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MAKING VOTES COUNT

Voting Reform Could Backfire

In 2000, untold thousands of eligible voters were prevented from voting because of flawed voting lists and other errors by election officials. This November, voters who show up and say they are eligible cannot be turned away. Instead, they must be given provisional ballots, which election officials will review after the polls close to determine their validity. This is an important reform, but unless it is done right, provisional ballots could actually disenfranchise many of the voters they were intended to help.

There is a real danger that provisional balloting — a result of the Help America Vote Act of 2002 — will be undermined by a lack of commitment and diligence by local election officials. If the law's promise that no voter will be turned away is to become a reality, poll workers will have to be retrained and voters informed of their right to cast a provisional ballot.

At the same time, there is a danger that provisional ballots will be overused. Lawyers can closely examine them, challenging everything from the way the form was filled out to the size of the check marks beside candidate names. As a result, some will be rejected on technicalities that would not apply to a regular ballot. Poor and minority voters are especially likely to have trouble at the polls, and are often singled out for challenges by partisan poll watchers. Provisional balloting must not become a second-class voting system, used whenever a question is raised about a voter's eligibility.

A major cause of Election Day confusion is voters showing up at the wrong polling place. If those misplaced citizens are given provisional ballots, they will be counted in some states. But in others, like Missouri and Florida, provisional ballots cast at the wrong polling place will be automatically discarded. This is not only antidemocratic, since it throws out valid votes on a technicality, it also may make the current system worse. In the past, voters at the wrong polling place were turned away, giving them a strong incentive to find the right precinct. Now, in some states, they will be given a meaningless ballot and will possibly be led to believe they are really voting.

States like Florida and Missouri should simply change their laws. But at minimum they must make sure poll workers are able to direct lost voters to their correct polling place, and understand their duty to do so. The workers must also make it crystal clear to the voters that if they are at the wrong site, their provisional ballots will not be counted.

The same problem could occur for voters without acceptable ID. Some states have put in place onerous ID requirements, and there is a danger that rather than sending people home to get the right identification, poll workers will give them provisional ballots that will be automatically voided when the polls close.

Other parts of the system also need work. In a Colorado Congressional race in 2002, in which provisional ballots provided the victory margin, the courts had to step in because the district's three counties had different rules for counting provisional ballots. Variations like these, which are not allowed under the Supreme Court's Bush v. Gore ruling, should be fixed before the November election.

Provisional balloting has great potential, but it is complicated, and the election system does not handle complexity well. State officials should be working now to put in place procedures to ensure that the ballots live up to their fullest potential, and do not make things worse.

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