



Uncounted Votes

The Racially Discriminatory Effects of Provisional Ballots

By Joshua Field, Charles Posner, and Anna Chu October 2014

Introduction and summary

In the wake of the troubled and deeply flawed 2000 presidential election in which between 4 million and 6 million votes were not counted,¹ Congress passed the Help America Vote Act, or HAVA, to restore voters' confidence in the electoral process.² One of HAVA's reforms was the establishment of the provisional ballot process, which was originally put in place as a fail-safe measure to ensure that voters who face issues when they arrive at the polls can still cast a ballot. Despite its best intentions, the process is not without serious problems. Of the more than 2.7 million provisional ballots that were cast in 2012,³ more than 30 percent were not fully counted or rejected all together.⁴ Moreover, according to this first-of-its-kind analysis, in 16 states, the use of provisional ballots is more frequent in counties with higher percentages of minority voters.

Beyond their propensity to not be counted, provisional ballots may serve as a proxy for breakdowns in the election process because they are issued when there is some type of problem precluding a normal ballot from being cast. While voter error may be the reason for the issuance of some provisional ballots, cumbersome voter registration procedures, restrictive voting laws, lack of voter education, poorly maintained voter registration lists, and mismanagement by election officials all contribute to voters casting provisional instead of regular ballots. This report, however, does not attempt to identify the institutional root causes of why provisional ballots are issued. Instead, it is a first-of-its-kind analysis that critically evaluates the issuance of provisional ballots in counties across all 50 states during the 2012 election with specific attention to whether minority populations were more affected by the use of provisional ballots.

After controlling for population and examining county-level data in each state, we found that during the 2012 election, voters in counties with a higher percentage of minorities cast provisional ballots at higher rates than in counties with lower percentages of minorities in 16 states. Those 16 states are Arizona, California, Colorado, Kansas, Maryland, Montana, North Carolina, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, and Utah.

Our findings raise serious questions about the health and integrity of the voting process in these states. Since nearly one-third of provisional votes are eventually rejected, the finding that minority voters may be more affected by the use of provisional ballots gives rise to concerns of whether minority voices are being properly heard in these 16 states. Although there are legitimate reasons for provisional ballots to be issued—and some such ballots are properly rejected—these statistically significant correlations between provisional ballots and minority populations are deeply troubling.

Moreover, additional restrictions on voting have been enacted in a number of these 16 states during the past two years. These new restrictions may result in an increase in race-based disenfranchisement in the upcoming 2014 midterm elections that exceeds the racial disparities of the 2012 election. This report provides a road map to the states and counties where minorities may face more barriers to voting in 2014 based on 2012 voting data.

Finally, this report provides the following recommendations to address the troubling issues related to provisional ballots:

- Modernize voter registration
- Implement same-day registration
- Provide online registration
- Expand early voting
- Liberalize correct county or precinct rules

Implementing these common-sense measures will go a long way to ensure that all Americans who are eligible can vote and will have their votes counted.

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