



Voting Rights and Wrongs:

A Snapshot of 2008 Presidential Primary Voting Problems and Recommendations for Reform

Based on Voter Protection Project

**by the
American Civil Liberties Union of New
Jersey and
League of Women Voters of New Jersey
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Introduction

The polling places were open in Hoboken at 6:15 a.m., and the Governor was ready to cast his vote. However, according to media reports, when the Governor's staff checked his polling place the day of the presidential primary, the voting machines were not working. Governor Corzine waited at home for a half hour while the problem was sorted out.

The Governor's experience was the most prominent story of voting problems on Election Day, but it was only one of many that came to the attention of New Jersey Voter Protection Project. Every election citizens experience problems trying to exercise their right and responsibility to vote in New Jersey.

The American Civil Liberties Union of New Jersey and the League of Women Voters of New Jersey's Voter Protection Project provide hotlines and poll monitors during elections to help voters understand and secure their rights, and to navigate the mechanics of voting.

While there will always be minor issues at the polls, most problems were problems that we have identified in Election Day monitoring efforts since 2004: inaccurate information given to voters, failure to provide provisional ballots, voting machine failures and registration list issues.

We provide this report of the February 2008 Election Protection effort – which highlights the most common problems and our recommendations to rectify them. We are encouraged by the determination to solve many of these problems expressed by Secretary of State Nina Mitchell Wells since taking leadership of elections on April 1, 2008. She and her staff have pledged to be proactive on many of the following issues and work to address them immediately. We appreciate her desire to work collaboratively with advocates to achieve voter education and smooth and transparent elections. We hope to see ongoing engagement of advocates and election officials to address the concerns in this report.

Background

The ACLU-NJ, LWVNJ, Asian American Legal Defense and Education Fund, New Jersey Appleseed and other members of the New Jersey Citizens Coalition for the Implementation of the Help America Vote Act have worked together over the past several years to monitor and push for the improvement of elections in New Jersey.

The goal of the Voter Protection Project is to provide assistance to voters and would-be voters who experience voting difficulties around elections. Our efforts to provide assistance includes voter hotlines, poll monitors handing out voting rights information at polls on Election Day and volunteer lawyers ready to help would-be voters at election courts on Election Day.

We significantly increased our efforts to monitor and report on elections starting in 2004, in light of the high number of complaints we received about voting rights violations and in light of the absence of similar reports by county elections offices.

For the February 2008 presidential primary, ACLU-NJ and LWVNJ's Voter Protection Project responded to over 140 voter calls for help, provided legal assistance at county court houses and assisted voters who encountered roadblocks in trying to exercise their rights to vote. These numbers are in addition to the calls received by the LWVNJ in between each election cycle. For the 2006 general election the Voter Protection Project responded to over 250 voter complaints, questions and concerns.

Over the years, we have communicated what we learned about problems at the polls to state and county election officials and provided recommendations for changes in policy and practice. We have met with election officials on numerous occasions in person and by phone, as well as corresponded by letter.

Methodology

The typical Voter Protection Project budget is around \$3,000 per election. We solicit both legal and lay volunteers prior to an election. Volunteers are trained as poll monitors, hotline intake support or Election Day lawyers who can go into court as needed to secure voting rights when voters are denied at the polls.

On Election Day, project coordinators deploy monitors to randomly selected polling places throughout the state depending on the number of available volunteers. Volunteers, who are supplied with printed voting rights information, complaint forms, identifying paraphernalia, office supplies and a compendium of election regulations and legal cases as needed, work in teams of two or more to observe polling sites. Monitors complete voter complaint forms and call in more severe problems they observe to the coordinators. The project coordinators compile the complaints and analyze the types, number and severity of problems captured.

Our Voter Protection reports provide only an abbreviated snapshot of election and voting problems because of the Voter Protection Project's limited budget, volunteer pool, reach of advertising and access to polls.

People with voting problems tend to call their county election offices, state officials or local party organizations rather than non-partisan hotlines, which also reduces our total complaint number. The extent of impact is hard to determine because none of those election offices track or reports on the complaints they receive.

While the overall numbers of complaints are not high, we see consistent patterns and types of complaints that indicate systemic problems that may be easily remedied.

