

# ELECTION REFORM

# Briefing

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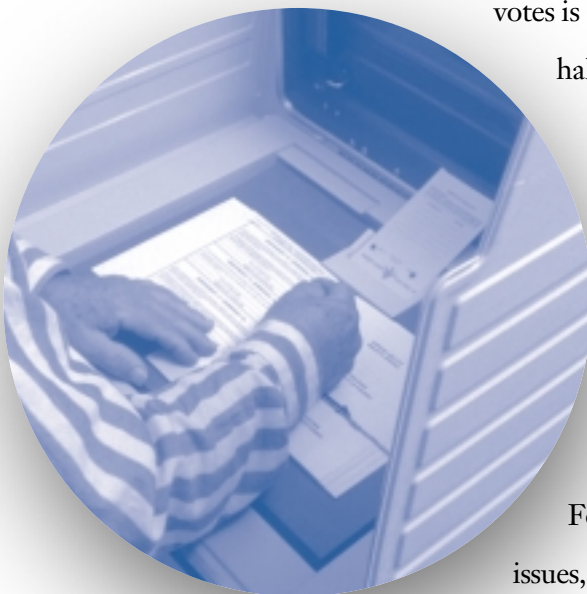
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## The Provisional Voting Challenge

**E**ach year, thousands of people arrive at the polls on Election Day only to find their names missing from the list of eligible voters. While these voters might believe they are registered, they discover that, often through no fault of their own, they are lost in the system – through purges, database errors, simple clerical mistakes or recent moves. The term “provisional voting” is used loosely to refer to a variety of practices that safeguard the right of these voters to cast a ballot on Election Day that will be counted.

Across the country, the goal of ensuring that qualified voters can cast their votes is achieved in vastly different ways – and sometimes not at all. Over half the states offer provisional voting, affidavit voting or fail-safe voting – different methods to ensure voters lost in the system are not denied the opportunity to cast a ballot. In many other states, voters can appeal to a judge if their name doesn’t appear on the list of registered voters. In several other states, voters not on the registration list have no recourse and are not permitted to vote.

For this briefing, the first of a series examining election reform issues, [electionline.org](http://electionline.org) and The Constitution Project surveyed election



administrators in all 50 states and the District of Columbia regarding provisional voting. The research revealed no national standard; indeed, no two states implement this safeguard in exactly the same way. The survey discovered a collection of practices as varied as the states themselves.

### Why Provisional Voting?

While voter frustrations with voting machines and butterfly ballots grabbed headlines late last year, hundreds if not thousands of voters in Florida and across the country never got that far. According to the U.S. Census Current Population Survey, nearly 3 million people – 7.4 percent of the 40 million non-voters in 2000 – stated that they didn’t vote because of registration problems. The CalTech-MIT Voting Technology Project estimates that between one and a half to three million votes were lost in 2000 because of the registration process.

In the aftermath of the 2000 election in Florida and reports of eligible voters being turned away at the polls after an erroneous voter list purge by a private company, task forces, voter advocates, state election officials and members of Congress called for states to offer provisional voting as a means to ensure every eligible voter who shows up at the polls on Election Day can cast a ballot.

While the National Voter Registration Act, commonly known as NVRA or “motor voter,” protects voters who changed their residence but failed to update their registration, it offers no protection for voters not on the list for other reasons. For example, this form of fail-safe voting does not protect voters whose registration never got to the registrar’s office or whose names were erroneously purged, as the case was for many voters in Florida’s November 2000 election.

This year two states, Maryland and Florida, enacted legislation implementing

provisional ballots, and the leading election reform bills in the U.S. Congress all promote universal adoption of the practice.

Implementing a system to allow provisional voting imposes some costs. In populous jurisdictions with a high degree of mobility, hundreds or even thousands of voters might require provisional ballots. Verifying the eligibility of each and every voter requires time and personnel — both of which are in short supply on Election Day as election administrators struggle to find poll workers and candidates and reporters demand almost instant results.

Kathy DeWolfe, director of elections and campaign finance in Vermont, said lawmakers and election administrators also fear provisional ballots would open the door to ineligible voters. DeWolfe added that because there would be so few provisional voters in her small, rural state, it would be nearly impossible to maintain ballot secrecy.<sup>1</sup>

“We don’t have it and we don’t want it,” she said.

