



Election 2004

Findings and Recommendations



Primary Partners

We would also like to acknowledge

League of Women Voters, American Civil Liberties Union, the Metropolitan Denver Homeless Initiative, Colorado Women's Agenda, The Legal Center for People with Disabilities and Older People, The White House Project, Colorado Coalition for the Homeless, Latin American Research and Service Agency, Colorado Progressive Coalition, Colorado Voting Project, and CoPIRG'S New Voters Project

EXECUTIVE SUMMARY

Fair Vote Colorado (FVC) is a coalition of nonpartisan organizations created to monitor the 2004 Colorado Primary and General Elections and to document and attempt to resolve voting problems. The 2004 elections brought particular challenges for Colorado election administrators and voters, with substantial changes from the federal “Help America Vote Act of 2002” (HAVA) and new laws passed by the Colorado Legislature. This brief report will provide an overview of FVC’s findings and make recommendations for specific changes to Colorado’s election practices.

On Election Day, FVC identified six problems that we believe are significant:

- 1) Election judge trainings were inconsistent and in some cases inadequate
- 2) In some counties, absentee ballots were not mailed on time, and voters who did not receive an absentee ballot were not always permitted to cast a provisional ballot at the polls
- 3) In a number of cases, registration information was incorrectly entered into county lists, not entered at all, or not delivered to county clerks in a timely manner
- 4) ID requirements varied between counties
- 5) Provisional ballot rules were unclear and inconsistently implemented
- 6) Some polling places suffered significant logistical problems

Based on its findings, FVC recommends the following election reforms:

- 1) Election judge training sessions need to be made more uniform and effective
- 2) Absentee ballot practices should be refined in two ways: 1) lawmakers should codify the court decision allowing would-be absentee voters to cast a provisional ballot when needed; and 2) if absentee ballots are not mailed by a predetermined deadline, counties should be allowed to fax absentee ballots to voters, as they currently do for military personnel serving overseas
- 3) Colorado should provide an easy mechanism for voters to verify their registration by telephone and Internet
- 4) Colorado should allow additional forms of ID, such as student IDs, and ensure that ID requirements are clear and consistent across all counties
- 5) Ballots cast in the correct county but wrong precinct should be counted toward all races and ballot issues for which the voter is eligible; or, at a minimum, ballots should be counted for all statewide and countywide races
- 6) Colorado should alleviate logistical problems at polling places

FINDINGS

FairVote Colorado (FVC) trained over 200 volunteer poll monitors to observe polling places in sixteen urban, suburban and rural counties across Colorado during the 2004 General Election. FVC also operated a toll-free ‘vote line’ staffed by volunteer attorneys and election law experts, which took over 16,000 calls on Election Day, and maintained a website with voter information, that received over one million hits between October 15 and November 1 and took over 442,000 hits on Election Day. The central component of FVC’s Election Day strategy was two-fold: 1) to collect and respond to voter questions and complaints over the voter hotline and website and work with election officials to resolve as many of these problems as possible, and 2) to send poll monitors to precincts serving demographic groups believed to be most likely to encounter voting problems (minority, low income, elderly, renters, and young voters). FVC also monitored a “control group” of precincts serving areas less likely to have problems (higher income, non-minority).

FVC did not have volunteers in every county or in every polling place, so our findings represent only a sampling of what occurred on Election Day. And while the vast majority of voters with whom the FVC volunteers spoke had no complaints, we do know that thousands of voters experienced some problems in exercising their right to vote. In some cases, voters simply had trouble locating the proper polling place, while in others, legitimate forms of ID were refused and voters were not allowed to vote.

The six major problems listed in the Executive Summary are described below. Each is followed by policy recommendations intended to prevent these problems in future elections.

1) Election judge trainings were inconsistent and sometimes inadequate

With the growing complexity of elections, we recognize that recruiting and training election judges can be a daunting challenge for election officials. Necessary but late-developing emergency rules and legal actions posed additional challenges to officials this fall. However, during the summer and fall of 2004, FVC volunteers attended several election judge trainings and observed significant inconsistencies between different counties, between verbal and written instructions given to judges, and between conflicting federal, state, and county guidelines. The problems in training translated into difficulties on Election Day, with voters and poll monitors registering complaints about judges who were misinformed about ID requirements and other rules, or were making errors such as failing to offer provisional ballots to eligible voters. These problems were exacerbated by the fact that the state’s election judge manual was not finalized and distributed to the county clerks until the week before the election and therefore could not have been in the hands of the election judges, if at all, until shortly before Election Day.

Recommendations:

- Election judge training sessions should be more uniform throughout Colorado, provide effective preparation for judges to implement up-to-date rules and procedures, and be an enforced prerequisite for serving as an election judge

- ☑ Training should be more extensive (the current 2 hours is insufficient) and should include a small set of experienced, highly-trained, and possibly better compensated judges to troubleshoot problems in particular precincts
- ☑ Training should include information on how to effectively assist and accommodate voters with different types of disabilities
- ☑ The Secretary of State's office should establish consistent parameters for the content and timing of training sessions and distribute a statewide training manual well before Early Voting or county training sessions begin

2) Some absentee ballots were not mailed on time; provisional ballots were not always available as required by law

In the weeks leading up to Election Day, FVC received an average of 50 telephone calls per day from voters—most of them from Denver, Arapahoe and Jefferson counties—who had requested an absentee ballot but had not received one in the mail. The Colorado Secretary of State's office took the position in its rules that anyone who had requested an absentee ballot would not be eligible to cast a provisional ballot at the polls on Election Day. A court enjoined the Secretary of State's rule prior to the election, but some counties failed to make voters aware of the change. Moreover, out-of-state, disabled, and other would-be absentee voters were not able to make use of provisional ballots because they lacked reasonable access to the polls on November 2.

