



NOVEMBER 2010 POST-ELECTION ASSESSMENT

by the

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

I. Summary of ACLU-NJ and LWFVNJ Election Activities

For the November 2, 2010 general election, the American Civil Liberties Union of New Jersey (ACLU-NJ) and the League of Women Voters of New Jersey (LWFVNJ) deployed staff and volunteers for a variety of election-protection efforts. These efforts were a continuation of these organizations' prior work, which includes:

- our May 2009 report and recommendations, *Making Every Vote Count*, based on observations during the November 2008 presidential election;
- our correspondence to and meeting with Lieutenant Governor Kim Guadagno in August 2010 to address a variety of election administration and voter rights issues; and
- the ACLU-NJ's ongoing litigation with the New Jersey Department of Education over its enforcement of the state law requiring voter registration drives in all New Jersey high schools.

Prior to the election, through our own efforts and those of partner organizations, we distributed 29,000 (24,000 English and 5,000 Spanish) voter "Know Your Rights" pamphlets statewide, as well as posting them on our websites. The pamphlets educate voters about their rights and responsibilities at the polls, and also include helpful information about mail-in ballots.

Prior to and on Election Day, LWFVNJ publicized and staffed a toll-free hotline for voters to call. The ACLU-NJ deployed staff and volunteer attorneys to four counties (Bergen, Middlesex, Monmouth and Union) for Election Day legal hearings. The Rutgers-Newark Law School also provided legal assistance in Essex County.

II. Election Day Problems and Progress Identified

Reports and observations from the hotline and the volunteer attorneys demonstrate that there are continued problems with extending voter registration opportunities as required under the NVRA; the processing of voter registrations; and poll workers failing or neglecting to comply with the law governing provisional ballots. Other areas of concern are also discussed below.

A. Noncompliance with NVRA registration obligations and flaws in processing voter registration applications

Hotline calls and activities in court demonstrated that the State continues to have problems with the extension of registration opportunities mandated by the NVRA, and in the processing of voter registration applications:

- Six voters who came to the election court in Essex County each claimed that during a recent visit to a Motor Vehicle Commission (MVC) office, they were denied a statutorily-mandated voter registration opportunity, and that they would have taken advantage of the opportunity if extended. All six were granted orders to vote.
- A hotline caller from Morris County reported that she completed and mailed a voter registration application in mid-August. She was not on the rolls when she went to vote, and her work schedule precluded her from going to court to contest the denial of the vote. She was therefore disenfranchised.
- A hotline caller stated he registered at the MVC but was not on the rolls. Another caller who reregistered at a social service agency in Monmouth County also was not on the rolls.
- A Middlesex County voter was denied a statutory voter registration opportunity at MVC but also completed and mailed a voter registration application on September 21. The registration was not processed; initially, the trial judge granted the voter a provisional ballot then after a motion for reconsideration, granted an order to vote in the machine.
- In Bergen County, we observed six cases of voters who believed they were registered but were not found in the poll books. The judge granted orders to vote in five of those cases.
- In Union County, voters obtained orders to vote because of a lost registration application (one voter), an improper purge (one voter), and MVC failure to extend registration opportunities (three voters).
- In Passaic County, media reports said there were 16 election cases during the day, mostly applications for emergency absentee ballots. But some cases “involved discrepancies in voter registrations.”

B. Poll Worker Performance / Provisional Ballots

- We continued to see issues with poll worker performance, such as with poll workers improperly asking for ID, not properly providing provisional ballots, and even incorrectly telling one voter how to do a write-in ballot.
- We received reports that poll workers at the Lincoln School, New Brunswick, were refusing provisional ballots to voters entitled to receive them. First, voters who resided in a precinct covered by the Lincoln School polling place but who was registered elsewhere in the county were improperly redirected back to the location where they were registered (but no longer resided). Further, at least two other voters there disappeared from the voter rolls even though they previously voted in that district, and did not move. While the reason for these deletions are unknown and require investigation, these voters were also wrongfully denied provisional

ballots. Some voters there, who were given provisional ballots, were not given the phone number to call where they could learn whether their ballot was counted or not.

- Although DOE has taken important steps to improve poll worker training, the foregoing is an example of poll workers not being trained, not applying what they learned when trained, or willful neglect (*cf.* N.J.S.A. 19:34-48). DOE should investigate this matter to determine what caused these problems and what remedy will be imposed, and should report publicly on same.

The above events continue to demonstrate the need for continued improvements in poll worker training, the creation of master poll worker teams, and, importantly, a knowledge assessment for new and existing poll workers. *See Making Every Vote Count*, pp. 7, 8.

C. Online tools for voter use

The LWVNJ and ACLU found that in the weeks leading up to Election Day, the State's online "Am I registered" and poll finder were extremely helpful and excellent tools. These online tools have been substantially improved since the 2008 election, in accordance with our suggestions. *See Making Every Vote Count*, p. 11. Unfortunately, those were down for three hours the morning of Election Day. We used the national League's poll finder and directed callers to their county election officials in the interim.

D. Vote by Mail

Once again we had reports of college students not receiving their ballots until just before the election and therefore unable to return the ballot in time. The State should therefore modify its mail-in ballot application template to note that for voters living on campus or in some other institution where mail might be delayed (e.g., a jail), the voter should apply earlier than the mandatory deadline, to allow extra time for ballots to be delivered through those mail systems.

