



What Provisional Ballots Tell Us about the Remaining Challenges in America's Local Voting Systems

Thessalia Merivaki, Mississippi State University

Conducting elections in the United States is a very complex enterprise. All states except North Dakota require that prospective voters register to be able to cast a ballot on Election Day. Some states allow voters to register the day they show up at the polls, while other states require advanced voter registration. In many states, voters can register to vote online, but all voters may still choose to register to vote in person or by mail. In some states, 16 and 17 year olds can pre-register to vote. And a few states automatically register any individual who is eligible to vote, thus eliminating the need to take an extra step in the voting process.

Even as rules vary by states, local officials are the ones who actually run elections in the United States. These officials are responsible for registering new voters and updating voter registration information for voters who move in and out of their jurisdictions, as well as removing the names of citizens who die or are convicted of disenfranchising crimes. To prepare for Election Day, local election officials are responsible for recruiting and training poll workers, staffing polling locations, and ensuring that voting machines work. They count and report vote totals and must deal with challenges relating to one's ability to vote or the voting outcome itself.

The Failsafe Mechanism Mandated by the Help America Vote Act

Many of the problems that come up during elections involve the management of voter registration. Before 2000, voters who showed up to vote on Election Day but found that their names were not on the voter registration lists in their jurisdiction were simply turned away from the polls. This practice prevented many eligible voters from casting their ballots, even when they were correctly registered to vote. Outdated and locally maintained voter lists increased the risk that eligible voters would be improperly turned away, as they left room for administrative errors.

To correct this situation, Congress adopted the Help America Vote Act in 2002, mandating that states take two steps:

- Keep and maintain statewide electronic poll books
- Offer voters whose names are not found on the voter registration list a provisional ballot

Provisional ballots have to be verified by local officials to confirm the voter's information and eligibility to vote. If the provisional voter's information is verified, then the vote will be counted. If it is not verified, then the provisional vote will be invalid. On its face, this process should solve problems created when voters' names cannot initially be found in registration lists – but this failsafe turns out to be insufficient.

Why the Provisional Ballot Does Not Protect All Registered Voters

Voters often cast provisional ballots for reasons other than lack of voter registration, or lack of evidence of voter registration. Voters are not allowed to vote outside of their county of residence, and if they insist on casting provisional ballots, those do not count if the voters reside in another county. But many show up to vote in their home county yet are instructed to cast a provisional ballot because they have gone to the wrong precinct. In many states, such provisional votes will also not count, even though voters are registered registered to vote and turn out to vote in their county of residence.

According to local officials, the majority of provisional ballots cast are not counted because voters are simply not registered to vote. But officials also acknowledge that they reject many provisional ballots cast by voters

who vote in the wrong precinct, even if they live and try to vote in the right county. Since 2004, when states were required by federal law to offer provisional ballots, voting rights groups have litigated in favor of counting these out-of-precinct votes in Colorado, Florida, North Carolina, Ohio, Michigan and Iowa. The courts assert that registered voters who turn out to vote in their county of residence but at the wrong precinct have the right to vote provisionally, but it is up to the individual state's voter eligibility requirements to say whether such votes will be counted. Only in Missouri were litigants successful in requiring out-of-precinct votes to be counted in the relevant counties.

Why Local Officials Should Do Voter Education and Outreach

The Help America Vote Act has undoubtedly helped citizens who would have otherwise been turned away from the polls due to administrative errors. And the Act has facilitated the maintenance of statewide voter lists. But it does not solve all problems or even guarantee that provisional ballots cast in the right county will be tallied. The drawback of local election administration is that not all local officials reach out to voters, but a benefit is that local officials can take innovative steps. To decrease the overall number of provisional ballots that are never counted, election officials should:

- Mail a voter registration application to provisional voters who were not registered to vote.
- Provide a voter registration application to all provisional voters whose voter registration is not verified on Election Day.
- Contact prospective voters before Election Day to verify their correct precinct.
- Inform voters about the ability to check their voting location online through social media.

Existing research shows that prospective voters usually learn about their registration status and correct polling locations from their local election officials. Although some local election officials obviously do more than others, all can have a positive impact on the voters' experience. When local officials reach out, voter participation increases and problems that cannot be solved by federal and state laws alone can be minimized.

Read more in Thessalia Merivaki and Daniel A. Smith, "Casting and Verifying Provisional Ballots in Florida" *Social Science Quarterly* (2016).