



MAY 2009

# Making Every Vote Count: A Review of the 2008 Elections in New Jersey

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



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## I. Overview

As in past elections, the American Civil Liberties Union of New Jersey (ACLU-NJ) and the League of Women Voters of New Jersey (LWVNJ) collaborated on Voter Protection 2008 (VPo8) to help New Jersey voters exercise their right to vote on November 4th. Voter Protection 2008 provided phone hotlines, legal support in courtrooms and poll monitors at more than 100 polling locations to help voters navigate any obstacles they encountered on Election Day.

The LWVNJ spearheaded the voter hotline efforts, while the ACLU-NJ managed the polling place and courtroom monitoring. More than 200 hundred community volunteers were trained and deployed as advocates and observers for the day.

During the November 2008 General Elections, VPo8 responded to more than 700 voter concerns, assisted hundreds of voters who encountered voting roadblocks, and provided legal assistance to 100 people petitioning for their right to vote at county courthouses. These numbers, a snapshot of voters' experiences in November, represent a fraction of the actual number of problems on Election Day. Even when joining together, the resources of the LWVNJ and the ACLU-NJ are limited and the project cannot possibly be implemented at every single polling location across the state. This results in a comparatively tiny — although representative — presence in the election.

We analyzed the complaints we received for patterns and signs of underlying systemic problems. Among the most prevalent problems we found were inadequate poll worker training and performance, failures with the provisional ballot process, and malfunctioning voting machines. Overly restrictive administrative policies and inadequate enforcement of existing rules continue to adversely affect people's ability to vote. There is a need for systemic uniformity and better coordination among state and county election offices. Election laws and policies must be brought into the 21st century to deal with new issues and challenges. Transparency and public accountability must be improved as well.

Although the majority of New Jerseyans successfully cast their ballots, an election is only truly successful when every eligible vote is counted. When we understand why the same problems recur each election cycle, we can take steps to resolve them.

This report on the November elections follows up on our previous report concerning the February 2008 Primary. It sets out the specifics of what is and isn't working in New Jersey elections, and recommends steps to improve elections for all New Jerseyans.

## II. The Big Picture: Key Recommendations

### Improve Poll Worker Training and Performance

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. Most of the voting rights violations and problems we observe result from ineffective poll workers, with the most frequent problems being failure to provide provisional ballots, improper requests for identification and misinformation. Uniform statewide poll worker training must be implemented.

### Record, Track and Rectify Voter Complaints and Problems

The state should establish systems for tracking voter complaints and problems in order to assess the efficiency of the state's voting apparatus. It should issue public reports that summarize the types of problems voters encounter and its plans to fix problems and improve the process.

The state should also track emergency and absentee ballot use in counties, as it does provisional ballots, to help monitor and assess local election performance. Counties must resolve individual voters' problems so that they will be able to vote in the next election.

During the November 2008 election VPo8 assisted 40 people who left their polling places without being offered provisional ballots. We sent them back into the polls with the information they needed to assert their rights.

### Educate and Assist Voters

The state must improve and diversify its voter public education programs intended to provide basic information about voting (e.g., promoting registration year-round, the right to receive a provisional ballot and to be heard by an election judge), and take advantage of wider promotional opportunities to ensure outreach to all communities in New Jersey.

### Convene an Election Summit with All Stakeholders

We urge the Secretary of State to expand the informal election roundtables held over the past several months by convening an annual Election Summit to review elections and to study ways to improve practices going forward. In 2008 and 2009, the Ohio Secretary of State, in cooperation with state and national election advocates, convened a public summit focusing on a wide array of voting and election administration issues. Discussions were led by election officials, voting rights advocates, academics and legislators, and resulted in a 101-page report that considered various methods for improving elections.

### **III. Recent Improvements in New Jersey Elections**

There have been some important changes in state and county practices since we began monitoring state elections in 2004. The state created the new State Voter Registration System (SVRS) as part of its obligations under the federal Help America Vote Act (HAVA). The New Jersey State Legislature properly moved the Division of Elections back under the command of the Secretary of State effective April 2008, reestablishing the separation between the responsibilities of administering an election and enforcing election law. We applaud the recent improvements in elections administration by the Secretary of State and the Division of Elections, including:

- **Convening meetings for state, county and local election officials and voting advocates to discuss emerging voting issues, evaluate voting processes and prepare for upcoming elections.**
- **Improving Election Day communications between election officials and voting rights advocates on the ground so that emerging problems are more quickly addressed as they arise.**
- **Improving on the Motor Vehicle Commission's (MVC's) compliance with the federal Motor Voter Law.**
- **Publishing comprehensive, uniform and accessible poll worker training guides.**

We commend the Department of the Public Advocate for fostering collaboration among state agencies that has the potential to increase voter registrations through Motor Vehicle Commission offices. As a result of the Public Advocate's intervention, more than 800,000 MVC clients were given the opportunity to register. This direct mailing resulted in reportedly record registrations, which highlights the effectiveness of proactive government outreach.