Recommendations:

- ☑ Colorado lawmakers should codify the court decision allowing absentee voters to cast a provisional ballot if they did not vote absentee. Ballots should be counted once clerks verify that no absentee ballot was received
- ☑ Statutory changes should be made so that if absentee ballots are not mailed by a certain deadline, counties can fax absentee ballots to voters, as they currently do for military personnel serving overseas

3) Problems with voter registration information

FVC received numerous calls on Election Day from voters experiencing problems with county registration lists. In many cases, a voter's name did not appear on the list; in others, the voter could not be found because a name or address had been entered incorrectly. In addition, inconsistencies plagued the procedures surrounding emergency registration. Individuals who stated that they had attempted to register through a voter registration drive were permitted to register on an emergency basis at the precinct polling place on Election Day; in contrast, voters who had moved but not changed their registration were not allowed to register on an emergency basis. By 2006, Colorado is projected to manage voter registration through a computerized statewide database, but without important safeguards such a system may be vulnerable to the problems evident in 2004.

Recommendations:

- ☑ Voters should have simple and secure ways to confirm their registration by telephone or Internet by disclosing a minimum amount of private information to ensure protection from third-party inquiries

- ☑ Colorado should make emergency registration easy, consistent, and effective
- ☑ The statewide voter database should be well-tested, resistant to hackers, and stored at redundant and physically separate sites. It should also be kept accurate and up-to-date but not subject to the kind of wide-ranging purges that have eliminated active, eligible voters in states like Florida

4) Confusion over ID requirements and use of student IDs

The 2004 election was the first in which all Colorado voters were required to present ID at the polls, and this new requirement was the source of some confusion. Late rule changes and the problems with election judge trainings left some judges uncertain about the rules regarding voter identification and provisional ballots. Some voters were told that certain forms of ID (a current utility bill or a passport, for example) were not acceptable, even though such IDs met the requirements set out by the Secretary of State. Some counties accepted college-issued student ID cards, while others did not.

Recommendations:

- ☑ Colorado should ensure that ID requirements are clear, uniform across the state, and consistent with HAVA and equal protection requirements
- ☑ Colorado statutes should accept a broader range of IDs, including student ID cards

5) Provisional votes on statewide races and ballot issues were not counted

Provisional ballots surely represented the area of greatest confusion in the 2004 election. Election officials had to deal with imprecise or conflicting state and federal statutes and unclear rules regarding provisional ballots. The provisional ballot acceptance rate varied dramatically among the ten largest counties, with one accepting only 43 percent and another accepting 86 percent. Most voters whose ballots were rejected do not know whether their vote counted or what they must do differently before the next election to ensure their enfranchisement in the future. Another issue arose when some voters cast their provisional ballots in incorrect (but usually neighboring) precincts. In our opinion, these voters were disenfranchised when their votes were counted only in the race for president and vice president and not in any other races or ballot issues. In 2002, provisional ballots cast in the wrong precinct were counted in all races for which the voter was eligible.

Recommendations:

- ☑ Non-partisan observers should be allowed the same access that partisan observers and those associated with ballot issues currently enjoy in monitoring the casting and counting of ballots
- ☑ All observers should be permitted to watch and listen to the processing of provisional ballots
- ☑ Voters whose provisional ballots have been rejected should be mailed a notice explaining the reason for rejection
- ☑ Ballots cast in the correct county but wrong precinct should be counted toward all races and ballot issues for which the voter is eligible; or, at a minimum, ballots should be counted for all statewide and countywide races
- ☑ Counties, not precincts, should be the controlling jurisdiction in any election dispute

6) Polling place logistical problems impeded the voting process

On Election Day, FVC poll monitors observed a wide range of logistical problems that hampered voting at polling places, including but not limited to the following: provisional ballot supplies lagged behind demand in certain precincts; multiple provisional ballots were placed in a single security envelope; lines were too long; not enough voting booths were available; voting machines broke down, would not start up, or recorded votes incorrectly; election judges arrived late; the polling place opened late or was not accessible to all voters; the location of the polling place changed between the Primary and General Elections; and voters were not informed of the correct location of their proper polling place.

Recommendations:

- Colorado should extend the dates for Early Voting to the weekend before the election
- Counties should ensure that all polling places comply with state and federal accessibility requirements, including HB04-1227, HAVA, and the Americans with Disabilities Act
- The use of Vote Centers, as in Larimer County, may help address many but not all of the problems described above. In discussing the geographic allocation of Vote Centers, the needs of all voters—especially those with limited mobility or inadequate access to transportation options—should be taken into account

Additional calls for reform

To increase voter confidence, electronic voting machines should use an auditable system, should have a transparent process for testing and certification, and computer security experts should be allowed access to improve security and prevent tampering. Machines must also provide the opportunity for voters with disabilities, including voters who are blind, to privately and independently cast and verify their ballot as required by HAVA and state law.

CONCLUSION

FairVote Colorado's findings from the 2004 election reveal that despite recent changes in state and federal election law, further election reforms are still needed in our state. If left unchanged, the problems detailed above hold the potential to deny thousands of Coloradans the right to vote in future elections. With thoughtful reform in a handful of important areas, unnecessary impediments to voting can be lowered and Colorado's electoral process made more consistent, convenient, and secure.