Yet such costs must be weighed against the potential disenfranchisement of eligible voters in the absence of provisional ballots. Investigations and hearings after the 2000 elections found that hundreds of thousands of qualified voters nationwide were denied the right to vote. Registration systems, even statewide voter registration databases, are subject to error. In Los Angeles County alone, more than 100,000 voters cast provisional ballots. After the election, 62 percent were found to have been legally registered voters.<sup>2</sup>

### What’s At Issue in Congress?

Members of Congress have taken different approaches to promoting adoption of this reform in federal elections. Two bills – H.R. 3295, the House bill sponsored by Rep. Robert Ney, R-Ohio, and Rep. Steny Hoyer, D-Md. (“Ney-Hoyer”), and S. 565, the Senate bill

sponsored by Sen. Chris Dodd, D-Conn. – would require all states to offer some means of provisional voting. S. 953, a rival Senate bill cosponsored by Sens. Mitch McConnell, R-Ky., and Charles Schumer, D-N.Y. (“McConnell-Schumer”), makes provisional ballots a condition for receiving federal funding.

The bills also vary in specificity. Ney-Hoyer establishes in-precinct provisional voting, “or an alternative which achieves the same objective,” as a minimum national standard. It neither defines the “objective” nor dictates how it should be accomplished.<sup>3</sup>

The Dodd bill defines when a provisional ballot is required and directs election officials 1) to research the voter’s eligibility, and 2) notify the voter as to the disposition of the ballot.<sup>4</sup>

McConnell-Schumer provides no specific definition of what constitutes provisional voting; rather, it leaves the details to a commission of experts established in the bill.

Not all states that fail to offer provisional voting oppose the practice. Indeed, some states that currently do not offer provisional voting are looking to Congress to establish rules before they proceed. In Indiana, state lawmakers have stayed away from the provisional voting issue because, as state election co-director Spencer Valentine said, “nobody can agree on the details.”<sup>5</sup>

This willingness to wait on Congress, however, could be outweighed by states’ concern over the threat of litigation in the courts. Given the general uncertainty about the reach of the U.S. Supreme Court’s opinion in *Bush v. Gore*, variations among states with regard to providing safeguards for voters not on the rolls could lead to lawsuits alleging that such differences constitute an equal protection violation.

# Summary Findings

## *Different Systems, Different Requirements*

**P**rovisional voting, affidavit voting and fail-safe voting all refer to different practices; however, states often use the terms interchangeably.

**Provisional ballots** are given to voters whose names do not appear on the voter rolls. These ballots are segregated from other ballots and counted only after election officials have verified the voter's eligibility.

**Affidavit ballots** are likewise given to voters missing from the rolls; however, they do not require election officials to verify the voter's eligibility. Rather, the procedure requires the voter to swear an affidavit (under penalty of perjury) that he or she is eligible to vote – thus relying on the force of law to dissuade ineligible voters from casting a ballot. In some states, affidavit ballots are tagged so that in the event of a contested election, officials can go back and verify the voter's eligibility.

**Fail-safe voting**, a requirement of NVRA ("motor voter"), offers voters who have moved within the same jurisdiction without re-registering an opportunity to vote after an oral or written affirmation of their new address. This mechanism, however, offers no protection to voters whose names may not appear on the registration list for other reasons.

States offering provisional or affidavit voting vary widely in how they administer these ballots. For

example, in some states voters may cast provisional ballots at the precinct, while in other states voters must go to a central location. In some states, election officials use the provisional ballot application as a request to change the voter's registration, while others require the voter to make this request separately.

States also varied widely in their procedures for verifying the voter's eligibility. Some states require election officials to match a signature on the provisional ballot envelope with the signature on the registration application. Other states allow election officials to use a receipt from the division of motor vehicles as adequate proof.

### **Recent State Activity**

State lawmakers introduced more than 1,700 election reform bills in legislative sessions this year.<sup>6</sup> Of those, 26 dealt specifically with the use of provisional, challenge or absentee ballots. Two were enacted – one in Florida and one in Maryland – establishing the use of in-precinct provisional ballots in both states.

### **Some Findings**

As of November 2001, all but 13 states offered some means to ensure that eligible voters showing up on Election Day had the opportunity to cast a ballot or register that day and

cast a ballot.

Nationwide, 17 states and the District of Columbia offer provisional ballots as previously defined. Another five provide affidavit ballots.

