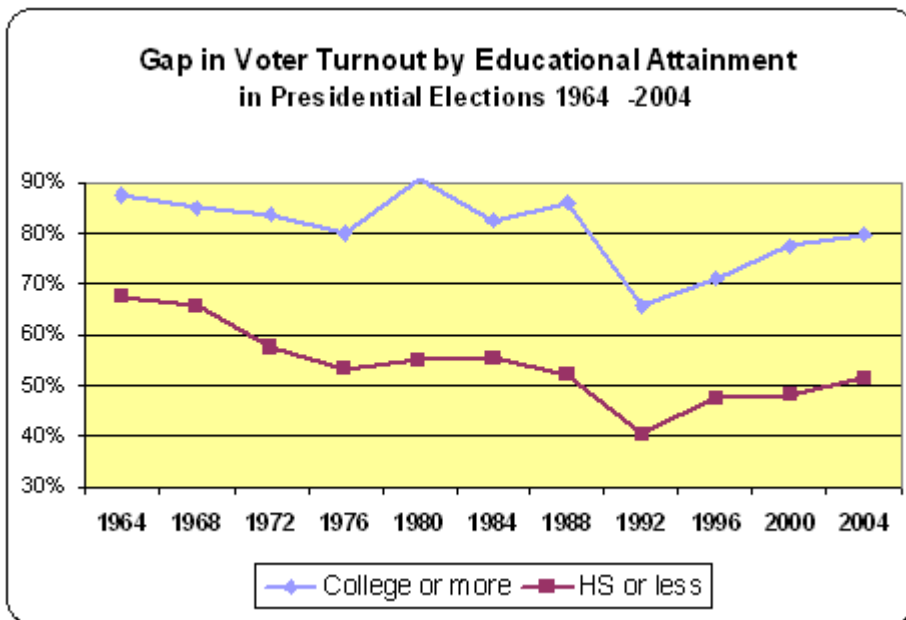
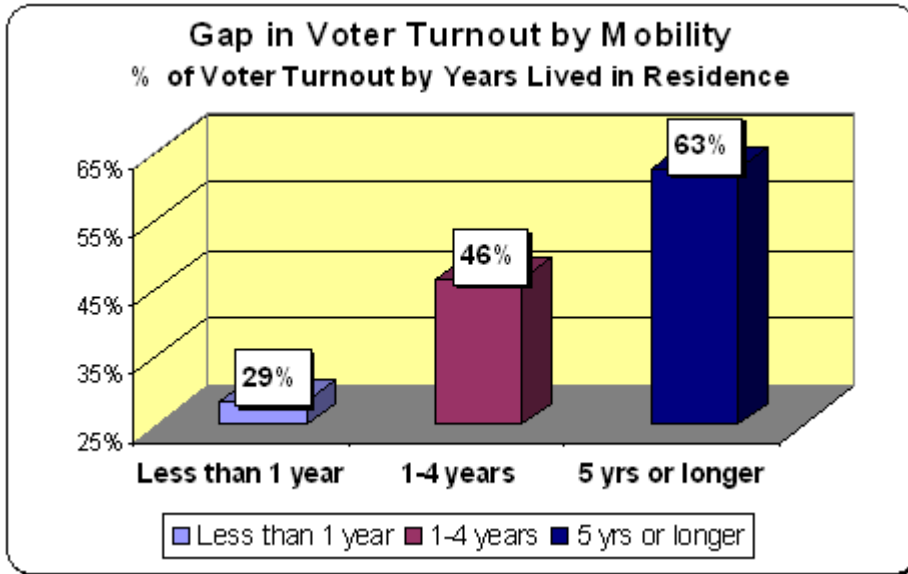


Figure 6

The trend seen in Figure 6 regarding turnout differences linked to level of education is also documented for younger voters. Turnout by young people aged 18-29 between 1972 and 2008 had a differential ranging from 25 to 31 percent between voting by young people who had attended college and non-college youth. In the 2008 general election there was a 26 percent gap between voter turnout by young people who had not attended college compared to those who had some college experience.<sup>47</sup> This gap points to the need for high school voter registration and education efforts because it can't be assumed that all of those students will go to college and be reached by voter registration and education efforts targeted to institutions of higher learning.

The trend illustrated in below Figure 7 about lower turnout by more mobile residents is of particular concern in Oregon where an accurate address is needed to receive a ballot. The Oregon Centralized Voter Registration (OCVR) database has been in place since 2006 and a review of

reasons for a shift to inactive status indicates that 74, 82, and 73 percent of all inactive voters were moved to this category due to undelivered ballot in 2006, 2007, and 2008 respectively. An undelivered ballot indicates an inaccurate address and is the single largest category of why a voter is moved to inactive status.<sup>48</sup> This points to the need for proactive use of address updates and policies that facilitate the portability of voter registration.



**Figure 7**

Data on who is voting in Oregon can be obtained by exit polling done by CNN after the 2004 and 2008 presidential elections. (Though exit polling has been done in other years, Oregon data could only be found for these presidential elections. Because Oregon is a vote-by-mail state exit polling in our state is actually done by phone surveys, but the term exit polling is still used.)

Chart 3 compares how exit polling information on who is voting in Oregon with census data. This comparison is made difficult by incompatibilities between exit polling questions and census data categories. Also census data was collected in 2000, though some 2006 updates are available. Because of these comparison caveats, the far right column in Chart 3 below is italicized to convey that these comparisons show trends, but that exact numbers may not be comparable.

Several general trends are evident in Chart 3. One is that though Oregon turnout for the 2004 presidential was higher in Oregon than in 2008, some Oregonians voted at different rates in an election dominated by the Obama-McCain race compared to the Kerry-Bush contest in 2004. Oregon was more of a swing state in 2004, which presumably contributed to a higher turnout overall.

In 2008, however, the presidential election result was considered a more forgone conclusion as illustrated by a slight decline in overall turnout. But African-American voter participation increased from 1 to 2 percent, on par with the representation of this community in Oregon’s voting age population. (See chart 3.) The 2008 Oregon participation figures are consistent with general election national exit polling that showed an increase in black voters from 11 percent of the national vote in 2004 to 13 percent in 2008. Nationally black turnout in the 2008 presidential vote was at an historic high.<sup>49</sup>

Exit polling also shows an increase in Latino voter participation from 3 percent in 2004 to 5 percent in 2008. However, that 5 percent of Latinos voted in the 2008 general election is far short of the 10.2 percent representation by Latinos in Oregon’s voting age population. This is a significant gap but it needs to be evaluated within the context of the Latino community having a higher percentage of adults who are not eligible to vote compared to other groups.

Exit polling percentages of young voters indicates that they don’t match the component they represent of Oregon’s voting age population. That youth voting increased in 2008, however, is illustrated in Figure 2.

Lower income and less educated Oregonians also vote at lower levels compared to their representation in our state’s population, but 2008 exit polling data is not complete in these categories. Also exact comparisons are complicated by census and exit polling categories not being an exact match. Even the 2004 data, however, follows national trends seen in Figures 4 and 6 above. These dynamics merit reform actions to enhance voter participation by lower income Oregonians and to prepare high school students for voting.

<b>Chart 3– 2004 and 2008 Oregon Exit Polling and Oregon Census Statistics</b>			
<b>Characteristics</b>	<b>2004<sup>50</sup></b>	<b>2008<sup>51</sup></b>	<b>Oregon Census</b>
<b>Vote by Age</b>			<i>Estimated %s of Oregon VAP<sup>52</sup></i>
18-29	13%	12%	20%
30-44	26%	27%	31%
45 and up	60%	60%	49%
<b>Vote by Race</b>			<i>Census Categories<sup>53</sup></i>
White	93%	89%	81%
African-American	1%	2%	1.9%
Latino	3%	5%	10.2%
Asian	1%	1%	3.6%
Other	2%	4%	2.7% (Pacific Islander and Identified as Two or More Races)
<b>Vote by Income</b>			<i>Households by Income<sup>54</sup></i>
Less than \$50,000	45%	not available	60 %
\$50,000 or more	55%	not available	40%
<b>Vote by Education</b>			<i>Population 25 years or more<sup>55</sup></i>
High School or less	23%	not available	
Some College	38%	not available	
College Graduate or More	39%	not available	Bachelors degree or higher = 25%

A survey done in October of 2006 by the Pew Research Center for the People and the Press provides details about regular, intermittent, registered, but rare, and non-registered Americans as summarized below in chart 4.

<b>Chart 4– A Spectrum of Voters and Non-Voters: Who Are They?</b> <sup>56</sup>				
Characteristics	Voting Frequency			
	Regular	Intermittent	Registered but rare	Not registered
Total	35%	20%	23%	22%
Men	36%	20%	21%	24%
Women	34%	21%	24%	21%
White	37%	21%	22%	20%
Black	31%	23%	29%	17%
Hispanic	24%	16%	20%	40%
18-29	22%	13%	25%	40%
30-49	35%	21%	24%	20%
50-64	42%	24%	20%	14%
65+	41%	22%	23%	14%
Married	40%	21%	22%	17%
Not married	29%	19%	24%	28%
College graduate	46%	22%	20%	12%
Some college	38%	20%	24%	18%
H.S. grad or less	28%	20%	24%	28%
\$75,000+	44%	22%	23%	11%
\$50K to \$74,999	36%	21%	25%	18%
\$30K to \$49,999	36%	20%	21%	23%
\$20K to \$29,999	31%	16%	18%	35%
Less than \$20K	26%	20%	23%	31%

These disparities between voters and nonvoters wouldn't be of great concern if evidence indicated that nonvoters would likely vote in a similar manner to voters. Indeed, early research on this question indicated few differences in policy preferences between voters and nonvoters.<sup>57</sup> More recent research, however, indicates that voters are not representative of nonvoters. This shift seems to reflect changes in the electorate over time, particularly in class differences as well as improvements in study protocols compared to earlier research. For example, "after 1972, voters and non-voters differ significantly on most issues relating to the role of government in redistributive policies. In addition to these differences being evident in nearly every election since 1972, we also note that the nature of the electoral bias is clear as well: voters are substantially more conservative than non-voters on class-based issues."<sup>58</sup>

Even if past research findings that election results wouldn't have significantly changed if nonvoters had participated are not overturned with newer analysis as indicated above, David E. Campbell identifies a deeper concern about low voter turnout and lack of voter participation that Common Cause Oregon finds particularly persuasive.

I [Campbell] submit that boosting turnout would be worth it even if not a single election outcome would change. This is because voting is not just about "who gets what" – the aggregation of individuals' preferences. I have detailed, at some length, that voting has both political and civic motivations. Similarly, voting also has both political and civic *consequences*. On the political side, *who votes* affects the public policy our elected officials enact. On the civic side, *how many vote*

reflect the nation's collective level of commitment to the responsibilities of citizenship in a participatory democracy. Voting has a communal dimension to it, thus triggering a concern that voter apathy impacts a whole that is greater than the sum of individuals' interests. The level of voter participation is an important indicator of our electoral system's legitimacy. As turnout falls, that legitimacy is threatened.<sup>59</sup>

### **American History of Voter Turnout**

#### **Dr. Michael McDonald – United States Election Project<sup>60</sup>**

America's lowest voter turnout occurred in its earlier years, 1789 through 1824. State elections typically got more attention and voting often required traveling long distances to cast ballots at county courthouses. The country's highest turnout rates occurred during what McDonald calls the Party Machine Era from 1828 through 1896. National turnout rates routinely exceeded 80 percent. Political machines fueled by party competition created grassroots organizations to mobilize their supporters.

National turnout declined overall from 1900 to 1948 with Progressive Era reforms intended to reign in the power of political machines being used in the South to lower turnout by African-American Voters. From World War II to the present voter turnout fluctuated up and down, typically depending on the competitiveness of the presidential election.

Beginning with the 1965 Voting Rights Act, the federal government became an increasing factor in the conduct of elections. Other federal actions include lowering the voting age from 21 to 18 in 1971, the National Voter Registration Act of 1993 (also known as 'Motor Voter') and the Help America Vote Act in 2002.

### **Voting Related Amendments to the Oregon Constitution**

Article II of the Oregon Constitution pertains to suffrage and elections. In the original 1857 document only white men of 21 years of age or older who had been a resident for at least six months were given the right to vote. Citizenship was not required in our state's founding constitution, though foreign-born white men had to have lived within the United States for at least one year, been a state resident for six months, and declared an intent to become a citizen to be eligible to vote. "Negros, Chinamen, and Mulattos" were explicitly barred from voting, as were convicted felons, "idiots" and insane individuals. As is the case across the country, the historic trend is expansion of suffrage rights with our state being ahead of the curve on some issues but lagging behind on other opportunities to increase voting opportunities.

Voting rights related amendments to Oregon's Constitution are summarized below in Chart 5. Women's suffrage was adopted using the ballot measure process in 1912 after failed measures on the Oregon ballot in each of the three previous election cycles. Territories that preceded our state in women's suffrage were Wyoming, Utah, Washington, and Montana while states that took this step before Oregon were Wyoming, Colorado, Utah, Idaho, Arizona, Washington and California. Kansas enacted women's suffrage in 1912, the same year that this right was extended in Oregon.<sup>61</sup>

Allowing only U.S. citizens to vote was adopted through a legislative referral in 1914. That this requirement was not in Oregon’s original 1857 constitution was typical for that time. “Indeed, in the 1850s, foreign-born settlers were not only welcomed to the United States, but often encouraged to participate in politics.” This encouragement was particularly prevalent in states, like Oregon, that were encouraging settlement. “Workers, however, were a different story. They were generally poor, . . . commonly depicted as rowdy rather than ‘upright, honorable, and industrious’; and most were Irish Catholic.”<sup>62</sup> “Oregon, in 1857, dealt with its threatening immigrants, who were Chinese rather than Irish, by limiting the franchise to whites.”<sup>63</sup> The trend to deny voting rights to immigrants began in the 1890s and accelerated in the early 1900s. The last state to overturn suffrage for immigrants was Arkansas in 1926.<sup>64</sup>

**Chart 5 – Voting Related Amendments to Oregon’s Constitution**

Date	Enactment Method	Subject	Vote	
			Yes %	No %
November 1912	Citizens Initiative	Extending right to vote to women	52	48
November 1914	Legislative Referral	Voters must be U.S. citizens	81	19
November 1924	Legislative Referral	Eligible voters must pass a literacy test	79	21
November 1926	Legislative Referral	Repeal ban on voting by “Negro, Chinaman, and Mulattos” (repealed Article 1, Section 35)	63	37
June 1927	Legislative Referral	Repeal of Section 6 that said that no “Negro, Chinaman, or Mulatto” have the right of suffrage.	62	38
June 1927	Legislative Referral	Requires voter registration prior to election	53	47
November 1932	Legislative Referral	Allows enactment of laws limiting voting rights on public bonds and special tax levies only to taxpayers	60	40
November 1944	Legislative Referral	Removed permanent disenfranchisement of convicted felons and allowed legislature to provide by statute a restoration of voting rights upon discharge from state penitentiary	54	45
November 1960	Legislative Referral	Eliminated six month residency requirement to vote for U.S. President, Vice President and presidential electors	73	27
November 1974	Legislative Referral	Lowered voting age to 18, changed residency requirements for all but presidential elections to 30 days, removed requirement that voter must read and write the English language.	51	49
November 1980	Legislative Referral	Guaranteed voting rights of mentally handicapped, unless judged incompetent to vote	60	40
November 1986	Citizens Initiative	Voter registration required by 21 <sup>st</sup> day before election/20 day pre-election voter registration cutoff	67	33

“Oregon, in 1924, was the last state to institute any kind of literacy test for voting, bringing to a halt a movement that had begun in Connecticut in 1855.” Literacy tests were viewed as a “critical check against the power of the mobs and the ‘extreme implications’ of democracy.”<sup>65</sup> The literacy test requirement was repealed as one component of a legislative referral in 1974 as described below.

Repealing Oregon’s ban on voting by “Negros, Chinamen, and Mulattos” occurred in 1926. An initial attempt failed in 1916 when voters did not adopt a legislatively referred removal of these voting restrictions. A subsequent referral to repeal this ban was enacted by voters in 1926 with a follow up amendment to remove related language in a 1927 special election. The Voters’ Pamphlet argument submitted by the Oregon legislature cites the 14<sup>th</sup> amendment to the U.S. Constitution, ratified in 1888 that broadened the definition of citizenship to protect the rights of former slaves as a reason for adopting this constitutional amendment in Oregon. Others identify the 15<sup>th</sup> amendment, prohibiting race as a bar to voting, as contributing to state level repeal of voting bans based on race. However, ratification of this federal amendment by western states, except Nevada, was delayed due to “opposition to the Fifteenth Amendment was fueled by the anti-Chinese furor that would sour the region’s politics for decades.”<sup>66</sup> For example, Oregon did not ratify the 15<sup>th</sup> amendment to the U. S. Constitution until 1959.

In the 1927 special election voters also enacted a legislative referral that clarified that voter registration prior to an election was required.

In 1932 a legislative referral was adopted that allowed the enactment of laws that limited the right to vote on public bond measures and special tax levies to taxpayers only. Use of this allowance does not seem to have been prevalent and overall Oregon’s voting rights history does not include the property owner or taxpayer only voting restrictions seen in many other states.

Removing the original constitutional language barring convicted felons from voting was done in 1944 by adoption of a legislative referral that allowed this issue to be dealt with by statutory provisions that, in turn, set in place the current restriction on voting only when for felons under the jurisdiction of the Oregon Department of Corrections. The Voters’ Pamphlet supportive argument from legislators included the following: “After a convicted person has fully paid his debt to society for his crime, there is no just reason why he should not then be permitted to once again exercise the normal rights of citizenship, and to have his voting privileges restored to him. To do otherwise, is to hinder the rehabilitation of criminal offenders.”<sup>67</sup>

Ballot Measure 7, sent to the voters by the legislature in 1960, eliminated the six-month residency requirement for presidential and vice-presidential candidates. Though a new Oregon resident still needed to comply with a six-month residency rule to vote in state and local elections, residency anywhere in the country facilitated familiarity with national issues and applying the state residency rule for presidential elections did not seem appropriate.

Setting the voting age at 21 was “a carryover from colonial and English precedents” and “proposals for lowering the age limit had appeared during or after every major war, on the grounds that men who were old enough to fight for their country were old enough to participate in its political decisions.”<sup>68</sup> These efforts were typically supported by a diverse range of political players, but New York Democrat Emanuel Celler disagreed and was a key player in blocking congressional action. Vietnam, however, made this issue a higher priority.

The prevalent view was that lowering the voting age required a federal constitutional amendment. Senators Edward Kennedy, Mike Mansfield, and Warren Magnuson, however, disagreed and inserted language to allow voting at age 18 into a 1970 extension of the Voting Rights Act. That was considered an essential bill, which opponents of this method to lower the voting age had to support. Similarly President Nixon signed the bill, though also he felt the voting age provision was unconstitutional. The state of Oregon filed a legal challenge on this point. The U.S. Supreme Court in *Oregon v. Mitchell* upheld Oregon's view that states could not be forced to lower their voting age, but gave Congress the right to set the voting age in federal elections.

“The prospect of a two-tiered age limit was an administrative and logistical nightmare for state election officials.” Only one month after the *Oregon v. Mitchell* decision what became the 26<sup>th</sup> amendment was introduced in Congress. The amendment passed the U.S. Senate and House in March of 1971 and by end of June the required number of state legislatures ratified this change. Oregon ratified this amendment on June 4, 1971. “The ratification process by far was the most rapid in the history of the republic. At a White House ceremony certifying the ratification, President Nixon announced that he believed in ‘young Americans’ who would ‘infuse into this country some idealism, some courage, some stamina, some moral strength.’ ”<sup>69</sup>

The first Oregon attempt to lower the voting age to 19 in 1970 failed. But after federal 26<sup>th</sup> amendment, another legislative referral, Measure 10, was enacted by voters in November 1974. Measure 10 was designed to make Oregon law conform with the new change in the U.S. Constitution that allowed lowering the voting age to 18. It also ensured consistency with U.S. Supreme Court decisions that struck down lengthy residency requirements as well as requirements that linked voter registration eligibility with the ability to read and write English.

In 1980 a legislative referral was adopted that guaranteed the voting rights of mentally handicapped Oregonians unless they are judged incompetent to vote.

Measure 13 in 1986 changed voter registration requirements as discussed in the next section.

