



**Massachusetts General Court
Joint Committee on Election Laws
Public Hearing
July 24, 2003**

**Testimony Submitted by
Dēmos: A Network for Ideas & Action**

Dēmos: A Network for Ideas & Action is a national, non-partisan public policy organization established in 1999 in order to improve our democracy and to foster greater economic opportunity and less disparity. *Dēmos* supports various policy reforms that reduce barriers to electoral participation, and have in recent years provided research and analysis on Election Day Registration to policymakers and issue advocates in California, Colorado, Connecticut, North Carolina, and other states. We are pleased to share our views on voter registration, Election Day Registration, and two of the election reform bills now under consideration by this Committee – House, No. 2415 and Senate, No. 342.

Voting problems in Florida and many other states in November 2000 produced a near-constitutional crisis for American democracy. Between one-half and three million votes were lost or could not be cast because of problems with the voter registration process and voting lists.¹ Congress reported that eligible voters in twenty-five states went to the polls and found that their names were either illegally purged from the rolls, or not added in a timely fashion. Serious misconduct was cited in eighteen states.² The Federal Election Commission cited a record number of complaints about citizens who had registered to vote under procedures mandated by the National Voter Registration Act, but whose names had not been added to the registration rolls in a timely fashion.³

The most troubling aspect of the 2000 election was that it underlined the fact that for many poor citizens and people of color, our democracy is perhaps more of a promise than a reality. Indeed, Congress found that “voters in low-income, high-minority districts were over three times more likely to have their vote for president discarded than voters in affluent districts with a small minority population.”⁴

Voters often point to the voter registration systems adopted by the various states as a source of frustration and a chief impediment to their exercise of the most fundamental right of citizenship. Early voter registration deadlines, like Massachusetts’ 20-day, pre-election day deadline, serve to deny the vote to otherwise eligible citizens who have recently moved into new election districts or otherwise failed to register to vote before the state-imposed cutoff dates. Technological

advances and the experience of six states that now allow for election day registration show that that Massachusetts and every other state can readily permit new voters to register and cast a ballot on election day, with few administrative burdens and in a manner that maintains the integrity of election results.

History of Voter Registration and Exclusion

Voter registration as we know it today is relatively new to the United States. In fact, “Prior to the late nineteenth century there were no personal voter registration requirements for white men in this country.”⁵ Sadly, when registration requirements did appear around the turn of the twentieth century, they were often imposed in an effort to limit access to the voting booth for low-income people, blacks, and immigrants, and thus cement the political power of middle- and upper-class white men.

The procedural hurdles thrown in the way of the ballot box are in part responsible for the nation’s low registration and turnout rates. Only fifty-one percent of the adult population voted in the 2000 presidential election.⁶ Turnout figures tend to be significantly lower for congressional (and non-presidential) election years.⁷

While voter registration requirements are not entirely to blame for increasingly low voter turnout, they continues to present a barrier to full voter participation, particularly for the poor, the young, people of color, and those with frequent changes of address. Whether intended or not, the original motivations for implementing registration requirements are still reflected in the registration data one hundred years later:

- In the last presidential election, only 59 percent of Americans with family incomes between \$10,000 and \$14,000 reported being registered, compared with registration rates of 69 percent for people with family incomes of \$25,000 to \$34,000, and 82 percent for those with incomes of \$75,000 or over.⁸
- While 51 percent of Americans between the ages of eighteen and twenty-four were registered in 2000, the share of registered voters jumped to more than three-quarters for citizens over 65 years of age.⁹
- Race and ethnicity continue to be major factors in the voter registration of U.S. citizens. Seventy-two percent of non-Latinos whites, 68 percent of non- Latino blacks, 57 percent of Latinos, and 52 percent of Asians and Pacific Islanders registered to vote in the November 2000 election.¹⁰

Length of residence is another major factor governing a person’s likelihood to be registered to vote. Only 60 percent of those who lived somewhere for less than six months were registered to vote in 2000, compared to 82 percent of those who had been in the same residence for five years or longer.¹¹ This is a significant fact in a nation that has a very high level of geographic mobility. The young (the majority in their twenties), people of color, and the poor -- three groups already less likely to register and vote – are disproportionately represented among the 43.4 million Americans who moved between March 1999 and March 2000.¹²

House, No. 2415 and Senate, No. 342

Dēmos commends Rep. Fox and Senator Creem for introducing House, No. 2415 and Senate, No. 342, respectively. We strongly support these efforts to adopt Election Day Registration (EDR) in Massachusetts. If passed, Massachusetts could expect to share the benefits now enjoyed by the six states that now allow voter registration on election day. In our report -- *Expanding the Vote: The Practice and Promise of Election Day Registration*, www.demos-usa.org/pubs/edr – Demos found that these six states (Maine, New Hampshire, Wisconsin, Minnesota, Idaho and Wyoming) led the nation in voter registration and turnout rates. They also avoided any significant voter fraud, incurred minimal marginal costs and created no unmanageable burdens for election officials.