Seven states have election systems that make provisional ballots unnecessary. (See map and chart.) In Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming, Election Day registration makes provisional voting unnecessary. North Dakota has no voter registration system.

Three states offer fail-safe voting, a limited form of provisional voting for voters who have moved within the same jurisdiction.

If, as its authors claim, the recently passed Ney-Hoyer bill would allow states to retain their affidavit ballot procedures, an estimated 17 states would have to enact legislation to establish new safeguards. Under the definition prescribed in Senator Dodd's bill, the number increases to include those states that do not either verify the eligibility of voters casting affidavit ballots or those that don't notify the voters as to whether their vote was counted.

Within each of these major categories there are significant differences in specific state practices. One major difference among states offering provisional ballots is the treatment of provisional ballots cast in the incorrect precinct. In Washington

<sup>6</sup>National Conference of State Legislatures.

State, provisional ballots cast in the wrong precinct are sent to the correct precinct where election officials tally the votes for all applicable races. In Virginia and Iowa, provisional ballots cast in the incorrect precinct are discarded. In Kansas, ballots cast in the incorrect precinct are nonetheless tallied for contests in which the voter was eligible to vote.

Another key difference is whether a voter casting a provisional ballot is notified as to the disposition of his or her vote. Iowa and Washington, D.C., provide such notification, while many other states, including Florida, do not.

Kentucky, which offers voters affidavit ballots when their names are not on the list, sends those ballots to the commonwealth's attorney for

**“A lot of people are looking for federal legislation that will be mandating provisional balloting, and details of what constitutes provisional balloting. That’s the difficulty.”**

**– Spencer Valentine, Indiana**  
*state election co-director*

investigation. In Texas, such ballots are tagged and segregated but no investigation is conducted except in the event of a contested election.

Differences even exist within states that do not offer provisional or affidavit voting. Oklahoma, for example, treats its voter rolls as conclusive, denying voters a ballot if they do not appear on the list. Hawaii treats its computerized registration database the same way, denying any recourse to voters who do not appear in the system other than a phone call to an election official who uses the same database to look for the voter's name. Election judges in Connecticut's 169 towns bring two lists to the polls on Election Day, one with active voters and another with inactive voters. Those found on the inactive list can sign a statement confirming their residency and can vote a regular ballot. If they do not appear on either list, they cannot vote.

## Provisional Voting: The Florida Experience

**E**lection reform legislation in Congress includes measures to promote universal adoption of provisional voting. While it is not clear what form of federal election reform will be signed into law, it is likely that any federal legislation passed will require states currently without some form of provisional balloting to institute this safeguard. For these states, Florida's experience may prove instructive. Florida included provisional ballots in its overhaul of elections. The measure now faces legal challenges on two fronts: a court challenge and pre-clearance by the Department of Justice.

Under the Florida Election Reform Act of 2001, citizens claiming to be “properly registered in the county and *eligible to vote at the precinct*” [emphasis added] but whose “eligibility cannot be determined” will be entitled to vote by provisional ballot. After Election Day, the county canvassing board is authorized to determine if the voter is entitled to vote at the precinct where the provisional ballot was cast and whether that person had already voted. If the signature on the provisional ballot