We applaud the cooperation from the county corrections officials at Essex and Hudson county jails who worked closely with the ACLU-NJ and Rutgers Law School-Newark to facilitate voting for incarcerated eligible voters. We similarly appreciate the support and assistance of those counties' Superintendents of Elections and County Clerks, whose staff often accommodated the project volunteers by meeting them outside of business hours. This collaboration resulted in several hundred inmates in the two facilities voting in the November 2008 election.



Volunteer poll monitor Lisa Witkowski poses outside her post in Atlantic City.

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We appreciate the efforts of all election officials who worked with advocates to address voting problems on Election Day. Problems such as improper demands for identification, lack of sufficient materials at polling sites and denial of provisional ballots would have affected many more voters had state election officials not responded promptly to alerts from volunteers “on the ground.”

We want to praise Camden, Gloucester, Middlesex, Ocean and Somerset counties for establishing video feeds between the courtroom in the county seat and other locations around the county so that voters did not have to travel to the county seat to go before a judge. This use of remote video feeds is a promising step that helps overcome the burden of N.J.S.A. 19:15-18.3 which requires the judges to sit in the county seats.



## **IV. Poll Worker Training and Performance**

Poll workers are the link between voters and their election systems. On Election Day, our right to vote rests in poll workers' hands. When poll workers give voters the wrong information, they imperil people's right to vote. Many of the 2,000 voters we surveyed in November reported favorable interactions with their poll workers. However, more than 50 percent of complaints we received about serious voting problems at the polls were due to poll worker error.

### **Failure to Provide Provisional Ballots**

The distribution of provisional ballots is one of the most common issues we encountered when assisting people trying to vote. There are many reasons why people who think they are properly registered may not appear on the rolls: Their registration may be incomplete or late; they may have shown up at the wrong voting precinct; they may have been purged from the rolls; they may have recently moved; or their registrations may have been lost in the system. The state provided a solution to government error in 1996 by mandating that provisional ballots be offered to people who believe they are registered to vote at a particular precinct but whose names do not appear on the rolls. These paper "ballots" should be counted if properly completed and if the citizen is registered at an address within the county. A 2006 law provided further voter protection by ensuring that denied provisional ballots would be treated as registrations for future elections and that any provisional ballot reflecting an address change in the county would result in the voter's address of record being updated.

VPo8 documented more than 300 people improperly denied provisional ballots by poll workers in November. The problem was particularly prevalent in student and urban polling places.

### **Poll Worker Misinformation**

An unacceptable number of poll workers also gave false or misleading advice, leading to uncast or uncounted ballots. We received reports of poll workers in Bergen, Middlesex and Union counties repeatedly sending voters to wrong polling sites, forcing some voters to go back and forth. We also received complaints of delays and issues arising from poll worker inexperience with electronic voting machines, paper ballot procedures and supplemental rolls.

### **Improper Demands for ID**

The law requires only first-time voters who mailed their registrations or those whose names were flagged in the poll books to show ID when voting. Calls about improper ID demands began early, prompting the first VPo8 voting alert of the day. The calls included people who had no ID flag on their record and some who did but could not get an explanation of why they were flagged. When multiple calls about improper ID demands came from Newark and Red Bank, we notified the Division of Elections, which promptly issued a corrective memo to counties.

The problem was exacerbated by aggressive challengers in Jersey City and Flemington who overstepped their authority by demanding ID and harassing voters. Poll workers at these sites did not stop the voter intimidation nor report it to their supervisors, as far as the voters could tell. In all, we collected 76 complaints of improper ID requests from voters at 40 polling places. VPo8 received two dozen incident reports of aggressive or intimidating acts by poll workers as well.

### **Inadequate Supplies**

Poll worker performance depends on support from county election offices. Some polling sites had insufficient supplies of provisional and emergency ballots, making it difficult for poll workers to do their job professionally. For example, the Camden County courts had no absentee ballots on hand to permit voting by court petitioners late in the day. In Atlantic City, the Ward 3, Dist 2 precinct ran out of English-language envelopes to secure provisional ballots, resulting in six people having to wait nearly an hour for county officials to provide more.

### **Inadequate Training of New Poll Workers**

New poll workers in Morris, Mercer and Union reported that the current training (one two hour session required every two years), is insufficient and that they felt overwhelmed by the paperwork on Election Day.

### **Recommendations for Improving Poll Worker Training and Performance**

*For state election officials:*

- Create and enforce uniform statewide standards to attract, train and retain qualified and quality poll workers. Guidelines should mandate the content of county supplemental training manuals, require training sessions for all categories of poll workers, create professional performance review standards and worker knowledge assessment, as well as set pay and reimbursement minimums. Such knowledge assessment should do more than attest that a poll worker received training, but should instead verify that the poll worker has in fact mastered the material presented. Under N.J.S.A. 19:50-1(a), no one who is not “*fully qualified* to perform the duties” required by Title 19 can be appointed as a regular poll worker. The time has come to enforce that legislative requirement.
- Create and require use of a comprehensive, accessible Best Practices Elections Procedures Sourcebook that standardizes county election practices and operations across the state. Uniform codes of practice will reduce poll worker error. This sourcebook should include statewide standards for provisional ballot dispensation, outline emergency ballot procedures and other election administration practices, and must be readily available to all election workers. The State’s *District Board Worker Training Manual* is a good first step to complying with this recommendation.

