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2004 Election Success and State Initiatives

By R. Doug Lewis, The Election Center

States are in danger of losing federal HAVA funds unless action is taken in early 2005. Despite a successful election in 2004, several issues face states to assure voter satisfaction and service. If states fail to act, Congress may do so.

What a difference four years makes. It is amazing how perspective changes when an election is not close. While Election 2000 was not as bad as its characterization, Election 2004 was a dramatic improvement—but nonetheless it demonstrated areas of needed improvements. Those in the elections profession still are concerned about administrative challenges discovered in 2004. With more than 11 million additional voters and dramatic increases in voter registration, due to the efforts of the campaigns and scores of political activist organizations, the administrative process was strained even greater than in Election 2000.

Election resources were stretched thin in many places due to the largest turnout of voters in more than 40 years. How did states manage such spectacular increases (e.g., Ky. had a 16 percent increase in voters between the 2000 and 2004 elections; Minn. – 14 percent ; Mich. up 13 percent; Ohio – 16 percent; Md. – 15 percent and an astounding increase for Utah up 20 percent, New Mexico up 26 percent, and Fla. up 27 percent)?

One of the reasons the states and the local jurisdictions were able to handle this incredible increase in voters was due directly to the statewide planning process done by states to comply with the federal Help America Vote Act (HAVA).

Attention to problems found (in 2000 and before) were identified and addressed by state and local election officials. Developing discussions throughout each state, local jurisdictions were able to get the political support from local leaders to make improvements to their own processes without any significant influx of federal or state funds because monies from HAVA had not been distributed in time to have major impact in 2004. The stress of “getting it right” with the national awareness and four years of constant criticism of the process contributed to heightened attention to details for all concerned. However, there are things we probably can and should do better, with changes by legislators.

Federal Issues Loom Immediately: Failure to Act can be Expensive

Some feel the decisions ought to begin with Congress, but

most of the nation’s elections administrators believe the real solutions to the challenges are more likely to be the responsibility of individual states—if there are to be effective solutions.

First, there is the need of the states to meet requirements of HAVA. At this writing, seven states had not yet completed the details necessary to receive their FY 2003 funds: Alaska, Hawaii, Ill., N.Y., Okla., S.D. and Utah, while most states are preparing to receive their FY 2004 funds. Most are in process and should be done by the time this article appears, but South Dakota and New York have larger hurdles to conquer. South Dakota needs its legislature to provide the 5 percent matching funds to qualify for federal HAVA funds. New York is mired in conflict within its own legislature about major portions of necessary legislation to make its state compliant with HAVA.

The risk for these states is they are playing Russian roulette with the U.S. Congress, which is now indicating that any undistributed funds available at appropriation time in the fall of 2005 are likely to be taken back by Congress. States not fully funded and in compliance by about July 2005 are likely to lose federal matching funds and *still* be responsible for compliance with state funds. That includes about 20 states who have not yet complied to qualify for FY 2004 funds. Some states have enough money to *partially* qualify for matching funds for FY 2004, but if they do not fully qualify quickly, there is a very real possibility the federal government will force them to repay all the distributed funds ... and still comply with state funds. The seriousness of this amounts to millions of dollars each for many states; N.Y. alone is risking a \$156 million loss of federal funds and then a necessity of producing a like amount from the state to meet its compliance requirements ... rather than simply a 5 percent match that gets them the \$156 million.

Election 2004 Issues: States Must Address Action Quickly

Let’s review concerns expressed by political groups and media about Election 2004. Editorial limitations prevent a discussion of all concerns policy makers have heard. Rather this article focuses on those appearing to have greatest needs for decisions.

Voting Equipment and Standard—The great debate that raged on the effectiveness and security of voting equipment, and especially electronic equipment, appears to have been somewhat

overblown in predictions of rampant fraud or ultimate and dire massive failures. Neither happened. While there were some examples of voting equipment foul-ups, so far the problems seem to be more of human failures rather than machine failures; i.e., if humans had done what they were supposed to have done, the equipment would have rendered votes accurately. It is important to remember that those criticizing voting equipment often ignore the imperfection of paper ballots. There are imperfections in all voting processes and almost always because humans—voters, or poll workers, or technicians or election officials—make mistakes. The presumption that paper ballots are perfect, and that voting equipment is mistake prone, is an erroneous judgment.