**“The arc of history is long, but it bends towards freedom.”  
Dr. Martin Luther King Jr.**

### **Oregon Voter Registration History**

Measure 13 adopted in November 1986 by a 67 percent yes vote enacted the current registration cut-off of 20 days before Election Day. This was a constitutional amendment, which means that reducing or eliminating the 21 day before Election Day registration requirement requires another popular vote brought either by a legislative referral or a citizens initiative.

Prior to Measure 13 the details of voter registration requirements were governed by state law and not addressed in the Oregon Constitution. Descriptions of voter qualifications in Oregon Blue Books indicate that registration was required as early as 1921, though the description that year

does not specify a registration deadline.<sup>70</sup> The legislatively referred clarification that voter registration is required before an election was a constitutional amendment adopted in 1927. The description in the 1929 Oregon Blue book added the details that “voters can not register to vote on the day of the election, but must be registered at least 30 days prior to election.”<sup>71</sup> This is re-worded in the 1961 Blue Book to “a person must be registered by 8 p.m., 31 days before the election.” Also specified in 1961 is that registration must be done in person at the county clerk’s office though registration by mail is allowed in case of illness, physical disability, or if an applicant is out of state or his home county.<sup>72</sup> This description of voter registration rules continues in Blue Books for the next ten years.

The 1975 legislature adopted HB 2307 that permitted voter registration by mail without any restrictions, changed the registration deadline from 30 to 20 days prior to an election, allowed for registration after that deadline by obtaining a certificate of registration, and extended until 8:00 pm of election day the opportunity for a registration by a person wishing to vote only for President and Vice President who has resided in state less than 30 days.<sup>73</sup> This last provision pertaining only to presidential elections reflects language in Measure 10 enacted in November 1974 that also focused on residency requirements for presidential voting following federal constitutional changes that only addressed federal elections.

The shift in HB 2307 from a 30 to 20 day registration deadline was due to go into effect in January of 1978 and did not influence the 1976 elections. However, the option to obtain a certificate of registration after the deadline and use it to vote on Election Day did result in increased walk-in traffic according to a post-election report. Between 900 and 1000 new voters appeared at election offices, most in Clackamas, Multnomah, Lane, Washington, and Marion counties. No or minimal provisions were made to provide extra staff on a busy Election Day, perhaps because election administrators were more focused on implementation of the 1975 legislation’s provision related to registration by mail. The implementation of that option revealed minor issues related to addresses in some counties, but overall went well during the 1976 primary.<sup>74</sup>

A legislative task force on Elections and Voter Registration was formed after the May 1976 primary due to administrative workload problems in some county election offices and accusations of fraudulent registrations. “Rumors of fraud were fostered” by registration processing difficulties in some counties. In addition, because Democratic presidential primary candidates Frank Church and Jerry Brown were from adjoining states this was viewed by some as increasing the motivation for non-Oregonians to vote in our state. Because the Secretary of State’s investigation found no evidence of fraud and county clerks told the task force that there was little if any fraud, the task force made no further recommendations on that topic. The task force did recommend shifting to the 20-day registration deadline but no longer allowing the certificate of registration process for new registration or re-registrations within that 20-day window.<sup>75</sup>

During the 1977 legislature several of these recommendations were adopted in HB 2087 but the certification of registration process was retained.<sup>76</sup> This is reflected in the 1979 Blue Book description that is used in subsequent Blue Books until the enactment of Measure 13. The residency requirement is reduced to 20 days and a voter must be registered 20 days before the election in order to be included in a poll book. Poll books were lists of registered voters used by precinct workers to evaluate whether or not a prospective voter was allowed to cast a ballot.

However, registering and voting within the 20 day window was allowed as outlined below in the 1979 Blue Book description of this process as follows:

You may register and vote within 20 days of election days if:

1. You deliver to the appropriate county clerk or a person designated by the county clerk a completed voter registration form and obtain a “Certificate of Registration.” If the county clerk receives your application more than ten days prior to Election Day, your certificate will be mailed to you. During the last ten days before the election you must obtain the certificate in person. Certificates are issued by the county clerk or designated representatives until 8 p.m. on the day of the election.
2. You present and surrender your certificate to your new precinct on Election Day and sign it in view of the election board clerk. The signed certificate shall be considered part of the poll book and your name will appear in the book at the next election.<sup>77</sup>

Measure 13 was prompted by an incident in Wasco County in 1984 where Rashneesh Puram was reported to have taken over the nearby town of Antelope, including claims of bringing in homeless people from elsewhere to vote in that year’s city elections. During the 1985 legislative session, HB 2771 was enacted in what appears to have been a contentious debate marked by defeats of minority reports and difficulty in reconciling House and Senate votes resulting in a conference committee. The Senate accepted the conference committee report in a 22 to 6 vote with two Senators excused for legislative business. The final House vote was 31 to 28 with one representative excused. Governor Vic Atiyeh did not veto the legislation but let it become law without his signature.

House Bill 2771 was originally introduced at the request of Citizens for Action, a group that appears to have become Oregonians in Action. The final legislation had three main provisions.

- Provides that a person, to vote in election, must be registered not later than 5 p.m. of the day before the election or, if registration by mail, not later than 5 p.m. of 12<sup>th</sup> day before election.
- Requests those requesting registration after 12<sup>th</sup> day before election to supply proof of residence.
- Provides that supplying proof of residence knowing it to be false is punishable by up to five years’ imprisonment, fine of up to \$100,000 or both.<sup>78</sup>

The original bill allowed voter registration not later than the fourth day before the election for in-person registration and not later than the 12<sup>th</sup> day before election in case of registration by mail. The details of HB 2771, however, evidently didn’t pass muster with proponents of tighter regulation who placed Measure 13 on the November 1986 ballot to amend the Constitution with a 20-day registration requirement. The success of Measure 13 means that only the 1986 elections occurred under the HB 2771 registration timelines. Beginning in 1988, the current registration rules were in place. The last bullet noted above regarding HB 2771 provisions is still in current law.

There were two Voters’ Pamphlet statements in support of Measure 13 filed by the president of Oregonians in Action and the Committee of Oregon Elected Officials that represented 33 out of 36 counties. Arguments in favor cited concerns about voter fraud, confusion at the polls as well

as extra work and cost for county election administrators. Of particular concern was the provision removing the option for registration up to 5:00 pm the day before the election because this didn't allow enough time to check that a late registrant was a qualified voter.

There were three opposition arguments in the Voters' Pamphlet. One was submitted by Oregon Common Cause, League of Women Voters of Oregon, American Civil Liberties Union of Oregon, and the AFL-CIO of Oregon. The other two were from the Democratic Party of Oregon and Thomas Novick for the Oregon State Public Interest Research Group (OSPIRG). Opposition statements cited that 71,000 Oregonians registered to vote in the 20 days before the election in 1984 and that 100,000 people registered in this time period in 1980. The adequacy of the 1985 election law updates were described. They also pointed out that even prior to that legislation the Secretary of State had the authority to step in to protect the integrity of the voting process and that this authority was effectively used in Wasco County in 1984 regarding voting in Antelope. It was also noted that during the 10 years that Oregon had Election Day registration there was not one person prosecuted for voter fraud. The Voters' Pamphlet statement also included quotations citing concerns about Measure 13 by the Bend *Bulletin*, Baker *Democrat-Herald*, Salem *Statesman Journal*, Eugene *Register-Guard*, and Pendleton *East Oregonian*.

**The Historical Context of Voter Registration**  
**Excerpt from article by Daniel P. Tokaji, Associate Professor of Law, Ohio State**  
**University, Moritz College of Law<sup>79</sup>**

Throughout its history, voter registration has served a dual purpose. The first is the laudable goal of promoting electoral integrity by preventing ineligible people from voting and by ensuring that those who are eligible vote only once. The other, less noble purpose that registration has served is to prevent eligible citizens from voting.

Among the most historically noteworthy examples of disenfranchisement-through-registration are the manipulations of voter lists in northern cities in the late nineteenth and early twentieth centuries. During this time, there were good reasons for worrying about voter fraud. As more people moved from rural to urban areas, election officials did not personally know every person who showed up to vote at a given precinct on Election Day. Although some rules served a legitimate purpose, those in power also used registration rules to keep voters viewed as undesirable by those in power – such as recent immigrants from southern and eastern Europe – from voting. The most egregious examples of registration manipulation occurred in the South. White Democrats manipulated voter registration rules to exclude African Americans. Among the tactics employed were lengthening registration requirements, demanding detailed information, requiring registrants to have witnesses “vouch” for them, and giving registration boards discretion over who was added to the rolls.

We have, of course, come a long way since the nadir of voter disenfranchisement. Although state and local authorities retain discretion of the maintenance of voter registration rolls, federal laws have eliminated some of the most egregious disenfranchising practices. Most notable is the Voting Rights Act of 1965, which dismantled the system of voting barriers that had kept African Americans from voting, and which was later amended to eliminate language barriers. The other noteworthy pre-HAVA [Help America Vote Act] federal law affecting registration is the National Voting Registration Act of 1993 (“NVRA”). Although commonly known as “Motor Voter,” the law did much more than require registration opportunities to be made available at motor vehicle agencies. It also required state agencies providing public assistance and services for people

with disabilities to offer registration, restricted states' ability to "purge" voters from lists based on a failure to vote, and provided a standardized means by which voters could register by mail.

Still, voter registration remains mostly a matter of state law, and the contemporary debate over voter registration echoes those that occurred in the nineteenth century through most of the twentieth century. It is clear that voter registration practices can block eligible citizens from voting or having their votes counted. In the 2000 election, for example, voter registration problems probably accounted for more lost votes than either voting machines or polling places. The Caltech/MIT Voting Technology Project estimated that 1.5 to 3 million votes were lost due to registration problems in that election.

HAVA was designed to address a number of existing problems in election administration, including voter registration. Congress' main goals in enacting HAVA were to promote access while reducing the risk of fraud, or as one of its primary co-sponsors put it, to make it "easier to vote" but "harder to cheat" – with Democrats more concerned with the former objective and Republicans with the latter. The version ultimately enacted was a compromise, designed to serve both ends.

## **SECTION 2 – STRATEGIES TO IMPROVE VOTER PARTICIPATION**

### **Overview**

This section begins with a discussion of opportunities to increase the number of Oregonians who are registered to vote and procedures to ensure maintenance of accurate voter rolls. Once barriers to initial registration and maintenance of that status are addressed, the discussion turns towards opportunities to increase voter turnout. Parallel sets of reforms pertaining to redistricting, media coverage of political campaigns, and campaign finance are discussed next. More information for voters is another element in improving voter participation. This topic raises the need to evaluate the Voters' Pamphlet and explore new options to provide nonpartisan information for voters. Opportunities to increase voter confidence include post-election audits.

### **Increasing Voter Registration**

There are three components of voter registration to consider when evaluating opportunities to reduce the gap between those eligible to vote and those who are registered, thereby increasing the numbers of registered voters. One step is reviewing the process of getting people registered in the first place by implementing options to increase the convenience and accuracy of a voter's initial registration as well as ensure complete voter rolls. Election Day registration is discussed but other strategies appear to be better suited to facilitate voter registration in Oregon.

The second element is that registration be portable and proactively updated. Portability is achieved by removing requirements to re-register when moving within the state. In other words, registration should cross county lines. Proactive updates begin with using postal service address changes. This is especially important in Oregon given our vote-by-mail system.

The third component is ensuring that once registered, people stay registered with carefully designed and transparent purge procedures for updating voter rolls that provide notification and

correction recourse to voters. This includes evaluating inactive voter regulations, particularly in the wake of the passage of Measure 56 in November 2008 that limits the number of elections during which the double majority requirement applies. It should also be noted that this double majority concept, that tax or other revenue increases must receive a majority of registered voters and not just a majority of votes cast, is unique to Oregon.<sup>80</sup>

Current law in Oregon requires registration by the 21<sup>st</sup> day before Election Day. A registered voter, however, who wants to change his or her address and party registration status, can do so after this deadline through Election Day. This option decreases the impact of the registration cut-off three weeks before Election Day, though it would be helpful to assess whether or not this option is widely understood to be available. This cut-off, however, does affect potential new registrants whose interest in voting is sparked by increased attention to candidates and issues due to advertising and news coverage as Election Day nears. For example, in 2008 there were 642,296 Oregonians who were eligible to vote but not registered.

Because the voter registration deadline was put into the Oregon Constitution with the passage of Measure 13 in 1986 any changes require either a citizen initiative or legislative referral and then winning the ballot measure campaign.

**Same Day Registration**

Nine states have either Election Day (EDR) or same day (SDR) registration. (See chart 6) These terms are sometimes used interchangeably but same day registration is a broader term used in those states that allow registration and voting on the same day in conjunction with the option of early voting. For example, North Carolina’s 2007 SDR law allows eligible citizens to register to vote and cast a ballot at “One-Stop” absentee voting sites that are allowed to operate from 19 to three days before each election. This replaced that state’s previous voter registration period that ended 25 days before the election.

<b>Chart 6 – EDR/SDR States</b>	
<b>State</b>	<b>Effective Year</b>
Maine	1973
Minnesota	1974
Wisconsin	1976
Wyoming	1993
Idaho	1994
New Hampshire	1994
Montana	2006
Iowa	2007
North Carolina	2007
North Dakota	No voter registration

There have been three waves of EDR enactment. Most recently, North Carolina and Iowa adopted their registration reforms in 2007, preceded by Montana in 2006. Wyoming adopted EDR in 1993 followed by Idaho and New Hampshire in 1994, evidently to avoid complying with all requirements of the National Voting Registration Act. The first wave of EDR adopters were Maine, Minnesota, and Wisconsin, which enacted this registration option between 1973 and 1976. As described on pages 20-23 Oregon had EDR from 1976 through 1986.

A review of academic research by Demos indicates that EDR generally increases voter turnout. This trend is less evident in Idaho, Wyoming, and New Hampshire whose implementation of EDR was linked to avoiding compliance with many provisions of the National Voter Registration Act. Evaluation of the early EDR adopters is also affected by those states, Minnesota, Maine, and Wisconsin having a culture of political participation, though turnout in Wisconsin still increased by 7 percent. Several studies especially indicate the potential for EDR to increase turnout by youth and geographically mobile voters, populations for which Oregon’s

vote-by-mail system has proven less effective in terms of turnout results. Some researchers, however, point out that EDR and other electoral reforms aren't enough as stand-alone improvements to overcome socioeconomic bias in voter turnout and identify the need to encourage a wider range of people to vote over and above just making it easier to register. A summary point by Demos is, "An emphasis on changing political culture to promote participation is a worthy objective; however, this doesn't mean that electoral reforms should be abandoned – both are important."<sup>81</sup>

There are two Oregon specific concerns with EDR or SDR. One is that enacting either of these options in our state requires amending the state constitution while the other concern relates to how either of these reform options dovetail, or not, with vote-by-mail procedures.

Amending the Oregon constitution requires a citizen's initiative or legislative referral. Either option for placing EDR or SDR on the ballot would need to be followed by a campaign to secure voter support for this reform. However, similar measures in California and Colorado have not been successful. Proposition 52 lost in California in 2002 with a 59 percent "no" vote. In the same year Colorado's Amendment 30 lost with a 61 percent "no" vote. The Colorado campaign was complicated by voters facing a vote-by-mail proposal on the same ballot that also lost. Nevertheless, in both states it is clear that those voters who complied with existing registration rules were not interested in changing those requirements for others.

The effectiveness of EDR in Oregon would also be reduced by lack of precinct polling places due to vote-by-mail. In other words, relatively convenient, close-to-home polling places would not be available to unregistered potential voters whose interest after the registration deadline has been sparked by a competitive election, or interest in a particular ballot measure, or contact by a friend or colleague. Instead, such voters in our state would have only one place to go to register on Election Day, the county elections office that, particularly in eastern Oregon, can be a long way from home. In addition, workload demands on county elections administrators would increase on Election Day. County election offices are preparing ballots for counting on that day as well as updating registrations and preparing ballots for walk-in voters who are changing their party designation or addresses on Election Day.

This isn't an insurmountable problem, but it does mean different reform design considerations in Oregon. Common Cause Oregon's suggestion to advocates of this approach is to require voting centers and a weeklong same day registration window beginning the Wednesday before the election through Election Day. The required number of voting centers could be determined by requiring one voting center per a designated number of eligible voters estimated per county. The goal would be to ensure more options for walk-in registration and voting than just one office per county but not as many as pre-vote-by-mail precinct polling places.

A weeklong SDR window would spread out administrative workload increases over several days, though it seems very likely that the number of Election Day registrations would still be significant. It is also important to recognize that voting centers would need to have secure electronic connections to the state's voter registration database and the capacity to print the appropriate ballot in terms of local and legislative races within the county as appropriate for each new registrant. A weeklong SDR window with voting centers requires money and Common Cause Oregon would not support such a proposal without ensuring adequate financial support for county election offices.

These Oregon concerns about EDR/SDR point to the need to consider other registration reforms that are more compatible with our vote-by-mail system. After other reform steps are taken, it may also be more politically feasible to revisit the possibility of removing the 20-day registration requirement since this deadline is a barrier to participation.

### **Voter Registration Modernization**

The Brennan Center for Justice at New York University Law School has been a pioneer in developing a policy framework for modernizing voter registration procedures that calls for government to proactively build comprehensive voter registration databases. This represents a policy shift from viewing registration as a required step for the voter to one that the state can do proactively linked with current government functions. The Brennan Center advocates for federal legislation that would include funding to states.

One motivation is to facilitate voting. Another motivation, however, is to reduce administrative difficulties that occur under the current voter-initiated registration system where voters can make mistakes that take time and resources to fix such as submitting multiple or incomplete forms and not notifying election offices of address changes.

One element of voter registration modernization is to evaluate existing state databases for their applicability for addition to the centralized voter registration database as well as assessing census enumeration projects or other approaches to build complete voter rolls.

Another key component is automatic or affirmative registration to add newly eligible voters to the voter rolls. This step could be linked to high school graduation, receipt of a GED, entering college, becoming a citizen, and application for driver's licenses or official IDs with an "opt-out" option since law does not mandate voter registration.

Requiring permanent registration within a state so that re-registration wouldn't be required if a voter moves is another element of voter registration modernization.

Election or Same Day Registration would also be allowed as a fail-safe opportunity for new voter registration if an individual is not registered by one of the other elements of a universal registration package.<sup>82</sup>

### **Comprehensive Voter Registration Improvement Program**

Improving our state's voter registration process will require a package of improvements. The scope of this package is broader than the Brennan Center's voter registration modernization proposal described above. Consideration of registration occurring on an "opt out" rather than the current "opt in" model is part of the program described in this section. Other reform steps should come first, especially due to the need for careful feasibility assessment of an "opt in" approach. Consideration of an "opt out" approach is feasible since Measure 56 was adopted in November of 2008, reducing the impact of the double majority requirement in tax increase measures. Such a double majority requirement is unique to Oregon. Common Cause Oregon would oppose any effort to return to past double majority requirements because this approach gives inappropriate clout to non-voters.

What to call a comprehensive package of reforms deserves careful consideration and polling if possible. One possible label is the Oregon Voter Improvement Program with a VIP acronym that illustrates how the reforms make Oregon’s voters “very important people” or VIPs in their ability to exercise their right to vote. Another terminology option is Streamlined and Accurate Voter Eligibility Program or the SAVE program. Even if the package described below is broader than Voter Registration Modernization (VRM) it may make sense to use that phrase since its use is growing. Whether any of these options this is the best program title remains to be seen. Terminology that seems prudent to avoid, however, is universal, automatic, or permanent voter registration. These terms don’t seem to be a good fit with the libertarian streak of many Oregonians to whom these descriptors could seem too much heavy-handed. Proactive, streamlined, one-stop, and comprehensive seem like better terms to describe elements of a comprehensive voter registration improvement program.

The goal of a comprehensive voter improvement program is to increase the accuracy of voter rolls and reduce the need for duplicative registration efforts by potential voters. Voter-initiated re-registrations and updates are a frequent source of errors that increase the burden on elections administrators. Third-party voter registration drives can also be eliminated or reduced. (See box on page 39.)

Adequate funding is essential and federal legislation on this topic should be accompanied by financial resources. There may be opportunities for cost savings with some registration improvement strategies. However, unfunded mandates on county election administrators are not acceptable. From a budget perspective it is helpful that Oregon seems well positioned to seek foundation support for possible demonstration projects.

