



Testimony in Support of S. 327
Election Laws Reform Act of 2013

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Joint Committee on Election Laws

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On Election Day 2012 voters in Boston, Springfield, Worcester, and other cities waited up to three hours to vote. While having a high turnout in an election is a good thing, having wait-times anywhere close to this long is unacceptable. As an active member of the Election Protection Coalition, we received over 1,000 calls from frustrated Massachusetts' voters on many subjects, from long lines, to problems with voter registration, to improper application of provisional and inactive voting rules. We also received call from those who could not wait for 3 hours to vote. We don't know how many voters left long lines and did not return, but we do know that our state can do better. In fact it can do a lot better. Massachusetts is way behind other states in terms of improving its election administration systems. We are one of only 18 states that do not have early voting, one of 22 that do not have no-excuse absentee voting, and one of 15 that do not have either. We are one of 25 states that do not audit our election equipment to ensure that our voting machines are accurately tallying the vote, and we are not leaders in implementing pre-registration of 16 year-olds.

S. 327 would remedy real problems in our election system and would make Massachusetts a leader in the area of election reform rather than lagging behind many other states. We applaud the sponsors of this bill and the sponsors of all of its component parts, most of which have been separately filed. We believe that S. 327 is a critical step towards making our generally well-run elections even better. It will encourage more people to register and vote (particularly young people), ensure that our voting machines are working properly and securely, help reduce long lines at the voting booth, and guarantee that election administrators are kept up-to-date as possible with mandatory training. Last year, a similar bill passed the House by a vote of 112-36 but was never taken up in the Senate. This year, Common Cause and our coalition partners will work very hard to get the bill through both branches and signed by the Governor. When passed, it will be the most significant election reform bill passed in decades.

Here are some of the bill's main provisions:

- 1) **Post-Election Audits of Election Equipment.**

Nearly all precincts in Massachusetts use electronic voting equipment to conduct elections. Electronic equipment, however, are subject to programming errors and mechanical flaws that can affect the outcome of an election. This provision of the bill would implement a mechanism for discovering potentially result-altering errors in the hardware and software of electronic voting machines, thereby protecting the integrity of our electoral system. There are many examples in Massachusetts of errors or malfunctions by electronic voting equipment that have caused votes to be miscounted:

- Methuen, 2009: AccuVote ballot scanner failed to read six ballots and the city clerk reported that the machines regularly jam and fail to count ballots.¹
- New Bedford, 2008: AutoMark ballot-marking machines could not process Republican primary ballots.²
- Abington in 2008: Out of 1255 votes cast in a city proposition, the scanner counted 4 votes wrong.³
- Taunton in 2008: A memory card problem in Ward 4 required votes from that ward to be counted and recorded separately, which forced the city clerk to create a new form to specifically accommodate Ward 4 returns.⁴

If an audit process had been in place prior to these elections, these malfunctions may have been detected long before 2008 and 2009.

Audits are conducted on a regular basis by all good businesses because they reveal accounting errors and ensure adherence to company policies. Similarly, election audits are important because they allow election administrators to check that electronic voting machines have properly and accurately counted all ballots. They can determine the existence and extent of a malfunction and identify errors in ballot counting mechanisms. Furthermore, they provide election officials with concrete data that enables the correction of systemic problems in results or procedures, including how blank votes and over-votes are counted. Because the electronic voting machines that are used in Massachusetts are manufactured by the same company, any insight learned in one precinct could be utilized by elections officials throughout the Commonwealth. Post-election audits can and have picked up improper programming, faulty ballot design, problems with ballot marking, and the like. At a very low cost, audits will also provide voters and elected officials a sense of security and the ability to detect fraud. Even if fraud does not exist, the procedure instills confidence and has caught discrepancies in machine tallies and actual ballots that were not caught in the pre-test of machines. Audits help states identify features needed in new voting machines, saving money when states retire old machines

¹ J.J. Huggins, *Jammed Voting Machine Misses Six Ballots in Close Race*, EAGLE TRIBUNE, Nov. 9, 2009, available at <http://www.eagletribune.com/local/x546148507/Jammed-voting-machine-misses-six-ballots-in-close-race>.