- Assess potential problem areas in upcoming elections and provide clear, specific pre-Election Day directives to assist counties with election preparedness. Such directives should be developed in consultation with affected parties and published on county Web sites.
- New Jersey should adopt the rule of *NAACP State Conf v. Cortes*, 591 F. Supp. 757 (E.D. Pa. 2008) and require poll workers to provide emergency ballots when half or more of voting machines at a precinct break down, rather than waiting for all machines to fail before using emergency ballots.

*For county election officials:*

- Build and cultivate teams of “master poll workers,” comprised of seasoned poll workers well trained on elections and voting practices to assist with problems as they arise in the field. Municipal clerks and other poll workers could be trained to serve as master poll workers to avoid the expense of hiring additional people.
- In addition to our discussion of training materials above, identify areas of improvement needed in poll worker performance and intensify training on these topics. Counties can improve poll worker training with short “quick-check” training sessions on specific practices before each election. Our analysis indicates that poll workers need additional training on provisional ballot dispensation, electronic machine function with problem-solving procedures, and proper use of supplemental poll books.
- Establish immediately accessible lines of command and communication for poll workers and the public to address problems as they arise at polls, with standard response systems set in place and made known to poll workers.
- Implement a voter complaint system that collects, investigates, responds to and reports on complaints about poll worker performance in a timely manner. Poll workers who repeatedly fail to perform in a professional manner should be placed on a “Do Not Rehire” list and if their conduct is a product of willful neglect or refusal, should be referred for criminal prosecution under N.J.S.A. 19:34-48. Complaint forms should be conspicuously available at polling sites.
- Ensure adequate supplies at polling places (provisional and emergency ballots, voting slips, machines), so that poll workers have the tools to do their job in a professional manner. Counties should also set up a delivery system that delivers needed supplies quickly to all polling locations.

## V. Communication Channels

Because the Division of Elections and county election offices administer elections, the backbone of democracy, it is essential that these agencies communicate effectively and frequently with voters and with poll workers before and during elections.

The LWVNJ fielded 2,000 pre-election calls from citizens who had election questions during October 2008. Many callers said they were unable to reach an official or get through on county election lines around the end of the registration period. People trying to use the state's "poll locator" (at <https://voter.njsvrs.com/PublicAccess/jsp/PollPlace/PollPlaceSearch.jsp>) found it wouldn't recognize some addresses; it was off-line at least four times in the days before the November election. The online personal New Jersey Voter Registration System (at <https://voter.njsvrs.com/PublicAccess/jsp/UserLogin/Login.jsp>), designed to provide individuals with their voter information, is not sufficiently user-friendly and requires a "voter identification number" that can be only obtained by first contacting one's home county election office.

County election offices do not always notify voters about changes in their status. We had 17 reports of people apparently purged from the official county rolls without notification (examples mostly coming from the court cases we observed). In addition, even newly registered voters reportedly received no notice from their county registration office about where to vote; we received 69 complaints from new voters who said that they had not received anything in the mail from their counties. VPo8 poll monitors in Bergen and Union counties tried to assist more than 70 voters who had been apparently re-assigned to another polling place without notification.

VPo8 made every effort to contact county officials as reports came in on Election Day. State and county election officials were much more responsive this election; Essex, Hudson, Mercer and Union all looked into or responded to our concerns promptly. However, gaps in the communication network on Election Day slowed county response time to emerging problems. The telephone capacity in some counties could not handle the number of incoming calls during the morning rush; voters, poll workers and VPo8 often got busy signals. This delay in response created more problems for those voters who were unable to wait.

Communication between state officials and election workers experienced slow-downs as well. When state officials responded to problems with corrective memos, their instructions weren't relayed quickly to poll workers on the ground. For example, poll workers continued to improperly demand IDs and deny voters provisional ballots at some locations despite corrective directives issued midday.

## **Recommendations for Improving Communication Channels**

### *For state election officials:*

- Convene an Election Summit with all stakeholders, similar to the one convened by the Secretary of State in Ohio to focus on voting and election administration issues (see Key Recommendations section for more detail).
- Improve the poll locator and online voter status functions, making them user-friendly and consistent. Look to states like Wisconsin and North Carolina that have much more user-friendly voter status systems.
- Work with county offices to review and improve county notification practices to ensure that people are properly notified about changes to their voting status or registration and given the chance to correct incorrect information.
- Work with counties to create statewide and county election alert systems that allow for faster response to voting problems as they emerge on Election Day.
- Establish a diverse network of public announcement systems designed to reach all New Jerseyans with elections information. Posters about election requirements and registration deadlines should be prominently displayed at mass transit hubs, in buses and trains, in social service offices, at community and university student centers and in courthouses.