Regardless of the program title, it is important to recognize that a package of reforms are required to ensure comprehensive modernization and improvement of Oregon’s voter registration procedures and opportunities. The program components are summarized as followed and discussed in more detail below.

- Portable Registration and Proactive Use of Address Changes
- Proactive Voter Registration Linked with New Government Licenses
- Online Voter Registration
- Full Implementation of NVRA
- Proactive Voter Registration Based on Existing State Databases
- 16-Year Old Pre-Registration and 17-Year Old Primary Voting
- School Based Registration Options

Before turning to this discussion, though, the box below summarizes some of the problems with the current voter registration system and the need for reform. This is an opinion piece by two election law experts who have been on opposite sides of many issues but are in agreement on the need for voter registration reforms.

**A New Page for Voting**

*Robert Bauer, chairman of the political law group of Perkins Coie, is general counsel to Obama for America and the Democratic National Committee. Trevor Potter, who leads the political activity law practice at Caplin & Drysdale, served as general counsel to John McCain's 2008 campaign and is the founding president and general counsel of the Campaign Legal Center.*

Too often, attention to problems with the nation's electoral process rises and falls with the coming and going of election seasons. Occasionally it happens that events force the issue back onto the agenda, such as the upheaval in Florida during the 2000 presidential election and the Supreme Court's decision in *Bush v. Gore*. A new discussion began this week when the Supreme Court declined to rule on the constitutionality of the Voting Rights Act; Chief Justice John Roberts's opinion ensures that the constitutional question will continue to be raised.

But there is a persistent threat to ballot access from election to election, and it is implicated in all reform debates modernize the registration system, for example by eliminating arcane inefficiencies that waste resources, disenfranchise voters, frustrate election officials and complicate campaigns. For two years, we were on opposite sides of a historic election, serving as general counsels to the Obama and McCain presidential campaigns. As adversaries, we disagreed passionately about many issues. Our roles in the campaign, however, were often similar; each of us was responsible for guiding our candidates and campaigns through the overly complex gantlet of election administration. Those experiences led us to an inescapable conclusion: Bringing our voter registration system into the 21st century must be the priority for improving the election process.

It is fortunate that many now recognize this pressing need. Election officials, voting experts, candidates, campaign operatives, policymakers from both parties and -- most important -- voters are frustrated by the current registration system and the resources it wastes, the fact that millions: the voter registration system. Unlike on many issues in election law and administration, there is a surprising amount of agreement on both sides of the aisle about how to of eligible Americans are prevented from casting ballots and the insufficiency of the current protections against registration fraud. These problems are rooted in the system's near-exclusive reliance on paper voter registration forms. In 2008, tens of millions of registrations nationwide were submitted to election officials who had to enter handwritten and often illegible forms into databases, often during the crush leading up to registration deadlines. As we were reminded last year, the lists generated by this process frequently contain large numbers of duplicates, invalid registrations and other errors.

The costs of administering paper-based registration systems are staggering. Designing and printing millions of forms, training staff, hiring temporary workers, mailing materials to inactive addresses and ensuring quality control cost taxpayers hundreds of millions of dollars every election cycle. These inefficiencies create distractions that infect the whole process of election administration, causing the absentee ballot system, election material production and voter education to suffer. The system relies on independent third-party registration drives that often utilize undertrained canvassers. Unfortunately, an unacceptable percentage of registration forms generated by these organizations are duplicates or otherwise invalid, overwhelming election officials and raising questions of registration fraud.

Voter registration is the single largest cause of problems on and before Election Day. Voters left off the rolls, confusion at polling places and voter information incorrectly entered into the system all lead to long lines and problems at the polls. These problems affect all voters, but some more than others. Voters who move frequently, such as military service members and young voters, are particularly vulnerable to the system's inefficiencies.

There is a better way: In 2002, Congress passed the Help America Vote Act, which assisted states in centralizing their voter registration lists into single databases. The logical next step is to build on innovations put in place over the past few election cycles and shift the responsibility to automatically identify and register eligible voters from individuals and independent voter

registration organizations to the states. An automatic system would eliminate the need for paper, alleviate the last-minute deluge of registration activity that consumes election officials and address the risks of registration fraud. Registration should also be portable, eliminating the unnecessary step of re-registering when one moves or changes one's name. Finally, there should be fail-safe mechanisms -- online and offline -- for voters to securely update and correct information and vote on Election Day.

We cannot be faithful to our core democratic values without ensuring that all eligible voters -- and only eligible voters -- have a chance to register their judgment through the ballot box. Congress should act this year, helping the states complete the transition to a paperless system, when we are at a safe distance from the partisanship of a campaign season. There is no excuse for letting more elections come and go without bringing our voter registration system into the 21st century.<sup>83</sup>

### Portable Registration and Proactive Use of Address Changes

In the United States 45 percent of the population moves every five years and as many as one in six Americans move every year.<sup>84</sup> Even if Oregonians are not quite this mobile the importance of address accuracy is particularly important in our vote-by-mail state because an undeliverable ballot is a major barrier to voting. Portable registration addresses this dynamic. Other terms used are permanent or continuous registration. Common Cause Oregon prefers the portable or continuous terminology since permanent registration could inaccurately convey that registration would continue even if the voter became ineligible to vote. Portability, however, could inappropriately convey the impression that re-registration wouldn't be required when moving to another state. Though no term is perfect, this report will use portable voter registration.

Oregon has already taken important steps towards registration that is portable across county lines. Research indicates that statewide registration portability can increase turnout rates of mobile voters by 2.4 percent<sup>85</sup> and it is gratifying that our state is ahead of the curve on this point. It should be noted, however, that those who have recently moved are still less likely to vote even in states where either Election Day Registration or registration portability is available.

For quite some time Oregonians have been able to update their registration status at any time through Election Day. This includes updating party registration status and notifying election officials of address or name changes. This policy resulted in Oregon being highlighted in a Brennan Center Justice report, *Permanent Voter Registration*.

Legislation adopted during the 2008 session clarified that these updates could be made even when address changes crossed county lines, a step facilitated by the statewide voter registration system now in place due to the federal Help America Vote Act. Additional steps include full implementation of SB 1098 and its requirements on use of postal service address updates, more effective use of Division of Motor Vehicles (DMV) address updates, and review of other sources of address updates.

Voter registration portability is particularly important in a vote-by-mail setting because an inaccurate address is a significant barrier to voting. For example, an undeliverable ballot due to inaccurate address is the top reason for Oregon voters being moved to inactive status. In the three years of operation of the Oregon Centralized Voter Registration (OCVR) database, 74, 82, and

73 percent of all inactive voters were moved to this category in 2006, 2007 and 2008 because an out-of-date address meant that a ballot could not be delivered.<sup>86</sup>

#### *National Change of Address Updates*

The 2008 legislation, SB 1098, requires the Secretary of State to purchase National Change Of Address (NCOA) data from the U.S. Post Office and make it available to county elections officials. Use of U.S Postal Service address updates was allowed prior to SB 1098, but changes could only be made if a voter moved within the same county. Given the existence of the state voter database, SB 1098 eliminated this “only within the same county” provision ensuring the portability of registration within Oregon. Sending a notice to the voter is an essential step of the process since contact with the voter is critical to ensure address accuracy and avoid inappropriate removal of a voter from the registration database.

SB 1098, however, does not provide details about notification procedures, leading to need for follow up clarifications either through administrative rulemaking or additional legislation. The NCOA data should be used to send a nonforwardable notice to new addresses to ensure the accuracy of the data. No response is required by the voter if the data is correct and the address change is made. A response is required if the voter does not agree that the new address is a permanent address to be used for voting purposes. If this nonforwardable notice is returned to elections officials, the next step is to send a nonforwardable notice to the old address. If there is no response, then retain the old address. If a voter responds, then change the address to the one preferred by the voter. If this notice is returned as nondeliverable it means that neither the new or old addresses are valid and at this point the voter would be moved to inactive status.

The notification steps described above could require sending more than one notice, which would be an added cost to county clerks. This expense, however, could be more than offset by cost savings due to reducing the number of ballots sent to inaccurate addresses. For example, if 5 percent of ballots are returned as undeliverable and printing and mailing costs of each ballot comes to \$1.50, then an estimated 107,695 ballots (5 percent of 2,153,914 registered voters) or \$161,542 could be saved if proactive steps were taken to ensure that the ballots were mailed to the correct address.

County clerks have valid concerns about the use of NCOA data seen in Common Cause Oregon’s use of NCOA in updating membership lists. These concerns are linked to the timing of the data purchase and frequency of updates. For example, NCOA data purchased in April was used in a May update to our organizational database of supporters. But review of the information for a fall mailing coupled with knowledge of current addresses of a couple of supporters revealed that one person had moved between the time of the NCOA purchase and the May update and that another supporter had switched back to a permanent address after a temporary move.

A conversation with a business that uses NCOA data indicates that a key to their success is regular purchase of updates and prompt use of the change of address information. The less regular timing of elections means that the Elections Division should develop a protocol for effective timing of purchase of NCOA data and requirements for timely use of the data by county elections offices in their ballot preparation. At least annual updates, however, are needed since address changes are removed from the NCOA database after twelve months.

Based on conversations with then-Election Division Director John Lindback, a suggested NCOA purchase timeline over a two-year election season is as follows. In an even-number year the Secretary of State would purchase and provide to county clerks NCOA updates in January, March, and in the third week of April to allow for updating lists before the May election. Providing the NCOA updates several times prior to the primary facilitates evening out the workload linked to processing the updates and reducing time needed for the April processing that occurs during peak workload for processing ballots. During the odd numbered year an NCOA update purchase would occur in February and October. This frequency ensures not missing updates and generally helps even out workload, though this timing would need to be adjusted if there were special elections. This timeline, however, does have cost implications for county election officers and Common Cause Oregon will be checking out this possible timeline with that group.

Common Cause Oregon plans additional conversations with the state election administrators on improved implementation of SB 1098. It may be that improvements can be made through administrative rulemaking. However, there may be a concern about imposing possible additional costs to county clerks through rulemaking. For this reason legislation may be required and Common Cause Oregon will work on development of such a bill for action during the supplemental 2010 legislative session.

#### *Division of Motor Vehicle Address Updates*

Once effective use of Postal Service NCOA address updates is fully implemented, the next step is to explore other sources of change of address information that could be proactively used by election administrators. For example, it is now possible for holders of Oregon driver's licenses or official IDs to make address updates online. The DMV already links from this option on their website to the Elections Division site and that link will go to the online voter registration option after that effective date of that legislation.

However, more proactive sharing of DMV address updates would improve registration portability. Indeed, the 1993 National Voting Registration Act includes the following language indicating that DMV address updates are required to be shared with by election officials for updating registration records.

§ 1973gg-3 (d) Change of address. Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as a notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.<sup>87</sup>

Current DMV practices presumably meet the letter of federal law. For example, the change of address cards have voter registration cards attached to them. It is still up to the individual, however, to fill out the registration card with an updated address update and this information is not electronically shared with election administrators. Also if a DMV representative changes an address at the counter or an address update is made by phone the opportunity for a voter registration update is not available.

Overall the Oregon DMV runs a very good voter registration program, but there are gaps and the capacity to share address update electronically is not part of current procedures. The Oregon Elections Division, however, gets regular updates from DMV that are

evidently primarily used to check for HAVA compliance. There may be technical difficulties in reconciling the structure of the OCVR with how address information is provided by DMV in terms of updating voter registrations with DMV address updates. However, Common Cause Oregon will work with the Secretary of State on ways to proactively use DMV address updates in an electronic format for updating voter registration records.

(A related issue is that the Elections Division is charged for DMV data, a practice that evidently does not occur in other states. Common Cause Oregon is also interested in pursuing opportunities to eliminate the DMV practice of charging for data, though, it could be difficult given restrictions of DMV activities linked to its funding sources.)

#### *Other Sources of Address Updates*

Other possible sources of change of address information should also be considered. One option is the Oregon Department of Human Services whose affiliated service providers are already required under the NVRA make voter registration options available. There are privacy concerns but the possibility of proactive sharing of address updates in an electronically transmittable format with the Elections Division should be assessed.

Other state agencies that presumably maintain accurate addresses for members and clients are the Oregon Military Department (National Guard), Department of Veterans' Affairs and the Department of Revenue. These agencies may also have concerns about database compatibility with the OCVR and confidentiality concerns, but the point of these suggestions is to start thinking creatively about good sources of address updates to maximize voter registration portability. Use of several sources of address updates will require the Elections Division to develop protocol to deal with conflicting information. This step should be done at the state level before distribution to county election administrators. It should also be made clear that the goal isn't to use any available database but that use of more than just NCOA address updates should be assessed.

Sharing of student address updates between institutions and higher learning and election administrators may be mandated by federal legislation. The mobility of students points to the value of this approach. However, the frequency of such updates from this mobile population could be a burden on election administrators. Another concern in Oregon is that evidently some colleges and universities do a better job than others of maintaining up-to-date student records. A prudent first step in Oregon, then, is to evaluate the effectiveness of online voter registration and alerting students to this option on college and university websites before mandating address updates from these institutions.

A final note is that even if proactive voter registration, as described below is adopted, proactive use of address updates will still be required on a continual basis to maintain up-to-date voter registration rolls.

#### Proactive Voter Registration Linked with New Government Licenses and Renewals

Since issuing Oregon drivers' licenses and official IDs are now linked to proof of lawful presence, it is feasible to proactively add people to the voter registration database. In addition, Division of Motor Vehicle licensing involves collecting a signature that can be used for the

signature-verification security step in Oregon's vote-by-mail system. An "opt out" option must be provided since voter registration is not mandatory.

It should also be made clear that the burden to evaluate voter eligibility is not imposed on the individual. If an Oregonian who is eligible to obtain a driver's license or official ID is a legal resident but not a citizen, then he or she is not eligible to vote. If the burden of "opting out" is the responsibility of the individual, then a non-citizen's inadvertently not checking an "opt out" box could be construed as trying to register to vote and viewed as fraud and possible grounds for deportation. Legally the inadvertent nature of such an error means that there was no intent and therefore the action shouldn't be viewed as fraudulent. But proving lack of intent can be a problem and may well put somebody in the position of needing legal assistance. Another way an "opt out" process could be viewed is that the government is trying to trick a non-citizen legally in the U.S. into committing a felony by attempting to register to vote.

One approach to an "opt out" system would be to add new DMV licensees to the voter registration rolls with a requirement for the Secretary of State to check eligibility. This could take the form of sending out a registration notice requesting an affirmation of eligibility. This card would also provide an "opt out" option and would request notice of the voter's party affiliation.

Another approach is currently under consideration in California in AB 106 with the added feature of incorporating voter registration questions on tax forms as described below:

This bill would also provide that a person may register to vote by completing and submitting to the Department of Motor Vehicles a voter form on an application for a new or renewed California driver's license, instruction permit, junior permit, or identification card, or by completing and submitting to the Franchise Tax Board a voter form on a Personal Income Tax form. If the person named on these voter forms would not be 18 years of age at the time of the next election but otherwise satisfies the requirements to be registered to vote, he or she would be automatically registered to vote at 18 years of age. The bill would require the Department of Motor Vehicles and the Franchise Tax Board to transmit these voter forms to the elections official of the county in which the person resides, unless the person has not indicated that he or she wishes to be registered to vote, has not completed the application or form, or has not supplied sufficient information to indicate that he or she satisfies the requirements to be registered to vote. Except as specified, these voter forms would be affidavits of registration.<sup>88</sup>

A proactive voter registration was passed by the Minnesota legislature but vetoed by Governor Tim Pawlenty, citing a concern that there wasn't bipartisan support and that voting should be an intentional act.<sup>89</sup> However, there was support from election administrators. For example, an election manager in a Minnesota county, Joel Mansky, cites three advantages: "We obviously get to register a very large number of people who are currently unregistered," said Mansky. "Second, we get rid of the redundant databases that we now operate between the counties, Secretary of State and the Department of Public Safety. And third, we have a more verifiable, more accurate database of voters."<sup>90</sup>

The following statistics illustrate the potential for voter registration improvements. In 2007 there were 234,918 new driver licenses and ID cards issued in Oregon. (This figure does not include motorcycle endorsements and commercial licenses since presumably those license holders already have a regular license.) Almost 12 percent or 27,215 of these were provisional licenses issued to young Oregonians under the age of 18. Renewals of Oregon driver's licenses and ID renewals totaled 331,711 in 2007.<sup>91</sup>

#### **Lemonade from Lemons or Return the Lemons?**

Common Cause Oregon views Oregon's new legislation linking obtaining a drivers license or official IDs to demonstration of legal residency in the United States as an unfortunate step back from previous law. Proactive voter registration linked to DMV licenses, however, is now feasible due to these new identification requirements. This can be viewed as making lemonade from the "legal presence lemon." Or should the lemons be returned? Before moving forward on proactive voter registration the feasibility of returning to past licensing practices should be assessed.

#### Online Voter Registration

Online voter registration is another element of a comprehensive voter registration improvement program to achieve streamlined voter registration. House Bill 2386 was enacted by the 2009 legislature with support from Secretary of State Kate Brown, Common Cause Oregon (then Democracy Reform Oregon), League of Women Voters of Oregon, and a Youth Vote Coalition comprised of the Bus Project, OSPIRG, and Oregon Student Association.

The Oregon online registration opportunity will go into effect in March 2010 and be available for Oregonians with driver's licenses or official IDs. This link to DMV ensures the availability of a voter's signature.

Online voter registration, sometimes called electronic registration, is currently allowed in Washington and Arizona with implementation underway in California. Other states that have joined Oregon in passing online voter registration legislation in 2009 include Colorado, Louisiana, and Utah.<sup>92</sup>

Once online voter registration is available links to this option should be made available on other governmental websites and educational institutions.

#### Full Implementation of National Voting Registration Act in Public Assistance Agencies

The 1993 National Voting Registration Act (NVRA) is more commonly known as "motor voter" because of its requirements that state driver licensing agencies offer the opportunity to register to vote. Another NVRA provision, however, is the requirement that states provide the opportunity for voter registration at public assistance agencies, including food stamp applicants and clients of Temporary Assistance for Needy Families (TANF) and Medicaid. This provision is especially important to meet the goal of NVRA to increase registration within populations underrepresented on voter registration rolls.

Oregon has been recognized for its effective implementation of the public assistance agency voter registration offerings. For example the NVRA Implementation Project, a joint effort by Demos and Project Vote, highlights an Oregon Elections Division power point training as a best practices resource for other states.<sup>93</sup> However, a study by the NVRA Implementation Project

indicates that the effectiveness of Oregon efforts in this category of providing voter registration opportunities has slipped. For example, there were 38,446 voter registration applications from Oregon public assistance agencies in 1995-1996. This figure increased to 53,538 for 2001-2002. But this number declined to 25,926 for 2003-2004 and slipped further to 19,333 during 2005-2006.<sup>94</sup> Inconsistent compliance with NVRA was also documented in several rural offices of human services providers in Oregon.<sup>95</sup>

Conversations with Elections Division staff, however, indicate that reported declines in this category of NVRA implementation may reflect a data collection problem and not an implementation concern. The NVRA requires state public assistance agencies to report the numbers of voter registration cards collected at their offices. However, Oregon's centralized voter registration database also identifies the source of these voter registration cards when they are processed by the appropriate county election office. The NVRA Implementation Project used the data submitted by Oregon public assistance agencies. However, comparing those numbers with the voter registration database indicates that more cards were collected than were reported by the agencies.

If the existence of this potential data discrepancy is confirmed, then changing the NVRA reporting requirements and reducing this burden on human services agencies may make sense. This may require federal legislation, which could be difficult. However, the current reporting regime helps Elections Division staff identify targeted training needs.

It seems possible, however, that data collection glitches are not the only explanation for the reported declines in voter registrations. For this reason providing additional resources for Election Division training of public assistance agencies is recommended. The current schedule is training for Department of Motor Vehicle staff one year and training for other public assistance agencies the next year. This means that training occurs every two years, which, with staff turnover, reduces the effectiveness of the NVRA implementation and could be a contributing factor in possible declines in Oregon statistics.