² Steve Urbon, *Ballot Glitch a Mystery*, SouthCoastToday.com, Sept. 10, 2008, <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20080910/NEWS/809100332>.

³ Robert Carrol, *Recount affirms: Abington Approves Another*, BOSTON GLOBE, May 18, 2008, available at http://www.boston.com/news/local/articles/2008/05/18/recount_affirms_abington_approves_another_override/.

⁴ Charles Winokoor, *Local Vote for Hillary, Mitt*, TAUNTON GAZETTE, Feb. 7, 2008, available at <http://www.tauntongazette.com/news/x1224705221>.

(many of the machines in Massachusetts are nearing the end of their useful lives). *25 states and the District of Columbia conduct a post-election audit.* California has been doing them for 30 years. This is not a new or radical proposal. It is a sensible one.

In terms of cost, Minnesota's statewide audit in 2006 has been estimated at \$24,500 to \$27,000 (for 202 precincts out of 4,192). In North Carolina's first audit when a single race was examined on ballots in 260 precincts, the average cost was \$65 per precinct. In Massachusetts, we estimate the cost around \$400-600 per precinct audited (2 tally clerks for 1-2 days). As only 63 precincts will be selected at random in a 3% audit, the cost would be about \$31,500. In reality, audits go very quickly and the cost could be even less. Other states use HAVA money and we could use it too (we have approximately \$50 million sitting in a bank that has been there for 7 years). Using a small amount of this money for audits will not hinder its usage for other current priorities. It is true that the State's HAVA committee would have to be convened and asked to make this change. This is not a difficult task.

Post-election audits are an important part of this bill that will help increase voter confidence and make Massachusetts' well-run elections even better. It is a common sense, low-cost proposal and we hope it will be enacted as soon as possible. We would, however, suggest returning the percentage of the audit back to 3%-- the number in the bill as it left committee last session. At 1%, there are just too few precincts to have much statistical confidence in the result.

2) Pre-registration. Academic studies of states with pre-registration (including California, Delaware, Florida, Hawaii, Maryland, North Carolina, Oregon, and Rhode Island) have shown "*a small, positive, and enduring effect on voter turnout,*" in young people, according to the *Worcester Telegram*, which reviewed the studies prior to writing an editorial supporting the concept.

Young people are the least likely demographic to register and vote. Preregistration—allowing 16 and 17 year-olds to pre-register to vote when they get their driver's license or in high school—is a proven antidote that is legal, workable, and inexpensive.

There is already a pending category for voters who are 17 but will be 18 before the next election in the Central Voter Registry (CVR), which is maintained by Secretary of State Galvin and is the database for all voter registrations statewide. The Secretary has an in-house programmer dedicated to the job. The formulas for this field will simply need to be updated but this is an inconsequential amount of work for staff already employed. When Maryland, Delaware, and North Carolina passed pre-registration, all three states did so without appropriation, recognizing that updating this small part of their own central voter database systems was well within their normal annual maintenance costs in their states' budgets.

During the debate last year, there was a concern raised about the number of youth who move. Young people 18-23 do move more frequently than the general population (although not as frequently as young adults aged 24-30) but young people who go to college also have the right to vote in their hometowns. In any given year, only 14% of young people 18-23 move. Amongst the general population the percentage is only slightly lower, at 10%. The state has in place a well-established procedure for removing people who move from the voting rolls – this procedure works as well for a 18 or 19 year-old voter as for a 30, 50, or 70 year-old one. The process is

systematic – voters who neither vote nor fill out the annual census in their community are first listed as inactive, and, after a few years, removed completely from the voter rolls.

Pre-registration is a legal and effective way to improve voter participation.

3) Online voter registration lookup. On Election Day, the 1-866-OUR-VOTE hotline received many calls from voters who recently moved or were infrequent voters and did not know where to vote. The Secretary's website allows for voters to enter their address and receive the location of their polling place, but this does not help voters determine whether they are registered, or from which address, or whether they are listed as inactive.

In fact, Massachusetts is one of just 9 states that does not give our voters the ability to look up their voter registration status online. With this ability, voters can determine where they are registered to vote, whether they are listed as inactive or a first-time voter, or whether they have been removed from the voting rolls. This is particularly important information for infrequent voters and those that have recently moved and will influence where they go and what identification they need to bring.