The Big Picture: Key Recommendations

Improve poll worker training. Poll workers are the link between voters and their election system. On Election Day, our right to vote is in their hands. When they give us wrong information, it imperils our right to vote. The majority of voting rights violations we hear about result from poorly trained poll workers, particularly around the failure to offer provisional ballots, erroneous requests for identification, and the provision of inaccurate information. Uniform poll worker training with role playing and sensitivity training and an emphasis on basics must be implemented.

Record, track and rectify voter complaints and problems. The state should establish systems for recording voter complaints and problems, and then analyze the causes. It should issue public reports that summarize the types of problems voters encounter and its plans to fix problems and improve the process. It should also take responsibility to resolve individual voters' problems, whether reported to the state or an outside organization, to allow them to vote in the next election. The state should also gather information about provisional, emergency and absentee ballots from all counties so it can further analyze local election performance.

Educate and assist voters. In addition to improving the performance of poll workers, the state can promote smoother voting experiences through a public education campaign distributing information about how to prevent or resolve problems at the polls, including the right to a provisional ballot, and utilizing statewide public notification systems that facilitate regular communication with voters.

February 2008 Elections: Problems & Solutions

Inaccurate Voter Rolls: Missing Names and Incorrect Party Affiliations

Problem: Voters found themselves incorrectly registered for a different party at the polls. Poll workers did not alert county officials as more voters complained about incorrect party affiliations. Some voters were told to vote in the incorrect party or not at all. Poll workers did not offer provisional ballots in these instances.

Solutions: The state should investigate and publicly release the causes of the party affiliation switch and take steps to prevent it in the future. Poll workers should be instructed to contact a centralized election office when several voters experience the same problem, and they should offer provisional ballots to each affected voter. County officials should determine whether an emerging problem indicates a larger pattern and alert state officials if it does. State officials should create a statewide election alert system to give directions for handling unanticipated problems.

Problem: Voters found their names left off the rolls and some were not offered provisional ballots.

Solutions: Poll workers should offer provisional ballots to all voters absent from the rolls. If voters were registered, the state should investigate and correct the system errors that caused the absence of their names. Informing voters about their rights to provisional ballots and to appear in front of an election judge that day to plead their case should be a public education priority. A simple system should be established for poll workers to record such problems and report them to the state.

Problem: Some registrations submitted to the Motor Vehicle Commission never made it to the county registration office.

Solutions: The state should develop and oversee a uniform, secure system for inter-agency and inter-county delivery of voter registration forms especially since there may be a time discrepancy between information transmitted electronically and signature cards that are transmitted through the mail.

Insufficient Training: Problems Caused By Poll Workers and State Elections Employees

Problem: Citizens received false information or misleading advice from poll workers, leading to uncast ballots. One woman who called our Voter Protection Project hotline to report an incorrect party affiliation had been told by poll workers that nothing could be done. She did not vote, refusing to vote in the other party's primary. Poll workers did not allow her to vote by provisional ballot.

Solutions: The state should create uniform guidelines and standards to govern poll worker performance that must be clearly communicated to all poll workers. Poll workers should be held to job performance standards, and workers who are the subject of multiple complaints should be provided with additional training and supervision, and, if necessary, disqualified from future service.

Problem: State voter hotlines were understaffed during the hours the polls were open. Our Voter Protection Project hotline received reports about unanswered calls to official voter help lines, including the state Division of Elections and Hudson County hotlines. One Hudson County employee hung up on a Voter Protection Project staff member who called to see if Hoboken voters were given emergency ballots when the machines went down.

Solutions: Election Day only happens a few times each year. The state should treat it as an all-hands-on-deck event when anything could happen and be ready when it does. There will always be problems at the polls. State and county offices should heavily staff the help lines during poll hours, using data from previous elections and interest in a specific contest to estimate how many callers to anticipate. We support the efforts of counties like Bergen which informed us that it hires and trains temporary staff to help with the increased workload on Election Days.

Problem: Poll workers did not routinely distribute provisional ballots to people whose voting eligibility was in question. We received a troubling comment from a voter who said poll workers told him they had been instructed not to provide provisional ballots this election.

Solutions: In 2005, former New Jersey Attorney General Peter Harvey set guidelines in accordance with HAVA that required poll workers to distribute provisional ballots to all voters whose eligibility to cast a ballot on a voting machine they questioned. That rule is required by law and should be continued; poll workers should receive extensive training on it and other aspects of provisional ballots under New Jersey law. Provisional ballots allow people to cast a vote and have it counted once their voting eligibility is verified by the county. In New Jersey, provisional ballots also automatically register currently unregistered voters for future elections if properly filled out.