### *For county election officials:*

- Assign a staff person to investigate and respond to individual voter complaints, including the preparation of a written record of complaints received orally. Voter complaints are an important part of effective Election Day communication, serving as an early warning detection system about problems that could affect future elections.
- Work with county and municipal clerks before Election Day to notify voters affected by redistricting about changes in their polling locations.
- Implement more effective communications systems to respond to emerging problems at the polls. Additional phone lines and other technologies should be utilized on Election Day to relay alerts from and to poll workers.
- Provide more visible signage at polls to distinguish individual precinct lines, voter sign-in areas and challenger areas. External signage should be large enough to be read easily from 100 feet away.

## VI. Voter Registration

Voter registration is the crucial first step to citizen participation in the democratic process. Voters who have not registered at least 21 days before an election cannot vote.

The state has fallen short of compliance with the 1993 National Voter Registration Act (also known as the Motor Voter Law) which mandates that state motor vehicle and social service agencies offer their clients the opportunity to register. As of 2006, New Jersey ranked 42 of 43 states in the percentage of voters registered through motor vehicle agencies, and was in the bottom half of states in the percentage of voters registered through social service agencies. A new day is dawning, however, with regard to motor vehicle agencies; the most recent statistics from the Motor Vehicle Commission (MVC) show that voter registrations there have nearly tripled from the 2006 numbers. Some problems remain, however: VPo8 documented about 180 problems with voter registration at MVC offices leading up to the November election. Many were not offered the registration form or their forms disappeared. About 25 percent of people we observed petitioning the court because of registration problems reported completing a registration form at their local MVC only to find that the county had no record of it.

Students often have problems voting. They are generally new voters, inexperienced in state voting regulations; they often have unique dorm addresses that don't conform to state requirements; and they frequently move which requires re-registration or, if an in-county move, requires filing an address change or filling out a provisional ballot. Students also tend to register through massive on-campus voter registration drives, often relying on third parties to properly deliver their completed forms. While some institutions provide extensive voter education to their students, most leave that outreach to on-campus advocacy organizations or student activists. Residency requirements and campus mail procedures can also affect student voting. VPo8 found that the state online poll locator couldn't recognize some campus addresses; students reported similar problems when trying to verify their voting status at their county offices.

*Judith Gordon, a monitor at a student voting site in Princeton, helped five students get a provisional ballot to vote. She wrote, "It was a great day. I felt several times like crying, to see democracy working and the people passionately excited about it."*

Nongovernmental voter registration drives are an essential component of our democracy and these efforts should be supported by local offices. However, the government should not rely solely on these hard-working volunteers or on paid political campaigners. It's important that the state and counties supplement these efforts with more voter education, availability of forms and good signage relating to voter registration.

We continue to be concerned about the efficacy of the Statewide Voter Registration System (SVRS) to accurately capture and maintain voter records. VPo8 monitors encountered nearly 60 citizens during the November General Elections whose names were missing from the rolls despite having recently voted at their precinct in previous elections. These missing names as well as February's party affiliation switch that affected hundreds of Primary voters and the counties' own reports of lost voters' names, point to glitches in the SVRS registration function. The SVRS vendor, Covansys, has had problems with its software and other states have dropped their contracts with this company.

The Statewide Voter Registration System does not appear to retain voter history records for years prior to its adoption and may not record most pending or incomplete registrations. The lack of historical record made it difficult for judges to determine some petitioners' voting history during court proceedings.

### **Recommendations for Increasing Voter Registrations**

*For state election officials:*

- Audit the Statewide Voter Registration System for communication problems with other state and county database systems. Address its inability to recognize nonconforming addresses. Work with the vendor and IT departments of all involved agencies to improve any underlying software and interconnectivity issues. SVRS, when integrated with MVC and other state databases, can help voters who move within a county or between counties register automatically. Under existing law, a change of address performed through MVC automatically functions as a change of address for voting purposes, whether in-county or between counties. State law should make it easier for voters moving across county lines to update their voter registrations in other venues as well.
- Devote greater resources to voter registration outreach. The state should not rely on fragmented efforts of nongovernmental groups for public outreach and voter registration. We need to enhance outreach and increase Public Service Announcements to improve citizens' knowledge about crucial voting requirements as well as supplies of registration forms should be available at government offices, public buildings and mass transit hubs. Announcements should be posted on trains, buses and billboards. Federal Help America Vote Act funds may be available to support these programs.
- Enforce the compliance of state social service agencies with the Motor Voter law, and monitor MVC compliance with the law. State officials should look to other states with successful MVC registrations, such as Illinois, to improve practices here. MVC license and change-of-address applications should include a checkbox for voter registration rather than require a separate form.

- Develop and oversee a uniform, secure system for interagency and intercounty delivery of completed voter registration forms. This should minimize loss during transit.
- Work with educational institutions and with county election officials to develop solutions to ongoing on-campus voting problems. Establish a system where colleges and universities provide voter registration forms to all incoming students. Amend state law to allow college students to choose among multiple campus polling locations on Election Day.
- To educate our youngest voters, the State Department of Education should ensure that public and nonpublic schools are complying with N.J.S.A. 18A:36-27, which requires an annual registration drive in every school for students eligible to register.
- The ACLU-NJ endorses Election Day Registration (EDR) in New Jersey to increase the number of people who can vote. Six states use EDR in conjunction with voter registration deadlines to increase voter turn-out, especially among new or infrequent voters. Iowa and Montana used EDR for the first time this year. EDR would improve participatory democracy in New Jersey, with our increasingly mobile electorate. New Jersey should consider it as a way to increase democratic participation.

