



**PROTECTING THE
VOTE IN 2016:**

A Review of 11 Swing States

PROTECTING THE VOTE IN 2016: A Review of 11 Swing States

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The **Common Cause Education Fund** is the research and public education affiliate of Common Cause, founded by John Gardner in 1970, and one of the country's most effective advocates working to reduce the influence of special-interest money in politics, empower voters to make their voices heard, ensure transparency in government, and protect the free flow of information. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

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INTRODUCTION

Election Day is the one day when every American's voice is equal. Whatever your party, income, or background, your vote counts the same as every other. That's the way it should be if we're to have a democracy truly representing us all. To achieve our ideals, everyone must vote, every voice must count.

Some, unfortunately, would have it be otherwise. Political fear-mongering is nothing new, but it feels particularly strong this year. Whether it's candidates dropping dark hints about a gamed election, legislators aiming to intimidate voters of color, politicians inciting illegal behavior at the polls, or groups using scare tactics to keep people home on Election Day, vote suppression is inappropriate, un-American, and sometimes illegal.

For a democracy to function at its best, every eligible citizen must participate. As Americans, we must appreciate the stakes by showing up and making our voices heard to decide who should lead us toward that "more perfect union." For us to exert our civic muscle, government must make our election systems free, fair, and accessible. We must *not* have laws stifling turnout; we must have ample opportunities to register and vote and safe and modern technology to ensure all ballots are counted as intended.



For a democracy to function at its best, **every eligible citizen** must participate.

Some states lead in democracy reform. Others need improvement. Still others impede voters in ways not seen since Jim Crow days. All must ensure that every eligible voter can register, cast a ballot, and have it counted properly. This report aims to provide a comprehensive overview of voting practices – from how voters register to what they can expect at the polling place, to what states do to ensure ballots are accurately counted – in 11 swing states where races are tight and single votes can make a difference.

We review:

- State requirements for voter identification at the precinct, noting whether the laws are fair or vote-suppressive;
- Options each state provides for voter registration, understanding that more opportunities increase the chances that those who have been politically marginalized can participate;
- State laws governing challenges to voters at the polling place on Election Day, given that such efforts are often unsubstantiated, sometimes intimidating, and can lead to illegal behavior;
- State procedures for counting provisional ballots, because some practices leave some voters voiceless;
- Whether a state provides a paper record for each vote, verifiable by the voter, as glitches can occur with voting machines;
- State policies and practices for robust post-election audits to detect and if necessary correct outcome-changing miscounts;
- State laws on transmitting marked ballots over the internet, where because of the limits of current technology they can be intercepted and undetectably altered.

Our review is only a snapshot. We don't cover all the states or issues that are as important as those listed above to a robust and comprehensive democracy. Ensuring that those who've completed criminal sentences are afforded their right to vote, for example, is crucial. So is ridding the political sphere of the ever-growing influx of money, advancing additional measures to improve access to the franchise, and restoring the full protections of the Voting Rights Act. Due to the Supreme Court's 2013 decision in *Shelby Co. v. Holder*, this is the first election in over 50 years without the full protections of that landmark law. There's much work on voting rights to be done at both the state and federal levels.

The point of this report is not to tsk-tsk states. Rather, we aim to empower voters with tools and information they need to vote. Studies show that those who make a plan, including how and where to vote, are likelier to follow through and succeed. Knowing what to expect at the polling place on Election Day helps you flesh out such a plan; knowing your rights assists you in securing your ballot.



America has no perfect voting system; **all states could do more** to provide access to voters and upgrade technology and safety measures.

This report isn't just for voters. We also aim to encourage election officials, state administrators, and legislators to improve election systems. America has no perfect voting system; all states could do more to provide access to voters and upgrade technology and safety measures. States that scored "needs improvement" or "unsatisfactory" in our ratings should heed the recommendations to improve their systems.

Whatever your state's grade, get out and vote. Our democracy depends on the participation of eligible citizens. Some groups and individuals will be fear-mongering up to and through Election Day. They'd have you believe the sky is falling, that your vote won't count. Don't let them get away with it. *Without your vote, democracy is incomplete.* Show up, stand up, and be counted.

The Swing States

Because races are especially tight in the following states, we selected them for review: Colorado, Florida, Iowa, Michigan, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin. In evaluating them on each issue, we've rated them "excellent," "good," "satisfactory," "needs improvement," or "unsatisfactory."

VOTER IDENTIFICATION: Strict or accessible?

Election Day is the one time of the year when we're equal, when all voices carry the same weight.

To ensure this equality – and encourage every eligible voter to participate in the political process – the ballot box must remain free, fair, and accessible. States should take care to safeguard elections, and all have measures in place to do so. Every state prohibits voter fraud, with penalties for violations including both fines and imprisonment; each also requires every voter to sign or check in at the polls before an election official. Additional purported safeguards don't improve the process; repeated studies have confirmed that in-person voter fraud already is essentially non-existent under current law.

In fact, photo ID laws harm democracy, erecting a barrier that may keep millions of Americans from voting. Following President Obama's election, and with renewed vigor after the Supreme Court's 2013 decision in *Shelby County v. Holder* – a case gouging one of the country's most effective and long-standing civil rights laws – states rushed to pass laws erecting obstacles to the vote. The changes included shortening early voting periods and eliminating same-day or Election Day registration, a reform increasing turnout by roughly 10 percentage points and particularly popular among people of color, students, the disabled, and seniors. Laws also were added requiring voters to present IDs that whites possess more often than African-Americans. Over the past six years, 22 states – most led by Republicans -- put such onerous measures to their books.

Many of the laws worked as intended – they kept eligible Americans from the polls – until they were stopped short. In several cases this summer, judges across the country struck down photo ID requirements and other voter suppression laws. Even the U.S. Court of Appeals for the 5th Circuit, arguably one of the most conservative courts in the land, recognized that whether by design or coincidence, the laws work to depress turnout among specific voter groups.



Photo ID laws **harm democracy**, erecting a barrier that may keep millions of Americans from voting.

While evidence varies case by case, it's clear that low-income Americans, including many Blacks, Latinos, students, and the disabled, are impacted significantly more by photo ID requirements than are white and higher-income voters. The result? Communities previously marginalized in our country remain out of power while those who've been included from the beginning continue to hold it. That doesn't make for a democracy truly representing us all. That doesn't ensure equality at the polls.

In the upcoming election, several of the 11 states reviewed for this report will enforce a voter ID requirement. It should be noted that, as specified in the Help America Vote Act, every state requires first-time, in-person voters who registered by mail to provide some identification when voting. Photo IDs aren't required under the federal law; a utility bill, paycheck, or some government form including name and address will suffice.

PHOTO ID LAW	WHAT KIND?	RATING
Colorado	Colorado has an ID requirement but voters may submit documents, like a utility bill; if the voter doesn't have those, a provisional ballot is permitted and will be counted if the voter is eligible.	Satisfactory
Florida	A voter lacking photo ID may vote by provisional ballot; it will be counted if the signature on ballot matches that on the registration form.	Satisfactory
Iowa	Photo ID isn't required for regular voting, but it is required for those registering and voting on the same day.	Needs improvement
Michigan	Photo ID is requested but those who don't have it can submit an affidavit.	Satisfactory
Nevada	No photo ID	Excellent
New Hampshire	If voters don't have the required photo ID, elections officials photograph them in the precinct, disrupting the elections process.	Unsatisfactory
North Carolina	Thanks to litigation, there is no photo ID law in place for this election.	Unsatisfactory (because the state has not abandoned an appeal)
Ohio	If a voter lacks photo or documentary ID, a provisional ballot is permitted; it will be counted so long as the last 4 digits of SSN are included.	Satisfactory
Pennsylvania	Photo ID law struck down; state will not appeal.	Good
Virginia	Strict photo ID requirement.	Unsatisfactory
Wisconsin	Photo ID requirement in place for this election. Court challenges continue.	Unsatisfactory

★★★★ States rated "Excellent"

Nevada has the most voter-friendly ID laws among the states we reviewed – it requires no photo ID for in-person voting. When a voter checks in to vote, the elections official compares the in-person signature against that on the voter registration form.¹ If they don't match, then the official will ask the voter a series of questions or request one of several specified IDs.²

☆★★★ States rated "Good"

Pennsylvania also requires no photo ID to vote, though not for lack of effort by some of its legislators. In 2012, House Republican Leader Mike Turzai championed a bill requiring photo ID at the polls. During a GOP state committee hearing, Turzai confirmed what voting rights advocates have long suspected is really behind these bills: they keep some potential voters away. Outlining the state party's agenda, he declared, "Pro-Second Amendment? The Castle Doctrine? It's done. First pro-life legislation—abortion facility regulations—in 22 years? Done. Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania? Done."³

A state court permanently enjoined the law in January 2014, finding it unconstitutional. The purportedly "free IDs" were difficult if not impossible to obtain from state motor vehicle offices, and there was "no evidence below of the existence of in-person voter fraud in [the] state," Judge Bernard McGinley concluded.⁴ After the court denied a rehearing, Gov. Tom Corbett announced the state wouldn't appeal.

Judge McGinley noted what several others subsequently have – that Pennsylvania had no “safety net” for those who didn’t have or couldn’t afford an ID. Had many of these strict ID laws included such an allowance, perhaps permitting voters to swear under oath to their identity in lieu of ID, most – including the one in Pennsylvania – may have survived legal scrutiny. Because the state did not appeal the ruling and no photo ID law will be in effect for this election, Pennsylvania merits a “good” grade; we downgraded from “excellent” due to legislators’ initial aim.

☆☆☆☆ States rated “Satisfactory”

Some states request – but don’t demand – ID at the polls. In **Michigan**, officials ask prospective voters for photo ID but allow those who don’t have one to sign a sworn affidavit attesting to their identity.⁵ The state requires no ID for absentee voting, a caveat to the rule exposing its absurdity. We grade the state “satisfactory” for permitting affidavits in lieu of photo ID.

Colorado, which generally excels in election reform, retains an ID requirement. Its requirement is among the least strict; it permits individuals to provide either a photo ID or a current document such as a utility bill, bank statement, or paycheck that includes name and residence.⁶ Those who don’t bring any of the permitted forms must vote by provisional ballot; so long as the voter is registered and eligible, the ballot will be counted.⁷ Points go to Colorado for that allowance. First-time registrants who registered without showing an ID and who vote by mail – the most popular way to vote in the Centennial state – must enclose a photocopy of their ID or document.⁸ Colorado merits a “satisfactory” rating thanks to the additional options.

Much like Colorado, **Ohio** requires individuals voting in-person to present a photo ID or a current utility bill, bank statement, pay stub, or any government document with the voter’s name and address. If the voter lacks all the specified forms, a provisional ballot is provided; it will be counted if the voter includes the last four digits of her social security number or driver’s license/state ID number, or provides the local board of elections with an ID (or one of the aforementioned numbers) within seven days after the election.⁹ As in Iowa, no such requirement applies to those who vote by mail.

Florida requires a photo ID for in-person voting. It accepts only IDs that include the voter’s signature, including debit or credit cards (if they have photos and signatures), military IDs, student IDs, retirement center IDs, public assistance IDs, and a handful of others.¹⁰ (If the photo ID doesn’t contain a signature, a separate ID with signature can be provided.) Again, Common Cause believes no photo ID should be required for in-person voting – as in-person voter fraud is far too infrequent to justify these laws – but Florida gets credit for accepting public assistance identification cards. Voter ID laws aim to suppress the vote of low-income Americans; Florida’s allowance of public assistance IDs offsets that aim, though the fact remains that 11 percent of Americans lack any photo ID. Floridians who don’t have photo ID may vote by provisional ballot, which will be counted if the signature on the provisional ballot matches that on the voter’s registration form¹¹. Florida gets a “satisfactory” grade for counting provisional ballots without requiring voters to take additional steps such as providing ID to county officials after the election.