#### Proactive Voter Registration Based on Existing State Databases

Caution is required when assessing pros and cons and technical feasibility for sharing data from state databases for voter registration due to civil liberties and public acceptance concerns as well as cost. Canada, however, has built a national list of 23 million eligible voters that costs less than \$13.1 CAD million to build and \$5 million CAD a year to maintain.<sup>96</sup> Called the National Register of Electors, Canada's registrant list draws on citizenship applications, tax returns, driver's licenses, and provincial voter list and includes 93.1 percent of eligible voters. Evidence also indicates that Canada's list facilitates a more inclusive electorate as well as participation by new voters and voters who have moved.<sup>97</sup> Proactive additions to the U.S. Selective Service list of men uses technology and techniques that could be applicable to voter registration steps in our country.<sup>98</sup>

A proposal in New York suggests using both state driver license and tax records as the basis for evaluation of voting eligibility and making additions to voter registration rolls. This discussion is also beginning in California with a focus on using Department of Motor Vehicles and the California Franchise Tax Board records.<sup>99</sup>

In our state, one starting point could be evaluation of the list of Oregon National Guard members, to see if it includes adequate information and signatures that are needed for evaluation

of voting eligibility and secure addition to the centralized voter registration database. This is a group for which good contact information is presumably available; an important consideration not only to ensure accurate delivery of ballots but also because a step in this process should be providing an “opt out” option since voting registration is not mandatory.

Another relatively small pool of people in an existing state database is men and women leaving the custody of Oregon state correctional institutions. Informing these former felons of the reinstatement of their voting rights is done by the Department of Corrections by including voter registration cards in the inmate exit package.<sup>100</sup> Obviously these people face many next steps upon their release and voter registration could take a backseat to finding work and a place. Providing voter registration cards to former felons provides a clear signal that one element of returning to society is to become a voter. Secretary of State Kate Brown is encouraged to work with the Department of Corrections to ensure continuation of these efforts. As a next step in the context of designing programs for proactive voter registration based on existing state databases, this population of potential voters could be in another pilot project.

A bigger next step would be to review names in the Department of Motor Vehicles prior to enactment of the current legal presence identification requirements to determine what additional information would be needed to assess voter eligibility. An advantage of using this list, however, is that it already includes signatures that are an important component of our state’s vote-by-mail security provisions.

Another consideration is identification of those government databases more likely to include sectors of society tending to be underrepresented on voter rolls. These efforts could be linked with current NVRA-mandated public assistance voter registration opportunities. An advantage of using these databases is that many benefits, including Temporary Aid for Needy Families (TANF), Supplemental Nutrition Assistance Program or food stamps, and Medicaid are that citizenship status data is collected. Review by the Brennan Center for Justice, however, indicates that not all state databases include this information. In addition, Oregon evidently does not have unified database where information about all these program recipients are maintained.<sup>101</sup>

Young people are another underrepresented group in voter rolls. Use of student registration data from universities, community colleges, technical training programs, and other educational institutions could be another list for consideration.

Opportunities for assessing voter eligibility of Oregonians in federal databases, for example, former military personnel in the Veterans Administration database and naturalization lists maintained by the U.S. Bureau of Citizenship and Immigration Services, should also be considered. It is likely, however, that coordination with these agencies would require federal legislative action. However, federal legislation on this topic is evidently being developed so this might be an option in the future.

Careful design of each element of a proactive voter registration program is very important and resources will be required. For this reason Common Cause Oregon supports the Secretary of State seeking foundation support for a pilot project and understands that this component of a comprehensive voter registration improvement program needs to be developed in a slow and steady manner.

### Pre-Registration and 17-Year-Old Primary Voting

In Oregon 17-year-olds can pre-register to vote, an option that sets the stage for receiving a ballot when they turn 18, which in turn can increase the likelihood of voting. This is sometimes called advance registration, though Common Cause Oregon prefers the term pre-registration.

The pre-registration concept was in existing Oregon law but strengthened during the 2007 legislative session by the Bus Project with supportive testimony by several ally groups including Common Cause Oregon precursor Democracy Reform Oregon. The 2007 bill removed confusing time periods when pre-registration was allowed based on whether or not election dates occurred before a prospective voter turned 18. The new law is more straightforward: when an Oregonian who meets registration requirements turns 17 he or she can pre-register to vote. Registration becomes a year-round routine and should reduce the election related surge of registrations by young people that can be an administrative burden for elections officials.

An improvement on Oregon law under consideration by Common Cause Oregon is to allow pre-registration of 16-year-olds, a change that would increase the opportunity for registration to occur in an educational context. This is particularly important since not all high school students graduate but they are more likely to still be in school when sixteen. Also, not all high school students go on to college so assuming that voter registration will occur on campuses misses a significant number of young people.

In addition, voter registration opportunities could be linked to obtaining a driver's license. A possible disadvantage to setting 16 rather than 17 as the uniform voter pre-registration age is that increasing the length of time between pre-registration and when a young person is 18 and eligible to vote could increase the odds of a ballot being mailed to an out-of-date address. However, youth mobility for 16 through 18-year-olds is likely to be less compared to address changes for 19 to 24-year-olds. This difference in mobility has been documented in North Carolina and it seems unlikely that 16 through 18-year-olds in Oregon are significantly more mobile.<sup>102</sup>

One approach is taken in a 2009 legislative proposal in California, AB 106, which is written without a specific reference to age of pre-registration. The voter registration parts of driver license and taxation forms would require the applicant's birth date to enable identifying the young person as eligible to vote upon reaching the age of 18.

In many states, though not Oregon, 17-year-olds can vote in primaries or participate in endorsement caucuses. The rationale for this policy is that the primary is an integral companion of the general election and if a young person will be eligible to vote in a general election, then he or she should have the right to vote in the primary whose major purpose is to determine the candidate that will appear on the general election ballot.

The 26<sup>th</sup> Amendment to the U.S. Constitution that went into effect in 1971 requires that states allow 18-year-olds to vote, but does not prevent a state from establishing 17-year-old primary voting for those young people who will be 18 before the general election.

This change in Oregon, however, would require an amendment to our state constitution. In November 2008 Connecticut voters adopted such an amendment to their state constitution with a 63 percent "yes" vote, reportedly with a minimal campaign effort. Obviously, Oregon specific

review of political feasibility is required, but the Connecticut vote is a signal that success may be possible.

### **2009 Online Voter Registration an Important Step but More Will Be Needed**

The priority on 2009 legislative enactment of online voter registration by the Oregon Secretary of State Kate Brown is well placed because it can serve as a cornerstone for other components of the comprehensive streamlined voter registration program described in this section. In particular, online voter registration provides the opportunity to coordinate with the Department of Motor Vehicles the security and legal details needed to share key information from the DMV database such as the electronic signature necessary for signature verification procedures used in our vote-by-mail system.

That said, however, it is important to recognize that online voter registration won't increase registration opportunities for poor people and others without convenient access to computers and the Internet. The digital divide may be shrinking but it has not disappeared. In addition, the link between online voter registration and Department of Motor Vehicle licensing won't facilitate voter registration for those potential registrants who don't have or intend to obtain a driver's license or official ID. This group, for example, could include students who don't drive.

This doesn't minimize the importance of 2009 enactment of online voter registration. It is just that more steps, as described in this section, are needed to improve and streamline Oregon's voter registration process. Adopting this comprehensive package of reforms will be a multi-year effort with coordination required to ensure that each successive step builds on previous efforts and sets the stage for enactment of the next step. Finally, as the comprehensive voter registration improvement package is implemented it is important to watch for gaps and underserved populations for whom voter registration still needs to be facilitated.

#### **The Need for Voter Registration Drives Reduced with Registration Improvement Program**

Voter-initiated voter registration sets the stage for third party groups from either end of the political spectrum to conduct voter registration drives that can increase the inaccuracy of voter rolls and place significant burdens on election administrators. Administrative concerns are of particular concern in Oregon since our state's voter registration deadline coincides with preparation of ballots for mailing and the onset of our vote-by-mail window.

Registration of fictional people by ACORN prompted many to make voter fraud accusations. For example, during one of the 2008 presidential debates Senator John McCain accused ACORN of potentially committing "one of the greatest frauds of voter history in this country, maybe destroying the fabric of democracy in this county."

An opposite view was: "blaming ACORN for our voter registration system is a classic failure of missing the forest for the trees. Amidst accusations of ACORN putting our democracy in jeopardy, few are asking why private groups are even in the business of voter registration drives."<sup>103</sup>

Groups at the opposite political spectrum from ACORN have also been implicated in voter registration irregularities. For example, registration tactics by Sproul & Associates "hired by the Republican National Committee to boost GOP registration" targeted Oregon campuses in 2004. Young people were asked to "sign a petition, often urging lower automatic insurance rates for students, and then asked to sign or initial a second document, which turned out to be a voter

registration card. Many of the students were urged to mark Republican as their party affiliation; others were told to leave the party affiliation section blank but to put their initial next to Republican.”<sup>104</sup> This firm was also found to have thrown out forms collected from voters registering as Democrats in Oregon and Nevada during 2004. During the 2008 election another organization in California used what many considered deceptive practices resulting in voters saying they were duped into changing their party preference to the GOP.”<sup>105</sup>

### **Civic Education**

The importance of civic education to increase voter registration and instill the habit of voting in young people is critical. Civic engagement educational efforts targeted to adults should also be explored. Even if all the steps outlined above to more proactively facilitate voter registration there may well still be people who are missed. Civic education can be part of a long-term strategy to facilitate voter registration and increase voter turnout. Educational efforts targeted to high school students are particularly important because not all these young people continue to college and it can't be assumed that they will register on campus.

### School Based Registration Options in Oregon

The 2009 legislature adopted HB 3473 that requires school districts to develop a plan to encourage students to register and vote in elections. Options identified in the bill for what a plan could include are posting a link from school websites to the Secretary of State's online voter registration site and making available to students educational materials on this topic developed by the Secretary of State. It also requires the State Board of Education to incorporate voter registration skills into Essential Learning Skills. These provisions were amendments to original legislation proposed by a high school student that included more mandates and raised budget concerns. Even the reduced scope of this bill, however, may face implementation challenges given reduced resources and multiple demands on limited teaching time.

During the 2007 legislature the Oregon Student Association was a key player in passage of a bill that outlines ways that Oregon higher education institutions can facilitate nonpartisan voter registration. This legislation appears to facilitate use of college and technical school enrollment databases for addition to voter registration rolls, subject to state assessment of voter eligibility. As noted above in the discussion of proactive use of existing databases, an “opt out” option must be provided since voter registration isn't mandatory.

The need for voter registration drives, which as described in the box above, have been conducted by a wide range of groups, would be dramatically reduced if all the reforms described in this section were adopted. However, given the importance of instilling the habit of voting in young people, nonpartisan voter registration drives at schools and other locations frequented by youth, could be a helpful part of a safety net to the proposed elements of a comprehensive registration improvement package.

### High School Programs-Partnerships with Non-Profits

The effectiveness of civic education to improve voter turnout was demonstrated by analysis of a First-time Voter Program. Participants in this program had voter turnout rates of approximately 9 percentage points higher than a control group. The First-time Voter Program was conducted in high schools in Connecticut, Indiana, Kentucky, Nebraska, New Hampshire, and New Jersey. The schools were varied in terms of the community's socio-economic status. Programs were also

run at different times in these states to allow for variation in the degree of electoral competitiveness and type of election.

The First-time Voter class presentation is an informal program about voting given by a young person. The sessions run around 40 minutes with encouragement of questions and a focus on making the program fun and comfortable for the students. Key informational elements of the program were why people vote, what offices up for election at local, state, and federal levels, and policy areas controlled by elected officials at each of those levels of governments. The history of 18-year-olds receiving the right to vote is also discussed. Questions of students about what they know about voting consistently revealed a lack of exposure to the voting process. The program then explains voter registration requirements and procedures, including absentee ballot options. Nonpartisan sources of information on candidates and issues are reviewed with a discussion about issues of particular concern to young people. Examination of a voting machine and the opportunity to cast a mock ballot is also provided.<sup>106</sup>

Obviously in Oregon this would mean review of a sample vote-by-mail ballot and mail-in and drop off procedures as well as the upcoming option of registering online. Given that the First-time Voter program uses a non-teacher presenter, Common Cause Oregon is exploring developing such a program in partnership with a organizations with college student members who would do the class presentations. Assistance would also be sought from the Secretary of State and Oregon Department of Education.

#### High School Programs-School Based Curriculum

A First-time Voter effort carried out by non-profit groups should not be viewed as being mutually exclusive with school based civic education curriculum. For example, Kids Voting USA is an interactive, election-based curriculum that is part of a national movement by CIRCLE: The Center for Information & Research on Civic Learning & Engagement to urge schools to include a civics mission as one instructional priority. Kids Voting USA began as a pilot project in Arizona in 1988 but is now a national program with lesson plans for each K-12 grade level in use in 39 states. The Kids Voting curriculum is taught during election years and includes a wide range of activities such as analysis of political advertisements, monitoring campaign news coverage, classroom debates, and activities to bring the curriculum home such as parent interviews about their voting history.<sup>107</sup>

Learning from the Department of Education about the current status of civics education in Oregon and opportunities for improvement is a next step for Common Cause Oregon. Goals of civics education are summarized in a major report, *The Civic Mission of Schools*, as follows:

Civic education should help young people acquire and learn to use the skills, knowledge, and attitudes that will prepare them to be competent and responsible citizens throughout their lives. Competent and responsible citizens:

1. are informed and thoughtful; have a grasp and appreciation of history and the fundamental processes of American democracy; have an understanding and awareness of public and community issues; and have the ability to obtain information, think critically, and enter into dialogue among others with different perspectives.

2. participate in their communities through membership in or contributions to organizations working to address an array of cultural, social, political, and religious interests and beliefs.
3. act politically by having the skills, knowledge, and commitment needed to accomplish public purposes, such as group problem solving, public speaking, petitioning and protesting, and voting.
4. have moral and civic virtues such as concern for the rights and welfare of others, social responsibility, tolerance and respect, and belief in the capacity to make a difference.<sup>108</sup>

*The Civic Mission of Schools* also summarizes reasons why schools are important venues for civic education including “encouraging the development of civic skills and attitudes among young people has been an important goal of education and was the primary impetus for originally establishing public schools.”<sup>109</sup>

### Adult Civic Engagement

Encouragement of civic engagement by adults is also needed as illustrated by the America’s Civic Health Index developed by the National Conference on Citizenship. This group’s 2008 Index includes survey results indicating strong support for college tuition for service; a national deliberation; mandatory service-learning in high schools; and civic education for young people including new tests. Of these options a national deliberation project that would involve discussion of an important public issue with the requirement for a Congressional response was the only one that focused on adult civic engagement.<sup>110</sup>

One possible resource for applying this concept in Oregon is *AmericaSpeaks*, a national group that has developed a 21<sup>st</sup> Century Town Meeting model designed to bring together large numbers of people to deliberate on policy issues and then connect the results to decision-makers.<sup>111</sup>

### **Long Term Thinking About Voter Eligibility**

Given the importance of instilling the habit of voting in young people a long-term consideration is to lower the voting age. One researcher suggests that 15-year-olds be enfranchised while others suggest that the voting age be reduced to the age 16. Civic education and the steps discussed above related to youth voting should be done before consideration of lowering the voting age, but as a long-term option this idea should be kept in mind.

Oregon should also consider joining Vermont and Maine as a state that allows prisoners to vote. "There is zero evidence that somebody who robs a gas station is more likely to violate the purity of the ballot box," said Harvard University historian Alexander Keyssar in response to claims that not allowing a felon to vote is a deterrent to crime or that felons are more likely to commit election related crimes. Vermont Secretary of State Deb Markowitz says, "Vermont has taken the position the more we can get folks in prison involved in the community in a responsible way, the better their chances of reintroducing them to the civilian world in a responsible way."<sup>112</sup>

Voting eligibility based on residency rather than citizenship was found in Oregon from 1857 through 1914 as described in Section 1. Some consider this question the next frontier in voting civil rights. There are cities such as Takoma Park and Somerset in Maryland who do allow residents who are non-citizens to vote in local and school board elections. Takoma Park has allowed this option since 1992 and the City Clerk maintains a separate voter roll from the list

generated by the county elections administration. Somerset has allowed voting for local races based on residency for local races since 1959.<sup>113</sup>

**Voter Registration Fraud**  
**Excerpts from article by Daniel P. Tokaji, Associate Professor of Law, Ohio State University, Moritz College of Law<sup>114</sup>**

There are good reasons why the [voter registration] values of access and integrity have played such a prominent role in the election reform debates since 2000. It would be a mistake, however, to let this dichotomy continue to dominate discussions of voter registration and voter fraud. First, liberalized registration practices will not necessarily lead to voter fraud. In this regard, there is an important, though under-recognized, distinction between registration fraud and voter fraud. Registration fraud refers to phony registration applications being submitted to election authorities – bearing, for example, the names of dead or existent people – while voter fraud refers to ineligible people knowingly voting.

There is evidence of registration fraud in the form of applications submitted on behalf of nonexistent voters like “Mickey Mouse,” apparently by canvassers getting paid for work they failed to do. This is unfortunate, but there is little evidence that phony registration forms resulted in fraudulent voting. Mickey Mouse’s name may have appeared on a registration form, but he did not attempt to vote. The real problem is not that these nonexistent voters have actually voted. It is instead the unnecessary administrative costs borne by state and local government, which arise from “deadwood” on the voting rolls. Among the things that the access-integrity debate misses are other values important to election administration, such as efficiency and finality.

**Voter Database Maintenance**

Once Oregonians are registered every effort should be taken to ensure they remain accurately registered. One element in achieving this goal was discussed above on page 30 related to registration portability across county lines and use of change of address information to ensure up-to-date registration. Other factors to facilitate this goal are to evaluate inactive voter registration regulations and ensure transparent database management such that purges are precise with public notice and the option of easy correction by the voter.

**Inactive Voter Regulation Modifications**

Registered voters are moved to inactive status under Oregon law (ORS 247.013) if “the county clerk has received evidence that there has been a change in the information required for registration” or “the elector has neither voted nor updated the registration for a period of not less than five years.” A county clerk must have mailed a notice (described in ORS 247.563) that may be forwarded and includes a postage prepaid, preaddressed return card on which the voter may provide his or her current address. If this postcard is not returned and the registrant “neither votes nor updates the registration before two general elections have been held” then a registration changes from inactive status to canceled. An individual cannot be moved to inactive status during the 60-day period prior to any election.<sup>115</sup> Oregon law is consistent with requirements in the National Voting Registration Act.

Federal NVRA provisions represent minimum requirements and a state can adopt less restrictive inactive voter regulations. Given the passage in 2008 of Measure 56 that reduces the impact of

the double majority requirement, Oregon should consider less restrictive inactive voter rules. There may well be resistance to this by county election administrators because the cost of producing and mailing more ballots for voters who might otherwise be on the inactive voter list. Cost increases require careful attention, especially during this time of tight budgets. However, evaluating inactive voter rules in the wake of Measure 56 deserves review.

### **Transparent Purge Policies with Public Notice and Easy Correction**

Removing voters from registration rolls is often called purging, an unfortunately negative term since there are legitimate reasons for such removals. For example, Oregon’s voter database is updated based on official death certificates notices that are provided to election administrators. “Dependable, accurate, and up-to-date voter registration lists increase the integrity of our elections in many ways. They let candidates and get-out-the-vote groups work more efficiently.” Dependable lists also reduce confusion at the polls, make turnout numbers more precise and election misconduct easier to detect and deter. To the extent that they help insure that registration lists correctly reflect eligible registrants, precise, carefully conducted purges are important.<sup>116</sup>

Some voter purges in the United States, however, “are performed in a slipshod manner and leave ample room for abuse and manipulation. When purges go wrong, eligible voter are removed from the rolls, frequently with no notice or knowledge until they show up at the polls to vote.”<sup>117</sup> The Brennan Center for Justice identifies four problematic voter purge practices. One is reliance on error-ridden lists, secret purges with no notice to voters, inappropriate “matching” criteria that leaves voters vulnerable to manipulated purges, and insufficient oversight. “For example, some states purge their voter lists based on the Social Security Administration’s Death Master File, a database that even the Social Security Administration admits includes people who are still alive.”<sup>118</sup>

There is no evidence that these inappropriate purge practices have occurred in Oregon. Indeed, the Oregon Elections Division is currently working with academic researchers under a National Academy of Sciences grant on developing effective name and address match protocols to ensure effective database management that reflects Oregonians moving to Washington State and appropriate removal from our state’s voter registration database. In addition to careful review of possible typos, confusion between similar names, confusion between full and shortened names often without a middle initial, this pilot project includes contact with the registrant.<sup>119</sup>

Nevertheless, current Oregon list management practices should be evaluated for consistency with recommendations on voter purge procedures recommended by the Brennan Center for Justice as summarized below:

#### A. Transparency and accountability for purges

1. Develop and publish uniform, non-discriminatory rules for purges.
2. Provide public notice of an impending purge.
3. Develop and publish rules to remedy erroneous inclusion in an impending purge.
4. Do not use failure to vote as a trigger for a purge.
5. Develop directives and criteria with respect to who has the authority to purge voters.
6. Preserve purged voter registration records.
7. Make purge lists readily available.