*For county election officials:*

- Conduct ongoing registration drives to help avoid the crush at deadline times and reduce logjams in data entry. This will ensure that everyone who registers in time gets on the rolls. Extend voter registration efforts to jails, nursing homes, universities and high schools to increase the registration of those currently underrepresented at the polls.
- Establish voter registration partnerships with colleges and universities and take advantage of electronic communications systems. Partnerships might include one-stop voter registration sites on campuses and advisories on student Web sites and e-mail systems. Explore creative ways to register college students, such as establishing an opt-out choice for students filling out college forms.



## VII. Unlocking the Vote

Eligible voters in county jails have great difficulty voting. Citizens awaiting trial, those incarcerated for civil offenses such as failures to pay fines, and those jailed for low-level misdemeanors are eligible to vote and should have access to registration materials and ballots while in custody. Unfortunately, compliance has been spotty and many prisoners are not aware of their voting rights. Internal corrections mailing systems and the current legal requirements that absentee ballot messengers be registered voters in the county also adversely affect inmates' ability to vote.

In the absence of state action, the ACLU-NJ has provided voting rights kits to all county jails to remind corrections officials of their duty to help eligible inmates vote. While our collaborations in Essex and Hudson counties successfully brought the ballot to 420 incarcerated voters, we estimate that more than 2,000 eligible voters in other state jails were unable to vote in November.

Citizens who have completed sentences after criminal convictions are also guaranteed the right to vote under our state's constitution. However, the 2008 ACLU-NJ survey of county voter registration practices for people with prior convictions revealed that eight county registration offices continue to discriminate against these citizens. The state attorney general issued corrective memos in 2005 and 2006 to address this problem, but Atlantic, Bergen, Hudson, Middlesex, Morris, Passaic, Somerset and Union continue to block their registrations with improper demands.

Some poll workers demand "proof" from registrants that they have finished their sentences, although this information is not required by law. Some of the documents demanded, such as a letter from a parole officer, don't even exist. County conviction records are apparently not regularly updated. A Hudson County voter had his absentee ballot rejected due to an outdated convictions "hold" on his voting status. A would-be voter in Burlington was improperly disenfranchised for a misdemeanor (formally known as a "disorderly persons" offense).

### **Recommendations for Unlocking the Vote**

*For state election officials:*

- Promulgate clear, nondiscriminatory best practices and/or regulations for the registration of people with prior convictions to ensure uniform and proper registration practices across the state. These practices should require the state to provide county officials with updated and timely sentencing information.

- Work with county corrections and elections administrators to develop a process for jail ballot access for all eligible voters in county jails. Include officials from Hudson and Essex counties who now have successfully facilitated voting in their facilities. Deputizing county poll workers or corrections staff to serve as absentee ballot messengers would simplify delivery and avoid jail mail issues.

*For county election officials:*

- Use the provisional ballot process for people with administrative holds on their voting status so that their conviction status can be verified later, just as is done with other citizens with questionable status.
- Collaborate on jail voting procedures with county correctional staff to ensure these citizens are able to exercise their right to vote.

*For the New Jersey Legislature:*

- Allow correctional facilities to designate institutional workers to be absentee ballot messengers for the voters in that facility and create an exemption from the requirement that the designated messenger be a county voter. Such an exemption would also assist nursing home and hospital administrators to help eligible voters under their care file absentee ballots.
- Alternatively, authorize the Board of Elections to set up on-site polling locations at jails on Election Day to allow direct voting on machines or paper ballots as is done in Maine and Vermont. This would especially help in the larger jails in the state.
- Enact legislation allowing people on probation and parole to vote, as in 14 other states including Massachusetts and Pennsylvania.

*Merrill Stern described his assignment at St. Mark's Church Parish Hall in Teaneck. "I started my assignment at 2 p.m. and left when the polls closed at 8 p.m. Everyone was asked, on leaving the polling place, if they had any problem. Everyone (except two persons) responded, "no problem" and most were delighted that there were no lines — no wait. Most thanked me for being there and appreciated the role we played."*

## **IIX. Democracy and the Courts: Due Process at Risk**

Election Day courtrooms and judges provide a much-needed remedy for citizens denied the right to vote. Election judges are tasked with ensuring due process is afforded to would-be voters by weighing a citizen's fundamental right to vote against the state's voting requirements. Judges may also consider factors that affect the petitioner's compliance with state requirements and order a ballot if the facts of the case indicate "government error" or unreasonable impacts on the petitioner's right to vote.

Citizens denied their vote had very different experiences in the crowded courts on Election Day. The outcome depended on the judge of the hour, the presence of partisan lawyers, the particular county, or the caseload ahead of them. In Morris County, a judge in one courtroom denied the vote to a petitioner who had become a citizen after the registration deadline, while next door another judge issued an order allowing a newly naturalized citizen to vote. Late in the day, some courts ran short of the absentee ballots needed for those petitioners granted their right to vote.