E. Polling Place Accessibility/ADA/VAEH

The polling place at the Senior Center, Storms Ave., Jersey City, was reported as inaccessible. Voters had to use stairs to reach the voting machines on the second floor, as the elevator was inoperative and in any event blocked on the second floor by voter sign-in tables and equipment. The Hudson County Board of Elections should be apprised of this noncompliance with the accessibility laws and asked to develop a plan to prevent its repetition.

F. Clarity of Public Question Language

While outside the purview of the Division of Elections, almost half of the calls received were voters confused by the language of the statewide public question. This demonstrates the need for greater clarity in drafting public questions and interpretive statements, and in better communication of election information to voters. *See Making Every Vote Count*, p. 11.

G. Bake sales (i.e., activity within 100 feet of a polling place)

We received multiple reports of bake sales or similar activities occurring in or near polling places. We notified the Attorney General's office, and have asked for their view on whether such activities are prohibited under the ruling in *I/M/O Attorney General's Directive on Exit Polling*. We have not received a response.

H. Explanation of DAGs' role

This was an area of progress. ACLU received assurances from Carolyn Murray, Counsel to the Attorney General, that deputy attorneys general involved in courthouse work on election day would verbally apprise all voters of their role in the process (i.e., that they represent the state, not the voter, and could use information obtained from the voter to formulate the State's position). This was recommended in *Making Every Vote Count*, p. 18. All voters that the ACLU encountered received this disclosure during this Election Day. It will be necessary to ensure that this training becomes a permanent part of deputies' training for future years. We intend to draft a separate letter to Carolyn Murray on this point, copying the relevant election officials.

I. NVRA compliance statistics

The MVC website that reports its compliance with its NVRA obligations was supposed to have been updated in April 2010 and again in October 2010 with information about the number of voters registered through MVC. Although we discussed this during the August meeting with Secretary of State Guadagno, the MVC's website is still not compliant, having last been updated in December 2009. See <http://www.state.nj.us/mvc/pdf/Licenses/hava.pdf>.

Separately, our office will draft an OPRA request to the Division of Elections seeking updated statistics on the number of voters registered through social service agencies which, like MVC offices, must also offer clients a voter registration opportunity.

J. Trial judges' application of the *IMO Hoff* decision

With one exception that was in any event quickly corrected (the Middlesex County case described above), trial judges we observed or about which we had reports regularly applied the rule of *IMO Hoff* and granted voters an order to vote on the machine, and not on a provisional ballot which would be not be counted, when they found that the voter had made a good faith but unsuccessful attempt to register (such as a lost or mishandled registration application), or had been denied a statutorily-mandated registration opportunity. We will draft a separate letter to Judge Feinberg on this point, to verify that this is permanently integrated into judicial training materials.

K. Absence of Satellite Locations

To our knowledge, the courts did not set up satellite locations where voters could make an application for an order to vote by video feed instead of traveling to the county courthouse (as was done during the 2008 election) (*see Making Every Vote Count*, p. 18). Nevertheless, in busier elections such as the next presidential election, this option should be reopened.

L. Other reforms identified in *Marking Every Vote Count*

We continue to believe, as we stated in *Making Every Vote Count*, that a number of other reforms continue to be necessary:

- Counties should record, track, correct, and publicize voter complaints and reported problems. (*Making Every Vote Count*, p. 4).
- The State should continue to improve and diversify voter public education programs that promotes registration, informs people of their right to vote, and apprises them of their right to receive a provisional ballot and be heard by an election judge. These programs should occur

throughout the year, but with special focus during the time of general elections. (*Making Every Vote Count*, pp. 4, 18).

- Using these and other sources of data, the Division of Elections should issue an annual “State of the Election” publication reporting on election administration issues. (*Making Every Vote Count*, p. 23). This can be combined with the annual report on the Statewide Voter Registration System (SVRS) that is already required by statute (N.J.S.A. 19:31-33).
- The State should convene an election summit with all stakeholders to have an open and frank discussion about voting rights and election administration issues, modeled after the one convened by the Ohio Secretary of State. (*Making Every Vote Count*, p. 11).
- The ACLU-NJ believes that the Division of Elections should endorse two important legislative reforms that will make the voting experience easier on Election Day, namely, inter-county provisional ballots and/or Election Day Registration (EDR). (*Making Every Vote Count*, p. 14). With the advent of the SVRS, there is no reason to discard provisional ballots cast by voters who are validly registered in a county other than the one where they now reside. In addition, the nine states and the District of Columbia that have adopted EDR have reported great successes, including increased turnout, with the new system.
- The ACLU-NJ will be looking into the counties’ compliance with N.J.S.A. 19:6-1, regarding the obligation to have Spanish-speaking poll workers in certain voting districts. We urge the Division of Elections to do the same.

III. A final word on turnout

Total turnout figures have not been finally calculated as of yet, but it appears to be approximately 2.087 million voters. That represents a turnout of about 40 percent of registered voters (based on registered voters being 5.274 million) and 36 percent of the voting eligible population (VEP) (based on VEP being 5.811 million). These figures may be adjusted slightly upward based on final figures, but New Jersey participation appears to have been lower than national rates. *See generally* Professor Michael McDonald’s turnout page, http://elections.gmu.edu/Turnout_2010G.html.

Experience shows that the election problems increase exponentially as the turnout increases. Now is therefore a good time to prepare for a sizeable increase in turnout for the 2012 presidential elections. A number of the reforms identified in *Making Every Vote Count* (such as prior planning, adequacy of election supplies, remedies when machines break down, etc.), will again be especially salient for those elections.

We look forward to a continuing and productive dialogue on these issues.