☆☆☆☆ States rated “Needs improvement”

For already-registered voters, **Iowa** imposes no ID requirement. For those registering and voting on the same day, the state requires a written oath plus proof of identity and residence before a ballot can be cast.¹² A photo ID including the voter’s name and current address, or a photo ID plus an additional government document establishing residence, will suffice. If a voter lacks ID, an individual registered to vote in the same precinct can vouch for the person’s identity and residency. While we appreciate a state’s interest in taking precautions when voters register and vote on the same day, we recommend the use of e-poll books, allowing for instant checks on individuals, over requiring IDs, which many low-income and minority voters – up to 11% of the population¹³ – simply don’t have. Iowa’s northern neighbor, Minnesota, permits voters to register and vote on the same day without a photo ID. Iowa can do better.



States rated “Unsatisfactory”

New Hampshire’s practice demonstrates the absurdity of photo ID laws. The state requires photo ID at the polls, but voters who don’t have one – and are lucky enough to know a poll worker at their precincts – can ask a voting official to verify their identity. Barring that, voters lacking ID (or whose ID expired over five years ago) must submit a “challenged voter” affidavit and be photographed by the official. (A voter with a religious objection to being photographed, must complete a religious exemption affidavit).¹⁴ It’s unclear how a photograph taken moments before one casts a vote – and expunged after the individual votes¹⁵ – helps the state verify that the voter is qualified; perhaps the aim is to frighten potential fraudsters from showing up at all. Whatever the intent, the law does nothing to prevent fraud, potentially chills the electoral process, and causes longer lines at the polls. As in several other states, those voting absentee by mail in New Hampshire need not submit a photocopy of their ID, further showing that the law aims to block voters, not voter fraud. Low-income voters, including people of color, most often vote in-person; those voting by mail are more likely to be white and seniors.

As in Pennsylvania, voters in **North Carolina** need not bring photo ID to the polls – but that’s not how state Republican legislators would have it. The day *Shelby* was decided in 2013, legislators signaled they would move omnibus legislation that before *Shelby* would’ve been stopped by Section 5 of the Voting Rights Act. The bill eliminated same-day registration, preregistration of 16- and 17-year-olds, and out-of-precinct voting; it also reduced early voting and included a requirement that each voter produce at the polls one of a select few types of photo ID. A federal appeals court struck down the law this year, concluding that the favored IDs were chosen based on evidence that whites were likelier than blacks to possess them.¹⁶ Public assistance ID cards, whose holders in North Carolina typically are poor and often black, were not on the acceptable list. The court concluded that the law “target[ed] African-Americans with almost surgical precision” while providing “cures for problems that did not exist.”¹⁷ The state “failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina,”¹⁸ the judges added.

North Carolina’s now-defunct law is the epitome of a photo ID law that’s discriminatory in aim and impact, disenfranchising voters with zero benefit to the state. Considering the progress North Carolina had made in voting reform, this fall from grace – before the courts stopped it – gets the state a rating of “unsatisfactory.” This is particularly true because North Carolina leaders have signaled that they intend to continue fighting for voter suppression measures.

Virginia’s strict photo ID law, unlike North Carolina’s, will be in place for this election. The Commonwealth requires voters to present a photo ID before voting. Acceptable forms, aside from those issued by the DMV, include military and veterans’ IDs, student IDs, employee IDs, tribal IDs, or nursing home resident IDs issued by government facilities.¹⁹ Thanks to this longer list of options, Virginia’s law is less strict than the Texas law that was thrown out this year by the 5th Circuit Court of Appeals because of its disparate impact on voters of color. But Virginia does not provide a “safety net” to those who don’t have the required ID cards. It permits those who lack a required ID to vote by provisional ballot; however, the voter must submit documentation to the local board of elections by noon on the third day after the election, after which the board decides whether to count the ballot.²⁰ Virginia rates “unsatisfactory” on its ID law.

For this election at least, **Wisconsin** also will have a photo ID law. The U.S. 7th Circuit Court of Appeals stayed a lower court’s decision overturning the ID requirement, accepting instead another district court’s modification to a compromise offer made by the state.²¹ Wisconsin’s “ID Petition Process” (IDPP) is a last-ditch attempt to save its photo ID law by promising to provide individuals with quick identification at DMV offices – even if they lack proof of citizenship. The process, like New Hampshire’s, is absurd on its face. Here, the state’s aim is not to protect against fraud by verifying an individual’s identity but to impose a test the voter must pass to cast a ballot. Additionally, even if the ID is free, the means to obtain it are not: low-income individuals are less likely to be able to reach a DMV office. Stay tuned. The lower court may modify the injunction if plaintiffs can show the state is not complying.

VOTER REGISTRATION: Modern or outdated?

As we've seen during midterm elections, photo ID laws effectively disenfranchise much of the population – mostly low-income Americans and people of color. Voter registration requirements can present an extra challenge to voting. Most states' registration deadlines are 30 days before the election, an arbitrary date that cuts out the many citizens who, because of work, school, or childcare schedules, can't get to a voter registration agency (DMV, public assistance office, etc.) or county office, or mail in the form by that deadline. Some Americans don't know the deadlines – or in some cases that registration is even necessary – and many don't tune into political campaigns until their final weeks. Because these missed opportunities hurt voter and country alike, Common Cause supports state and national steps to modernize voter registration, enabling voters to clear the registration hurdle using technology. **Online voter registration, same day registration, and automatic voter registration** all bring us closer to a high-functioning 21st Century election systems.

Online voter registration

Over half the country has implemented **online voter registration (OVR)** – and with good reason. It replaces outdated, paper-based systems with a modern, streamlined process that is easier and cheaper. Plus, it gives voters a much more accessible means of registering. The Presidential Commission on Election Administration (PCEA), a bipartisan team created by President Obama to identify ways to shorten voter lines at the polls, hailed OVR in 2014 as “an invaluable tool for managing the accuracy of voter rolls and reducing the costs of list maintenance.” Red and blue states alike have passed OVR as a cost-saving measure. When Arizona adopted the reform, it reduced the cost of processing registrations from 83 cents per form to just 3 cents.²² The process is easier for administrators and more convenient to voters, who enter required information from their computers instead of completing, printing, and mailing in a form. To make the process work for all, states must make registration sites accessible to citizens with

ONLINE REGISTRATION	YES OR NO?	RATING
Colorado	Yes	Excellent
Florida	Yes, as of 2017	Excellent
Iowa	Yes	Excellent
Michigan	No (only to update addresses)	Unsatisfactory
Nevada	Yes	Excellent
New Hampshire	No	Unsatisfactory
North Carolina	No	Unsatisfactory
Ohio	Yes, as of 2017	Excellent
Pennsylvania	Yes	Excellent
Virginia	Yes	Excellent
Wisconsin	Yes, as of 2017	Excellent

disabilities, a move that generally is inexpensive.²³ The ACLU has effective and cost-efficient recommendations on improving accessibility, available here:

https://www.aclu.org/sites/default/files/field_document/021915-aclu-voterregonline_0.pdf

A note about the safety of online registration: Although Common Cause believes current technology does not allow secure online voting – see below – online registration is safe and reliable. In the rare event a voter registration system is hacked, voters whose information has been compromised may re-register, ideally through same day registration, or vote by provisional ballot, after which they may demonstrate their previous registration. The same safeguards do not apply for online voting.

★★★★ States rated “Excellent”

Colorado,²⁴ **Florida** (in effect 2017),²⁵ **Virginia**,²⁶ **Wisconsin** (in effect 2017),²⁷ **Nevada**,²⁸ and **Ohio** (also in effect 2017)²⁹ have legislation permitting eligible voters to register to vote online. **Iowa**³⁰ and **Pennsylvania**³¹ both added OVR administratively, rather than through legislation. All these states get high marks – or “excellent” – for providing voters with this option.

✗ States rated “Unsatisfactory”

Neither **North Carolina** nor **New Hampshire** provide OVR. Thanks to a recent 4th Circuit Court of Appeals decision, same day registration is back in place in North Carolina. New Hampshire also has same day registration, ensuring that those who’ve recently moved or just decided on a candidate will be able to register and vote on Election Day (or before), even if they were unable to register online. **Michigan**³² does not provide online voter registration but allows voters to update their current registrations online; Ohio currently provides this allowance too, but full OVR will be in place there next year. These three states receive an “unsatisfactory” rating because none provide the OVR option, especially given that it’s increasingly easy and affordable.

Same Day Registration

Perhaps the most powerful tool to boost voter turnout is same day registration (SDR). States with SDR permit eligible voters to register and vote on the same day, either on Election Day or during an early voting period, and preferably both.



Perhaps the most powerful tool to boost voter turnout is **same day registration**.

SDR raises participation by upwards of 10 percentage points and has proved particularly effective in increasing turnout among young voters, people of color, and other groups traditionally underrepresented.³³ Voter registration modernization programs – including same day registration – also can serve as an equalizer. As the

Atlantic reports, “47 percent of eligible adults *with family incomes of less than \$20,000 a year voted in 2012 and just one in four voted in the midterm election of 2010. By contrast, those with annual earnings of \$100,000 or more turned out at rates of around 80 percent and 60 percent, respectively. Similar disparities are seen in voter registration.*”³⁴ Greater registration opportunities alone won’t eliminate this gap, but they can start to diminish it. Twenty-two percent of eligible Americans are not registered; SDR could give them access to the ballot box.³⁵

★★★★ States rated “Excellent”

Only four of the 11 states we evaluated offer same day registration. **Wisconsin**³⁶ was among the first, adding it in 1975. The state’s voter turnout is consistently higher than that in most other states; in 2012, Wisconsin’s turnout was exceeded only by Minnesota, as 72.9 percent of eligible voters cast ballots in the presidential election.³⁷ **Iowa**³⁸ and **New Hampshire**³⁹ also offer same day registration; both boasted turnout rates above 70% in 2012.⁴⁰ In 2013, after **Colorado**⁴¹ passed a wide-ranging election reform bill, including vote-by-mail and

SAME DAY

REGISTRATION

YES OR NO?

RATING

SAME DAY REGISTRATION	YES OR NO?	RATING
Colorado	Yes	Excellent
Florida	No	Unsatisfactory
Iowa	Yes	Excellent
Michigan	No	Unsatisfactory
Nevada	No	Unsatisfactory
New Hampshire	Yes	Excellent
North Carolina	Yes, thanks to recent litigation.	Good (because the reform is back on the books for this election; however, the state has not abandoned an appeal)
Ohio	No	Unsatisfactory
Pennsylvania	No	Unsatisfactory
Virginia	No	Unsatisfactory
Wisconsin	Yes	Excellent

same day registration during an early voting period and on Election Day, turnout jumped by over 300,000 voters from 2011, the last non-presidential election before the reforms.⁴² That's close to the population of Aurora, the state's third largest city.



States rated "Good"

Although **North Carolina's** legislature eliminated same day registration in its "monster" bill in 2013, the 4th Circuit Court of Appeals recently reinstated same-day registration, the full early voting period (17 days), and pre-registration of 16- and 17-year-olds after concluding that the new law had both the intention and effect of discriminating against black voters. The court noted that between 2000 – when those reforms were enacted – and 2012, black registration "swelled by 51.1%. African American turnout similarly surged, from 41.9% in 2000 to 71.5% in 2008."⁴³ With new majorities looming, Republican legislators acted to suppress the vote. But thanks to the 4th Circuit decision, which the Supreme Court declined to review,⁴⁴ North Carolinians can register and vote during the early voting period. The state rates as "good" in this category simply because the reform is now back on the books; we downgraded it from "excellent" given the legislature's intent and persistence in appealing the court's ruling. We urge that during their next session, North Carolina legislators add to the state's election reforms.



States rated "Unsatisfactory"

Ohio, which once permitted voters to register and vote during a "golden week" in October, has eliminated that option. The 6th Circuit Court of Appeals upheld the move and the Supreme Court refused to disturb that ruling.⁴⁵ African Americans disproportionately register and vote early – 3.5 times more often than whites – so this change will likely impact turnout.⁴⁶ Ohio rates "unsatisfactory" as a result.