Some judges used provisional ballots indiscriminately instead of deciding voter eligibility immediately. The high number of judicial orders for provisional ballots in Somerset was particularly problematic since these ballots would only count where people were already on the county rolls. People with registration problems resulting from bureaucratic error, like those with MVC or purging issues, were out of luck even with a provisional voting order. Legislators of the Senate State Government Committee also questioned the provisional ballot discrepancies between county courts during a public hearing on December 11, 2008.

The courts did not always ensure all petitioners received due process on Election Day. VPo8's analysis of the hearings observed showed that petitioners with legal representation were more often successful. Having legal representation helped, while lack of legal representation meant a lesser chance of success.

Lawyers from the state and opposing political factions were in almost every court. Although the deputy attorney general (DAG) represents the state and not the citizen-petitioner, petitioners were not always informed of this conflict when they spoke to a DAG before their hearing. A DAG's failure to disclose his/her role is a potential violation of attorney ethics rules that must be stopped. One Warren County judge finally ordered DAGs to inform petitioners immediately that they were lawyers for the state.

Equal access to the court's protection is also a due process concern. In November, VPo8 encountered more than 100 people who were not allowed to vote on Election Day but who

lived too far from the county seat to take advantage of this remedy. Transportation needs and time constraints were the most common reasons cited.

### **Recommendations for Improving Court Redress for Voters**

#### *For the Administrative Office of the Courts:*

- Institute mandatory trainings on federal and state election law for election judges.
- Work with county assignment judges to develop a cadre of county judges for Election Day assignment who are knowledgeable in election law.
- Work with court ombudsmen to develop informational materials for those accessing courts on Election Day. Provide clear descriptions of the hearing process in lay terms for court petitioners, including descriptions of the role(s) of various state and county officials.
- Encourage more counties to follow the lead of Camden, Gloucester, Middlesex, Ocean and Somerset counties, which established video feeds between the courtroom in the county seat and other locations around the county so that voters did not have to travel to the county seat to go before a judge.

#### *For state election officials:*

- Develop materials for Election Day judge training and ongoing professional development.
- Develop materials for petitioners that explain in layman's terms the court process; the role(s) of various legal, state and county officials; their rights; and the potential of legal representation. Input from voting advocates should be solicited. These materials should be available at polling locations and given to would-be voters who are turned away. Disseminate these "Guide to Election Courts" materials to county election offices and post them on state and county election Web sites.
- Work with the attorney general to develop a form for election court petitioners that describes the DAG's role and the rights of the citizen.

#### *For the state legislature:*

- Amend to N.J.S.A. 19:15-18.3 to allow for satellite election courts around the county rather than the current mandate that all election judges sit at the county seat.

#### *For county election officials:*

- Work with county and town transportation services to provide additional transportation services from towns to election courts for those who need it.

## IX. Elections in an Electronic Age

Elections in New Jersey have moved into the electronic age. State and county officials have contracted with several hardware and software vendors for electronic voting machines, absentee ballot scanners, development and maintenance of voter registration databases, and printing of voter rolls. These modern applications that allow for amazing interconnectivity and instant election results create new problems for our 20th century voting code.

The accuracy of electronic voting machines has been controversial since their wide-scale implementation after the 2004 election. Voters wonder whether their choices are correctly recorded; some question whether the machines are deliberately altering their selections. All New Jersey voters now use some form of electronic voting, whether they vote at the polls or have their paper votes scanned. Any machine is open to manipulation, but the use of electronic voting machines has exacerbated the problem because election officials cannot determine whether hacking or pre-priming of election counts has taken place for one simple reason: The state doesn't have access to the commercial computer code that runs the ballot counting because the manufacturers have claimed it is a trade secret.

As in previous elections, problems with the Sequoia electronic voting machines began immediately on November 4, as many machines around the state failed to fire up. We

Many electronic voting machines wouldn't start on November 4th, leaving workers to scramble for paper ballots first thing in the morning or send people away. Poll workers in District 8 in Belle Meade, told early voters to leave and "come back later" rather than providing them with emergency ballots.

received nearly 40 complaints, but the press reported many more. County election officials attributed most of these failures to poll worker error but voters at the Conklin Hall site in Newark point to frequent machine failures since the introduction of the new machines in 2006. At many sites, including Conklin Hall, the machine failure was compounded when uncertain workers did not provide voters with the mandated emergency ballots.

VPO8 received 35 reports of problems with electronic machines from voters and poll workers. Problems ranged from flickering "X"s to lost votes and problems with the "write-in" function. All those who reported problems were uncertain that their votes registered properly. At least two people went to court to demand a paper ballot rather than vote on the flickering touch screens. Many voters expressed unfamiliarity with the touch screen

technology, and some forgot to press the final “X” button at the bottom of the touch screen to cast their ballot. Poll workers had to remind them, and in some cases, actually reached into the booth after the voter had left to press the “X.”