Election Day Registration -- A Boost to Voter Turnout

Six states have responded to the disenfranchising effect of voter registration by eliminating pre-registration deadlines. While citizens in Maine, New Hampshire, Minnesota, Wisconsin, Idaho and Wyoming may register through traditional means in advance of elections, they may also choose to register and vote on election day.

The results are impressive. States that allow for election day registration boast voter turnout rates that lead the nation. All six EDR states have significantly higher voter turnout than the national average. In the 2000 elections, an average of 63% of the voting age population in these states voted -- roughly twelve percent higher than the national average of 51%.

The table below demonstrates that although all six EDR states had higher than average voter turnout rates prior to implementing EDR, their turnout advantage over the national average substantially increased once they implemented the reform.

Voter Turnout by Percentage in States with EDR in Presidential Elections, 1968-2000¹³
(boldface indicates when EDR was instituted)

<i>Year</i>	<i>United States Average</i>	<i>Maine</i>	<i>Minnesota</i>	<i>Wisconsin</i>	<i>Idaho</i>	<i>New Hampshire</i>	<i>Wyoming</i>
1968	60.84	66.37	73.75	66.52	73.34	69.62	66.95
1972	55.21	60.27	68.65	62.49	63.34	63.63	64.41
1976	53.55	63.66	71.53	66.52	60.68	57.27	58.56
1980	52.56	64.49	69.96	67.35	67.71	57.14	53.23
1984	53.11	64.77	68.16	63.46	59.93	52.98	53.38
1988	50.15	62.15	66.33	61.98	58.34	54.81	50.30
1992	55.23	71.98	71.73	68.99	65.16	63.14	62.30
1996	49.08	71.90	64.07	57.43	57.05	57.30	59.43
2000	51.3	67.3	68.8	66.1	54.5	62.5	59.7

Political scientists concur in their view that EDR would significantly increase the size of the voting public. Craig Leonard Briens and Bernard Grofman have estimated that adoption of EDR would produce a seven-percent rise in voter turnout in the average state. This finding is based on an analysis of the existing six states that have EDR over the period 1972 to 1996.¹⁴ In a 1990 study of a variety of changes in election law, Curtis Gans and the Committee for the Study of the American Electorate determined that the “enactment of election day registration was found, not surprisingly, to have the greatest potential impact on voter turnout. More than six million voters might be added to the rolls if election day registration were adopted in all states.”¹⁵ In a more recent study, Mark J. Fenster posits that implementing EDR nationwide could increase electoral participation in United States presidential elections by 8.54 million people.¹⁶

Election Day Registration -- A Remedy to Inaccurate Registration Rolls

Election day registration would also provide a ready remedy to one of the most egregious problems cited in the troubled 2000 presidential election. All over the nation, election officials from numerous states reported that many voters were unable to vote because their names were not on voting lists when they arrived at polling places. Administrative inefficiency, poor implementation of the Nation Voter Registration Act’s registration procedures, incompetence and outright misconduct combined to deny thousands, if not millions of citizens the opportunity to vote in that election. With EDR, voters whose names did not appear on the registration rolls could have simply re-registered and voted on election day.

Election Day Registration – An Accommodation of Surging Pre-election Interest

Election day registration also helps capture the votes of people who are unregistered but become interested in voting as election day approaches. During the final weeks of a campaign, press coverage increases, candidates advertise vigorously to get their messages across, and races inevitably tighten. Typically, the public’s interest in elections surges at this time. Indeed, the number of new voting registrants tends to spike upward as election day approaches.

Not surprisingly, the evidence suggests that those states with cut-off dates closer to election day experience higher voter turnout.¹⁷ Massachusetts’ 20-day pre-election day deadline for voter registration works to deny the opportunity to vote to unregistered citizens whose interest in an election is piqued in the frenzied two-week period before the vote.