None of our remaining states – **Florida, Virginia, Pennsylvania, Nevada, and Michigan** – provide same day registration. None boasted turnout as high as that in the states with SDR, and so all are judged "unsatisfactory."

Automatic Voter Registration

Automatic registration (AVR) is a potential election game-changer for our elections. Through AVR, the DMV and other government agencies (public assistance offices, libraries, colleges, Medicaid offices, etc.) can automatically register eligible citizens. Done correctly, AVR is safe, efficient, and shifts the burden of registering from the prospective voter to the government. If all states adopted AVR, millions of Americans who are politically off the grid could register and join our growing electorate.

AVR is not new; Sweden, France, Argentina, Peru, Indonesia, Belgium, and others register citizens automatically, and their turnout rates trounce those in the U.S..⁴⁷ Recognizing this success, states are embracing AVR quickly. Oregon was first, in March 2015, with a “New Motor Voter” law, requiring DMV offices to transfer client data to county offices, which then register all eligible citizens who choose not to “opt out” of the process through a follow-up mailing. Legislatures in California, Vermont, West Virginia, and Illinois soon followed Oregon’s lead, though the Illinois law was vetoed by Gov. Bruce Rauner. Illinois would have been the first state to provide the service beyond the DMV, reaching public assistance offices and others. Connecticut recently adopted AVR by administrative action and several other states may do so as well.

Advocates will watch closely to determine the reform’s success. Oregon, the only state to have implemented it so far, already has seen a big jump in registration. By the November election, Oregon will have added 250,000 new registrants – a 14 percent increase from last year.⁴⁸ Turnout for Oregon’s 2016 primary, moreover, beat that of 2012 – jumping to 36% from 22%.⁴⁹ There’s no way to know if the increase is solely attributable to AVR, but it surely helped. Oregon already has some of the highest turnout in the country; we expect AVR to provide an additional boost.

To date, none of the 11 states we reviewed has AVR; each receives an “unsatisfactory” grade for this section. Again, the reform is fast-moving. As with online registration, it is not a matter of “if” but “when” states adopt it.

AUTOMATIC REGISTRATION	YES OR NO?	RATING
Colorado	No	Unsatisfactory
Florida	No	Unsatisfactory
Iowa	No	Unsatisfactory
Michigan	No	Unsatisfactory
Nevada	No	Unsatisfactory
New Hampshire	No	Unsatisfactory
North Carolina	No	Unsatisfactory
Ohio	No	Unsatisfactory
Pennsylvania	No	Unsatisfactory
Virginia	No	Unsatisfactory
Wisconsin	No	Unsatisfactory

POLLING PLACES: Are challenges acceptable?

In presidential races, the stakes are always high. And in this decidedly unconventional year, the sense that a lot is on the line feels especially palpable. Particularly in hotly contested states, the pressure to win may lead party activists, political groups, and individual voters to engage in inappropriate, sometimes illegal behavior.

Indeed, it's already happening. In August, Republican presidential nominee Donald Trump urged supporters in Pennsylvania to "not just vote on the eighth [but] go around and look and watch other polling places and make sure that it is 100 percent fine. We are going to watch Pennsylvania," he added. "Go down to certain areas and watch and study, make sure other people do not come in and vote five times."⁵⁰ Trump has repeatedly made similar comments in other forums.

"Certain areas"? Delivered to mostly white, working class crowds, Trump's words are an unmistakable incitement to voter vigilantism and a deliberate attempt to undermine public confidence in the most vital cog in our democracy. When public figures, especially candidates, call for potentially threatening, intimidating, and illegal behavior, citizens may be robbed of the opportunity to vote. That's why it's essential that states have clear laws controlling behavior at polling places.

Most states clearly bar intimidating behavior at the polls, and the federal Voting Rights Act prohibits intimidation, threats, and coercion against individuals attempting to exercise the franchise. (For a detailed analysis of state laws against intimidation, pre-Election Day challenges, and challenges at the polls, please see Common Cause's and Demos' 2012 publication, [Bullies at the Ballot Box](#)). We urge every state to be extra vigilant in prohibiting intimidating behavior. For voting to be free, fair, and accessible, citizens must be confident that they will not face intimidating language or behavior, or any other attempt to interfere with their right to vote. Such behavior is especially troubling when targeted at people of color challenged by whites, and anyone who is part of a group that has been politically sidelined or marginalized. The effects may extend far beyond one election, deterring even civically-engaged individuals from casting future ballots.

In addition to prohibiting voter intimidation, states should limit – if not eliminate – in-person challenges on Election Day. States generally specify whether and how challenges are conducted and with what result for the challenged voter. Parties and groups alike have conducted mass challenges, often targeting poor and minority communities, the "certain areas" alluded to by Trump. Wherever they occur and whatever the circumstances, challenges can be



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CHALLENGES	WHAT'S THE LAW?	RATING
Colorado	Colorado permits non-elections officials to challenge voters, but the challenged voter can vote regularly after satisfactorily answering questions.	Good
Florida	Florida permits poll watchers and registered voters to challenge voters; challenged voters must vote provisionally.	Unsatisfactory
Iowa	A challenged voter must cast a provisional ballot unless the challenge is withdrawn.	Unsatisfactory
Michigan	Challengers in Michigan have many allowances but challenged voters may cast regular ballots if an elections official deems them eligible.	Needs improvement
Nevada	Some categories of challenged voters must vote provisionally.	Unsatisfactory
New Hampshire	Challenged voters may cast regular ballots upon submission of an affidavit as to identity and eligibility.	Good
North Carolina	Despite some poor practices, the voter may vote a regular ballot if the election official believes he is eligible.	Satisfactory
Ohio	Only elections officials may make challenges on Election Day.	Excellent
Pennsylvania	Many categories of individuals may challenge voters on Election Day, and a heavy burden – producing an eligible voter from the precinct to attest to identity and eligibility – is on the voter.	Unsatisfactory
Virginia	Once challenged, voters may sign an oath as to eligibility and then vote regularly.	Good
Wisconsin	Challenged voters may vote after attesting to an oath, but the board will review it.	Needs improvement

disruptive for the voter, others in the precinct, and election officials. Challengers often question the citizenship, residence, or identity of individuals or groups of voters. Most states do not require physical evidence or proof of these claims; even without proof from the challenger, the challenged voter must sometimes vote by provisional ballot. State laws vary on how those provisional ballots are counted.

Below, we specify how each of the 11 states regulates challenges. (For a detailed account of what poll watchers and observers are permitted to do in the precinct, see *Bullies*.) We advise prohibiting outright day-of challenges – absent physical proof – unless made by trained elections officials; we rate each state’s law according to the protections afforded the voter, with marks of “excellent,” “good,” “satisfactory,” or “unsatisfactory.”

Ohio is the only state we reviewed that permits only elections officials to challenge voters on the day of an election, so only Ohio earned a grade of “excellent.” Several other states rated “good” for permitting voters to vote regularly after swearing or attesting, under penalty of perjury, to their eligibility. We believe this suffices. Some states had mixed provisions, with some “good” and some “unsatisfactory” requirements; we labeled these “satisfactory” on average. States that are less voter-friendly and more permissive to challengers received an “unsatisfactory” rating. Note that we rated the states based on protections afforded challenged voters. States may need to make additional improvements to curb intimidating or threatening behavior at the polls. Such behavior is prohibited by the Voting Rights Act, but states should specify banned conduct on their books as well.

★★★★ States rated “Excellent”

Ohio gets our highest rating because it permits only precinct election officials to challenge voters on Election Day. Registered voters may challenge other voters before Election Day, allowing judges to conduct a more thorough examination without causing congestion at the polling place and giving challenged voters an opportunity to gather evidence to defend themselves against baseless claims ahead of the election.

States that permit challenges by other registered voters on Election Day are using an outdated practice that should be prohibited. In Ohio, challenges that the pertinent board of elections has not ruled on by Election Day are addressed by precinct election officials at polling places.⁵¹ The voting location manager offers challenged voters an opportunity to swear under oath that they have “fully and truly” answered a series of questions about eligibility.⁵² The questions depend on the grounds for the challenge: citizenship status, age, state residence, or precinct residence; the manager may ask additional questions on other kinds of challenges.⁵³ If the challenged voter provides sufficient documentary evidence (for some claims), and makes the appropriate declaration under oath, a regular ballot may be cast. Otherwise, the voter gets a provisional ballot, to be counted only if fully completed and the board of elections determines that the voter is registered and eligible. The law specifies that “[i]f a person challenged refuses to answer fully any question put to the person, is unable to answer the questions as they were answered on the registration form by the person under whose name the person offers to vote, or refuses to sign the person’s name or make the person’s mark, or if for any other reason a majority of the precinct election officials believes the person is not entitled to vote, the precinct election officials shall provide to the person, and the person may vote, a provisional ballot.”⁵⁴

☆☆☆☆ States rated “Good”

Colorado prohibits individuals who are not elections officials (or not designated by them) to be within six feet of a voting booth or equipment.⁵⁵ Though the state permits poll watchers, election judges, and voters registered in the precinct to challenge voters,⁵⁶ a challenged voter who satisfactorily answers the challenge may still vote by regular ballot. State law requires that the challenge “shall be made by written oath, shall set forth the name of the person challenged and the specific factual basis for the challenge of the person’s right to vote, and shall be signed by the challenger under penalty of perjury in the second degree.”⁵⁷ No oral challenges are permitted; all challengers must use the prescribed form.⁵⁸

The election judge must ask the challenged voter a series of questions addressing age, citizenship, residency, etc., depending on the kind of challenge, to determine eligibility. If the questions are answered “satisfactorily” and the voter signs a provided oath, attesting to citizenship, age, residency, and other matters, the election official will accept a regular ballot.⁵⁹ If the challenged voter refuses to answer the questions, sign the challenge form, or take the required oath, a provisional ballot is issued.⁶⁰ We believe a provisional ballot is warranted under these circumstances, though provisional ballots are not always counted (see below). The challenger is also given the opportunity to withdraw the challenge.

Provisional ballots and those cast by mail also are subject to challenge. (Most Coloradans vote by mail, so we cover challenges to mailed ballots here.) Any mail ballot may be challenged if the challenger uses the prescribed form, signed under penalty of perjury, and includes a basis for the challenge.⁶¹ Colorado law requires that challenged ballots be counted unless rejected due to an incomplete or incorrect voter affidavit, forgery of a deceased person’s signature, or submission of multiple ballots.⁶² The secretary of state’s rules provide that if a mail ballot is challenged, the election judge must forward the ballot to two other election judges of differing political parties.⁶³ If both judges determine the voter is eligible, the ballot is counted; if both determine he isn’t eligible, they must follow statutes governing the counting of ballots where a signature on the affidavit and registration (assuming that this is applicable) don’t match.⁶⁴ If the signatures don’t match, the judges must send the voter a letter within two days of the election describing the signature discrepancy and enclosing a form for the voter to complete and a request for copy of voter identification (listed above). If the voter completes the form and provides a copy of his identification, the ballot is counted.⁶⁵ Disagreements between the election judges on whether the signatures match are resolved in favor of the voter and the ballot will be counted.

All challenges, plus challenged voter affidavits, are submitted to the county clerk, election official, or other designated individual.⁶⁶ Challenges that aren't withdrawn are delivered to the district attorney for investigation, which should be conducted within 10 days.⁶⁷

New Hampshire has a reasonable challenge law. Voters may be challenged in writing at the polls by election officials, other registered voters in the same town or ward, or individuals appointed for this purpose by political parties or the attorney general.⁶⁸ If the moderator – or election official – finds the challenge “well grounded,” the challenged voter may vote a regular ballot after submitting a specific affidavit as to identity and eligibility.⁶⁹ If the challenge isn't “well grounded,” the election official will allow the challenged voter to cast a ballot.⁷⁰ No challenges may be made at the Election Day registration table,⁷¹ a smart provision to avoid congestion for those looking to register and vote on the same day.