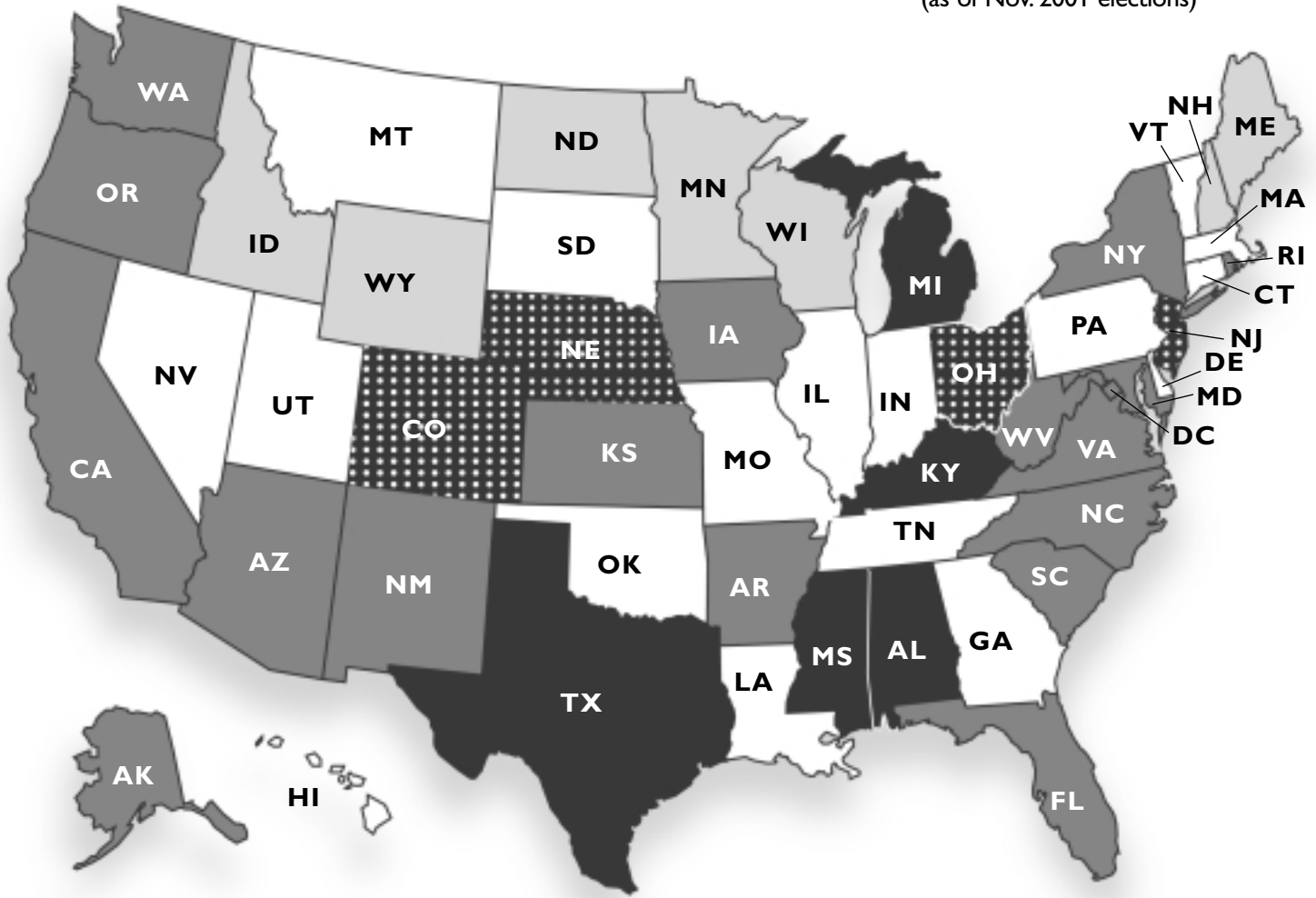
matches the signature on the voter's registration form, the ballot will be counted. The law does not require notifying voters as to the outcome.

Critics contend that Election Day workers will be more likely to hand out provisional ballots than to help the voters determine their correct precinct. Because ballots cast in the incorrect precinct will not be counted, minority voters, who move more frequently are more likely to end up in the wrong precinct, and could be more likely to have their votes discarded. Moreover, redistricting will make the problem of voters showing up in the wrong precinct more acute.

The outcome of these challenges remains to be seen. The Justice Department has yet to approve this measure and has asked the state for more information in order to determine whether the provision would have disparate impact on minorities. In addition to the hurdle of pre-clearance, the Florida ACLU and others have filed suit to prevent implementation of the provisional ballots measure.<sup>7</sup>

# State-by-State: Provisional and Affidavit Ballots

(as of Nov. 2001 elections)



**Provisional ballots** are available for people whose names do not appear on the registration rolls and cannot be confirmed at the site. Ballots are segregated and counted only after a voter's eligibility has been confirmed.

**Limited provisional ballots** allow the use of provisional ballots in select cases.

**Affidavit ballots** are available for people whose names do not appear on the registration rolls and cannot be confirmed at the site. The voter signs an affidavit affirming his/her right to vote. The vote is then counted as a regular ballot.

**No provisional ballot system** in place.

**Unnecessary or not applicable** because another system in place that covers the goals of provisional voting.

## Explanations for special cases:

**Colorado** offers provisional ballots from a central location rather than at each polling place.

**Kentucky** checks the validity of affidavit ballots following an election for possible prosecution.

**Maine** also offers a challenge ballot, which works like an affidavit ballot, despite having Election Day registration. Officials say the system helps avoid double registrations.