By implementing voter-registration status look-up, fewer voters will go to the wrong location, wardens will be less burdened by additional work and paperwork, and lines should be decreased.

4) Online voter registration.

Just this week, Virginia Governor Bob McDonnell signed HB 2341, making Virginia the 16th state to pass a law providing for paperless, online voter registration. Online registration would allow citizens to fill out paperless applications over the internet, shaving a week or more off the time used processing paper, cutting costs, decreasing errors, and encouraging young people and others to register to vote. More states are considering this measure, which enjoys widespread bipartisan support from lawmakers across the country and from the public.

And no wonder. This reform accomplishes many goals simultaneously with proven results. After Arizona implemented online voter registration in 2002, the first state to do so, registration rates rose from 28% to 53% among voters 18-24. California saw a smaller but also significant increase in voter registration as well. Arizona also found that on-line registration was five times less likely to contain errors compared to paper forms and was significantly cheaper than processing paper forms. As far as cost savings, a Pew Charitable Trusts study of Arizona and Washington found that each online registration costs 3 cents to process compared to 83 cents per paper form. Maricopa County, AZ, which has a population bigger than 23 states, saved over \$1 million in five years using online registration.

The online voter registration system proposed in this bill would search the Department of Motor Vehicles database for the applicants driver's license and other identifying information and match it to the electronic form thereby reducing security risks. Other states have used similar methods and have not had breaches of security. With decreased cost and errors, and increased registration rates, this is a reform whose time has come.

5) Early Voting. In the 32 states that offer early voting, the record shows that the added convenience has had a modestly positive impact on turnout. According to empirical studies, it

persuades voters who might miss the odd election to vote more regularly.ⁱ This retention of voters from election to election increases voter turnout in contests that are not highly publicized but has less of an impact in Presidential elections.ⁱⁱ

But early voting also acts as valve to relieve pressure on Election Day by reducing the numbers of voters who must vote on that day only. While having a large turnout is a good thing, having voters wait in lines up to three hours, as happened in a few places in Boston, and close to that in several other cities, is unacceptable. Evidence suggests that early voting reduces lines on Election Day and can make Election Day procedures more manageable and efficient.ⁱⁱⁱ That is one of the reasons that Mayor Menino has strongly supported early voting bills in the past.^{iv} The reform is also quite popular with voters and enjoys widespread support in public opinion polls.

In implementing early voting, we advocate for a longer voting period with weekend and after work hours. With too few early voting sites and too few hours, some states have experienced lines as long as 8 hours at early voting sites.

6) Inactive Voter Reform. Massachusetts is unique in tying inactive voting status to its state census forms. In fact, according to current law, if a resident does not return the census form in any year, he or she becomes an inactive voter and must fill out paper work (affidavit of continuous residency and a registration form) and show identification at the polls regardless of how frequently they vote. If the voter did not bring identification, he or she must cast a challenged ballot, which involves more paperwork. According to the law, even if a person votes in every election, he or she could become an inactive voter by merely not returning a census post card. This is crazy. It also was one of the most significant reasons behind long lines at many urban polling places because of the amount of paperwork required and the numbers of voters who are on the list in some communities. S. 327 proposes a modest reform by increasing the number of years that an unreturned form will place a voter on the inactive list from 1 to 2.

Conclusion.

S. 327 includes many other worthy provisions but I will not include them all here. The bill represents a giant leap forward in election administration in Massachusetts. It would go log way towards making voting more secure, accurate, accessible, and efficient and we urge you to give it a favorable report.

ⁱ Paul Gronke, *Early Voting Reforms and American Elections*, 17 WM. & MARY BILL RTS. J. 432-33 (2008).

ⁱⁱ *Id.*

ⁱⁱⁱ The Early Voting Information Center, *Frequently Asked Questions*, <http://earlyvoting.net/faq>.

^{iv} John C. Drake, *City Council Considers Moving Voting Day to Saturdays*, BOSTON GLOBE, April 3, 2008 (reporting that Mayor Menino believes there is a need for early voting in Massachusetts) *available at* http://www.boston.com/news/local/articles/2008/04/03/city_council_considers_moving_voting_day_to_saturdays/