A challenger must submit a signed affidavit, under oath administered by an election official; the challenge must be based on personal knowledge “or other basis of probable cause that the challenged voter is ineligible to vote.”⁷² Challenges must assert grounds from an itemized list – including ineligibility based on age, citizenship status, residence, and others – and provide “specific facts” in support.⁷³ Individuals whose party affiliation is challenged at a primary election may vote after swearing under oath that they affiliate with and generally support candidates of that party.⁷⁴

In **Virginia**, as in other states, party-authorized representatives – or poll watchers – are permitted at polling places.⁷⁵ So are neutral observers.⁷⁶ Virginia permits election officers and any “qualified voter,” regardless of precinct or county, to challenge a voter “listed on the poll book but known or suspected not to be a qualified voter.”⁷⁷ Challengers must submit a written, prescribed statement, subject to penalties for “hindering, intimidating, or interfering with a qualified voter,” detailing any claim that an individual is ineligible to vote by virtue of lack of citizenship; age (under 18 by a general election); non-residence in Virginia, the precinct, or the town; disqualification under the state Constitution; identity misrepresentation; or previous voting in the same election.⁷⁸ The election officer must explain the challenge to the voter and, unless it is withdrawn, offer the voter an opportunity to sign an oath refuting it.⁷⁹ Those refusing to sign may not vote. Signers may vote a regular ballot unless the poll book indicates they've already voted, in which case a provisional ballot is allowed.⁸⁰ (Post-election audits can determine if an individual double-voted, which is a punishable offense.) Given that challengers need not submit proof of ineligibility, the voter's signed oath, subject to penalties for perjury, should suffice. Virginia rates a “good,” but should do more to require challengers to substantiate their allegations.

☆☆☆☆ States rated “Satisfactory”

North Carolina permits political parties to designate observers (two per precinct) during primary and general elections. The chair of each political party in a county may also designate 10 “at-large” observers registered in the county to observe at any polling place in the county.⁸¹ All observers must be registered in the county where they're observing, and of “good moral character.”⁸² Observers may not “impede the voting process or interfere or communicate with or observe any voter in casting a ballot.”⁸³

Aside from prohibitions against intimidating behavior at the polls (explored more fully in *Bullies at the Ballot Box*), North Carolina's laws include strong language on what challengers are prohibited from doing:

“The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.”⁸⁴

Challenges also “shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.”⁸⁵ We strongly encourage states to require that challenges (preferably conducted before Election Day) be based on specific facts, with substantiation.

Individuals not registered within the county may challenge voters on Election Day on the following grounds: non-residence in North Carolina or the county or precinct in which the voter is registered (challenge won't survive if voter moved within 30 days of the election); age (not 18 or won't be by the general election); lack of citizenship; false identification; past felony conviction; already voted in the election; residence outside the municipality (for municipal elections); or, for partisan primaries, incorrect partisan registration.⁸⁶ (The law still prohibits out-of-precinct voting and lists failure to present proper photo ID as grounds for a challenge, but the 4th Circuit has struck down those provisions.)

All challenges are heard and decided before the polls close. For finality's sake, this is a good procedure. Precinct officials must inform the challenged voter of qualifications to register and vote, and must "examine him as to his qualifications."⁸⁷ If the challenged voter proves his identity and residence within the precinct (although out-of-precinct voting is now permitted) through sworn testimony, the election judge will then tender an oath.⁸⁸ If the challenged voter refuses the oath, the challenge is sustained and the voter's name is erased from the poll book. If the challenged voter takes the oath, the election official may nevertheless sustain the challenge "unless they are satisfied that the challenged registrant is a legal voter."⁸⁹ The law specifies that, "[n]o challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated."⁹⁰ If satisfied that the voter is legally qualified, the judge shall overrule the challenge and allow the vote; any vote received after a challenge includes a "sworn" notation on the registration record opposite the registrant's name.⁹¹

If the judge sustains the challenge, the voter may apply for a challenged ballot using a prescribed form, including a signed affidavit regarding eligibility. A letter "C" is entered on the "permanent registration record" of those requesting challenged ballots. (Decisions are appealable to the county's superior court; the "C" is removed if the challenge is denied.) Challenged ballots are bundled and delivered to the board chairman at canvas.⁹² They typically are not counted and are kept in sealed envelopes for six months after the election. If an election is contested, either party may request the court to unseal the envelopes. If the court agrees, the board of elections will consider each challenged ballot and "rule as to which ballots shall be counted."⁹³ The board can take "such further evidence as it deems necessary, and shall have the power of subpoena."⁹⁴ Ballots ordered to be counted will be added to the vote totals. We give North Carolina a "satisfactory" grade; despite some poor practices, the voter may vote a regular ballot if the election official believes he is eligible. Other states permit the voter to cast a regular ballot upon submitting an oath or attestation; we believe that's appropriate.

☆☆☆☆★ States rated "Needs improvement"

In **Michigan**, an election inspector must challenge a voter if the inspector "has good reason to suspect" the voter is unqualified.⁹⁵ Another registered voter from the precinct may also challenge a voter if that individual "knows or has good reason to suspect that individual is not a registered elector in that precinct;" a voter may also be challenged for attempting to vote in person after requesting an absentee ballot.⁹⁶ Once the challenge has been made, the inspector must write a report detailing the alleged violation, name of the challenger, time of the challenge, and name, telephone number, and address of the challenged voter.⁹⁷ Oddly, the challenger need not provide complete identifying information. The law bans challenges made "indiscriminately and without good cause" and specifies that challenges may not "interfere with or unduly delay" the election inspector's work.⁹⁸ A challenge made "for the purpose of annoying or delaying voters," is a misdemeanor.⁹⁹

The inspector is required to put a challenged voter under oath to answer questions regarding eligibility; any other voter in the polls may also question the voter.¹⁰⁰ If, after questioning, the inspector concludes the voter is a "qualified elector," a regular ballot may be cast; if the voter is found not qualified at that poll, no vote is permitted. And if "any one of his answers concerning a material matter shall not be true, he shall, upon conviction, be deemed guilty of perjury."¹⁰¹ To avoid disrupting the polling place, the challenged voter (and presumably the challenger?) must step aside until unchallenged voters have cast their ballots.¹⁰²

Political parties, incorporated organizations, or organized committees of citizens interested in a ballot question or "in preserving the purity of elections and in guarding against the abuse of the elective franchise" may designate two challengers per precinct, if the clerk of the secretary of state approves.¹⁰³ Challengers may observe the counting of ballots and may make challenges upon good belief.¹⁰⁴ Any officer or election board

blocking challengers from entering the polls is subject to “a fine not exceeding \$1,000, or by imprisonment in the state prison not exceeding 2 years, or by both such fine and imprisonment ...”¹⁰⁵ While challengers in Michigan seem to have more protections than voters, challenged voters may still vote regular ballots. Had the state permitted its voters to vote regular ballots after an appropriate attestation or oath – rather than allowing the official to make a determination on the voter’s qualifications following the challenge – Michigan would merit a “good” grade. As is, it “needs improvement.”

Thanks largely to its attempt to impose photo ID requirements, **Wisconsin** hasn’t been the most voter-friendly state lately. Challenges by election inspectors¹⁰⁶ and voters registered in the state are permitted and may be lodged against anyone the challenger “knows or suspects is not a qualified elector.”¹⁰⁷ An inspector administers an oath to each challenged voter and asks a series of questions appropriate to the challenge.¹⁰⁸ If the challenged voter refuses to fully answer any relevant questions, the inspector will reject the vote. If the challenged voter meets registration requirements and satisfactorily answers the questions, but the challenge isn’t withdrawn, the inspector administers another oath regarding eligibility. Those who take this oath are allowed to vote,¹⁰⁹ but their votes are subject to review by the board.¹¹⁰ (The board’s decision, though, is appealable.)¹¹¹ As a result, Wisconsin rates “needs improvement.”



States rated “Unsatisfactory”

In **Florida**, any registered elector or poll watcher may challenge another voter within his or her county – not just within the precinct – if the challenge is in writing and the challenger swears to an oath specified in the statute.¹¹² Immediately thereafter, the clerk or inspector provides the challenged voter with a copy of the oath and a provisional ballot.¹¹³ If the challenge alleges that the voter’s legal address is outside the precinct, the voter is given an opportunity to execute a change of legal residence.¹¹⁴ If the change places the voter in the correct precinct, a regular ballot is permitted.¹¹⁵ (If the change puts the voter in another precinct, the voter is directed there; if the voter insists on remaining in the original precinct, a provisional ballot is issued.¹¹⁶) That is the only circumstance under which the challenged voter may vote a regular ballot.

The process allows any political poll watcher or voter registered in the county to make an allegation without substantiating it. The voter has no immediate opportunity to counter a claim that, for example, he is not a citizen or otherwise ineligible. But some protections are in place. The challenger must attest to the claim, and any elector or poll watcher “filing a frivolous challenge ... commits a misdemeanor of the first degree.”¹¹⁷ A false oath, moreover, is punishable as a third-degree felony.¹¹⁸ Challenges made “in good faith” and “in furtherance of any activity or duty permitted of such electors or poll watchers by law” are not be subject to liability.¹¹⁹ And if the voter provides satisfactory written proof of his eligibility by 5 p.m. two days following the election, the vote *will* be counted.¹²⁰ Because the state puts a burden on the voter to prove his eligibility however, Florida is rated “unsatisfactory.” Again, an oath or attestation – punishable by perjury – should suffice.

Iowa also permits challenges on Election Day, but gives voters more opportunities than Florida to counter the challenger. Any precinct election official or registered voter may challenge a voter based on citizenship, age, residence, (though same day registration can sometimes cure the problem), false information on a registration form, a felony conviction, or a legal judgment of incompetence.¹²¹ The challenger must use a prescribed form and attest to the truth of his statement;¹²² otherwise the form will be rejected.¹²³ (Precinct election officials may also challenge voters, but don’t need to use the prescribed form.) A challenger who willfully files false information commits second degree election misconduct, an aggravated misdemeanor.¹²⁴

Challenged voters receive an explanation of the qualification of electors from the elections official and may be examined under oath.¹²⁵ The official may ask for the voter’s age and residence, the time at the residence and whether the voter has another residence.¹²⁶ (Citizenship is conspicuously absent.) The official may permit the challenger to question the voter, and the voter may present “such evidence and facts as the elector feels sustains the fact that the person is qualified to vote.”¹²⁷ If the challenge is withdrawn, the voter may cast a regular ballot; if it’s not withdrawn, a provisional ballot is permitted.¹²⁸ The challenged voter – in addition to any other eligible voter – may present written statements or documents in support of her case until polls close.¹²⁹ Because the challenged voter must vote a provisional ballot unless the challenge is withdrawn, Iowa’s process gets an “unsatisfactory” rating.

In **Nevada**, any citizen may enter a polling place to observe elections.¹³⁰ And any registered voter of the precinct may challenge a voter on grounds that “he or she is not the person entitled to vote as claimed or has voted before at the same election.”¹³¹ The challenger must submit and sign under penalty of perjury a prescribed affirmation that the challenge is based on personal knowledge of the challenged voter.¹³² We commend Nevada for requiring that challenges be based on personal knowledge and not suspicion, which is often legally difficult to characterize. An election board officer tenders an oath to each challenged voter, tailored to the allegations of the challenge (e.g. if the challenge alleges the voter has provided an incorrect address, the officer tenders an oath regarding the voter’s residence).

Nevada puts the onus on the challenged voter to counter the accusation by signing the oath or affirmation on the prescribed form.¹³³ In general, if the challenged voter does *not* execute the oath, no vote is permitted. Instead, the election officer must write “challenge” next to the voter’s name in the register.¹³⁴ If the voter refuses to sign an oath regarding political party affiliation or registration, a nonpartisan ballot is issued.¹³⁵ (This rule has greater implications for primaries, which are closed in Nevada.) A voter who refuses to sign an oath verifying residence at the registered address is directed to a “special polling place,” and may vote there for President, Vice President, U.S. Senator, and those running for state and county offices.¹³⁶ If the challenged voter signs the oath – and the challenge doesn’t pertain to identity – a regular, partisan ballot is allowed.¹³⁷ As with other states, Nevada gets good marks for this practice.