Vote tally discrepancies, where fewer ballots were registered on internal counters than the number of voters who used the machines, were reported at Conklin Hall in Newark during the June Primary and at the Ward 2 precinct in Hillside during the General Elections, where 40 votes apparently disappeared. These incidents echoed the Union County clerk’s alert after the February primary about discrepancies in some Sequoia machines’ internal “counting” systems.

*Michelle Sternfeld, staffing the voter hotline at the League office for a good part of the day, wrote about her experience: “This partnership between the LWV and the ACLU has once again demonstrated how important this service is to the voters of New Jersey, and beyond. It was quite apparent that callers were often satisfied and reassured just by finding a human being on the other end of a quickly answered phone, no matter what the actual response to their questions or concerns. It was an honor to be part of that.”*

Electronic equipment also introduces a host of security concerns. Voting machines that rely on the integrity of software are susceptible to hacking and require sufficient security prior to elections. Voters at several polling locations in schools and universities also reported that their voting machines were left unattended and in the open at least two to three days before the election.

### **Recommendations for Improving Election-Related Technologies**

- The ACLU-NJ supports replacing the current touch-screen electronic voting machines with optical-scan voting machines, a composite of both a paper ballot and computer system. This latter method is preferred because paper ballots are filled in by the voter and can be counted in the event of a recount. States around the country, after experimenting with electronic voting machines since 2004, have switched to optical-scan voting machines because of their greater reliability, vote capture and ease of recount.

#### *For state election officials:*

- Track and investigate machine malfunctions to ensure product performance and reliability. The investigation should include examination of all software and should be shared with the Voting Machine Examination Committee to improve its capacity to certify our voting machines.
- Require vendors to provide all information regarding the design and workings of their

products, including any voting-specific computer software and code that is not a commercial off-the-shelf (COTS) product used in the voting system. California successfully made this a requirement after public outcry over the dangers created by private control of public business.

- Improve public notice and input into elections administration policy and procedural changes, including the Voting Machine Examination Committee.

*For county election officials:*

- Make vendor contracts publicly available in county offices and on county Web sites. The number of machine failures raises questions about the Sequoia Advantage machines' durability and ease of use. VPo8 supports the Public Advocate's recommendations for more comprehensive warranty provisions than the 30-day, "no responsibility" warranties currently in place.
- Provide sufficient numbers of replacement voting machines; use past machine performance and anticipated election turnout to establish the number of backups needed. Provide "practice machines" at polling locations to show new voters how to use the touch screen correctly.
- Secure voting machines physically as well as electronically before elections.

*For the State Legislature:*

- Modernize election law to take into account the realities and issues raised by electronic voting. Current laws refer to out-of-date equipment and ballot counting procedures. The Voting Machine Examination Committee must be empowered to consider computer-age processes and issues. The Legislature must weigh in on the election controversies of today to ensure a healthy, well-functioning and respected voting system.



Young election day monitors pose in their aprons before deployment to the polls.

## **X. Transparency, Accountability and Responsiveness**

Open, fair and transparent elections are a prerequisite of democracy. The people have the right to observe elections. County officials in Mercer and Somerset improperly tried to prevent citizens from observing the machine count after the polls closed. One county incorrectly told VPo8 that only election officials were allowed inside to watch the ballot count. The attorney general agreed with the citizen observers who finally were allowed to watch the count. These observers reported that paperless electronic voting machines used in these counties didn't allow for an "open and public examination" of the vote count, as specified in our election law, because of the secrecy of the internal counting mechanism.

One hallmark of a successful organization is accountability. Systematically tracking voting problems helps elections officials evaluate the efficiency and accuracy of our elections system. All polls are required to keep on hand official voter complaint forms. The state office has a toll-free number for people to call about voting problems. The ACLU-NJ requested records of the voting complaints each county received during the February 5 and June 3 2008 primaries. Sussex and Cape May provided a laudably comprehensive package of documents, including court cases and phone records. The responses of other counties to our Open Public Records request were haphazard and incomplete. Several counties, including Bergen, Mercer and Hudson maintained they had no "official complaints," although we knew otherwise.

A responsive administration is an essential component of democracy because it deepens trust in the system. VPo8 heard from many people who submitted complaints (either in writing, via e-mail or by phone) but heard nothing back from their election officials. The Voter Protection Project began in 2004 in response to calls from people with voting problems. Collaborators trained volunteers to provide voting rights palm cards and survey voters at polling sites to assess our elections administration. Initially ordered away from polling sites by state officials, VPo8 is now allowed to survey voters only after they vote and only with people who obtained exit poll badges and credentials from the county elections board a full 2 weeks before the election. Advocates however are still banned from providing "Know Your Rights" voting information to voters entering the polls. These state constraints have hurt our ability to adequately observe elections in New Jersey. One voting rights organization reports that of the five states where it observes elections, New Jersey is the most restrictive.

People also have the right to vote without intimidation. This is why we have the 100-foot electioneering prohibition rule and the secret ballot. Police presence at polling sites can be a special concern in communities with historically tense relations with police departments.