As this is being written, it appears states must proceed with purchasing voting equipment without the benefit of having national standards for disability compliance or for security standards. HAVA requires states to purchase at least one voting device per polling site that allows persons with disabilities, especially the blind and visually impaired, to vote independently and privately. To meet the 2006 deadline in HAVA, states will need to proceed with a full court press in 2005 to identify and purchase systems.

Those who wait until the deadline looms stand to have delivery problems, training problems and potential election disasters in 2006 because units are too new to both election officials and voters. State leaders are urging Congressional leaders to revamp deadline dates for HAVA compliance, but there is a genuine reluctance by some members of both political parties to reopen the HAVA legislation. Since no one can accurately predict what will happen to the legislation if it is opened, it appears unlikely as of this writing that there is sufficient political will to reopen the legislation and change deadlines. That leaves states faced with immediate action at the state level.

It appears that standards from the federal government (the Election Assistance Commission and the National Institute of Standards and Technology) will come too late to meet the HAVA deadlines. Even if they complete standards by mid year 2005, the lag time for vendors to design and produce units to meet new standards are likely to take an additional year beyond the final published standards. Additionally, government purchasing processes take long lead times.

Long lines at the polls seem to be one of the major concerns in 2004, and yet the choices available to fix the problem are rarely heeded. The principal solution for this is a recognition that the longer the ballot is in a presidential election year, the longer it takes voters to vote. Keeping initiatives, referendum, and state Constitutional amendments to a minimum in a presidential election year is certainly one key solution but one that is rarely acceptable to policy-makers.

The second part of the problem is recognition that more voting equipment is needed for the increased numbers of voters that appear in a presidential year. Most states and local jurisdictions do not provide sufficient quantities of voting equipment needed for an off-presidential year election, let alone one where more voters show up than have appeared in any election in 40 years.

This becomes a matter of the “public will” to do what is necessary: buy enough voting equipment to provide enough machines for the voters who showed up in Election 2004 and elections professionals can probably whip this issue for the foreseeable future. That means buying not just enough equipment for the voters, but enough spares to replace the units that malfunction during the election.

Blaming election officials for long lines is not going to fix this problem without initially solving the first two problems: limiting the ballot size and buying enough voting machines to do the job. Election officials cannot run to the nearest electronics store and buy extra voting machines on the spur of the moment. Despite the election administrators request for more equipment, that decision is usually made at least one to two years in advance and it is a decision made by budget and political authorities who are not election officials.

Immediate Policy Concerns of the States

What are systemic problems that face policy-makers immediately? The following must receive attention of each and every state:

Voter Registration Issues

Voter Registration Deadlines: States that have less than a 30-day cutoff for voter registration imperil the ability of the election official to assure the voter is on the roll and not disenfranchised. Well intentioned legislators who have provided for shorter cutoff periods trying to enfranchise more voters have actually forced the unintended consequence of almost assuring that the records are not accurate. Two, and probably only two solutions, are available in this regard: establish 30-day cutoff of registration, or have same day registration (which creates additional administrative problems and may prove difficult in states with huge population centers or where a history of voter fraud has occurred). Clearly too short a period works to the disadvantage and possible disenfranchisement of voters and to the integrity of the process.

Voter Registration Groups: The importance of groups dedicated to voter registration efforts is certainly welcome within our democracy. Their efforts reward the process with more Americans eligible to participate. However, Election 2004 proved conclusively there is a major problem where some voter groups, special interest groups and candidate organizations engage in voter registration drives and then burden the process because of innocent or intentional manipulation of the process. States need to quickly address legal changes for necessary training of “deputy or outside registrars” and must set deadlines for turning in the registrations immediately upon soliciting them from voters. Allegations of (1) “bogus registrations” or (2) where voter groups accept registrations but then only turn in the ones they think are for their candidates, must not be allowed to damage the fundamental faith of voters in the process. States need to force all organizations to receive official training by election officials. Concurrently, give election administrators the ability to stop efforts of groups or individuals who can’t seem to follow

law and procedures. Voter registration (VR) applications need to be turned in within 48 hours of being completed by the voter.