If the challenge is based on residence, the voter may not cast a regular ballot without providing “satisfactory identification which contains proof of the address at which the person actually resides” (a voter registration card does not suffice) – even if he has signed the applicable oath.¹³⁸ If the challenge is based on identity, the challenged voter who wishes to cast a regular ballot must present “official” photo identification or be accompanied by an adult with photo ID who can verify his identity under oath.¹³⁹ For any challenge, the election officer must record the challenger’s name, the name of the challenged voter, and the result; the officer must orally notify the registered voter who made the challenge of the result “if possible.”¹⁴⁰ (Challengers are also mailed the result no later than 21 days after an election.¹⁴¹) Nevada’s practices are mixed – in some instances a challenged voter may vote a regular ballot, in others not – so it gets an “unsatisfactory” rating.

Pennsylvania’s challenger laws place the burden on the voter. Poll watchers appointed by candidates and parties are permitted to “keep a list of voters and shall be entitled to challenge any person making application to vote and to require proof of his qualifications, as provided by this act.”¹⁴² In addition, if five or more registered voters of any district show that appointment of overseers – separate from poll watchers - “is a reasonable precaution to secure the purity and fairness” of the election, then the court of common pleas must appoint two “judicious, sober and intelligent electors,” each from separate political parties, to oversee and supervise the proceedings of election officers.¹⁴³ Like poll watchers, these electors may challenge voters at the polls.¹⁴⁴ Again, allowing this many individuals to challenge voters can, if not unchecked, result in chaos and intimidation at polling places, even if the state has strong prohibitions against such behavior.

Another registered voter, election officer, overseer or watcher at a primary or general election – a long list – may challenge a voter’s identity or residence.¹⁴⁵ Once challenged, the voter must “produce at least one qualified elector of the election district as a witness, who shall make affidavit of his identity or continued residence in the election district.”¹⁴⁶ It’s worth noting that Pennsylvania is among the states in which Trump has encouraged his supporters to “go around and look and watch.” Challenges en masse could effectively suppress votes. It shouldn’t have to be this way, but we encourage voters, given the state’s current law, to go to the polls with a friend or family member from the district. This sort of burden on voters flouts standards of democracy, but “better safe than sorry.” Pennsylvania rates “unsatisfactory.”

PROVISIONAL BALLOTS

No sensible American wants a replay of the *Bush v. Gore*¹⁴⁷ debacle of 2000, with its hanging chads, stopped counts and recounts. But that election prodded Congress to pass the Help America Vote Act (HAVA),¹⁴⁸ a federal law that set standards for states on voting machines, registration, poll worker training, accessibility, and other election administration issues. The law also established the Election Administration Commission to assist states in complying with new benchmarks.

Because nearly 2 million votes went uncounted in 2000 – largely due to machines failing to register votes properly – HAVA established a requirement that anyone not appearing eligible to vote at the polls (because their name isn't

found on voter registration list or they don't provide required identification) be given a provisional ballot, to be counted if election officials thereafter verify their eligibility.



Provisional ballots allow those who couldn't otherwise vote at the polls to **cast a ballot**, sometimes giving them needed time to find and bring in require identification. But they also instill a sense of confidence that ballots will count when in fact they may not.

With the law in place, nearly 2 million provisional ballots were cast in the 2004 presidential election. But 40 percent – 800,000 -- went uncounted. Provisional ballots allow those who couldn't otherwise vote at the polls to cast a ballot, sometimes giving them needed time to find and bring in require identification. But they also instill a sense of confidence that ballots will count when in fact they may not. To avoid this problem, we recommend that states do what's

necessary to verify voters' eligibility on Election Day AND provide same day registration. That way, eligible citizens, who believe they are registered but do not find themselves on the rolls, for whatever reason – administrative error, voter mistake, or improper purging – can vote and be counted.

Below we review the 11 states' practices on when provisional ballots are distributed and how they are counted.

★★★★ States rated "Excellent"

In **Colorado**, voters who claim to be registered, but whose qualifications can't be established from the registration list or other documents on hand, must cast a provisional ballot.¹⁴⁹ So must voters who don't show required identification (including photo ID and documentary proof such as a utility bill),¹⁵⁰ and those whose votes were challenged and who provided "unsatisfactory" answers in response.¹⁵¹ Provisional ballots must also be cast by citizens voting after polls have closed when hours have been extended by court order.¹⁵² Those casting provisional ballots must complete an affidavit, subject to penalty of perjury, and be given a toll-free

PROVISIONAL BALLOTS	WHAT'S THE LAW?	RATING
Colorado	Uses almost no provisional ballots, thanks to an extensive reforms package, including same day registration.	Excellent
Florida	Doesn't count provisional ballots cast out of precinct.	Unsatisfactory
Iowa	Same day registration does away with the need for many provisional ballots, but Iowa doesn't count provisional ballots cast out of precinct.	Needs improvement
Michigan	Does not count provisional ballots cast out of precinct but permits voters to provide ID up to six days after the election.	Needs improvement
Nevada	Does not count provisional ballots out of precinct.	Unsatisfactory
New Hampshire	Doesn't use provisional ballots.	
North Carolina	Thanks to litigation, provisional ballots will be counted for this election.	Satisfactory
Ohio	Gives voters time to provide ID after the election, but does not count provisional ballots out of precinct.	Needs improvement
Pennsylvania	Challenged voters must vote provisionally.	Unsatisfactory
Virginia	Provisional ballots are not counted out-of-precinct.	Unsatisfactory
Wisconsin	Allows voters to provide ID the next day to have provisional votes counted.	Satisfactory

number or website to determine whether the ballot was counted (and if not, why);¹⁵³ the affidavit, moreover, serves as a voter registration application for future elections.¹⁵⁴

The election official must then verify the voter's eligibility. If the voter is found eligible, the provisional ballot will be counted.¹⁵⁵ If the affidavit is not signed or ID not provided, the official must advise the voter by letter within two days that, for the ballot to be counted, he must come to the office and sign it or provide the ID – whichever is applicable -- within eight days of the election.^{156 157} Provisional ballots cast outside one's county will not be counted.¹⁵⁸ Provisional ballots must be counted by the 14th day after a general election (by the 10th after a primary).¹⁵⁹

Colorado uses very few provisional ballots, largely due to the state's adoption in 2013 of a comprehensive elections package allowing voting-by-mail and at vote centers, same day registration, and more.¹⁶⁰ For this reason, it warrants an "excellent" grade. In the 2014 election, only 981 provisional ballots were cast. Of those, 387 were issued and cast due to losses of connectivity to the state's electronic SCORE database. With its new voting program, Colorado has reduced the use of provisional ballots by a stunning 98%.¹⁶¹ If other states moved to a comparable program, they'd likely see similar declines, meaning that nearly all votes cast would be counted.

☆☆☆☆ States rated "Satisfactory"

North Carolina has recently improved some provisional ballot provisions – in part thanks to a court order. A Tar Heel voter eligible to vote and having submitted a registration application, will be given a provisional ballot if not listed on the registration record.¹⁶² The voter must first execute a written affirmation of registration in that jurisdiction.¹⁶³ (Current statutes state that the individual must affirm registration in the polling place's

jurisdiction, but the 4th Circuit Court recently struck down the law prohibiting out-of-precinct voting, so provisional ballots given to individuals voting within the county but outside their precinct should be counted.) A voter casting a provisional ballot must be provided with written information on how to determine if the ballot was counted and, if not, why.¹⁶⁴

The state will count a provisional ballot only if the voter is registered in the county, voted in his proper precinct, and was otherwise eligible.¹⁶⁵ Now that the 4th Circuit Court of Appeals struck down much of North Carolina’s “monster” suppression bill, the requirement for voting in the proper precinct is void. For a provisional ballot to count, the voter must be registered within the county where she votes and must otherwise be eligible. Thanks to litigators and the appellate court – not the legislators who aimed to limit the right of people of color to vote – North Carolina gets a “satisfactory” rating.¹⁶⁶

Because **Wisconsin** provides same day registration, HAVA exempts the state from the requirement that it make provisional ballots available. The state still makes some use of them however, a sensible step given its new ID law (although we counter that no such law is needed). A voter who doesn’t provide proof of residence or identity at the polls must vote by provisional ballot; if the voter returns and provides it by the close of polls, the ballot will be counted regularly.¹⁶⁷ Otherwise, proof can be provided until 4 p.m. on the Friday after the election; if the voter is deemed eligible, the provisional ballot will count.¹⁶⁸ Wisconsin gets a “satisfactory” grade for permitting voters to provide ID the next day and have their votes counted.¹⁶⁹ Better still would be a legislative amendment undoing or modifying the photo ID bill to allow for documentary proof such as a utility bill or paystub.

☆☆☆☆★ States rated “Needs Improvement”

In **Iowa**, these individuals must vote by provisional ballot:

- first-time registrants who don’t include an identifying number (last four digits of SSN, driver’s license number, etc.) on the registration form or provide ID (including a photo ID, utility bill, bank statement, etc.);¹⁷⁰
- individuals whose names don’t appear on the registration rolls (but who claim they are registered in the precinct);¹⁷¹
- individuals who don’t provide the necessary ID (or get identified by a precinct worker) when registering on Election Day;¹⁷²
- voters who have been challenged.^{173/174}

Each voter casting a provisional ballot receives:

- a statement specifying the reason;
- notice that a required ID must be produced for the ballot to be counted (if lack of ID prompted provisional ballot use);
- allegations of a challenge, details on the process, and the voter’s right to address the challenge (if a challenge prompted provisional ballot use);
- a statement that, if the vote isn’t counted, the voter will receive an explanation for that decision;
- any other information deemed necessary by the state commissioner.¹⁷⁵

Iowa does a good job of keeping voters informed. Any eligible voter may “present written statements or documents, supporting or opposing the counting of any provisional ballot” to precinct election officials before the polls close on Election Day.¹⁷⁶ The board decides whether to accept a ballot based on the information included with the ballot, evidence related to a challenge (if any), and voter registration documents.¹⁷⁷ A provisional ballot will be rejected if the voter didn’t provide required ID, wasn’t registered in the precinct, wasn’t qualified, earlier submitted an absentee ballot that got counted, or was inactive/pending and didn’t provide the required ID.¹⁷⁸

Iowa loses points for not counting ballots cast out of precinct even if the voter meets all other requirements. It should also require individuals challenging provisional ballots to provide specific facts, with supplemental proof, in their statements. On a positive note, the state offers same day registration, so those with at least some form of ID – like a utility bill or bank statement – can register and vote if their names don’t appear on the rolls. Overall, we believe it’s doing a fair job but “needs improvement.”

In **Michigan**, an individual missing from the voter registration rolls but who has completed an application must vote by provisional ballot.¹⁷⁹ If the voter presents a receipt issued by a voter registration agency a regular vote is permitted.¹⁸⁰ Hats off to Michigan for this addition, although most people likely don't retain this documentation. When an individual who isn't on the rolls also doesn't have a registration receipt, the election inspector will determine the proper polling precinct and if necessary direct the voter there. If the voter insists on the original voting place, a provisional ballot is issued.¹⁸¹ The ballot will not be counted if voted out-of-precinct.

An individual not listed on the rolls, and not presenting a receipt, must execute a sworn statement, subject to penalty of perjury, affirming that an application was submitted and she is eligible to vote; she must also complete a new voter registration application.¹⁸² The election inspector will then contact the city or township clerk to verify whether the voter is on the rolls; if the clerk verifies the voter's information and the voter presents a required photo ID containing a current address, the voter will receive a provisional ballot; that ballot will be counted regularly.¹⁸³ If the election inspector doesn't reach the clerk, the voter is in an incorrect precinct or doesn't have the required ID (or one with a current address), a provisional ballot is issued that "is not tabulated on election day but is secured for verification after the election."¹⁸⁴ In this instance, the inspector will give the voter a notice that the information will be verified by the clerk within six days of the election; if the ballot isn't counted, the voter will be notified as to why. The voter will also receive details for a toll-free number and website to verify if the ballot was counted.¹⁸⁵

Michigan voters who don't have an ID with a current address will also be required to vote by provisional ballot, and must supply a document such as a utility bill or bank statement with their current address.¹⁸⁶ Michigan rates "unsatisfactory" for failing to count ballots cast out of precinct, but "good" for allowing voters to provide their ID to the board up to six days after the election (in-person, by fax, or through the mail).¹⁸⁷ Overall, it "needs improvement."