There is no reason to deny anyone a provisional ballot. Distributing provisional ballots gives voters the benefit of the doubt and acknowledges that updated registration information may not be properly reflected in the poll books. Provisional ballots should be included on a poll worker checklist for ways to address voter problems, and poll workers must be directed to remind voters to fill out all the information requested on the provisional ballot.

Supplies and Demands: Shortages of Voting Materials

Problem: Polling places did not have adequate ballots (such as voting machine cards and provisional ballots), and necessary forms were not replenished quickly once they ran out. Some county offices took several hours to replenish ballots at polling locations.

Solutions: The increased interest in this primary election should have alerted election officials to the need for a substantial number of machine cards and paper ballots. Over 48,000 new voters registered between November and the January registration deadline for the presidential primary. Crews should have been on hand to deliver materials quickly in anticipation of high turnout.

Voting Machine Failures

Problem: Machines in this election malfunctioned, causing long delays and raising doubts about the integrity of votes cast.

Solutions: The state should allow voters experiencing machine problems to use emergency ballots. In addition, there should be a standard protocol in response to malfunctions. The poll workers should report machine complaints immediately to the county machine supervisor, and the machine supervisor should then send authorized technicians to investigate specific problems and alert state officials. The state should keep public records of voter complaints and machine malfunctions.

Problem: Poll workers had problems preparing electronic machines for voters, leading to incorrect or incomplete voting.

Solutions: Poll workers should be trained in new technology more frequently, more thoroughly and with compensation. There should be a master poll worker at each polling place who is responsible for fixing a problem or contacting the county machine supervisor, who in turn is able to provide qualified individuals to help workers immediately with machine problems.

Problem: Voters and poll workers are not sufficiently familiar with the current electronic machines.

Solutions: We have sample ballots; we should also have sample machines. In some counties, officials exhibit machines at various places prior to the election (such as schools and supermarkets) so voters can experience the new technology prior to entering the polling place to actually vote. This should be expanded statewide.

Ensuring a Pro-Democracy Environment at the Polls

Problem: Police intimidation of voters was documented in New Brunswick.

Solutions: Police should be present at the polls only when called by election officials or poll workers due to a criminal problem or threat. They should not establish or maintain an ongoing presence around polling places.

Problem: The Attorney General has prohibited non-electioneering free speech activities and voting rights advocacy within 100 feet of the polls.

Solutions: Lift the ban so that non-partisan poll monitors are accessible to voters who need information about voting rights prior to entering the polling place and who complain that their voting rights were denied upon exit from the polling place.

Access Restricted: Voters Could Not Reach Their Polling Places

Problem: Many polling places remain inaccessible to disabled people. For example, the Hoboken Elks Club polling site did not accommodate wheelchairs or strollers. This problem has persisted in New Jersey for many years despite numerous efforts by advocates to remedy the problem.

Solutions: The state should investigate the Elks Club of Hoboken and other problematic sites for accessibility and order each county to make improvements as needed. Locations that are not accessible should not be used and waivers should not be given. Nontraditional polling sites like malls, car dealerships and corporate cafeterias should be investigated as potential new and accessible polling sites.

Problem: Registered voters could not find their polling place using the state's online locator tool.

Solution: The state should examine its online poll locator for deficiencies and make improvements. Elections officials should have a system for inputting addresses to match with polling places, and they should have a well-staffed hotline to call if the locator does not work.

Campus Poll Problems: Obstacles for Student Voters

Problem: Some students in New Brunswick, Piscataway and Newark were not allowed to vote on the machines at student polling places and many were denied provisional ballots. Students unsure of their polling place had to shuttle back and forth across campus before finding the correct site.

Solutions: Elections officials should allow college students to vote at any campus polling place, either provisionally or on a voting machine. Election law allows for intra-county provisional ballots, and any two polling locations for the same university are usually in the same county. Colleges should distribute voter registration and change-of-address forms in student packets and at student centers and explain that in New Jersey students are permitted to register in New Jersey during their academic residency.

Problem: Residency requirements and campus mail procedures hindered student registration and voting. Campus dorm addresses are often not recognized on county or state databases. Compounding the problem, Rutgers University does not forward students' mail, impeding voter notification.