B. Strict criteria for the development of purge lists

1. Ensure a high degree of certainty that names on a purge list belong there.
2. Establish strict criteria for matching.
3. Audit purge source lists.
4. Monitor duplicate removal procedures.<sup>120</sup>

In October 2008, the Oregon Elections Division was asked to investigate allegations of lax voter registration database management that were considered to increase the potential for voter fraud by the Cascade Policy Institute. Their study alleged that Oregon’s voter rolls contained 6,142 deceased registrants. “We believe this has the potential for voter fraud being that Oregon is a vote-by-mail state,” said Jeff Alan, Cascades’ chief investigator. The Cascade Policy Institute study, however, compared names and birth dates of Oregon registered voters with the Social Security Death Master File. The actual work was commissioned by the Chicago-based Sam Adams Alliance that did similar studies in other states<sup>121</sup>

As mentioned above, the Social Security Death Master File, as acknowledged by that agency, includes names of living people. In addition, the list-matching criteria used in the complaint were flawed by not using middle initial to reduce the number of false positives. Perhaps because the work was done by an out-of state-group, the complaint also did not distinguish between the active and inactive status of registered voters. Of the alleged 6,142 deceased voters, 81 percent or 4,998 were either inactive voters or had already had their registration cancelled. Based on phone calls made by the Elections Division it is estimated that 43 percent of the remaining 1,144 names were of people were still alive. The remaining 600 to 700 names appear to represent voters who died between the primary and general election whose official death notices have been or will be sent to election administrators for processing.<sup>122</sup>

Appropriately then-Elections Division Director John Lindback expressed concern about the late October 2008 timeline of the Cascade Policy Institute’s press release and complaint to this office. “You need to be very suspicious of these things that come in so close to the election,” Lindback said. “It’s not uncommon for people who are afraid they are going to lose to do things like this to try to cast doubt on the integrity of the election.” Secretary of State spokesman Don Hamilton said, “We may have some people on the voter rolls who have died, but they’re not going to vote. Dead people can’t sign their names.” And if somebody else used that person’s ballot, “they would have to forge a signature, which is highly unlikely.”<sup>123</sup> Such a forgery could result in a class C felony. In addition, the signature verification safeguards in Oregon’s vote-by-mail system are designed to catch fraudulent signatures.

**Analysis of Voter Fraud in the United States  
Excerpt of Dêmos Report by Lorraine C. Minnite<sup>124</sup>**

Notable election reforms of the past 10 to 15 years – such as the NVRA, more permissive absentee balloting rules, all mail-in voting in Oregon, and the enactment of Election Day Registration in several more states – have not facilitated voter fraud.

**The Truth About Voter Fraud**  
**Excerpt from Brennan Center for Justice Report by Justin Levitt<sup>125</sup>**

“Voter fraud” is fraud by voters.

More precisely, “voter fraud” occurs when individuals cast ballots despite knowing that they are ineligible to vote, in an attempt to defraud the election system.

This sounds straightforward. And yet, voter fraud is often conflated, intentionally or unintentionally, with other forms of election misconduct or irregularities.

There are many such problems that are improperly lumped under the umbrella of “voter fraud. Some result from technological glitches, whether sinister or benign: for example, voting machines may record inaccurate tallies due to fraud, user error, or technical malfunction. Some result from honest mistakes by elections officials or voters...And some irregularities involve fraud or intentional misconduct perpetrated by actors other than individual voters: for example, flyers may spread misinformation about the proper locations or procedures for voting; thugs may be dispatched to intimidate voters at the polls; missing ballot boxes may mysteriously reappear. These are all problems with the election administration system... but they are not “voter fraud.”

Conflating these concerns is not merely a semantic issue. First, the rhetorical sloppiness fosters the misperception that fraud by voters is prevalent. That is, when every problem with an election is attributed to “voter fraud,” it appears that fraud by voters is much more common than is actually the case.

This, in turn, promotes inappropriate policy. By inflating the perceived prevalence of fraud by voters, policymakers find it easier to justify restrictions on those voters that are not warranted by the real facts.

Moreover, mislabeling problems as “voter fraud” distracts attention from the real election issues that need to be resolved. It draws attention away from problems best addressed, for example, by resource allocation or poll worker education or implementation of longstanding statutory mandates, and instead improperly focuses on the voter as the source of the problem.

There have been a handful of substantiated cases of individual ineligible voters attempting to defraud the election system. But by any measure, voter fraud is extraordinarily rare.

### **Increasing Voter Turnout**

Once an Oregonian is registered to vote and receives a ballot at the correct address, what can be done to increase the likelihood that he or she will take the time to vote and either drop it off or mail it in to the county elections office? Turnout improvement options begin with removing barriers with a number of options including providing non-English ballots and voting materials. Discussion then turns to longer-range strategies linked to increasing electoral competition.

#### **Removing Turnout Barriers**

##### **Voter Drop Boxes and Election Office Hours**

Not enough official voter drop boxes or overflowing boxes such that a voter hesitates to leave their ballot can be a barrier to voting. There are minimum requirements for numbers of official

drop boxes that should be continually evaluated. The frequency of picking up ballots from drop boxes and size of such boxes should also be assessed. Feedback should be sought by elections officials from political campaigns and parties that frequently monitor drop box adequacy, especially close to Election Day. Proactive action to ensure ballot drop box effectiveness by election officials is to be commended. For example, Multnomah County installed very large ballot drop off boxes in 2008 that built on their efforts in previous elections to reduce traffic congestion by the elections office.

Concerns about ballot drop off box adequacy often focus on more densely populated parts of Oregon because of the high numbers of ballots cast. The particular voter drop box needs in rural areas, including reservations, should also be evaluated. It is possible for a county to meet minimum drop box requirements in state law but not adequately serve widely dispersed populations in some parts of Oregon. The impact on rural voters with post office box delivery should also be considered since if a ballot is not delivered to the actual residence a post office could be a long drive to either pick up or mail a ballot.

Expanded hours at county election offices in the week before Election Day should also be evaluated to ensure that voter questions and requests can be addressed in a convenient fashion. Opening election offices the weekend before Election Day to handle possible inquiries about overflowing drop boxes or other concerns should especially be considered.

#### Timing and Tone of Drop Off Instead of Mailing Ballots Announcements

In a vote-by-mail system there is obviously a point when dropping off rather than mailing a ballot is required to ensure delivery before 8 p.m. on Election Day. Conversations with postal office staff, however, are recommended to get their view on how close to Election Day ballots can be mailed and still be delivered on time. If an announcement by election administrations that it is too late to mail in a ballot is made before it is really needed, a voter for whom finding a drop off box is difficult may prematurely give up and not mail in their ballot.

Evaluation of the tone and content of announcements urging potential voters to switch from mailing in ballots to finding a drop off box is also recommended. These announcements should include information on how to find ballot drop off boxes. Also instead of emphasizing that it is too late to vote-by-mail, the focus should be on conveying the message that it isn't too late to join the many Oregonians who are dropping off their ballots by 8:00 p.m. on Election Day.

Research indicates that people frequently take positive actions (in this case dropping off their ballot) when they know that other people are doing the same thing. For example, the optimal message on hotel room cards encouraging guests to reuse towels and save water was, "The majority of guests that stay in our hotel do reuse their towels." The subliminal message was that everyone is conserving.<sup>126</sup> Applying this concept would mean that the announcement by election administrators would be something along the lines of: "It is now time to join many other Oregonians in dropping off your ballot instead of mailing it in due to how close we are getting to Election Day. Go to [www.oregonvotes.org](http://www.oregonvotes.org) or call 1-886-ORE-VOTE, or 1-866-673-8683 to find the location of the closest ballot drop box."

#### Postage - Cost and Convenience Concerns

One issue related to postage is what happens when the cost of a stamp increases during the vote-by-mail window or the weight of the ballot envelope requires more than one stamp. Both of these

concerns have occurred in recent elections. Evidently the Arizona legislature has considered legislation requiring the state to cover increased postal costs under such circumstances. However, in that state the scope of this possible expense is less than in Oregon because it would apply only to absentee ballots. A 2009 legislative proposal, HB 3240, would have authorized counties to pay for additional postage due to ballot envelopes that weigh more than one ounce. It passed out of the House rules committee but didn't move out of the Ways and Means process, presumably because the bill also required the state to pay county election officials for costs incurred in elections for state offices and ballot measures.

A bigger concern about postage in a vote-by-mail system is whether or not the cost of the stamp is a barrier to voting and possibly vulnerable to legal challenge. Legal concerns were raised during testimony on HB 3240 citing a 1966 United States Supreme Court case overturning poll taxes. This case involved a \$1.50 poll tax that after adjusting for inflation would be almost \$10 in today's dollars. Nevertheless the court decision asserts that a citizen even with "nothing at all" in his pocket cannot be discriminated against.<sup>127</sup> Legal review during the process of adopting vote-by-mail in Oregon, however, evidently indicated that this approach was constitutional.

In legislative hearings in Salem there has been considerable skepticism expressed in response to testimony about the cost of postage or difficulty of purchasing a stamp being a barrier to voting. A growing reality, though, is that many people, particularly the young but increasingly Oregonians of all ages, write fewer and fewer letters and conduct much or all of their personal business online. The need for these people to purchase stamps is essentially eliminated and though the cost of a stamp may not be an issue, the need for an extra atypical errand to buy stamps can represent one additional step with the net result being a vote that is not cast.

Also the purchase is likely to be stamps rather than just one stamp since most non-post office locations, such as grocery stores, won't sell just one stamp. Especially when it isn't a matter of purchasing only one stamp, it should be recognized that the cost can be a barrier, especially for low-income people for whom the most convenient place to buy stamps is likely to be at a grocery store. For those Oregonians the result can be a choice between voting and purchasing milk for the family.

The cost of state government paying for postage would be approximately \$1 million per election. This is calculated by multiplying the cost of a first class stamp by the 2.1 million registered voters. Obviously this is not a minimal cost, especially given current budget difficulties. Continuing budget concerns as well as resistance to this idea could mean that finding elections administration savings could be required to facilitate payment for ballot postage. One option could be using possible savings related to Oregon's Voters' Pamphlet as discussed on page 57.

### Online Voting

Online voting could facilitate voting but major security concerns warrant great caution. Obviously the digital divide with members of our society not having resources to buy computers and pay for online access at home means that online voting could not be the only voting option. Security is also a critical issue to address. However, as more and more people conduct business online not providing for web based voting will increasingly be viewed as an anomaly as indicated by the commentary below by a retired college dean and business journalist on Nightly Business Review.

The other day, I cast a vote online from the comfort of home. I was voting a proxy on my GM stock. I had wanted to vote online in one of the presidential primaries, but there was no way to do so. It doesn't make sense that investors can vote a proxy online, but in a presidential election, you can only cast a ballot in person or by mail.

Think how much more efficient online voting would be. No expensive gas to drive to a polling place, no hassle for a parking space, no waiting your turn at a voting machine, [In Oregon no need to find a stamp and a mail box or a ballot drop off box.] no voting machine breakdowns, no hanging chads.

Our voting methods seem primitive in the Internet age. Efforts to introduce online voting have run into problems. The problem of safeguarding a voter's privacy, the problem of hackers compromising your vote, the problem of computer illiterates making mistakes. But such problems should not be insurmountable. There's not enough time to solve the problems before the November elections, but the winner in November should make Internet voting a priority for the next presidential election.<sup>128</sup>

Online voting should be reviewed with considerable caution, but it seems prudent to recognize the views noted by the commentator above in long term thinking about possible trends in voting. One indication of the caution required about online voting is that 2009 legislation that originally proposed this option for overseas ballots was amended to allow military and other voters living abroad to vote via fax. The new law, HB 2511A, would allow elections officials to compare the signature on a fax with the signature on a voter registration card to verify a voter's identity. It creates an exception to the law that only an original signature can be used for verification.

#### Non-English Voting Materials and Resources for Disabled Voters

Ballots are prepared at the county level and Linn County has prepared Spanish language ballots even though no Oregon counties are required to do so by federal voting rights law. Spanish language Voters' Pamphlet, voter registration materials, and other voting resources are available online at [www.oregonvotes.org](http://www.oregonvotes.org).

Obviously, however, online availability isn't as accessible as receiving a Voters' Pamphlet in the appropriate language for the voter. One option that should be explored is the allowing a voter to notify their county clerk of an interest in receiving a Spanish language Voters' Pamphlet. A code with this designation could be added into the centralized voter registration database with the Secretary of State being responsible for mailing the Spanish Voters' Pamphlets to these voters. Obviously this will cost money, especially since these mailings are less likely to be able to be handled on a bulk-mailing basis. Given budget difficulties this improvement may not be feasible in the short run but considering this improvement in the future could be helpful.

The need for availability of voting resources in other languages beyond Spanish merits evaluation. For example, the Asian Pacific American Network of Oregon (APANO) has evidently translated materials in a number of languages to serve their constituencies.

To serve the needs of disabled voters an audio voting guide is available online at [www.oregonvotes.org](http://www.oregonvotes.org). Large print and Braille materials are also available. Oregon has also done

pioneering work in developing an Alternative Format Ballot (AFB) that works in conjunction with a wide range of adaptive devices such as screen readers, Braille displays, and joysticks. A visually impaired person or someone with manual dexterity impairments receives the AFB either via e-mail or a mailed CD. A computer and printer is needed with the completed ballot printed out and sent to election administrators using the same security envelope placed inside a signed envelope procedure used by all other Oregonians in our vote-by-mail system.

The AFB option allows for private and independent voting. A visually impaired Oregonian said that the AFB was “my first time voting independently in my life.” Disability Rights Oregon (formerly Oregon Advocacy Center) was a key player in advocating for the AFB option and publicizing its availability. If a voter is interested in using an AFB ballot, but does not have a computer, there are two computers available at each county elections office. At least one is a laptop that can be brought to the voter.<sup>129</sup>

### **Caging and Vote-By-Mail – Require Contact Information for Mailings to Voters**

Caging in the context of voter registration challenges involves “sending out non-forwardable or registered mail to targeted groups of voters and compiling ‘caging lists’ of voters whose mail was returned for any reason.” The caging list is then used to challenge voter registration validity solely on the basis of such a mailing, even though NVRA bans election administrators from canceling a voter’s registration solely on the basis of a single mailing being returned. These challenges typically occur at precinct polling places with publicity and in a manner widely considered to be intimidating to voters, even those not directly challenged.<sup>130</sup>

In Oregon, however, the question is whether or not our vote-by-mail system and lack of precinct polling places eliminate or drastically reduce the likelihood of caging attempts. Presumably what caging would look like here would be a mailing designed to generate a list of voters who may no longer live at the address for them on the voter rolls. That list could then be provided to election administrators when ballots are being prepared to be mailed with an assertion that these voters should not be sent ballots. But since the ballots are nonforwardable the concern about inaccurate registrations is already addressed. For this reason anti-caging provisions in Oregon do not seem applicable.

What may be needed in Oregon are clear standards for making post-election voter challenges. For example, Washington passed such clarifications during the 2006 legislative session; presumably in response to challenges made after that state’s close 2004 gubernatorial election. Requirements for a written complaint to state the reason for believing that a violation has occurred is already in ORS 260.345 and may be adequate. But comparison of Oregon standards for complaints and challenges with Washington legislation, SSB 6362, should be considered.

Claims about voter registration problems and related publicity, however, can undermine public perception about the integrity of the election system even if not accompanied by voter challenges. As described above on page 44 a study commissioned by the Cascade Policy Institute based on inappropriate list matching criteria and with poor understanding of our state’s inactive voter registration raised questions close to the November 2008 election about dead people on voter rolls. The timing of this study seemed designed to generate public concern about election administration practices. These concerns are ill founded, but can’t be addressed by anti-caging steps taken in other states. Rather continued public education about voter database management and the signature verification security steps will be required.

However, legislation to require that detailed contact information be included on mailings to Oregonians about voter registration is worth considering. For example, a Washington, D.C. group called Women's Voice, Women Vote sent out mailings in a number of states including Oregon that caused confusion at best and anger at election administrators at worst. The stated goal of this group was to register unmarried women.

The Oregon mailing from Women's Voice, Women Vote in August 2008 included generic voter registration forms that are legal under the federal Help America Vote Act, but were sent to many people not eligible to vote. Since the letter and forms were designed to resemble an official government mailing and used a Voter Participation Center return label with a Salem post office box, the Elections Division received angry calls and forwarded forms that included "My mother died about 13 years ago. Please take her name off the list." and "My daughter died 4 ½ years ago of cancer. Please do not send this again." A Secretary of State press release stressed that the Elections Division does not do mass mailings and urged that voters "not assume that, because they receive one of these mailings, that their voter registration is out of date or they are in danger of being ineligible to vote if they don't return it."<sup>131</sup>

Though this mailing included an Oregon post office box, legislation to require more detailed contact information including a phone number and email may be prudent.

### **Education on Voting Rights for Ex-Felons**

Oregon felons have historically only been denied the right to vote while incarcerated in state prisons. However, in 2008 the legislature adopted HB 3638A, a companion to SB 1097 the referral that became Measure 57. Section 6 of HB 3638A expanded restrictions on voting rights for felons. Prior to 2008 voting restrictions only applied to felons in the custody of the Oregon Department of Corrections. This meant that felons in a county jail could vote, but this is no longer allowed due to HB 3638. Since those in county jail for misdemeanor charges can vote, this change increases the likelihood for confusion about voting rights of those being held in county jail. To remove this confusion Common Cause Oregon would support legislation to restore the original language.

The Oregon Department of Correction includes voter registration cards in the inmate exit package upon leaving prison. This practice evidently began at suggestion of the Secretary of State and Common Cause Oregon fully supports its continuation.

Nevertheless it is poorly understood that ex-felons in Oregon are allowed to vote. An education campaign designed for this target audience as well as providing this voting rights information to government workers in contact with those ex-felons who are on parole or probation is recommended.

It is also not well understood that voter registration can occur in jails by those convicted of misdemeanors. This option could be the subject of an education effort, particularly if Common Cause Oregon learns of the interest by ally groups in such a registration drive.

### **Increasing Electoral Competition**

As discussed in Section 1, most political scientists believe that more competitive elections increase voter turnout because such races are meaningful and entice voter participation, often with encouragement from more intense campaign efforts to get out the vote.

Ten battleground states in the November 2008 presidential election had a combined turnout of eligible voters of 65.9 percent compared with 61.9 percent combined turnout in the other states. New battleground states such as Indiana, Virginia, and North Carolina had turnout rate increases in 2008 of 4.5 percent, 6.8 percent, and 8 percent, respectively compared with 2004 turnout figures in those states. Oregon is cited as a state that “left the battlefield” in 2008 compared to 2004 when it was a swing state resulting in high voter turnout that wasn’t matched in the 2008 election when it was conventional wisdom that our state would be in the Obama column.<sup>132</sup>

During the May 2008 primary, however, because the Democratic presidential primary between Obama and Clinton was still in play, there was high turnout in that race with large numbers of Oregonians switching their party status so they could participate in a meaningful endorsement election.