In **Ohio**, several categories of voters are required to vote by provisional ballot:

individuals claiming they're registered and eligible to vote in the precinct but whose names aren't on the official list (or whom the election official asserts are ineligible);

- those who don't have the required ID (which includes a utility bill, bank statement, etc.);
- those who've requested an absentee ballot but didn't get it;
- those whose registrations have been returned as undelivered;
- those who've been successfully challenged (or whose challenge hearings are set for after the election);
- those who've changed their names, moved to a new precinct, or moved to a new county;
- those whose in-person signatures don't match the signature on their registration forms.¹⁸⁸

Before casting a provisional ballot, voters must affirm their registration in the precinct and their eligibility in that election.¹⁸⁹ The ballot and affirmation are sent to the appropriate election official, who determines eligibility. With the official's permission, the vote counts.¹⁹⁰ The voter also is given information on a free access system to ascertain the outcome and, if applicable, why the vote wasn't counted.¹⁹¹

If a provisional ballot was cast because the voter didn't provide the required ID or was successfully challenged, the voter must appear before the appropriate board with "additional information necessary to determine [his] eligibility."¹⁹² Those who don't have ID at the election must provide (within seven days) either the required ID (which, again, can be a utility bill, not just a photo ID) or a driver's license/state ID number or the last four digits of a social security number, in order for the vote to count.¹⁹³ Those who have been successfully challenged must provide identification or other documentation applicable to the allegations.¹⁹⁴

Voters in the wrong precinct will be re-directed. If they vote at an incorrect location, the whole ballot, or a portion, won't count, depending on the election.¹⁹⁵ In deciding whether to count a provisional ballot, the board determines whether the voter is registered and eligible and considers information in the attached affirmation, plus any additional information the voter has provided.¹⁹⁶ The ballot will be counted if the voter is registered, eligible to vote in the precinct, provided all necessary information, and if the last four SSN digits, birthdate, and address (unless the voter noted a move in the provisional ballot) match up with those on file.¹⁹⁷ Additionally, if the challenge hearing was decided favorably for the voter, the ballot will be counted.¹⁹⁸ Ohio rates "needs improvement" – it affords voters plenty of time to provide required ID, but it doesn't count votes out-of-precinct.



States rated “Unsatisfactory”

The hurricane’s eye of *Bush v. Gore*, **Florida** continues to have problems counting ballots. As a result, it gets an “unsatisfactory” grade. Reforms including same day registration would cure the problem of voters casting provisional ballots when their names don’t appear on registration rolls. As in other states and as required by HAVA, voters who claim to be eligible and registered, but whose eligibility can’t be determined, get provisional ballots,¹⁹⁹ as do challenged voters. Challenged voters have until 5 p.m. on the second day following the election to present written evidence supporting their eligibility.²⁰⁰ Those voting after the polls closed pursuant to a court order extending voting hours must also vote provisional ballots; so long as the voter meets eligibility requirements, and the ballot is valid, it will be counted.²⁰¹

To determine if the individual was entitled to vote in the precinct, the county canvassing board examines the certificate and affirmation attached to the provisional ballot, and checks to see that the voter hadn’t already voted.²⁰² The board must also consider any written evidence provided by the voter, the challenger (if applicable), and the supervisor of elections. The provisional ballot will be counted “unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote.”²⁰³ If the board finds the individual was registered and entitled to vote at the precinct where the ballot was cast, the board compares the signature on the ballot with that on registration record. If they match, the ballot counts.²⁰⁴ Other states contact the voter if the signatures don’t match to explain the discrepancy and ask for an oath or follow-up proof. Florida loses marks for this failure. If the board finds the individual was not registered or entitled to vote in the precinct where the ballot was cast, the provisional ballot is not counted and must remain in its envelope, marked “rejected as illegal.” Other states will count the ballot if the ballot was cast in the right county but wrong precinct, so long as the individual is registered and eligible to vote. Again, Florida should remedy its practices to allow for out-of-precinct voting when other eligibility criteria are met.²⁰⁵

In **Nevada**, an individual using a provisional ballot may only vote for federal offices.²⁰⁶ For this reason, it gets an “unsatisfactory” grade. A provisional ballot is given to a voter who claims to be registered in the jurisdiction and eligible to vote but whose name doesn’t appear on the voter registration list, who applied to register by mail or online, hadn’t previously voted in a federal election, and failed to provide the necessary HAVA ID (which can include a utility bill, etc.), or who claims she’s entitled to vote after the polls close pursuant to a court order issued 10 days before the election.²⁰⁷ (Some mailed-in ballots will also be counted as provisional ballots.)²⁰⁸

Before casting a provisional ballot, the voter must complete a written affirmation including a statement -- subject to penalty of perjury -- verifying registration in the jurisdiction and eligibility to vote (for the first category of provisional voters) and/or a note as to whether the required HAVA ID was provided when applying to register (for the first two categories of provisional voters listed above). A voter who lacks ID receives a written warning that it must be provided by 5 p.m. on the Friday after the election or the vote will not be counted.²⁰⁹ After receiving the affirmation, the election board officer must provide the voter with a receipt including an identification number and explanation of how to access a free system to determine whether the vote was counted and, if not, why.²¹⁰

Provisional ballots aren’t counted until the day after the election.²¹¹ If the clerk determines that the voter is registered, eligible, and received the appropriate ballot, the provisional ballot counts.²¹² Out-of-precinct ballots will not be counted.²¹³ For those required to produce HAVA ID, the ballot will be counted only if the ID is submitted by the deadline.²¹⁴ We believe this is “unsatisfactory.”

As in other states, a **Pennsylvania** voter who claims to be eligible and registered in the election district, but whose name isn’t found on the general register, will be given a provisional ballot.²¹⁵ Those on the register who haven’t provided HAVA identification also vote a provisional ballot. Still on the books is a requirement that voters show ID – and that those who don’t bring it to the polls vote provisionally – but that law has been struck down and so won’t be in effect for this election. Voters who’ve been challenged must still vote by provisional ballots however.²¹⁶ So must those who present a judicial order to vote.²¹⁷

Before casting a provisional ballot, the voter must sign an affidavit stating that this is their only ballot in this election.²¹⁸ Within seven days of the election, the board will review the ballots. The board considers whether the voter is registered, entitled to vote at the election district (or another one), and if the signature appears genuine.²¹⁹ Candidates, watchers, candidates’ representatives, and political party representatives may chal-

lunge the board's decisions.²²⁰ Hearings on challenged provisional ballots must be heard within seven days of the election. Notice is given to pertinent parties, including the voter, "where possible."²²¹ It's unclear how the voter would not be given notice of this, given all the information required on the provisional ballot. If the board determines a provisional ballot is eligible, the vote counts. Pennsylvania rates "unsatisfactory" for permitting outsiders – particularly political ones – to be a part of the process in ascertaining eligibility.

In **Virginia**, election officers try to allow those whose names don't appear on the poll books to vote regularly. For this, the state merits a "good" score. Those missing from the poll book may vote if the election officer learns from the registrar that they are in fact registered; they sign a statement subject to penalty of perjury verifying that they're qualified and registered for the precinct and that their registration isn't subject to cancellation; and they provide identifying information, including the last four digits of their Social Security Number.²²²

If the poll book indicates the voter has already voted, a provisional ballot will be issued (to be counted as instructed by the State Board of Elections).²²³ If the person's name isn't on the poll book, and the registrar can't verify the registration, the voter will be given a provisional ballot.²²⁴ The voter must provide identifying information, under penalty of perjury, including the last four digits of her SSN and signature, and must also provide the required ID.²²⁵ The officer must mark whether the ID was provided and must inform the voter that the electoral board will determine her right to vote. The officer also must advise the voter of her right to attend that meeting (with her legal representative), and to submit ID (if applicable) by fax, e-mail, in-person, or mail so long as it's received by noon on the third day after the election.²²⁶ (The board may grant an extension.) The board must meet to make determinations on all provisional ballots no later than seven days after the election; an authorized representative of each political party or independent candidate may attend that meeting as an observer only.²²⁷ If the board determines the voter is not qualified in the precinct, is unable to determine eligibility to vote, or does not receive one of the required forms of ID, the provisional ballot will not be counted. Provisional ballots will not be counted out-of-precinct. Virginia receives an "unsatisfactory" grade for this practice. Ballots cast after the polls were scheduled to be closed but remain open by court order, are also provisional; the state board of elections advises on how to count them.²²⁸ So are ballots cast by individuals who requested absentee ballots but claimed, under penalty of perjury, never to have received them.²²⁹

New Hampshire, because it offered same day registration at the time HAVA was passed, is exempt from the requirement to provide provisional ballots.

ENSURING BALLOTS ARE COUNTED AS CAST

This report details some very basic practices to help election officials ensure that ballots are counted as cast. These are simple, yet critical practices, included here because they introduce necessary resilience into the election process. In past election cycles, computer glitches and human errors have changed election outcomes. These practices provide insurance against such problems and correct them. The practices include:

- ensuring that there is a paper ballot or record, verifiable by the voter, for every vote cast; (A print out of a digital ballot, printed when the voter is not present, will not serve. The voter has only verified the digital ballot – not the paper ballot. The voter **MUST** have verified the paper ballot. Computers can easily have malware that shows the voter one ballot – and records another. [https://www.youtube.com/watch?v=OJOyz7_sk8I]. The paper ballot, which the voter has verified, must be the one that is counted.)
- ensuring there are robust post-election audits (risk limiting audits can detect outcome-changing miscounts and can correct the outcome);
- ensuring that marked ballots are not transmitted over the internet (where they can be intercepted and undetectably altered);

These simple practices, if fully in use, can ensure that outcome changing miscounts of ballots for any reason (computer glitch, computer malfunction, malware, or human error) are detected and the true outcome ascertained.

The above steps are critical. Many election administrators do even more. Suggested procedures include rigorous pre-election testing of equipment, meticulous ballot accounting and reconciliation, reporting and publicizing ballot accounting and final results in detail before certification, quarantining of ballots submitted from the internet, robust chains of custody for voting equipment and more. A comprehensive list, prepared by experts in computer security and voting systems who are part of the Election Verification Network, is available at <https://electionverification.org/wp-content/uploads/2016/09/evntop109516.pdf>. Additionally, the Department of Homeland Security has offered state election directors new and important services and tools which all state elections directors should use. According to their materials these include the following which are available at www.dhs.gov/cyber:

- The Cyber Hygiene assessment. This is a no-cost voluntary, technical assessment encompassing configuration error and vulnerability scanning. Based on findings, DHS offers recommendations on remediating the vulnerabilities. This assessment is conducted remotely and on a recurring basis.
- The Risk and Vulnerability Assessment (RVA), a more in depth, no-cost voluntary technical assessment than Cyber Hygiene. This suite of services includes penetration testing, social engineering, wireless access discovery and identification, as well as database and operating system scanning.

Jurisdictions should take these basic steps, and others, to protect against miscounts caused by basic computer glitches, human error or malware. There are many other steps that can and should be taken prior to Election Day to ensure that votes are counted as cast.

Paper Ballots

There is widespread agreement among computer security experts that an independent, voter-verifiable record, serving as a check against potential electronic miscounts, is critical for voting system security.²³⁰ And with a heightened possibility of hacking, the need for a resilient way to count votes without using possibly corrupted software is even more critical. Inaccurate, computer-generated tallies are not just hypothetical; they have occurred in live elections. The absence of paper ballots/records leaves open the possibility the voters will be misrepresented. In instances where counting errors were so egregious they were obvious, the disruption and cost to the state or jurisdiction was onerous.