**Massachusetts** offers an "escrow ballot," which allows someone to vote, but the vote will not be counted unless an election is contested.

**Michigan** has a centralized database available at polling places, but also offers an affidavit ballot.

**Nebraska, New Jersey and Ohio** have provisional voting only for people who have moved.

**North Dakota** has no voter registration.

**Oklahoma** requires voter identification cards. If a voter does not possess a card, he/she does not vote.

**Oregon** has mail-in voting, but also offers provisional ballots for rare in-person special elections.

**Vermont's** affidavit ballot is optional by each voting jurisdiction.

**Virginia's** attorney general can choose to apply one of two statutes that govern provisional ballots.

# How States Handle Voters Who Are Lost in the System

[P] – Provisional [LP] – Limited Provisional [A] – Affidavit [N] – No System in place [U/NA] – Unnecessary/Not Applicable

<b>Alabama</b>	If a voter claims eligibility but is not on the rolls, the voter signs an affidavit to vote a “challenge” ballot, which is a paper ballot that will be counted. [A]
<b>Alaska</b>	If a voter claims eligibility but is not on the rolls and if he or she is not known personally by the election official, the voter is asked to sign a “questioned voter” register and vote a questioned ballot. The validity of the ballot will be determined by the Questioned Review Board after polls close. [P]
<b>Arizona</b>	If a person claims eligibility but is not on the rolls, he/she can present identification to the election board in the precinct. The voter will be given a provisional ballot. If valid, the ballot will be counted. [P]
<b>Arkansas</b>	If a voter claims eligibility but is not on the rolls, he/she is allowed to cast a challenged ballot. The challenged ballot is given to the voter if the election official at a specific polling precinct is unable verify the voter’s registration status with the county clerk. An election cannot be certified until each challenged ballot is determined to be valid or not. [P]
<b>California</b>	If a person claims to be registered but is not on the rolls, he/she is permitted to cast a provisional ballot. The vote will be counted if the voter’s eligibility is verified. [P]
<b>Colorado</b>	Voters whose name does not appear on the precinct list are sent to a county clerk’s office where he/she will sign an affidavit and vote a provisional ballot. [LP]
<b>Connecticut</b>	If a voter claims eligibility but is not on the rolls, election officials check two lists – one for active and one for inactive voters – to confirm eligibility. Voters on the inactive list attest to their residency and vote a regular ballot. If he/she is not on either list, election officials call the registrar’s office, which can authorize the voter to sign a restoration form so that the voter can be placed back on the rolls. [N]
<b>Delaware</b>	Voters who claim eligibility but are not on the list are sent to a “fail-safe” table. Officials check to verify voter’s eligibility. The officials contact the department of elections to verify eligibility. If eligibility is still in doubt, voters can appeal to a county judge. [N]
<b>D.C.</b>	If a voter claims eligibility but is not on registration rolls, he/she can use a provisional or “special ballot.” These ballots are kept separate and counted with the absentee ballots after the election, following verification by election officials. [P]
<b>Florida</b>	Any voter who claims eligibility but is not on the rolls is issued a provisional ballot. The county canvassing board then determines whether the voter is entitled to vote at the precinct in the election and whether that person has already voted. If the signature on the provisional ballot matches the signature on the voter’s registration form, the ballot is counted. The voter is not notified of the determination. [P]
<b>Georgia</b>	If a voter’s claims eligibility but is not on the rolls, election officials call the county registrar’s office to check the files for an application. If none is found, no ballot can be cast. If someone has moved within a county, election officials will check to see whether the person has moved within the county within 30 days of Election Day. If so, the voter is instructed to vote at his/her former precinct. [N]
<b>Hawaii</b>	If a voter claims eligibility but is not on the rolls, precinct officials place a call to a voting control center. The operator then brings up a statewide database and makes an immediate determination of voter eligibility. [N]