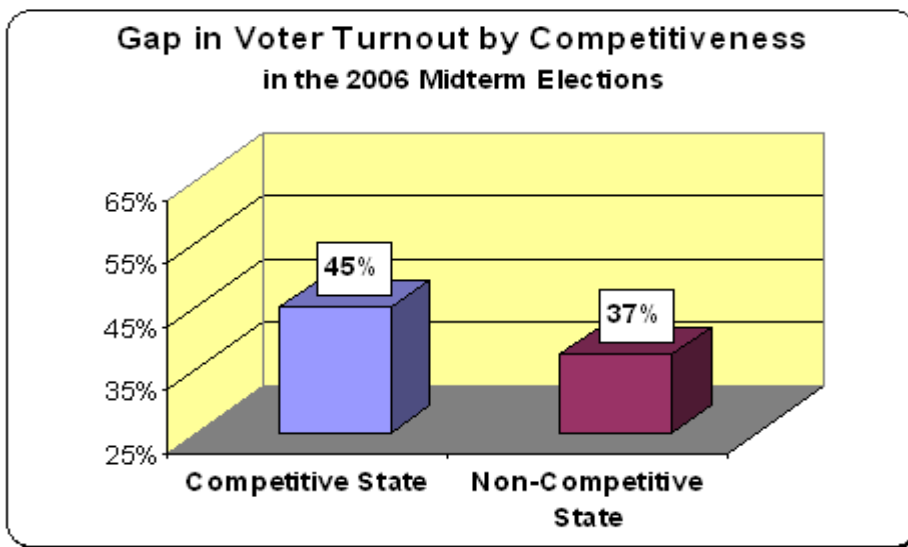


Figure 8

As noted in Figure 8 above turnout varied between competitive and noncompetitive states during the 2006 mid term elections, indicating that this isn’t just a dynamic found in presidential years. However, the discussion below focuses first on reform options regarding presidential elections.

Options to increase electoral competition in presidential races are to reform the presidential primary system and adopt National Popular Vote that changes the use of the Electoral College during the general election. The options for state action related to the presidential primary system are limited, but the National Popular Vote approach about the general election is based upon state level legislation. Primary reform options are discussed first followed by a review of the National Popular Vote proposal.

Reform Presidential Primary System

Oregon can move its presidential primary from its current date in May, but this requires holding a special election. Moving our state’s presidential primary to February was discussed during the 2007 legislature in anticipation of what was expected to be a presidential primary season that would be over long before Oregon’s May primary. This change was not made because of its approximate price tag of \$3 million. As it turned out, the May timing was still meaningful, at

least in the Democratic primary, because the race between Obama and Clinton wasn't over until June.

In general, individual states rushing to the front of the primary line and the presidential primary season starting earlier and earlier is not a long-term solution. If Oregon wants to get in the line of front loaded presidential primary states, however, it would seem prudent to begin consideration of this idea prior to the 2011 legislative session. Common Cause Oregon would prefer more systemic reforms of the presidential primary system but, especially if a history of inaction on this topic is repeated, would be sympathetic to an Oregon specific change in presidential primary timing.

In 2007, Senate Bill 1905 (co-authored by Lamar Alexander (R. Tenn.), Amy Klobuchar (D. Minn.), and Joe Lieberman (I. Conn.)) received a hearing but did not advance further. This legislation set dates for four regional presidential nominating contests.<sup>133</sup> This proposal is similar to one proposed by the National Secretaries of State that establishes four geographical regions with a lottery determining which region begins in the first year, in the next presidential election it moves to the end of the sequence. Iowa and New Hampshire retain their "early bird" position with primaries in other states scheduled for the first Tuesday in March, April, May, and June.<sup>134</sup>

Other options are the Delaware Plan that calls for less populated states to go first and the most populated last. Four "pods" or sets of primaries thirty days apart would be held. States within a pod may vote at any time during the appointed month or may move their primaries later beyond that month, but not earlier.<sup>135</sup> The American Plan proposes ten two-week intervals in which randomly selected states may hold primaries with a gradual increase in total population holding these presidential party nomination contests.<sup>136</sup>

Questions have been raised as to the constitutionality of any Congressional legislation regulating presidential primaries. The issue is whether such legislation would violate the parties' constitutional right to freedom of association.<sup>137</sup> Though Congressional action might nudge reform ideas along, it does appear that the political parties are the key players in changing the presidential primary system.

#### National Popular Vote

Once presidential nominees are selected their general election campaigns typically focus on swing states. This set the stage for a 3 percent voter turnout gap between the 12 most competitive and 12 least competitive states in the 2000 presidential race. In the 2004 contest between John Kerry and George Bush the voter turnout gap between the most and last competitive 12 states increased by 10 percent.<sup>138</sup> As noted above, ten battleground states in the November 2008 presidential election had a combined turnout of eligible voters of 65.9 percent compared with 61.9 percent combined turnout in all other states.

Presidential campaigns are focusing on winning enough Electoral College votes. The Gallup Poll results indicate public support for a change in the Electoral College system that has ranged from 58 to 81 percent. This question was first asked in 1944 and then periodically during the 1960's, and in 1977, 1980, 2000, and 2004.<sup>139</sup> However, numerous attempts to change or abolish the Electoral College have failed.

State legislatures, however, have started to adopt a National Popular Vote interstate compact that shifts how the Electoral College is used. Under this compact member states pledge their electoral votes to the winner of the national popular vote. The interstate compact would only go into effect when enough states have passed the compact so that their combined Electoral College votes would comprise a majority (270+) thus ensuring that the national popular vote winner would also win in the Electoral College.

A survey of 800 Oregon voters conducted on December 16-17, 2008 showed 76 percent overall support for a national popular vote for President. The question was: How do you think we should elect the President: should it be the candidate who gets the most votes in all 50 states, or the current electoral college system?

Details on the Oregon survey results are that support was 82 percent among Democrats, 70 percent among Republicans, and 72 percent among independents. By age, support was 67 percent among 18-29 year olds, 68 percent among 30-45 year olds, 82 percent among 46-65 year olds, and 76 percent for those older than 65. By gender, support was 81 percent among women and 71 percent among men. By race, support was 87 percent among whites (representing 89 percent of respondents), 59 percent among African-Americans (representing 3 percent of respondents), and 80 percent among Hispanics (representing 2 percent of respondents), and 69 percent among Others (representing 6 percent of respondents). The survey had a margin of error of plus or minus 3.5 percent. This poll was conducted by the group, National Popular Vote.<sup>140</sup>

One concern is that Oregon might still be left out under National Popular Vote because presidential campaigns might focus on large states. However, the Democratic National Committee 50 state strategy and the Obama's campaign's efforts in more states, including Oregon, than was typical for presidential candidates could indicate campaign trends that would be complementary with the National Popular Vote. Fundamentally candidates go where they can find votes and instead of presidential campaigns focusing on Electoral College swing states under National Popular Vote the focus would shift to swing districts in each state.

Common Cause Oregon supports Oregon adoption of the National Popular Vote legislation while recognizing that its potential for increasing voter turnout, though significant, is still likely to be modest. There are also other policy gains facilitated by the National Popular Vote Compact, however, including eliminating a repeat of the presidential elections in 1824, 1876, 1888, and 2000 when the national popular vote recipient did not move into the White House because he did not receive a majority of Electoral College votes. These election results undermine public confidence in elections.

A National Popular Vote bill received a hearing during the 2007 session and this concept was discussed in the fall of 2008 at an interim joint hearing of the House and Senate rules committees. In the 2009 legislative session HB 2588 passed the House with a bipartisan 39-19 vote. However, the bill never got a hearing in the Senate.

#### Alternative Election Methods

Alternative election methods, particularly, fusion voting, instant runoff voting, and multi-member districts with cumulative voting also deserve consideration for a number of reasons, including their potential to help increase voter turnout by providing more candidate choices and reducing the spoiler effect. A full discussion of these and other election methods, including

detailed lists of pros and cons are in the League of Women Voters of Oregon study, *Election Methods: Review of Alternatives and Oregon Proposals*.

Common Cause Oregon supports fusion voting for partisan legislative and statewide offices. This election alternative allows one candidate to be nominated for an office by more than one political party with a total vote count that can be differentiated by the party line on which a vote was cast. This reform option is less focused on candidates than on encouraging issue-oriented campaigns. Our support is contingent on the availability of funds for increased educational and implementation costs that would be incurred by county elections officials.

During the 2009 legislative session fusion proponents and representatives from the Independent Party of Oregon that had run into problems during the 2008 election about cross nomination of candidates developed HB 2414, popularly called “fusion light.” This bill clarified cross nomination procedures and allowed for listing up to three party nominations on one ballot line for a candidate, subject to acceptance by the candidate. The Secretary of State and county election officials supported the bill. This bill had significant bipartisan support in the House where it passed on a 53 to 7 vote. *Willamette Week* reported that this bill was dead in the Senate due to opposition from the Democratic Party of Oregon and a major lobbying group, the Oregon Education Association.<sup>141</sup> In the final days of the legislative session, the “fusion light” contents of HB 2414 were added to the content of SB 326. The amended SB 326 with the “fusion light” language was adopted with a 42 to 17 vote in the House and 25 to 5 vote in the Senate.

Common Cause Oregon also supports legislation that enables local governments to employ alternative election methods such as instant runoff voting. Nonpartisan offices that are more common in local government elections could be particularly suited to instant runoff voting with potential cost savings. In nonpartisan races the primary identifies the top two candidates with the general election becoming a runoff. In this setting, instant runoff voting would enable the primary and general elections to be collapsed into one election, with the runoff phase occurring as part of the voting process because voters would have indicated top and subsequent choices on their original ballot. These cost savings, however, would be offset by implementation expenses that would involve educational outreach and the anticipated need for changes in vote tally machines or new equipment. A bill allowing local governments to conduct instant run-off elections received only a courtesy hearing in the 2009 legislature.

The higher implementation cost of instant runoff voting contributes to Common Cause Oregon’s preference for fusion voting as reform option for legislative and statewide elections. Exploration of instant runoff voting in local elections would provide information and experiences that could help inform debate about its broader application.

It is important that state legislation enabling local government use of alternative election methods allow for more than just instant runoff voting to maximize the potential for local elections to be “laboratories of democracy” and provide first hand experiences with new options. For example, there is increasing interest in range voting, which has a greater likelihood of being able to use current vote tally equipment.

Proportional representation methods are particularly powerful means for elections to provide options to voters and increase representation options. Given the relative homogeneity of many of

our state's political jurisdictions, Common Cause Oregon is especially interested in cumulative voting in multiple seat elections.

Cumulative voting in a multiple seat political jurisdiction provides each voter with a fixed number of votes to spread among the candidates as desired with the top vote recipients winning the number of seats available in that election. For example, in an election for three seats on a five-person city council like in Portland, voters could choose to give one vote each to three candidates or two votes to one candidate and one vote to another candidate or all three votes to a single candidate.

This system allows voters with a particular political interest or members of a racial or ethnic group to band together behind a single candidate. In Portland this could facilitate the election of an African-American, especially since gentrification has dispersed that community beyond historically black neighborhoods such that obtaining representation through a single seat district election is difficult. Conservatives in Portland could also focus their support on one candidate who would represent their political views on the city council. In general, representation in city hall could better reflect the diverse interests of Portland residents.

Multiple seat elections with cumulative voting for legislative seats would require a reconfiguration of legislative districts. One option, for example, would be to have 15 Senate districts with two Senators elected from each district. Each of these Senate districts would elect 4 House members. With cumulative voting Republicans could focus on electing a member of their party as one House member out of four elected from a Portland district. Conversely Democrats could band together in an eastern Oregon district with the increased likelihood of having a voice in Salem as compared to our current single seat, winner-take-all election method.

Though proportional representation methods may seem strange they have been and are still used in the United States. In 1995 then-governor George W. Bush signed enabling legislation to allow Texas school districts to adopt cumulative voting. Since then more than 57 jurisdictions have switched to cumulative voting, primarily to remedy Voting Rights Act lawsuits.<sup>142</sup>

From 1870 to 1980 the Illinois legislature was elected from three-seat districts. Voters had three votes but could give all three votes to one candidate. The result was that many Illinois districts had two representatives representing two major factions within the majority party and one representative from the minority party. In Chicago this increased representation of Republicans, while in other parts of Illinois Democrats were more likely to have a representative in Springfield. In 1995 the Chicago Tribune editorialized in support of cumulative voting's return, writing that "Many partisans and political independents have looked back wistfully at the era of cumulative voting. They acknowledge that it has produced some of the best and the brightest in Illinois politics." Returning to multiple-seat elections and cumulative voting is supported by a bipartisan group of Illinois leaders led by former Governor Jim Edgar and former federal Judge Abner Mikva.<sup>143</sup>

A 1915 editorial after the first election in Ashtabula, Ohio using cumulative voting stated: "The drys and wets are represented; the Protestants and Catholics; the business, professional, and laboring men; the Republicans, Democrats, and Socialists; the English, Swedes and Italians are represented. It would be hard to select a more representative council in any other way."<sup>144</sup>

Most political scientists view the abandonment of proportional representation in the United States as being due to this system's threat to those with political power and not a defect in this election method. This speaks to the political difficulty of asking elected officials who have been successful in single seat, winner-take-all races to adopt a legislative referral of an alternative voting method. Building political momentum to adopt a proportional representation system using the citizen initiative is also a challenging prospect. Nevertheless, if the goal is elected officials who more fairly represent their legislative districts or varied interests within a city, then proportional representation must be considered.

### **Two Instead of Four Election Day Options?**

If voting is a habit, do too frequent elections encourage development of not voting? As one political scientist has written: "One might liken sleepy municipal elections to gateway drugs; by enticing so many people to abstain from voting, they weaken voting habits."<sup>145</sup> Trying to increase turnout is cited as one reason Delaware is considering legislation that would move their school board elections from the spring to the November general election. The other motivation is saving money by holding fewer elections.<sup>146</sup>

In Oregon there are four official election dates, March, May, September, and November. The most familiar dates are the May and November elections. Counties pay for those elections in even-numbered years<sup>147</sup> when higher profile state ballot measure and candidate races occur. School board elections are held in May of odd-numbered years. Due to double majority requirements (passage based on receiving majority of registered voters rather than majority of votes cast) bond measures began to be more frequently placed on the November ballot in even-numbered years when that rule that empowered non-voters didn't apply. Measure 56, adopted by the voters in 2008, changed the double majority requirement to only apply to March and September races, providing more incentive for school boards and local governments to use any May and November election for revenue measures.

These dynamics mean that March and September election dates are not frequently used, though their availability provides flexibility for local governments and other political jurisdictions. For these reasons it isn't clear that reducing from four to two election day options would meet goals of reducing election costs and increasing turnout, but Common Cause Oregon is open to this idea if election administrators and political jurisdictions in the state are interested.

#### **An Affirmative Right to Vote**

"Enshrining an affirmative right to vote explicitly in the Constitution or federal law" to "ensure a uniform set of voting laws rather than an assortment of inconsistent voting guidelines." "...the U.S. is one of only 11 democratic countries that do not explicitly provide the right to vote in their constitutions" this "constitutional silence on a basic right to vote leaves the United States in company with such regressive nations as Iran, Libya, and Singapore."

The Advancement Project is a leading advocate for an affirmative right to vote. Their mission is: "To develop, encourage, and widely disseminate innovative ideas, and pioneer models that inspire and mobilize a broad national racial justice movement to achieve universal opportunity and a just democracy."<sup>148</sup>

## More Information for Voters

### **Voters' Pamphlet Cost, Evaluation and Possible Improvements**

#### Cost

Oregon is justifiably proud of its long history of broad distribution of a Voters' Pamphlet. Its cost, however, is typically the single largest budget item of the state Elections Division. Between 2000 and 2008 Voters' Pamphlet costs ranged from \$311,975 for the 2004 primary to \$2,041,046 for the 2000 general election. In 2008, the Voters' Pamphlet cost \$426,191 and \$1,153,223 for the primary and general elections respectively.

On one hand this expense is more than justified given the public service the Voters' Pamphlet provides to Oregonians. At the same time it seems prudent to evaluate the effectiveness of the Voters' Pamphlet and consider possible improvements, regardless of cost concern. In other words, in a perfect world the Voters' Pamphlet would be a free resource for candidates and ballot measure campaigns provided to each household in Oregon. The fact that relatively nominal fees are charged for candidate and ballot measure statements is an indication that we don't live in that perfect world. But even if there were unlimited dollars for this educational resource it would still be prudent to evaluate who uses the Voters' Pamphlet and the effectiveness of this resource for potential voters.

Common Cause Oregon does not support the notion that the Voters' Pamphlet should be self-supporting. It should be recognized, however, that a Voters' Pamphlet statement by candidate and ballot measure campaigns are a bargain given that this document is delivered to every household in the state. The steps taken by the Elections Division to reduce costs by more efficient placement of statements on each page are also appropriate. Statement fees should not be raised to the level required to cover the cost of the Voters' Pamphlet. However, the cost per statement could be significantly increased and still be the most cost effective way for a candidate or ballot measure campaign to get a message in each household in a district or the state.

In addition to considering a per statement payment increase, Common Cause Oregon would support consideration of establishing an automatic inflation adjustment in the cost of Voters' Pamphlet statements. Making such an adjustment should be evaluated each election cycle with any increase occurring in 25-dollar increments. Some other increment may be appropriate, but the point is to not have annual adjustments that result in awkward amounts. Common Cause Oregon does not support offering different sizes of Voters' Pamphlet statements for different fees because that introduces an inappropriate differential on the information available to voters based on a group or candidates' ability to pay.

Senate Bill 776, with support from the Secretary of State, increased the charges for both candidate and ballot measure statements. Most of the previous fees were doubled. Some increases were greater with the highest jump being \$3,500 for presidential and vice presidential statements compared to \$1,000 previously. The cost of ballot measure statements went from \$500 to \$1,200, though 500 instead of 1,000 signatures are required if that method of securing a place in the Voters' Pamphlet is selected. These changes were within the scale of increases supported by Common Cause Oregon. The additional revenue is being allocated to the Elections Division budget, which is to be expected given budget difficulties. As noted earlier, however, Common Cause Oregon recommends that any long-term cost savings regarding the Voters' Pamphlet be directed towards paying postage on vote-by-mail ballots.

### Evaluation

The effectiveness of the Voters' Pamphlet needs to be evaluated. Its length, particularly the number of ballot measure statements, comes up as a frequent concern as well as the difficulty of reading the legalistic contents of most measures. The Elections Division has added evaluation of the Voters' Pamphlet as one of its performance measures and anticipates doing a survey of voters to gather data on the Pamphlet's use and effectiveness. Such an evaluation is fiscally prudent given that the Voters' Pamphlet is such a major expenditure of the Election Division.

### Possible Improvements

In the current absence of a Voters' Pamphlet evaluation, however, Common Cause Oregon makes some tentative suggestions for improvements including shortening the length of statements in the printed version of the Voters' Pamphlet with the option of providing more information online. This might be especially appropriate in regard to ballot measure campaigns where it seems that the pertinent information isn't so much the content of the statement but rather the lists of individuals and groups that support or oppose a measure.

One option could be to allow full statements by one ballot measure proponent and one measure opponent with a list of individual and group endorsers in the printed Voters' Pamphlet with website links for more details from endorsers on both sides of a measure. To the extent that the current Voters' Pamphlet ballot measure arguments provide cues to the voters along the lines of "I like this group, so I'll support this measure" the option described above provides this information in the paper version of the pamphlet with more information provided online.

The group Healthy Democracy Oregon advocates use of a citizens' initiative review panel to prepare a Voters' Pamphlet statement. This randomly selected panel that reflects the demographics of Oregon, sometimes called a citizen jury, would hear pro and con arguments about each measure as well as background information and expert testimony. After this multi-day review, the panel would determine if the ballot measure really accomplished the claims of its supporters and was a good solution to a statewide problem. "By providing a trustworthy, balanced, and citizen-based source of information in the hands of every voter across Oregon, the Citizens Initiative Review has the potential to decrease the influence of political spin in our initiative process."<sup>149</sup>

Legislation from Healthy Democracy Oregon for state support for citizen review panels failed in 2007. During 2008 this group did a pilot project on one ballot measure, but not on a timeline that allowed for putting the resulting statement into the Voters' Pamphlet. The 2008 trial run evidently cost \$125,000. Though there might be some economies of scale realized by doing more than one measure, full implementation would have been approximately \$875,000 for the all seven of the 2008 citizen initiatives.

During the 2009 session the group advocated for state sponsorship of a pilot project on up three ballot measures with the requirement that the statements be printed in the Voters' Pamphlet. Amendments clarified the scope of the pilot and included a sunset clause to ensure that it is a one-time effort. The pilot will not require any public resources, except for the cost of adding their statement to the Voters' Pamphlet. The Oregon legislature adopted HB 2895.