- During the June 2011 Democratic primary election in Cumberland County, N.J., computerized voting machines used in one district attributed votes to the wrong candidates, declaring the losers victorious.²³¹ The county and the attorney general’s office acknowledged that the voting machine used in the election switched votes and been programmed incorrectly; a court ordered **a new election**.²³²
- In the 2008 primary election in Washington D.C., thousands of “phantom” write-in votes were added to the vote totals due to a defective memory cartridge; because D.C. was using paper ballots and optical scanners, the correct results were readily determined.²³³
- In November 2004 in Carteret County, N.C., a memory limitation on the county’s touch screen voting machines lost 4,500 votes.²³⁴ Because the machines did not use voter-marked paper ballots or produce a VVPAT, it was impossible to determine how the lost votes should have been counted.

When voting systems produce a paper ballot or voter-verifiable paper trail, election results can not only be properly recounted, they can be properly audited. A proper post-election audit involves a manual check of paper ballots against the machine counts. These types of audits are critical to catching election miscounts. Simply put, there is no way to guarantee a correct outcome without audits that use paper ballots. This is why most election jurisdictions have switched from paperless voting machines to systems which produce a paper ballot or are vote-by-mail systems.

PAPER BALLOTS	CURRENT STATUS	RATING
Colorado	All voters mark paper ballots.	Excellent
Florida	Most voting systems use paper but some paperless machines still deployed for disability access produce no paper; all voting systems will deploy paper by 2020	Needs Improvement
Iowa	Voters cast paper ballots	Excellent
Michigan	Voter cast paper ballots	Excellent
Nevada	Machines produce voter verifiable paper record	Excellent
New Hampshire	Voters cast paper ballots	Excellent
North Carolina	Voters cast paper ballots	Excellent
Ohio	Voters cast paper ballots or machines produce voter verifiable paper record	Excellent
Pennsylvania	Many machines produce no paper record	Unsatisfactory
Virginia	Many machines produce no paper record	Unsatisfactory
Wisconsin	Voters cast paper ballots or machines produce voter verifiable paper record	Excellent

★★★★ States rated “Excellent”

Eight states in our report use paper ballots and/or paper records: **Colorado, Iowa, Michigan, Nevada, New Hampshire, North Carolina, Ohio** and **Wisconsin**. They have received an “excellent” grade. It is important to note that four of these states, **Colorado, Ohio, Nevada, North Carolina**, converted to paper ballots in the

past 12 years, as state leaders heeded growing concerns about paperless voting systems. Changing voting systems is expensive and requires leadership. There has been tremendous progress.

☆☆☆☆ States rated “Needs Improvement”

In **Florida** and **Virginia**, the changeover to paper ballots will be completed in the next four years. Under the leadership of then-Gov. Charlie Crist and the state legislature, **Florida** converted to a mostly paper ballot system in 2007 after a closely contested election with highly anomalous results – and no paper ballots - left many unanswered questions. Now **Florida** deploys voting systems which produce a paper ballot in every county; the only remaining paperless machines are those used for voters with disabilities in some counties. By 2020, Florida will convert to a fully paper system.²³⁵ Just this year, **Virginia** passed SB 190, requiring its counties to convert to paper based systems by 2020.



States rated “Unsatisfactory”

Unlike Florida and Virginia, **Pennsylvania** is not on its way to verifiable elections. Pennsylvania has used paperless voting systems for decades; both the legislature and Secretary of State Pedro A. Cortes have resisted calls to switch to systems which can produce a paper ballot (See *Banfield v. Cortes*, 922 A.2d 36 (Pa. Commw. Ct 2007)). As a result, election outcomes in much of Pennsylvania cannot be audited.

Casting Ballots Via Email or Through Internet Portals

The Obama administration recently accused the Russian government of attempting to hack into the computer systems of U.S. political organizations. The charges came after disclosures that hackers had infiltrated computer systems at the Democratic National Committee, the Democratic Congressional Campaign Committee, other offices and the two statewide voter registration databases of Arizona and Illinois. Public concern immediately shifted to



Ballots cast online simply **cannot be protected** from undetectable tampering. Foreign or domestic hackers can access these ballots and alter their contents.

actual voting systems and their potential vulnerability. The Chair of the U.S. Election Assistance Commission quickly sought to calm a jittery public by declaring that U.S. voting systems it has certified have been vigorously tested against security standards and are not connected to the internet.²³⁶

That means no EAC certified voting systems permit voting by email or through any other online system. Voting via the internet is the most

unprotected, insecure way to vote. Ballots cast online simply cannot be protected from undetectable tampering. Foreign or domestic hackers can access these ballots and alter their contents.

Senior officials at the Department of Homeland Security (DHS) have warned against internet voting. “We believe that online voting, especially online voting in large scale, introduces great risk into the election system by threatening voters’ expectations of confidentiality, accountability and security of their votes and provides an avenue for malicious actors to manipulate the voting results,” said Neil Jenkins, chief of policy and planning in DHS’ Office of Cybersecurity and Communications.²³⁷

The National Institute of Standards and Technology (NIST) has documented security issues with online voting that cannot be mitigated or solved with currently available cyber security safeguards and voting system protocols. NIST concluded in 2011 that, until these challenges are overcome, secure Internet voting is not feasible.²³⁸ Those findings led Congress to abandon a Department of Defense internet voting demonstration project for military and overseas voters.²³⁹

“[The Future of Voting](#),” the most recent comprehensive report on prospects for internet voting, was published in 2015 by the US Vote Foundation. The study incorporates the perspectives of election officials and experts in secu-

rity and other related fields. “No existing commercial internet voting system is open to public review. Independent parties cannot verify that these systems function and count correctly, nor can they audit and verify election results,” the report noted. The authors added that “Elections for public office are a matter of national security. Researchers have shown that every publicly audited, commercial internet voting system to date is fundamentally insecure.”

While all internet voting is insecure, email votes are the most at risk. In 2014, the computer security firm Galois directly addressed the risks of email voting in a paper, “[Hacking Internet Voting via Ballot Tampering](#)” and [video](#).

[In testimony submitted in September](#) to the House Committee on Science, Space, and Technology, Dan Wallach, a professor of computer science at Rice University, detailed the vulnerabilities of current internet voting systems and the ways computer scientists have been able to locate and at times exploit those weaknesses:

In one prominent example, Washington, DC, conducted a pilot election using an Internet voting system, inviting external researchers to have a go at attacking them. The University of Michigan’s Prof. Alex Halderman and his students managed to completely compromise this system in a few hours. They were able to watch election workers from the internal video cameras. They arranged for fictional characters to win all the elections. They even modified the web site to play the Michigan fight song after each vote was cast. If Prof. Halderman and his students can do this, so can our adversaries. Halderman and others have studied Internetbased voting systems in New South Wales, Australia, and in Estonia, finding similar problems. Safe internet voting is simply not feasible today.

With this in mind, we strongly recommend that states encourage return of voted ballots **via trackable expedited return service** or postal mail. The Department of Defense’s Federal Voting Assistance Program (FVAP) has advised that postal return of voted ballots is the most responsible method of ballot return.²⁴⁰

A provision of the MOVE Act made expedited ballot mail available to military voters overseas through the use of a special label, “11-DoD.” A study by the military postal service indicated ballots transmitted this way were received by local election offices within an average of 5.2 days. Ballots sent this way are fully trackable. Voters can track their ballot’s arrival as if it were express mail or another expedited service; there is no charge for transmitting a ballot this way for military voters.²⁴¹For postal mail, the USPS has a chart showing the time needed to ensure timely arrival of the voted ballot from APO/FPO locations around the world.²⁴²

We reviewed the practices of our 11 swing states.

INTERNET VOTING	CURRENT STATUS	RATING
Colorado	Ballots at risk; voters must ascertain that more secure ways to vote are not available.	Needs Improvement
Florida	Ballots at risk; However, voters can only send ballots by fax to dedicated phone numbers at DOD and at State Election Supervisor. Still, ballots can be digital (efax) and sent via internet	Needs Improvement
Iowa	Ballots at risk	Unsatisfactory
Michigan	Ballots not at risk	Excellent
Nevada	Ballots at risk	Unsatisfactory
New Hampshire	Ballots not at risk	Excellent
North Carolina	Ballots at risk	Unsatisfactory
Ohio	Ballots not at risk	Excellent
Pennsylvania	Ballots not at risk	Excellent
Virginia	Ballots not at risk	Excellent
Wisconsin	Ballots not at risk	Excellent

★★★★ States rated “Excellent”

Michigan, New Hampshire, Ohio, Pennsylvania, Virginia and Wisconsin, protect voters’ ballots and the integrity of the election by not accepting electronic ballots, which can be undetectably altered during transfer. The federal Military and Overseas Voter Empowerment (MOVE) Act of 2009 (52 U.S.C.A. § 20302) requires these and all other states to transmit blank ballots to voters electronically, a reasonable step that does not risk voters’ privacy or election integrity; the ballots are filled out and returned by conventional mail. The MOVE Act made expedited ballot mail available to military voters overseas through the use of a special label, “11-DoD.”

☆☆☆☆ States rated “Needs Improvement”

Florida²⁴³ allows voters to send their ballots by fax but only to a dedicated line at the Supervisor of Elections office at the Defense Department’s Federal Voting Assistance Program. This limitation is excellent; it allows the faxed ballots to be isolated from all other votes. Ballots sent via e-fax can contain malware. **Colorado**²⁴⁴ allows military and overseas voters to vote via email but requires that those doing so certify that a more secure method was not available. This acknowledges that internet voting is not secure.



States rated “Unsatisfactory”

Four of the states we reviewed put ballots at risk by allowing the ballots to be sent over the internet, where they are vulnerable to remote interception and undetectable altering. These states do not acknowledge the risks involved in internet voting. Two of our swing states, **Iowa**²⁴⁵ and **North Carolina**²⁴⁶, put ballots at risk by allowing overseas and military voters to vote *via email*. A third, **Nevada**²⁴⁷ has created its own internet portal for voter use.

Post-Election Audits

“Recount shows wrong winner declared in Wellington Election Races²⁴⁸.” This 2012 headline in the Palm Beach Post was every election official’s worst nightmare. The accompanying article described how a computer software error in the town’s ballot counting machine generated incorrect tallies, leading officials to certify the wrong candidates as winners. In a post-election audit, comparing a count of the actual physical ballots against the computer-generated tally, the mistake was discovered. That led to a full recount and two of the candidates who had “lost” were ultimately certified as winners.

The Wellington saga demonstrates the power and importance of a post-election audit, one that checks ballots or voter-verifiable paper audit trail printouts against reported election outcomes. It enables election officials to use these records of voter intent to confirm or correct the outcome.

Audits are similar to recounts, in that a portion of the ballots are examined independently of the original system’s software. But unlike recounts, audits do not have to be requested by a losing candidate or be triggered only when margins are razor-thin. Instead, audits are a regular post-election-night check on the outcome and help provide several benefits:

- Revealing when recounts are necessary to verify election outcomes
- Finding error, whether accidental or intentional
- Deterring fraud
- Providing for continuous improvement in the conduct of elections
- Promoting public confidence in elections.

Voting systems should have reliable paper audit records; those records (the ballots and paper trails) should be secured and carefully preserved through good chain of custody practices. Regardless of whether technology supports optimal audits, a best effort should be made to do an audit. Even weak audit provisions have uncovered outcome-changing error.