The courts have recognized the intimidating effect this can have on voters, in one case ordering New Brunswick police away from the Lord Stirling Community School site. Officials in Trenton and Paterson, concerned about possible public reaction to predicted long waits, increased the police presence at the polls. VPo8 received no calls that seemed to justify law enforcement action but did receive 11 calls about police presence Newark and Trenton. At one point, a dozen police officers, from three different agencies, milled around a Newark polling location, outnumbering the voters.

### **Recommendations for Transparency, Accountability and Responsiveness**

#### *For state election officials:*

- Remove the overly restrictive conditions of the county certification process for nonpartisan groups that observe elections in New Jersey. The public has a right to open, transparent elections.
- Codify, by way of regulation, the existing requirement of state law that any citizen, whether or not he or she has a challenger's badge or an exit pollster's badge, has the right to be present for the opening of machines and the counting of votes at the end of Election Day. See N.J.S.A. 19:16-2, 19:47-2, 10:4-6 et seq.
- Investigate and analyze the causes of widespread voting glitches and report on their effect on the voting process; include solutions to eliminate future occurrences.
- Promulgate rules requiring counties to collect, investigate and follow up on voting problems. Counties should accept and log complaints made by phone, at the polls, electronically, in courthouse petitions, by voters and by voting advocates in the field.
- Compile county reports to evaluate possible threats to the integrity of the voting process and issue annual "State of the Election" reports addressing county issues and statewide administrative responses.

#### *For county election officials:*

- Address and resolve individual voters' problems so they can vote in future elections.
- Generate and make public a report after each election, summarizing county-level issues and voters' problems for state election officials.
- Employ police at polls only in response to specific incidents. Employ more poll workers at polls on Election Day to improve wait times and reduce any perceived need for "crowd control."

## **XI. Conclusion**

While there have been some improvements in New Jersey elections — thanks in large part to those elections officials who work collaboratively to ensure that every vote counts — New Jersey still has a long way to go before our elections benefit from the best systems and practices. Our key recommendations have not changed significantly since our earlier reports, and it has become apparent that true reform of New Jersey elections will require more unity, more sophisticated thinking, more attention to best practices in other locations and, perhaps most importantly, more enforcement.



**LWVNJ staffer Pat Thompson calls a county elections office to resolve a voter’s problem on Election Day.**

## **Election Protection by the Numbers – 2008 General Election**

**741**

Number of voter incidents and questions received by the Voter Protection 2008 Project (VPo8), comprising the League of Women Voters of New Jersey VOTeline, the ACLU-NJ intake line and poll monitors at polling sites.

**488**

Number of election court cases observed by VPo8 court monitors in 13 counties on November 4th.

**473**

Number of voters VPo8 monitors actively helped on Election Day who otherwise would have been unable to vote.

**303**

Number of voters VPo8 observed with registration problems.

**194**

Number of poll monitors in the field.

**189**

Number of students who reported difficulty voting.

**176**

Number of people the VPo8 Project recorded who were turned away from the polls without voting and without being offered provisional ballots; most were not directed to an election court.

**94**

Number of people VPo8 volunteer lawyers represented in election courts on November 4th.

**76**

Number of complaints concerning voters improperly asked for ID at the polls.

**71**

Number of complaints from voters about long waits and long lines.

**69**

Number of voters who reported that they had not received their polling place location information from their county.

## **Election Protection by the Numbers — 2008 General Election** *(Continued)*

**65**

Percentage of people granted their right to vote by an election judge in the 13 county courts monitored by VPo8 volunteers.

**55**

Number of voters who contacted us about problems they had with the voting machines.

**50**

Number of voters who had voted previously at the site or had received a sample ballot but whose name was missing from the poll book.

**40**

Number of people VPo8 documented who were not allowed to vote and left without being offered provisional ballots, but went back to demand them on the advice of VPo8.

**30**

Number of people who didn't receive their absentee ballots in time.

**25**

Number of voters calling to report polling place problems, including lack of wheelchair access.

**20**

Number of voters who claimed their names were incorrectly purged from the registration rolls.

**12**

Number of years provisional ballots have been in use in New Jersey. Poll workers still resist distributing them.

**8**

Number of times nonpartisan poll monitors were accosted by poll workers and/or police.

**0**

Number of polling places located on military bases in New Jersey.

## **Thank You**

We would like to thank the hundreds of volunteers listed below who worked the phones, distributed voting rights information, helped monitor the polls, observed the county courthouses, and represented voters during the 2008 elections. Their efforts and dedication to empower voters throughout the state were integral to this report.

We owe a special thanks to Anne Barron, who led and facilitated these efforts on behalf of the ACLU-NJ. Her exceptional oversight of VPo8 included recruiting, training and deploying volunteers; advocating for individual voters; verifying and tracking voter complaints; analyzing complaints and data; and drafting this report. We are grateful for Anne's time and commitment to this project.

We deeply appreciate the efforts of LWVNJ and ACLU-NJ staff who went above and beyond the call of duty to help ensure that every vote counts.

*—Deborah Jacobs & Anne Ruach Nicolas*

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