<b>Idaho</b>	Election Day registration. [U/NA]
<b>Illinois</b>	Illinois offers its voters a limited affidavit ballot. If a voter claims eligibility but is not on a registration roll, election judges can check active and inactive lists and call a central clerk's office to confirm. Under certain defined circumstances - canceling an absentee ballot, the voter has changed his or her name – the voter can sign an affidavit and vote. The ballot is counted without verification. [N]
<b>Indiana</b>	Indiana does not have provisional voting. Voters whose names do not appear on the rolls must either receive a “certificate of error” from the county clerk showing that there was a mistake in the rolls, or be able to present the receipt from voter registration service agencies. [N]
<b>Iowa</b>	If a voter claims eligibility but is not on the registration rolls, the voter is allowed to cast a “special ballot.” This is a paper ballot that goes inside an envelope with a voter registration form on the outside. These votes are then investigated to confirm the voter's eligibility and the voter is notified if the ballot is not counted. The information is used to update the registration rolls. [P]
<b>Kansas</b>	If a voter claims eligibility but is not on the registration rolls, he/she is given a provisional ballot at the precinct. The ballot is segregated until its validity can be confirmed. [P]
<b>Kentucky</b>	If the voter is in the correct precinct but not on the registration lists, he/she is allowed to use a regular ballot after filling out an “oath of voter” form. “Oath of voter” forms are delivered to the commonwealth attorney for investigation, and anyone who is found to have voted falsely is indicted. [A]
<b>Louisiana</b>	If a voter claims eligibility but is not on the rolls, the election commissioner contacts the local voting registration office to confirm eligibility. If the voter's information is found, he/she is allowed to vote, but also must sign an affidavit form. If the voter is at the wrong precinct but is eligible, he/she is directed to the correct polling station. If no registration information can be found at the local voting office, voting is prohibited. [N]
<b>Maine</b>	Election Day registration. If a voter does not appear on the rolls and does not have the proper identification necessary to register, he/she is given a challenge ballot. These ballots are counted with regular ballots, but have a secret number that marks them as challenge ballots, so they can be retrieved in the case of a contested election. [U/NA]
<b>Maryland</b>	Persons who claim eligibility but are not on registration rolls fill out a form indicating a good faith effort to register within the past year and fill out a voter registration application at the same time. Their ballots are segregated until verified and, if eligible, are canvassed with absentee ballots. [P]
<b>Massachusetts</b>	Election officers call the city or town hall to check for the registration of a voter who does not appear on the rolls. If this fails, the voter may go to the town or city hall themselves to establish eligibility. If he/she can, the person may vote, but if not, he/she may vote on an “escrow ballot,” which is held aside and counted only if the election is contested. [N]
<b>Michigan</b>	If a voter claims eligibility but is not found in the Qualified Voter File as being registered in another precinct, the voter may sign an affidavit and is issued a challenged ballot, which will be counted as a normal ballot. Challenged ballots can be later traced through their serial numbers. [A]
<b>Minnesota</b>	Election Day registration. [U/NA]

## How States Handle Voters (continued)

<b>Mississippi</b>	A person who claims eligibility but is not on the registration rolls must sign an affidavit to vote an absentee ballot. Such ballots are segregated until eligibility is verified after the election. In cases where election officials cannot find the registration application of the questioned voter, the ballots may, at the discretion of the election officials, be counted as well. [A]
<b>Missouri</b>	If a person claims eligibility but is not on the registration rolls, verification must be received from the county clerk before the election judges allow the person to vote. If the voter claims he or she has been improperly removed from the rolls, he/she may file a petition with the circuit judge and the judge can order the person be placed back on the rolls. Without the judge's approval, the voter cannot cast a ballot. [N]
<b>Montana</b>	If a voter claims eligibility but is not on the rolls, an election official will contact the registrar's office and, if necessary, the Department of Motor Vehicles. If no evidence of registration is found, the voter cannot cast a ballot. [N]
<b>Nebraska</b>	If a person's name is not on the registration rolls because he/she has moved within the jurisdiction, that person may swear an affidavit and cast a provisional ballot. After eligibility is verified, the vote is counted. [LP]
<b>Nevada</b>	If a voter is not on the rolls, they are not permitted to vote. If a voter has moved within the same voting jurisdiction, he/she can vote at his or her old precinct. [N]
<b>New Hampshire</b>	Election Day registration. [U/NA]
<b>New Jersey</b>	If a person's name is not on the registration rolls because he/she has moved within the jurisdiction, that person may swear an affidavit and cast a provisional ballot. After eligibility is verified, the vote is counted. [LP]
<b>New Mexico</b>	Voters who claim that they are at the correct precinct but whose names do not appear on the rolls are permitted to vote a "fail-safe ballot." Fail-safe ballots are segregated and sent to the county clerk's office to be confirmed and counted afterward. [P]
<b>New York</b>	If a voter claims eligibility but is not on registration rolls, they can either apply to a judge to be added to the list and vote a regular ballot or vote a provisional ballot. For the latter, the voter must sign an affidavit. A voter's eligibility is checked after they leave the polls and he or she is informed of the outcome. [P]
<b>North Carolina</b>	If a voter claims eligibility but is not on registration rolls, the voter must complete and sign an affidavit which includes their name, date and an account of the situation. Their ballot is then placed a sealed envelope and counted following verification. [P]
<b>North Dakota</b>	No voter registration. [U/NA]
<b>Ohio</b>	If a voter claims eligibility but is not on registration rolls, a provisional ballot is given only if he/she has moved within the state and the voter fills out an address update form. It is segregated until it has been determined that the voter has not cast a ballot anywhere else. [LP]
<b>Oklahoma</b>	A voter whose name is not on the rolls must show his/her voter identification card and fill out a challenge voter affidavit. If the voter does not have an ID card and is not on the registration lists, he/she is not allowed to vote. [N]