A more extensive trial of the citizens' panel will be helpful in evaluating the feasibility of this approach to providing more information to voters on ballot measures. The bigger question, though as discussed above is the need for a broader evaluation of the effectiveness of the Voters' Pamphlet. The results of that evaluation will inform the wisdom of future legislation pertaining to the citizens' panel approach to developing ballot measure statements for the Voters' Pamphlet.

### **Wikipedia Style Ballot Measure Discussions**

Another option to consider to achieve the "more information to voters" goal of the Citizens' Initiative Review process is interactive web based discussion forums, possibly moderated by political science classes as a cooperative effort between state academic institutions and the Secretary of State. These Internet forums could be styled on Wikipedia entries with opportunities for input by the public but with moderation by students with supervision by political scientists.

Obviously lots of details would need to be worked out, but consideration of this and similar innovative uses of the Internet to provide more information for voters merit further attention.

### **Elections Division Website Improvements**

The Elections Division is already exploring website-based improvements in providing information for voters. For example, during the 2008 election Oregonians could go online to check the accuracy of their voter registration status. The Elections Division is also working on upgrades to its website capacity to prevent reoccurrences of election night delays and crashes.

The *Voter Information Websites* Study by the U.S. Election Assistance Commission provides helpful suggestions that build upon the basic function of allowing voters to check their registration such as providing maps to polling places. In Oregon this feature would be showing nearby post offices and ballot drop off boxes. Other suggestions would also require modification to dovetail with vote-by-mail. For example, providing voters the option of generating a sample ballot so they can be better prepared at a polling place isn't required since Oregon voters receive their ballot in the mail and have time at home to cast their votes.<sup>150</sup>

The option to generate a voter specific Voters' Pamphlet focused on just the candidates and ballot measures that will face that voter that is available on the Washington Secretary of State site merits consideration in Oregon. The Washington website is also more visually inviting with logos and icons for different options while the Oregon site relies more on text and has a dense appearance that seems less than inviting, especially to inexperienced Internet users or users who prefer more graphics oriented websites.

An evaluation of state elections websites by the Pew Center on the States, *Being On Line Is Not Enough* gives Oregon a usability score of 57 out of a possible 77 points. To put this into perspective the top ten states had scores between 68 and 77 while the bottom 10 states scored from 33 to 49. In other words, Oregon is in the middle of the pack with room for improvement on the range of criteria used in this analysis.<sup>151</sup>

One criterion was web presence related to ease of connection from the state homepage and other searchability features. Ease of website navigation such as logical grouping of information and easy to use links is another topic reviewed in this analysis. Another criterion concerned the accessibility of content in terms of grade level of writing and writing for a website setting. The ease of use of the homepage was another criterion. The accessibility of the website in terms of

ease of viewing, easy to read graphics, ability to increase font size to increase readability, and tracking use of the site by visited links changing color was evaluated. Searchability and adequacy of tool descriptions with clear error messages were also considered.

In general, just as the Voters' Pamphlet deserves evaluation so does the Elections Division website. Especially with a limited state budget, opportunities for Secretary of State partnerships with graphic design and computer science resources at Oregon academic institutions deserve consideration. Evaluations of county election division websites are also recommended while recognizing that budget constraints are also significant for county election offices.

### **Public Service Announcements and Other Tools for Voter Education and Updates**

*Get out the Vote* by Yale University professors Donald Green and Alan Gerber primarily summarizes research findings on the effectiveness of a wide range of strategies used by political campaigns to generate action by voters. Some testing of nonpartisan get out the vote activities, however, has been done that point to potential opportunities for effective use of mass media to provide updates to voters and education about election process issues.

For example, nonpartisan radio ads that highlighted typically low profile mayoral elections and stressed the importance of local government showed voter turnout increases but the results were not definitive. These ads had a low level of penetration compared to most political campaigns.<sup>152</sup> But to be affordable as a function of government such ads as these would need to be public service announcements (PSAs) that may not be aired at suitable times or with a frequency enough to make a difference. Frequency may be able to be increased if the PSAs run on public access television, which again has a limited audience but may still be worth investigating due to low costs.

Possible applications of public service announcements either on public access or as a public private partnership with commercial radio and television stations include:

- Letting people know about upcoming voter registration deadlines
- During the vote-by-mail window letting voters know that updates in registration status due to a name change or a move can be made through Election Day
- Letting people know where ballot drop box locations can be found either by calling a toll free number or going online
- General advertising of the toll free voter information number

Robocalls are another technology option that may be effective in notifying those voters with incomplete registration cards such that they are considered non-HAVA compliant and not eligible to vote in federal elections. Such calls would only supplement and not replace postcards and other actions taken by county elections officials seeking to ensure that complete registration information is on file. Phone numbers are not required on voter registration cards so another consideration is whether or not the centralized voter database includes enough numbers to warrant this approach. Obviously robocalls have their detractors so this option needs to be carefully considered. But it seems possible for a robocall to have an upbeat informational message from the Secretary of State suggesting that the potential voter check their mail for a postcard from their county elections office requesting additional information to ensure complete and up to date registration information.

## **Video Voter**

Video Voter is the name of a project of the Center for Governmental Studies in Los Angeles that works to provide all candidates for public office and ballot measure committees with free television time to communicate their views to voters. Video Voter involves three components: production of videos by PEG access cable TV studios, distribution of videos over cable TV and the Internet, and viewing of videos in real time or on-demand via Digital Video Recorders or cable TV Video-On-Demand systems. For each of these steps, production, distribution, and retrieval, Center for Governmental Studies staff provides guidance and coordination. This effort is supported with foundation dollars.<sup>153</sup>

An improvement over this California program, though, could be a partnership between government and non-profit groups. Some aspects of what is produced by the Video Voter project in California are equivalent to what is in Oregon's Voters' Pamphlet. As part of the suggested evaluation of the Voters' Pamphlet review of the Video Voter project is recommended since it seems appropriate for government to provide online and video resources on candidates and ballot measures. The role for a non-profit could be to aggregate new stories, provide links to candidate questionnaires as well as links to independent electioneering groups.

Within the context of a Video Voter project, however, a priority should be on providing straightforward English versions of materials available. Common Cause Oregon has heard from some groups that the legalistic language, particularly ballot measures and their official explanations can be intimidating and that some people don't vote for fear that they wouldn't be voting their actual intent. The basic English version of the Voters' Pamphlet produced by the League of Women Voters of Oregon could be helpful in this regard.

## **ORESTAR Improvements to Facilitate Following the Money by General Public**

ORESTAR is Oregon's online campaign finance reporting and disclosure program that provides far more opportunities than past reporting procedures for the public to learn about campaign contributions to candidates and ballot measure campaigns at all levels of government. State campaign finance disclosure websites are graded in a long-term project conducted by the Campaign Disclosure Project, which is a collaboration of the UCLA School of Law, the Center for Governmental Studies, and the California Voter Foundation. Due to ORESTAR, Oregon's low grade shot up. However, one component of this grade, online usability, is still low in Oregon and dragging down ORESTAR's overall grade.

Review of websites in other states that receive high marks for their online usability as well as discussions with Campaign Disclosure Project staff is suggested to identify opportunities for improvement. Some suggestions, however, are to provide more background information for public users not familiar with the basic content of campaign finance reports that is accessible through a less dense, more visually appealing opening screen than the current ORESTAR online entry point. An explanation of the availability of pre-ORESTAR data is also suggested. Providing more opportunities for comparing total contributions and expenses and cash balances for candidates in the same race would also be helpful, with subsequent links to each candidate's contributions and expenditures.

Mentioning ORESTAR as a way to follow the money was an excellent addition to the 2008 Voters' Pamphlet. One suggestion, however, is to do more than just list ORESTAR in the

Voters' Pamphlet index because most readers are unlikely to know what that means. A more helpful index listing would be something like: Follow political money using ORESTAR.

### **Top Contributors Displays**

Requirements that a certain number of top contributors to a candidate or ballot measure be displayed either in the Voters' Pamphlet or on campaign communications are appealing suggestions that can run into both legal and logistical problems.

Logistical concerns are such that including top contributor data in the Voters' Pamphlet does not seem feasible. Production of the Voters' Pamphlet begins in late summer; often before some campaigns are raising significant amounts of money. This means that by the time Voters' Pamphlets arrive in mailboxes around the state the top contributor data would be out of date. Regarding ballot measures, one option would be to include in the Voters' Pamphlet the top donors to signature gathering efforts so that Oregonians know the financial players that contributed to put proposals before the voters. But this could be viewed as being unfair since subsequent top donors to campaigns that support or oppose ballot measures is so difficult to include.

In terms of the current Voters' Pamphlet, then, Common Cause Oregon supports the practice begun in 2008 by including information on ORESTAR in that document, though with an index reference that more clearly identifies the purpose of ORESTAR as noted above. As part of a broader evaluation of the Voters' Pamphlet, options for how to include top donor data could be considered that provide more timely information to voters than is feasible given current Voters' Pamphlet production logistics.

Requiring a top contributors list on electioneering communications by campaigns presents two legal concerns. One is that the Oregon Attorney General's office advised the Secretary of State to not enforce past requirements to label campaign materials with the relatively benign "paid for by" designation that includes the name of the political committee. This recommendation was based on an assessment that such display or disclaimer requirements violated the free speech provisions in the Oregon constitution.

In a legal environment where even restoring the "paid for by" labeling requirement on campaign ads needs a constitutional amendment, it seems that adding additional burdens on campaigns to identify on campaign materials a certain number of top contributors would also be a legal red flag. Assuming that an enabling constitutional amendment is adopted, then the possibility of requiring the basis "paid for by" label plus identification of the top three or perhaps top five donors could be considered.

The second legal concern, however, is that even with a state constitutional amendment, the top donor identification requirement could introduce logistical burdens on campaigns that trigger a federal legal challenge. Guessing the result of such a legal challenge is always difficult, but it does seem safe to say that reducing the burden to the extent possible while still providing information to the voter is desirable. One option that attempts to reach the appropriate balance between burden and public interest is to only require that the top three donors be listed. Even more likely to be found legally acceptable may be just adding a reference to where contribution data can be found on ORESTAR. Possible language could be "paid for by political committee XYZ, for contribution data go to ORESTAR.org."

If this approach is taken it would also be helpful to impose the same labeling requirements on campaign materials funded by independent expenditures over a certain dollar threshold. Label details would also need to be determined for different kinds of campaign materials, including email and online communications.

### **Beyond ORESTAR – Oregon Project Sunlight**

Project Sunlight, a project of New York state government, is a pioneering government website that ties together in one website campaign contribution data, lobbying expenditures, legislative votes, and contracts awarded made by the government agencies.<sup>154</sup>

Three of the four categories of transparency described above are in place in Oregon, though not in a coordinated fashion. ORESTAR includes the campaign finance component of what is included in this New York government website. Votes by Oregon state senators and representatives are summarized online on the legislature's website. Lobbying expenditures reported to the Oregon Government Ethics Commission will be available online due to legislation adopted during the 2007 session, though implementation of this work was delayed by the 2009 legislature due to budget difficulties.

The fourth accountability component is transparency of government contracts. House Bill 2037 focused on this topic and Common Cause Oregon (then Democracy Reform Oregon) testified in support. This bill died and the focus of many allies shifting to contracting procedures culminating in the passage of HB 2867. House Bill 2500 became the focus regarding online access to information about a wide range of government functions, including contracts. The catch is that due to budget constraints the bill does not include a lot of implementation details and is less focused on contract transparency. Common Cause Oregon will carefully monitor the progress of HB 2500 and its Transparency Oregon Advisory Commission as well as track transparency efforts regarding use of both federal and state stimulus dollars. Assessing the quality of jobs and diversity of contractors is another accountability concern regarding contracting procedures and use of economic stimulus dollars.

A Transparency Oregon website could also incorporate the campaign finance, lobbying, and legislative votes websites. If not, all these websites should be tied together by an umbrella website that could be called Oregon Project Sunlight. This will obviously require resources, but a helpful first step would be legislation directing the Department of Administrative Services to work with the state agencies preparing the websites described above to ensure coordinated planning that would facilitate development of an Oregon Project Sunlight website.

### **Increasing Voter Confidence**

Oregon is in the enviable position of having a commendable history of impartial and effective election administration. To maintain and increase voter confidence, however, opportunities to assess vote-counting accuracy should be continually assessed and election operations reviewed.

### **Shorten the Time Needed for Ballot Counts**

When elections are not close results can be announced by the press on election night even though official results come much later. In November 2008, however there were two close races, the U.S. Senate contest between Gordon Smith and Jeff Merkley and Measure 64, whose results

could not be “called” until almost two days after the election. Slow ballot counting caused this delay with long ballots cited as a major factor in slow vote tallying. Options to address slow counts include having enough vote tally machines and/or allowing vote scanning to begin earlier.

That vote counting can be slow due to long ballots should be no surprise since such ballots are not an uncommon occurrence in Oregon, especially in election years with large numbers of ballot measures. There are also variations in ballot length due to different local election circumstances. It is understandable that budget conscious counties will try to have enough vote tally equipment to cover most elections, resulting in slower vote counts when typical ballot counting demands are exceeded due to long ballots. To the extent that from election to election different counties may have varying lengths of ballots, what might be helpful is for the counties that use the same type of equipment to purchase some machines that can be used on a flex basis depending on the length of ballot in different counties. A long-term solution is to purchase enough machines to handle elections with longer ballots or higher turnout than usual.

Another option is allowing county election offices to begin early scanning of ballots. This idea was adopted in HB 3451 during the 2009 legislative session. Now county clerks will be able to begin scanning ballots into their vote tally machines earlier than was allowed in the past. This scanning must be done in accordance to security plans to be approved by the Secretary of State. The counting function of the vote tally machines still only starts after polls close on Election Day, but this step moves faster because of the preliminary scanning can now begin earlier due to HB 3451.

The 2009 legislature also adopted HB 3237 that included a provision requiring county clerks to electronically send precinct level election results to the Secretary of State. This step is typically done as part of certifying election results so this bill’s impact will primarily facilitate post-election precinct level analysis and not hasten the speed of learning results on Election night. Indeed, the bill specifies that this step should occur as soon as possible after any election without a definite deadline. Adding this kind of capacity to the Oregon Centralized Voter Registration database is already underway by the Elections Division, but this bill should ensure that these results are available electronically at the precinct level.

### **Post Election Audits**

The 2007 legislature adopted HB 3270 that calls for a post election audit. Such an audit occurred after the November 2008 election with a priority on careful assessment of this initial audit. The results of the hand counts conducted by county election administrators indicate that vote tally machines counted with very, very close to 100 percent accuracy. There were only 11 inaccurately counted ballots that represented less than 0.01 percent of the sample. There were 92 ballots labeled as exceptions, which means that ballots were marked in a way that could cause a vote machine count to not match a hand count result. For example, an incomplete erasure could be counted by a machine as an overvote while a hand count could have provided information needed to determine the voter’s intended vote. The exceptions found during the hand count represented 0.04 percent of reviewed ballots.

A report on the 2008 post-election audit identified opportunities for improvement, primarily related to timing, but none of them indicate any serious problems with the law or its implementation.<sup>155</sup> The 2009 legislature adopted recommendations from this report in HB 2095.

There has been criticism of HB 3270 that seems linked to different motivations for doing a post election review with election administrators being more concerned with answering certain questions while critics of the current law want different concerns assessed.

The Brennan Center for Justice released a major report evaluating different post-audit options.<sup>156</sup> HB 3270 uses an audit method where all the ballots for a given number of precincts are manually counted. This is more familiar to election administrators and similar to federal post-election audit proposals.

It appears that critics prefer a sampling of ballots that Brennan Center calls the polling audit method. Randomly chosen small samples of ballots are recounted in every precinct and the total compared with electronic results. This method seems to be preferred by statisticians and some voting watchdogs, but as of 2007 when the Brennan Center report was written no election administrators were using this method.

Two benefits of the polling audit method are that it confirms that the correct candidate has been declared the winner with a great degree of certainty and reduces the need to decide whether a discrepancy is large enough to justify additional action. The hand count will or will not produce a result within one percent of the full electronic tally. This is fine if the hand count matches the electronic count. But if it doesn't, then a full recount is necessary.

There are three weaknesses of the polling audit approach. One is it won't necessarily help jurisdictions discover fraud or specific machine problems unless errors are so widespread that it affects turnout. Second when a polling audit reveals discrepancies, little information is provided to identify the problem since the audit is detached from specific precincts. A third concern is that it can produce "false positives" with a problem being identified that doesn't really exist.

It seems that election administrators are less interested in the polling audit method because they have a greater confidence that vote counts are accurate and that the role of a post-election audit is to identify problems with certain machines or counting procedures in certain precincts. Election administrators are also more familiar with precinct level evaluation and other features of the HB 3270 method.

HB 3270 critics appear to have less confidence that the overall elections results are correct and feel that the polling audit method is better at making that evaluation even if the process provides less helpful information for election administrators.

In other words it isn't a situation of one method being inherently better than the other but rather that the two audit methods address different concerns. For this reason Common Cause Oregon supports continuing the current audit program with the improvements adopted in HB 2095. But the Secretary of State could also work to identify funds for a pilot effort, perhaps with only one or two counties, to conduct a post election review using the polling audit method. There may also be an opportunity for a partnership effort with an academic institution. For example, University of California at Berkley statistics professor did an analysis of a Marin County vote using the polling audit method.

## Review Recount Procedures

Overall, Oregon's recount procedures seem to be effective as illustrated by the recount of Measure 53 on the May 2008 ballot. A recount is required if the margin is within 1/5 of 1 percent. In the case of Measure 53 the margin required for a recount was 1,957 and the actual margin was even less, 550 more "yes" votes.

After the recount the overall vote count increased by 1,001 with 566 more "yes" ballots and 435 additional "no" votes resulting in a new "yes" margin of 681 votes. Oregon law is clear that vote intent should be evaluated and reflected in recounting procedures. The additional votes indicate that this occurred with votes gained on both side of this ballot question. The final result, however, did not change.

Measure 53 was a low profile issue and the recount didn't garner significant media attention. The close race in the 2004 Washington gubernatorial race and the recount litigation about the U.S. Senate seat in Minnesota illustrate that it could be helpful to review Oregon recount procedures. As noted earlier, one follow up in Washington was to clarify procedures for post-election challenges to votes and their legislation should be reviewed. Possible modifications to Minnesota recount procedures could also be evaluated, though resolution of that case indicates that may concerns in that state aren't applicable in a vote by mail state.

### Oregon Voter Bill of Rights

**You have the right** to vote if you are a US citizen, live in Oregon, are 18 years old, and have registered.

**You have the right** to vote if you are homeless.

**You have the right** to vote if you have been convicted of a felony but have been released from custody, even if you are on probation or parole.

**You have the right** to vote even if you have a guardian and even if you need help reading or filling out your ballot.

**You have the right** to vote or cast your ballot if you are in line by 8 PM on Election Day.

**You have the right** to know if you are registered to vote.

**You have the right** to choose whether or not you want to register as a member of a political party.

**You have the right** to use a signature stamp or other mark but first you have to fill out a form. No one can sign for you.

**You have the right** to ask for help from elections staff or from a friend or family member. There are some people who cannot help you vote, for example, your boss or a union officer from your job.

**You have the right** to a secret vote. You do not have to tell anyone how you voted.

**You have the right** to get a "provisional ballot", even if you are told you are not registered to vote.

**You have the right** to get a new ballot if you make a mistake.

**You have the right** to vote for the person you want. You can write in someone else's name if you don't like the choices on your ballot.

**You have the right** to vote "yes" or "no" on any issue on your ballot.

**You have the right** to leave some choices blank on your ballot. The choices you do mark will still count.

**You have the right** to use a voting system for all Federal Elections that makes it equally possible for people with disabilities to vote privately and independently.