Audit requirements vary significantly and no single model is best for all states, but there are several components that are important to a good audit. Common Cause and Verified Voting previously have measured states’ post-election audits using these criteria:

POST-ELECTION AUDITS

CURRENT STATUS

RATING

POST-ELECTION AUDITS	CURRENT STATUS	RATING
Colorado	Manual audits. State will conduct risk-limiting audits starting in 2017 and has been piloting procedures for carrying these out in advance of required implementation.	Good
Florida	Formerly required only manual audits; now counties may substitute a “second scan” of ballots using a system not programmed by the same system as the original tally system. No manual review required.	Needs Improvement
Iowa	County auditors are permitted to conduct discretionary recounts of the ballots to check an election outcome. Such efforts have uncovered outcome changing error in the past.	Needs improvement
Michigan	Conducts a process audit but it does not include a vote tabulation audit.	Unsatisfactory
Nevada	Manual audit required	Good
New Hampshire	No audit requirement; conducts frequent manual state-wide recounts.	Unsatisfactory
North Carolina	Manual audit required	Good
Ohio	Manual audit required	Good
Pennsylvania	Manual audit required. However, Pennsylvania does not have voter-verifiable paper ballots statewide; only some counties can comply with audit requirement.	Needs Improvement
Virginia	No audit required	Unsatisfactory
Wisconsin	Manual audit required	Satisfactory

- **Robust** (examining more than just one or two contests);
- **Comprehensive** (auditing all types of systems/ballots, including military and overseas ballots);
- **Timely** (selection starts after initial count is published, and completed before results are finalized); and
- **Transparent and random** (there is an observably random selection of units to be audited, and the audit count itself is transparent).

We also strongly support statutory provisions that trigger expansion of the audit if unexplained discrepancies are found. To be considered “excellent,” a state would have to require all of the foregoing, plus use risk-limiting or statistical audits.

☆☆☆☆ States rated “Satisfactory”

Five of the states we examined for this report – **Colorado**²⁴⁹, **Nevada**²⁵⁰, **North Carolina**²⁵¹, **Ohio**²⁵², and **Wisconsin**²⁵³ -- require and perform post-election audits (all but OH by statute). Colorado will conduct risk-limiting audits starting in 2017 and has been piloting procedures for them in advance of required implementation.

☆☆☆☆ States rated “Needs Improvement”

Florida²⁵⁴ and **Pennsylvania**²⁵⁵ have statutes requiring post-election audits. However, Pennsylvania does not have voter-verifiable paper records in all jurisdictions however, so it cannot audit effectively statewide. Florida lacks paper trails on voting systems deployed for voters with disabilities, but otherwise has paper ballots statewide; so it has some limitations on auditability, but fewer than found in Pennsylvania. Florida formerly required only manual audits; statutes were changed to allow a form of review rather than manual audits at the option of the county. The alternative to the manual audit allows a second scan of ballots using a system not programmed by the same system used for the original tally. It does not require manual review of the ballots. **Iowa** has no statutory or regulatory requirement for post-election manual audits. Iowa county

auditors are permitted to conduct discretionary recounts of the ballots to check an election outcome. Such efforts have uncovered outcome changing error in the past.



States rated “Unsatisfactory”

Michigan, New Hampshire and **Virginia** have no statutory or regulatory requirement for post-election manual audits. Michigan also has paper ballots statewide; it does a process audit but no manual check on the paper ballots. New Hampshire has paper ballots statewide but no statute for post-election audits. However, the state frequently does statewide recounts; in the event of a close contest in New Hampshire or any election dispute in November, a manual recount would be highly likely. **Virginia** has studied methods of post-election audits, but does not have auditable systems statewide.

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Appendix: State-by-State Summaries

COLORADO

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	ID required, but voters may submit paper documents, like a utility bill. Voters without ID or documents may vote by provisional ballot, counted if the voter is eligible.	Satisfactory
VOTER REGISTRATION - Online	Voters may register online.	Excellent
VOTER REGISTRATION – Same Day	Voters may register and vote on the same day.	Excellent
VOTER REGISTRATION - Automatic	Not in place yet.	Unsatisfactory
VOTER CHALLENGES	Non-election officials may challenge voters, but challenged voters can vote regularly after satisfactorily answering questions.	Good
PROVISIONAL BALLOTS	Rarely used thanks to state’s broad package of elections reforms.	Excellent
PAPER BALLOT OR PAPER RECORD	Voters mark paper ballots	Excellent
POST-ELECTION MANUAL AUDIT	Manual audits. Risk-limiting audits start in 2017 and state has been piloting procedures for carrying these out in advance of required implementation.	Good
UNVERIFIABLE INTERNET VOTING	Ballots at risk; voters must ascertain that more secure ways to vote are not available.	Needs Improvement

IOWA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Photo ID required for those who register and vote on Election Day. No photo ID required for just voting.	Needs improvement
VOTER REGISTRATION - Online	Online registration has been administratively implemented.	Excellent
VOTER REGISTRATION – Same Day	Voters may register and vote on the same day.	Excellent
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
VOTER CHALLENGES	A challenged voter must cast a provisional ballot unless the challenge is withdrawn.	Unsatisfactory
PROVISIONAL BALLOTS	Same Day Registration eliminates the need for many provisional ballots; state doesn't count provisional ballots cast out of precinct.	Needs improvement
PAPER BALLOT OR PAPER RECORD	Voters mark paper ballots	Excellent
POST-ELECTION MANUAL AUDIT	County auditors are permitted to conduct discretionary recounts. Such efforts have uncovered outcome changing error in the past.	Needs improvement
UNVERIFIABLE INTERNET VOTING	Ballots at risk	Unsatisfactory

FLORIDA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Voters lacking photo ID may vote by provisional ballot, counted if the signature on the ballot matches that on the voter's registration form.	Satisfactory
VOTER REGISTRATION - Online	Online registration will be in effect in 2017.	Excellent
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Poll watchers and registered voters may challenge voters; challenged voters must vote provisionally.	Unsatisfactory
PROVISIONAL BALLOTS	Provisional ballots cast out of precinct are not counted.	Unsatisfactory
PAPER BALLOT OR PAPER RECORD	Most voting systems use paper but some paperless machines still deployed for disability access. All voting systems will deploy paper by 2020	Needs Improvement
POST-ELECTION MANUAL AUDIT	Florida formerly required only manual audits; now counties may substitute a “second scan” of ballots using a system not programmed by the same system as the original tally system. No manual review required.	Needs Improvement
UNVERIFIABLE INTERNET VOTING	Ballots at risk; no direct online voting but voters can send ballots by fax to dedicated phone numbers at the Department of Defense and at State Election Supervisor. Still, ballots can be digital (efax) and sent via internet	Needs Improvement

MICHIGAN

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Photo ID is requested but those who don't have it can submit an affidavit before voting	Satisfactory
VOTER REGISTRATION - Online	No online registration (only updates can be made online).	Unsatisfactory
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
VOTER CHALLENGES	Challengers have many allowances but challenged voters may cast regular ballots if an elections official deems them eligible.	Needs improvement
PROVISIONAL BALLOTS	Michigan rates “unsatisfactory” for failing to count ballots cast out of precinct, but “good” for permitting voters to provide ID to the board up to six days after the election (in-person, by fax, or through the mail).	Needs improvement
PAPER BALLOT OR PAPER RECORD	Voters cast paper ballots	Excellent
POST-ELECTION MANUAL AUDIT	State conducts a process audit but it does not include a vote tabulation audit.	Unsatisfactory
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent

NEVADA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	No photo ID required	Excellent
VOTER REGISTRATION - Online	Voters may register online.	Excellent
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Some categories of challenged voters must vote provisionally.	Unsatisfactory
PROVISIONAL BALLOTS	Provisional ballots cast out of precinct are not counted.	Unsatisfactory
PAPER BALLOT OR PAPER RECORD	Machines produce voter verifiable paper record	Excellent
POST-ELECTION MANUAL AUDIT	Manual audit required	Good
UNVERIFIABLE INTERNET VOTING	Ballots at risk	Unsatisfactory

NEW HAMPSHIRE

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	If voters lack required photo ID, elections officials will photograph them in the precinct, disrupting administration of the election.	Unsatisfactory
VOTER REGISTRATION - Online	No online registration.	Unsatisfactory
VOTER REGISTRATION – Same Day	Voters may register and vote on the same day.	Excellent
VOTER REGISTRATION – Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Challenged voters may cast regular ballots after submitting an affidavit as to identity and eligibility.	Good
PROVISIONAL BALLOTS	No provisional ballots.	
PAPER BALLOT OR PAPER RECORD	Voters cast paper ballots	Excellent
POST-ELECTION MANUAL AUDIT	No audit requirement; state conducts frequent manual statewide recounts.	Unsatisfactory
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent

NORTH CAROLINA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Thanks to a 4 th Circuit Court decision, state's photo ID law will not be in place for this election.	Unsatisfactory (because the state has not abandoned an appeal)
VOTER REGISTRATION - Online	No online registration.	Unsatisfactory
VOTER REGISTRATION – Same Day	Voters may register and vote on the same day.	Good (because the reform is back on the books, but the state has not abandoned an appeal)
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Despite some poor practices, the voter may vote a regular ballot if the election official believes he is eligible.	Satisfactory
PROVISIONAL BALLOTS	Thanks to litigation, out-of-precinct ballots will be counted for this election.	Satisfactory
PAPER BALLOT OR PAPER RECORD	Voters cast paper ballots	Excellent
POST-ELECTION MANUAL AUDIT	Manual audit required	Good
UNVERIFIABLE INTERNET VOTING	Ballots at risk	Unsatisfactory

OHIO

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Voters with no photo or documentary ID receive a provisional ballot, counted so long as the last 4 digits off SSN are included.	Satisfactory
VOTER REGISTRATION - Online	Online voter registration will be in effect in 2017.	Excellent
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	On Election Day, only elections officials may challenge voters.	Excellent
PROVISIONAL BALLOTS	Voters are given time to provide ID after the election, but ballots cast out-of-precinct are not counted.	Needs improvement
PAPER BALLOT OR PAPER RECORD	Voters cast paper ballots or machines produce voter verifiable paper record	Excellent
POST-ELECTION MANUAL AUDIT	Manual audit required	Good
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent

PENNSYLVANIA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Photo ID law struck down; state will not appeal.	Good
VOTER REGISTRATION – Online	Online registration permitted; adopted administratively.	Excellent
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION – Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Many categories of individuals may challenge voters on Election Day, and a heavy burden – producing an eligible voter from the precinct to attest to identity and eligibility – is on the voter.	Unsatisfactory
PROVISIONAL BALLOTS	Challenged voters must vote provisionally, and a great number of individuals may conduct challenges.	Unsatisfactory
PAPER BALLOT OR PAPER RECORD	Many machines produce no paper record	Unsatisfactory
POST-ELECTION MANUAL AUDIT	Manual audit required. However, Pennsylvania does not have voter-verifiable paper ballots statewide; only some counties can comply with audit requirement.	Needs Improvement
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent

VIRGINIA

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Strict photo ID requirement.	Unsatisfactory
VOTER REGISTRATION – Online	Online registration permitted.	Excellent
VOTER REGISTRATION – Same Day	No same day registration.	Unsatisfactory
VOTER REGISTRATION – Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Once challenged, voters may sign an oath as to eligibility and then vote regularly.	Good
PROVISIONAL BALLOTS	Provisional ballots cast out of precinct are not counted.	Unsatisfactory
PAPER BALLOT OR PAPER RECORD	Many machines produce no paper record	Unsatisfactory
POST-ELECTION MANUAL AUDIT	No audit required	Unsatisfactory
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent

WISCONSIN

POLICY	CURRENT STATUS	ASSESSMENT
ID LAW	Photo ID requirement in place for this election; legal challenge continues.	Unsatisfactory
VOTER REGISTRATION - Online	Online voter registration available as of 2017.	Excellent
VOTER REGISTRATION – Same Day	Same day registration permitted.	Excellent
VOTER REGISTRATION - Automatic	No automatic registration.	Unsatisfactory
CHALLENGERS	Challenged voters may vote after swearing an oath to their identity, but the board will review it.	Needs improvement
PROVISIONAL BALLOTS	Voters may provide ID the day after the election to have their votes counted.	Satisfactory
PAPER BALLOT OR PAPER RECORD	Voters cast paper ballots or machines produce voter verifiable paper record	Excellent
POST-ELECTION MANUAL AUDIT	Manual audit required	Satisfactory
UNVERIFIABLE INTERNET VOTING	Ballots not at risk	Excellent



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