<b>Oregon</b>	Elections are conducted almost entirely by mail. Voters receive ballots 10-14 days before the election. If they do not, they must call their county election office to verify registration. If registration is verified, a replacement ballot will be sent. Although provisional balloting is still state law, these special in-person elections are rare. In those cases, voters not on the registration lists are allowed to cast provisional ballots. [P]
<b>Pennsylvania</b>	If a person claims eligibility but is not on the registration rolls, he/she may file an affidavit with a judge. Without the judge's approval, he/she cannot cast a vote. [N]
<b>Rhode Island</b>	If a voter claims eligibility but is not on the registration rolls, the voter signs an affidavit. The election official then calls the central registrar. Only when the voter's name can be found on the list is he or she permitted to cast a ballot. [N]
<b>South Carolina</b>	If a person claims eligibility but is not on the registration rolls, he/she is allowed to vote a provisional ballot. If the officials do not find proof of the voter's eligibility, it is up to the county election commission to determine if the voter is eligible. [P]
<b>South Dakota</b>	If a voter claims eligibility but is not on the registration rolls, the precinct election official calls the county auditor and a determination of eligibility is made on the spot. If the person is eligible, an emergency voter card is filled out, signifying that an investigation was done and the person is allowed to vote in a regular fashion. [N]
<b>Tennessee</b>	If a voter claims eligibility but is not on the registration rolls, election officials ask the administrator of elections to check the central registration file. If the name is not found, the voter cannot cast a ballot. If a voter has moved within a county and is not on the new precinct's registration rolls, they are allowed to vote a regular ballot. [N]
<b>Texas</b>	A voter who claims eligibility but is not on the registration rolls can swear an affidavit and vote a "challenge" ballot, which is tagged and counted. Validity is determined only if there is a contested election. [A]
<b>Utah</b>	Voters whose names do not appear on the rolls are unable to vote. A voter who has moved within the same congressional district is allowed to vote at his/her previous polling location. [N]
<b>Vermont</b>	If a voter claims eligibility but is not on registration rolls, an election official can accept an application receipt as proof of registration. If there is no receipt, a voter can appeal to a circuit court judge to be added to the registration list. [N]
<b>Virginia</b>	If a person claims to be registered but is not on the list, the state has two methods to allow him/her to cast a ballot. One allows voters to cast a conditional paper ballot that is segregated and counted if the voter's eligibility can be proven. The other allows a conditional ballot only if the registrar of voters can be contacted. The attorney general determines which statute is controlling for the election. [P]
<b>Washington</b>	If a person claims eligibility but is not on registration rolls, he or she is given a provisional ballot. If the ballot is cast in the wrong precinct, the ballot is sent to the appropriate registrar. Eligibility is determined after the election. If the voter is found to be eligible, the ballot is counted with absentee ballots. [P]
<b>West Virginia</b>	If a person claims eligibility but is not on registration rolls, he or she is given a "challenge" or provisional ballot. Ballots are segregated and once the voter eligibility has been verified, the ballot is counted. [P]
<b>Wisconsin</b>	Election Day registration. [U/NA]
<b>Wyoming</b>	Election Day registration. Voters who believe they are registered but are not on the registration rolls can cast a "challenge ballot," which requires voters to sign an affidavit. The vote is counted after a county clerk confirms the voter's eligibility. [U/NA]