**You have the right** to know if your ballot, including a "provisional ballot", was accepted for counting.

**You have the right** to file a complaint if you think your voting rights have been denied.

**Call toll free - 1-866-673-8683 to get more information about these and other voting rights.**

(Oregon Constitution, Sections 2 and 3; ORS Chapters 137, 246, 247, and 254; Vote-by-mail Manual; Help America Vote Act of 2002; OAR 165-001-0090 and 165-007-0030)

Developed by the Disability Steering Committee of the Oregon HAVA Committee and available at <http://oregonvotes.org/HAVA/ovbr.html>

## **Parallel Reforms**

### **Campaign Finance Reform**

There are indications that public distrust of politics linked to the role of money in politics may affect voter participation. One study assessed voter turnout linked with the growth of Senate election contributions by political action committees. "It would appear that the growth of real PAC Senate election campaign contributions has led to a reduction in voter turnout, possibly because such contributions may lead voters to feel politically disenfranchised and to experience a decline or loss in expected benefits from voting, perhaps in the form of expected lost influence over elected officials."<sup>157</sup>

Since relatively few people make campaign contributions, however, a better explanation of these findings may be that some don't think their vote matters because the interest of campaign contributors takes precedence. For example, a California survey found that the top barrier to voting cited by 66 percent of infrequent voters and 69 percent of nonvoters was that "politics are controlled by special interests."

There are many reasons to support campaign finance reform and it seems unlikely, especially as a stand-alone effort that reforming the system of campaign financing will affect voter turnout. Rather opportunities to increase voter participation and campaign finance reform can be considered complementary efforts.

### **Media Reform**

Broadcast television stations use public airwaves without paying any fees for the licenses issued by the Federal Communications Commission (FCC) in exchange for meeting the "public interest, convenience, and necessity." One way to evaluate public interest is whether or not voters are served by local news programs that typically provide little if any coverage of local elections. The Money in Politics Research Action Project worked with several state and national partners to document poor campaign coverage on Portland area TV news programs and file a license renewal challenge with the FCC. This challenge was denied.

In general, providing more and better information for voters is not just the responsibility of government as discussed above, but also a role that should be played by a vibrant and diverse

media. Any number of media reform efforts focus on expanding opportunities for local production of independent media, imposing meaningful public interest obligations on mainstream media, and revitalizing the watchdog role of the Federal Communications Commission. Much of this work occurs at the federal level, though, state level opportunities to push for national legislation should be pursued.

## **Redistricting**

### **Background**

States re-draw boundaries of congressional and legislative districts every ten years based on new census population figures. Some states may lose and some gain congressional seats due to population shifts. Always an intensely political process, sophisticated computer and mapping technology have enabled the drawing of more precise lines based on a wide range of criteria.

Gerrymandering has long been alleged in redistricting and occurs in three ways, incumbent protection, partisan advantage, and racial gerrymandering. It is important to note that racial gerrymandering can be linked to the valid criteria of preserving communities of interest. Given Oregon's demographic distribution, claims of gerrymandering may not be as applicable here than in other states. For example, Darlene Hooley won by healthy margins in 2000 and 2004 while Democratic presidential candidates Al Gore and John Kerry lost. There are also other factors beyond gerrymandering that contribute to electoral success including the power of incumbency, particularly in fundraising.

An underlying theme of redistricting reform discussions is embodied in this statement from Americans for Redistricting Reform, an organization that includes groups across the political spectrum including Public Citizen, Committee for Economic Development, and Republican Main Stream Partnership. "Redistricting reform is needed to ensure transparency of the process and to provide a more meaningful opportunity for effective public participation. Voters should choose elected representatives, not the other way around."<sup>158</sup>

"In 2001, both Republicans and Democrats elevated incumbent protection to new heights. In California, incumbent U.S. House Democrats paid \$20,000 apiece to a redistricting consultant for 'designer districts.' Republicans accepted this cozy arrangement in exchange for their own safe seats. The result in 2002 was 50 incumbent landslides, with no challenger winning even 40 percent of the vote. Nationally, only four challengers defeated House incumbents, the fewest in history. For the third consecutive election, fewer than one in 10 House races were won by competitive margins."<sup>159</sup>

Partisan gerrymandering involves use of several techniques with descriptive labels such as "packing," "cracking," and "kidnapping." "Packing concentrates one group's voters in the fewest possible districts, so they cannot influence the outcome of races in others; cracking divides a group's voters into other districts, where they will be ineffective minorities; and kidnapping places two incumbents from the same party in the same district."<sup>160</sup>

A Georgia case points to the influence of the Voting Rights Act on redistricting and racial gerrymandering. The Voting Rights Act has been used to prevent gerrymandering benefiting white legislators with a focus on drawing majority-minority districts to ensure African-American representation. What constitutes such a district, though, may be shifting. For example, the Georgia 2000 redistricting, controlled by Democrats, drew districts with less African-American

concentration effectively spreading black votes around to more districts. The Georgia plan was challenged under the Voting Rights Act, however, because there was less certainty of black representation in several districts. The U.S. Supreme Court upheld the Georgia plan.

Increased partisanship is often cited as another result of partisan redistricting. Former Iowa Congressman Jim Leach, a moderate Republican, identifies that with so few contested House seats it becomes particularly important to consider who controls the safe seats. “Then you have to ask who ‘are those people who vote in primaries.’ They are the real partisans, the activists, on both sides. A district that is solidly Republican is a district that is more likely to go to the more conservative side of the Republican part of the Party for candidates and platforms. Presidential candidates go to the left or the right in the primaries and then try to get back in the center. In House politics, if your district is solidly one party, your only challenge is from within that party, so you have every incentive for staying to the more extreme side of your party. If you are Republican in an all-Republican district, there is no reason to move to the center. You want to protect your base. You hear that in Congress all the time, in both parties – ‘We’ve got to appeal to our base.’ It’s much more likely than an incumbent will lose a primary than he will a general election. So redistricting has made Congress a more partisan, more polarized place.”<sup>161</sup>

As noted earlier, these redistricting concerns in Oregon appear to be less applicable given Oregon’s population distribution patterns. Evaluating this premise, however, would be one benefit of a parallel public redistricting process discussed below on page 73. The inherent conflict of interest or perception of conflict is a fundamental flaw of legislative drawing of district lines that warrants being addressed by procedural reforms and/or efforts to increase public oversight and input. In Oregon such reform efforts may not result in dramatically different district maps but would help reduce claims of partisan abuse and increase public trust. Reform discussions must also account for redistricting being poorly understood by the public.

### **Reform Options**

A paper by Thomas Mann prepared for an April 2004 Brookings Institute symposium on redistricting identifies three major reform strategies. One option is changing from single-member districts to multi-member districts that reduce the importance of boundaries and the motivation for partisan drawing of lines. A second option is improvement of redistricting standards and a third is reform in redistricting procedures.<sup>162</sup>

#### Criteria

Dr. Michael McDonald of George Mason University identifies the following redistricting standards:<sup>163</sup>

1. Contiguity
2. Compactness
3. Respect for communities of interest/existing political and geographical boundaries
4. Voting Rights Act guidelines
5. Equal population
6. Incumbent and partisan blind redistricting
7. Competitiveness requirements

#### Independent Commission

Dr. McDonald’s recommendations for a commission system based on the Arizona model with lessons learned from other states are:

1. The commission should have an odd-number of members and use a majority rule to select a redistricting plan. This institutional framework prevents stalemates
2. An equal number of partisan appointees to the commission should select an odd-numbered, tie-breaking member as the first order of business. This allows all commission members to have the same information throughout the entire process.
3. The selection procedure should insulate members from political influence, while at the same time providing for partisan representation on the commission. Members should not be allowed to run for election in the districts they create.
4. The commission should be given adequate funding to carry out its duties free of political interference. The state government should be constrained in funding of lawsuits challenging the commission's work. In the event of extraordinary circumstances, such as a protracted lawsuit, the commission should be given adequate funding to continue its work.
5. The commission should meet in public, and should actively solicit public input. It may be necessary for the commission to meet in closed session to consult with attorneys.
6. The commission should have immediate State Supreme Court review, to promptly deal with state law objections.
7. The entire process should be delineated and occur in a timely manner, so that candidates may file to run in the new districts.
8. The commission should have a competitiveness requirement in drawing districts, as so much as that requirement does not conflict with other legitimate goals of redistricting, such as population equality, adhering to the Voting Rights Act, etc.
9. The commission should not be allowed to know the location of incumbent homes when drawing districts. Information regarding partisan voting is necessary, however, in order to gauge the competitiveness of districts.
10. The commission should be given the same legislative authority of the legislature (this prevents certain lines of litigation).

However, when asked about a 2004 California redistricting reform proposal researcher Tim Storey of the National Conference of State Legislatures said, “No plan is perfect and ‘you can’t take the politics out of redistricting,’ and the track record is about even...commission systems are just as likely to be corrected or overturned by the courts as straight legislative plans.”<sup>164</sup>

### Multi-Member Districts

A third strategy discussed in the papers by Thomas Mann and Michael McDonald is a change in electoral systems. Multi-member congressional or legislative districts reduce the importance of district lines and the motivation for political line drawing. “Indeed, winner-take-all elections regularly violate the principle of majority rule based on statewide vote totals and can easily do so even after nonpartisan redistricting. Iowa Democrats have not won more than 20 percent of House seats in districts drawn by the state’s much-vaunted nonpartisan system for more than a decade, although they regularly win the state’s presidential race and at least 40 percent of the total congressional vote. Only non-winner-take-all, multiseat district systems are designed to fully and accurately represent the majority of voters.”<sup>165</sup> (See discussion of this option in the discussion of increasing electoral competition above on page 54.)

### **Oregon Redistricting Procedures and Reform Discussions**

The League of Women Voters of Oregon has an excellent report, *Redistricting in Oregon* that discusses our state’s redistricting criteria and procedures as well as possible reforms. A basic

description for drawing new legislative district lines is that the legislature prepares a new map. If legislative agreement isn't possible or the Governor vetoes the plan, then the Secretary of State draws the plan. It is possible to challenge this plan in the Oregon Supreme Court. Timelines and deadlines are in the Oregon Constitution and redistricting criteria are in ORS 188.010 outlined below. The legislature also draws new Congressional districts, though timelines and deadlines are not as clearly identified in state law and challenges are directed to federal court. One improvement could be adding clarifications in current law regarding drawing of Congressional districts.

**ORS 188.010 Criteria in Apportionment for Legislative Assembly and Congress**

The Legislative Assembly or the Secretary of State, whichever is applicable, shall consider the following criteria when apportioning the state into congressional and legislative districts:

- (1) Each districts, as nearly as practicable, shall:
  - (a) Be contiguous;
  - (b) Be of equal population;
  - (c) Utilize existing geographic or political boundaries;
  - (d) Not divide communities of common interest; and
  - (e) Be connected by transportation links.
- (2) No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.
- (3) No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.
- (4) Two state House of Representative districts shall be wholly included within a single state senatorial district.

It is worth noting that Oregon's criteria are similar to the recommendations outlined above by Dr. McDonald. The major difference is that McDonald recommends an electoral competitiveness criterion. Competitiveness and other possible criteria in addition to what is required in Oregon law are also discussed in the League of Women Voters of Oregon study. One factor to consider, however, is that population distribution trends in Oregon are such that it isn't possible to make every legislative district competitive. To the extent, however, that competition is a factor in line drawing, along with other important criteria, voter turnout could be enhanced by more meaningful elections.

There have been frequent calls, most recently by the Public Commission on the Oregon Legislature to establish a nonpartisan office of State Controller who would appoint a redistricting commission. This suggested legislation did not move during the 2007 legislature. Less comprehensive legislative proposals to modify redistricting timelines and procedures have also not been successful and no action on these options is expected during the 2009 session.

A long-term goal in Oregon is to continue advocating for redistricting by an independent commission. It is important to note, however, that this goal isn't linked to concern that past redistricting in our state has resulted in incredibly inappropriate district maps. In other words, it isn't clear that a nonpartisan redistricting commission would prepare maps that are significantly different from maps prepared by either the legislature or the Secretary of State. The point of an independent district, at least in Oregon, then is that the redistricting process wouldn't be vulnerable to claims of partisan abuse with an accompanying increase in public confidence in the process and its product. Given a track record of legislative disinterest achieving this goal may

well require use of the ballot measure process. This is obviously a major endeavor and a cost/benefit analysis is required to evaluate whether the resources involved in a ballot measure campaign justify the result in terms of greater public confidence.

The reforms discussed in the section merit continued assessment. Now, however, this discussion turns to ideas to improve redistricting in our state in 2011 that do not require legislation. The need for such educational efforts is increased by the possibility that Oregon will have six rather than the current five Congressional districts. In that eventuality the drawing of Congressional lines in our state will be more than just a few tweaks to the current district map.

### **Improving Oregon Redistricting in 2011**

Educational opportunities to improve redistricting in our state in 2011 include outreach to editorial boards and legislators as well as use of shadow institutions, a process advocated by Heather Gerken of Yale University School of Law. (The effectiveness of the shadow terminology needs to be evaluated as discussed below, but is used initially since this is the term Gerken has used in her writing.)

Gerken writes that shadow institutions are valuable for improving public policy decisions as well being potential stepping-stones to more systemic reforms. In the case of redistricting Gerken suggests nonpartisan commissions and writes, “We have a ‘here to there’ problem in election reform. Academics and reformers spend a lot of time on the ‘here’ (identifying problems with our current system) and the ‘there’ (figuring out how things ought to work in the future).” Gerken identifies partisanship as a major concern in election related policymaking, including “the highly politicized area of drawing election districts.” “The problem is not just that partisanship infects the decision-making process. The problem is that partisanship makes it hard to put neutral decision-makers into place. The people who decide who decides—the legislators who could take election decisions out of partisan hands—are themselves party members. They have every incentive to hang on to that power.”

Gerken proposes shadow redistricting commissions that would use census data that is available for free and increasingly affordable districting software. “Although the shadow districting plan would have no legal effect, it would lay down an important benchmark” and “be an inexpensive strategy for improving existing practices in the short term and jump-starting debate in the long term.”<sup>166</sup> Gerken suggests that foundations could support shadow-redistricting commissions but overall her idea is not accompanied by practical suggestions for conducting a shadow redistricting process.

Other terms for independent work done by a group parallel to the official redistricting process should also be considered. Other options to replace shadow is sunlight or public or open or transparency redistricting commissions. Model Citizen Commission is another term surfacing in reform community discussions. For the following discussion, Common Cause Oregon will use the phrase public redistricting process but terminology may change in the future.

Common Cause Oregon is exploring a partnership with an academic institution to conduct a Student Redistricting Seminar. Given Portland State University’s focus on community partnerships that institution is the initial focus of partnership discussions. Other public redistricting options under consideration are use of a citizen jury or a competition like one recently sponsored by the Ohio Secretary of State. Based on conversations with participants in past redistricting, including a former Deputy Secretary of State, Common Cause Oregon is

focusing on the student seminar approach. An academic seminar appears to be a better venue for providing the extensive background information and technical resources required for an effective public redistricting process. These tools may be helpful in assessing the results of legislative redistricting.

One difficulty facing any public redistricting process is Oregon's short timeline and difficulties in assessing communities of interest. This assessment during the legislative process is facilitated by public hearings, a step that could be difficult to replicate in a parallel public redistricting project. In general, project design of a Student Redistricting Seminar or any other public process needs to be clear about how it is –and is not – similar to the official redistricting done by either the legislature or the Secretary of State. Even if not identical to official redistricting, a parallel public process can be helpful to increase public awareness of this important topic.

A Student Redistricting Seminar would be accompanied by educational outreach with the whole package being called an Improving Oregon Redistricting Project that would include the following elements:

- Conduct educational outreach including editorial board visits to raise the profile of redistricting during their conversations with legislative candidates during the upcoming general election campaign season. Of particular interest is gathering input on how to define communities of interest. For example, understanding whether people in Chemult or Gilchrist listen to radio or read newspapers from Klamath Falls and Bend would be helpful information in deciding where to draw a district line in that region of the state. – summer and fall 2010.
- Meetings with legislative leaders and redistricting committee staff on redistricting criteria and upcoming Student Redistricting Seminar. – fall 2010 and winter 2011.
- Student Redistricting Seminar at an academic institution where student teams will prepare redistricting maps after background information and coaching is provided by guest speakers. In other words, student teams would draw maps parallel to the work of the 2011 legislature. Resources such as redistricting software would be provided. – spring 2011.
- Monitor legislative and possible Secretary of State redistricting line drawing using maps drawn by Student Redistricting Seminar.– summer 2011.
- Conduct a post-redistricting review with key opinion leaders. This could take the form of a conference, possibly in partnership with an academic institution. Regardless of the format the goal would be to identify improvements for redistricting in 2021.– fall 2011.

This would be an ambitious effort and require foundation support, but Common Cause Oregon is assessing funding options and gathering feedback on this possible project.

### **Redistricting and Prison Populations**

The goal of equal population in legislative and congressional districts is affected by the presence of prisons that, especially in some rural areas, can represent significant portions of an electoral district. The best solution would be for the U.S. Census to count prisoners by their home address and not as residents of the community that contains a prison. However, efforts to change census procedures in this regard have not yet been successful.

A dramatic example how redistricting that counts a prison population can affect an election is in a small Iowa town, Anamosa, that has one ward with a population of 1,300 prison inmates, none

of them eligible to vote, and only 58 non-prisoner residents. These 58 eligible voters have almost 25 times more clout than the 1,400 eligible voters in all of the other city wards. When asked if he considers the 1,300 prisoners constituents, the city council representative from this ward said, “They don’t vote, so I guess, not really.”<sup>167</sup>

Research by the Prison Policy Initiative indicates that there were at least 21 counties in the United States where at least 20 percent of the residents were prison inmates whose home addresses were not where they were incarcerated. Many other local governments have prison populations that are significant though not at the one out of every five people level in the counties noted above. “There’s no reason why a community ought to gain representation because of a large, incarcerated, nonvoting population,” said Professor Nathan Persily, director of the Center on Law and Politics at Columbia University.<sup>168</sup>

Drawing of local government electoral districts frequently adjusts for prison populations, either by only counting inmates whose home addresses are in the community or by not including nonvoting prisoners in calculations of equivalent district sizes. Making such adjustments when drawing legislative district lines is less common, though legislation has been introduced in some states on this topic. For example, House Bill 4935 was introduced during the 2007 session in Michigan but did not move.<sup>169</sup>

Representative Chip Shields introduced legislation in 2007 on this topic that did not get a hearing. His second attempt, HB 2930, received a hearing and Common Cause Oregon (then Democracy Reform Oregon) testified in support, but the bill did not move.

### **SECTION 3 –SUCCESES AND NEXT STEPS**

The major success of the 2009 legislative session was enactment of online or electronic voter registration. Legislation allowing cross-nomination of candidates (subject to acceptance by the candidate) with multiple parties listed on one ballot line was a last minute election reform victory due to the hard work of several minor political parties. Several other bills will facilitate improved election administration such as earlier ballot processing to enable faster vote counts. Legislation was also enacted to facilitate voter registration opportunities for high school students. Also important is that the Elections Division plans to conduct a survey evaluation of the Voters’ Pamphlet.

Regarding voter registration improvements, immediate next steps for Common Cause Oregon include consultation with the Secretary of State and county election administrators on rulemaking and/or 2010 legislation to improve use of National Change of Address updates and build on past steps to improve registration portability. Longer-term next steps include conversations with election administrators and ally organizations on tackling the broader package of voter registration improvements described on pages 27 through 38. A review of recount procedures, especially rules regarding challenging votes is also planned.

Other legislative opportunities that Common Cause Oregon will consider in 2010 and 2011 include continued advocacy for the National Popular Vote, allowing 16-year olds to pre-register to vote, and rolling back restrictions on voting rights in county jails. The feasibility of any of these options will be reviewed with key ally groups and stakeholders.

Civic education is another Common Cause Oregon priority and we are exploring opportunities for bringing the First-time Voter program to Oregon high schools in partnership with groups focused on increasing political participation by young people. This program development will be aided by work underway between the Secretary of State and Oregon Department of Education about how to incorporate voter registration education into Essential Learning Skills and provide tools for school districts.

Regarding governmental transparency Common Cause Oregon will monitor development of the Oregon Transparency Website mandated by HB 2500 A long-term goal is advocacy of an Oregon Sunlight Project that ties together into a one-step governmental accountability website access to lobbying and campaign contribution data, legislative votes, and governmental contracts.

Improving information for voters is another priority with Common Cause Oregon, which is eager to use the results of the Elections Division's Voters' Pamphlet evaluation in advocating for modifications to that resource and exploring other opportunities to inform voters.

Common Cause Oregon is also exploring opportunities for a public redistricting process to occur within the context of a broader educational effort. A Student Redistricting Seminar is being explored with possible academic partners and is a key element of an Improving Oregon Redistricting Project discussed on pages 73-74.

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