Solutions: County elections offices should establish partnerships with colleges and universities and take advantage of electronic communications systems. These partnerships might include one-stop voter registration sites on campuses and advisories on student web sites and e-mail systems. A recent survey of web-based voter information at New Jersey colleges and universities found links on the Rutgers and Princeton websites to voting resources. However, the web sites of Montclair State University, Rider College and Fairleigh Dickinson University had no voting information.

February 2008 Election by the Numbers

Some voters experienced more than one voting problem and some incidents affected more than one voter, particularly with respect to machine malfunctions. We believe the complaints we collected reveal a larger pattern of systemic problems. The complaints mirror the information collected in past election protection efforts.

48,000 – Number of new voters who registered in New Jersey in the months immediately preceding the February 2008 Presidential Primary.

140+ – Number of voter incidents and questions the Voter Protection Project helped solve, between the League of Women Voters of New Jersey VOTeline, the ACLU-NJ intake line, poll monitors at polling sites and on-call volunteer lawyers.

64 – Number of people the Voter Protection Project recorded who were turned away from the polls without voting. None of these would-be voters were offered provisional ballots and most were not directed to an election court. The reasons included:

- Voter rolls listed incorrect party affiliation and provisional ballots were not issued (all over, particularly in Neptune, Bergenfield, Princeton);
- Machines were down and poll workers did not provide emergency ballots (Hoboken, Elizabeth);
- Voters' names were not on the rolls (Rutgers student polling sites in Piscataway, New Brunswick and Newark, and regular election sites in Ewing);
- Polls did not have sufficient voter stubs for democratic voters (Hillside);
- Information within Motor Vehicle Commission voter registration forms were not properly transmitted to the county election offices (Somerset); and
- The county apparently removed voters from rolls because of spotty voting records without notifying voters (Somerset).

The total number of voters trying to participate in the presidential primary who were turned away without voting is hard to assess, given that neither the counties nor the state tracks rejected voters.

30 – Number of voters the Voter Protection Project actively helped on Election Day who otherwise would have been turned away.

44 – Number of calls received regarding problems with voter registration. Party affiliation and wrong student addresses dominated.

200+ – Number of calls the New Jersey Public Advocate received from people incorrectly registered with the wrong party.

30+ – Number of people Voter Protection Project documented who were mistakenly registered for the wrong party. Only a few of these voters actually voted.

- One polling place allowed a husband and wife to vote again after they voted in the incorrect primary.
- A poll worker in Camden incorrectly told a couple to come back later, saying the State was allowing voters to change their affiliation at the polls then.

23 – Number of voters calling to report polling place accessibility problems, including wheelchair accessibility.

8 – Number of voters who called the hotline to ask the location of their polling place because they had not received the information from their county. One voter could not find his information in the state poll locator, but he found it in the League of Women Voters' database.

7 – Number of people the Voter Protection Project documented who were not allowed to vote and not offered provisional ballots but went back to demand them on the advice of poll monitors standing outside the polling place.

7 – Number of callers where the electronic recording machine would not register their votes after repeated attempts to push the machines' buttons. The machines in the end did register their selections. Vote count discrepancies on several machines were reported around the state after first being noticed by the Union County clerk upon comparison of tallies with machine tapes (demonstrating the importance of quickly reporting problems to election officials).

3 – Number of calls received from voters doubting that the machine they used correctly registered their vote. One voter's machine registered a vote before he touched the console. He voted on the machine for a different (and his correct) choice, but he suspects he voted twice.

2 – Number of registered voters whose addresses pulled up no response in the state's polling place locator.

2 - Number of callers to the Voter Protection Project hotline who praised competent poll workers. We received far more complaints about poll worker performance including:

- Poll workers at Grace Church in Jersey City said they had never heard of provisional ballots.
- The election judge in Mercer County expressed frustration with poll workers in Hamilton because they referred problems to his court that could have been handled at polling places with provisional ballots instead.
- Poll workers at Ward 13 on 230 Mt. Vernon Place in Newark asked a voter for ID, which is not necessary to vote in New Jersey.
- Poll workers at Grace Church and Bloomfield High School primed the machine for the wrong party without asking voters or checking the rolls.

2 – Number of sites in Union to repeatedly ask for supplies without receiving them.

2 – Number of students at Rutgers Livingston Student Center whom a deputy attorney general personally kept from voting. They were told they could not vote and asked poll monitors for help. The deputy attorney general demanded they stop and refused to provide provisional ballots.