## Pros and Cons

### Arguments for Provisional and Affidavit Ballots

- Protects the civil rights of all voters by ensuring that people who are eligible to vote are allowed to do so and have their ballots counted (“Voting Irregularities in Florida During the 2000 Presidential Election,” U.S. Civil Rights Commission, 2001)
- Speeds up and improves polling place operation on Election Day by offering an mechanism to resolve disputes between voters and poll workers (Hearings of U.S. Commission on Civil Rights, 2001; Ion Sancho, Leon County supervisor of elections, 2001)
- Provides a fail-safe mechanism to protect voters when registration applications are not transferred from departments of motor vehicles or other state agencies to registrars. (“Building Consensus on Election Reform,” The Constitution Project, 2001)
- Offers a solution to the nearly 3 million voters who said they didn’t vote because of registration problems (U.S. Census Current Population Survey, 2000)
- Helps election officials maintain more accurate registration databases (“To Assure Pride and Confidence in the Electoral Process,” National Commission, 2001)

### Arguments Against Provisional and Affidavit Ballots

- Imposes additional costs for special materials and staff hours for verification (The National Commission on Federal Election Reform, Conny McCormack, Los Angeles County Clerk and Recorder, San Francisco City Hall Scoop, Oct. 2000)
- Has potential to delay final tally while voter eligibility is being verified (National Commission, 2001)
- Creates possibility that voters will avail themselves of affidavit ballots rather than keeping their registration updated (“To Assure Pride and Confidence in the Electoral Process,” National Commission, 2001)
- Raises potential that voter’s anonymity will be compromised in smaller jurisdictions (Kathy DeWolfe, Vermont director of election and campaign finance)
- Might open the door to ineligible voters (DeWolfe)

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# Methodology

Information for the map and chart was culled from interviews with state election directors, deputy election directors and a review of state election codes. For Congressional information, firsthand sources – the bills themselves – were used. In the majority of states, top election officials were interviewed over the course of three weeks. In the case of discrepancies between state code and election administrators’ description of state practice, the administrators who explained their state’s provisional voting practices were paraphrased in the report.

Other sources for this report include:

- **American Civil Liberties Union of Florida**
- **“Voting: What Is, What Could Be,”  
a report by the CalTech-MIT Voting Technology Project**
- **California State Senate Republican Caucus website**
- **Federal Election Commission, Office of Election Administration**
- **The National Commission on Federal Election Reform**
- **National Conference of State Legislatures**
- **Philadelphia Committee of 70**
- **“Revitalizing Democracy In Florida” by Gov. Bush’s task force**
- **San Francisco City Hall Scoop**
- **U.S. Census Bureau**
- **U.S. Civil Rights Commission**

electionline.org

The Constitution Project

**e**lectionline.org, administered by the Election Reform Information Project, is the nation's only nonpartisan, non-advocacy website providing up-to-the-minute news and analysis on election reform.

After the November 2000 election brought the shortcomings of the American electoral system to the public's attention, The Pew Charitable Trusts made a three-year grant to the University of Richmond to establish a clearinghouse for election reform information. Serving everyone with an interest in the issue—policymakers, officials, journalists, scholars, and concerned citizens—electionline.org provides a centralized source of data and information in the face of decentralized reform efforts.

electionline.org hosts a forum for learning about, discussing, and analyzing election reform issues. The Election Reform Information Project also commissions and conducts research on questions of interest to the election reform community and sponsors conferences where policymakers, journalists and other interested parties can gather to share ideas, successes and failures.

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**T**he Constitution Project, based at Georgetown University's Public Policy Institute, in Washington, D.C., is a bipartisan, nonprofit organization that seeks consensus on controversial constitutional and legal issues through a unique combination of scholarship and activism. The Constitution Project's election reform initiative hosts the Forum on Election Reform. Meeting regularly, the Forum provides an opportunity for dialogue among election officials, voter advocates, legal experts and other interested organizations and individuals. In addition to coordinating the Forum, the Constitution Project's election reform initiative seeks to inform legislative efforts at the federal and state level through legal and policy research. To sustain momentum for reform, the initiative has and will continue to educate the public and policymakers on the critical needs of our electoral system. The election reform initiative is supported through generous grants from the William and Flora Hewlett Foundation and the David and Lucile Packard Foundation.

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