This process must be fair to both the voter and the official election administration. If the VR groups are allowed to sit on applications for weeks or months at a time, voters can not check to see if the organization actually turned it in. They burden the process by turning in applications on the last day or two before registration cutoff. There has to be accountability built into the VR process. A valid name, address and phone number or some form of identification of the solicitor of the VR application is necessary to improving this process. Continual process abusers need to be prohibited from engaging in VR drives. Thousands of voters thought they had registered through one of these groups only to discover that their applications never arrived or arrived too late to get on the official rolls. What is the difference? The difference is whether the voter votes an actual ballot or a provisional ballot that may not be qualified in a later decision. That is a significant difference. States need to provide for effective enforcement perhaps by giving the chief election official of each state the ability to use internal legal staff to prosecute.

Absentee and Early Voting Issues

Policy-makers must allow enough time to end early voting with sufficient time for local election officials to produce official poll books to be distributed to polling sites showing voters who voted early. There can be disagreement on how much time is necessary, but most election officials would recommend no less than four full days prior to election day. The process of identifying early voters on rolls is paramount to correctly serving voters as well as preventing double voting.

Absentee ballot applications, likewise, need to have a prior cutoff date so the elections office can receive the application and have ability to return the ballot by mail to the absentee voter. A cutoff date is likely to require at least seven days prior to election. Allowing voters to request absentee ballots up to the day before election almost guarantees that large numbers in urban areas will be ill served: because they have requested an absentee ballot the election official almost always has to deny the opportunity to vote in person to avoid duplicate voting. That is not fair to the voter or the election process.

Absentee ballots tend to be paper based and the trend is growing for states to lessen the restrictions on why a voter can vote by absentee ballot. California allows any voter to register as a permanent absentee voter; Texas allows voters 65 and older to register as absentee voters. All states need to consider allowing election officials to open and process absentee ballots prior to election day. Examples of states allowing officials to open the ballots prior to election are: Ark., Calif., Iowa, Idaho, Kan., Mass., Mo., Ohio, Tenn., Texas and Utah. Among the states allowing them to count the ballots (but not reveal results) prior to election day: Calif., Fla., Kan., Mo. and Texas.

Provisional Voting

Policy-makers need to address the short term issues in provisional voting. Long term, the numbers of provisional voters is likely to decrease to a much smaller, more manageable num-

ber because statewide voter databases will do a better job of keeping up address changes and eliminate need for voters to request a provisional ballot. Michigan, even in 2004, with extraordinary numbers of voters going to the polls, found their provisional ballots were an exceedingly small part of their election because of effective use of the statewide voter database. But until statewide databases are created, debugged and functional, there is an interim problem.

Multiple lawsuits were filed in a variety of states to force states to count the provisional ballot regardless of whether the voter was in the right polling site. So far, all final adjudications of this have indicated state law prevails as called for in HAVA. But those suits did not settle the issue of what races should be counted whenever a provisional ballot is cast. Most states have indicated the voter must go to the proper polling site to have any of the voter's votes counted. Some states (e.g., N.Y., Wash., Calif.) allow the voter to have votes counted for any wide jurisdictional race such as presidential and other federal races, statewide races, and countywide races, regardless of whether the voter is in the correct polling site. States need to decide, on a state-by-state basis, what is appropriate and fair to the voter.

Additionally, states need to review policies on how long election administrators have to qualify provisional ballots. If the spirit of offering provisional ballots is to assure that voters have some method of fail safe when they are inadvertently left off the official rolls, then states need to determine if the spirit of the law can be met by providing less than two weeks to check and qualify those ballots.

Poll watchers – A Continuing Source of Problems

It is time for states to revisit the whole concept of poll watchers—distinct from the concerns about official poll workers. Voters often confuse the actions of poll watchers as being an election official who is challenging them. Legislators need to review and define when and how election officials can regulate the poll watcher process.

These are not the only concerns but are the major policy issues for states immediately and failure to act this year may lead to Congressional action instead. The nation's elections administrators meet during the first quarter of 2005 to draw up recommendations for states and Congress about the best solutions for the most vexing of systemic problems. The Election Center's National Task Force on Election Reform 2004 will publish their findings to help policy-makers at all levels find appropriate solutions.

Bio

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