Election Day Registration in Practice – Higher Turnout without Fraud, Administrative Burden or Excessive Costs

Critics of election day registration typically cite three reasons for their opposition – administrative burden, excessive cost, and voter fraud. The six EDR states have shown each of these concerns to be unfounded. EDR also evidences clear advantages over provisional voting, a more common innovation.

EDR without administrative burden. Officials in EDR states report that same-day registration imposes no undue administrative burdens.¹⁸ Advance planning, voter education, and staff training are key. EDR administrators emphasize the importance of anticipating the level of voter

turnout on election day, and adequately staffing registration sites on that day with poll workers qualified to process same-day registrations.

Milwaukee, WI, one of the largest EDR jurisdictions in the nation, assigns registrars to each of its 335 wards in peak election years. It also assigns new registrants to separate voting areas from pre-registered voters in an attempt to head off long lines and to avoid the frustrations associated with them. When voters arrive at the polls, a “greeter” talks with them and directs them to the appropriate area. Election officials observe that they have prevented excessive congestion, even in metropolitan locations, by structuring the physical environment of the polling place in this way. New Hampshire and Maine respond to potential staffing problems by assigning an election judge to each of its polling sites on election day.

Public education is another component of successful same-day registration systems. Maine and Minnesota make considerable efforts to advise their citizens about the process of voter registration and the mechanics of voting. Milwaukee election officials publicize how election day registration works on television and radio, and on billboards. They also avoid some election day confusion through advance circulation of lists of identification accepted for voter registration.

Poll worker training is the third element in successful EDR systems. Poll workers, election clerks and registrars must all be fully versed in state registration and voting regulations. Maine requires that all its clerks and registrars receive such training every two years.

Many cite computerized statewide registration systems as a prerequisite for EDR and the antidote to any of the administrative challenges that may accompany it. While none of the six states that have adopted EDR had these systems at the time of enactment, the Help America Vote Act (HAVA) now mandates that all states implement statewide, computerized registration databases by January 1, 2006 at the latest. Congress has authorized \$3.8 million to help implement this and other changes to state election procedures over the next three years. If computerized lists are designed to facilitate information sharing with other states, they could also be used to track mobile voters, ensuring that the one-sixth of the Americans who move on an annual basis retain their right to vote.

EDR improves upon provisional balloting. HAVA also requires all states to offer provisional ballots to voters who claim to be registered but whose names do not appear on the registration list. Provisional ballots are set aside until after an election, when election officials must evaluate them for eligibility before counting the votes.

Although provisional ballots are unquestionably better than the common practice of turning would-be voters away from the polls on election day, they are generally resisted by election officials who must expend extra time and effort to verify voter eligibility before counting the votes. EDR is a preferable alternative. By allowing citizens to register and cast a live ballot on election day, EDR eliminates the need for most provisional ballots and assures eligible citizens that their votes will count.

EDR without excessive costs. Pinpointing the precise cost of election day registration in EDR states is a difficult undertaking, given inadequate record keeping and the fact that EDR costs are embedded in state, county and municipal budgets. Nevertheless, election officials in EDR states do not report substantially higher election administration costs because of same-day registration.

The marginal cost in Minnesota is the expense of staffing one election judge in larger precincts. Each judge's services on election day cost the state \$250.¹⁹ Milwaukee's costs are manageable. It spends \$25,000 for citing a registrar in each of its 335 wards, \$20,000 to mail verification cards to election day registrants, and an undisclosed but not excessive additional sum for clerks to input same-day registration data and file registration cards.²⁰ New Hampshire reports no additional costs, apart from printing extra registration forms.²¹

EDR without fraud. States with same-day registration have adopted a number of measures to maintain the integrity of their elections. For example, each requires registrants to take an oath attesting to the truthfulness of the information they provide upon registration. Willful violations typically carry significant penalties of fines and imprisonment. House, No. 2415 and Senate, No. 342 adopt these safeguards. Both bills require election day registrants to swear an oath in the form recommended by the Secretary of the Commonwealth of Massachusetts. Under Massachusetts law, the penalty for taking a false oath is a fine of up to \$1000 or imprisonment for up to a year.²²

Some EDR states go beyond the oath requirement by mailing a non-forwardable postcard to the addresses provided by election day registrants. The return of these cards to the offices of election administrators signals problems with the registrations and allow them to be removed from the rolls. EDR bills introduced in at least three states (Arizona, Iowa, Pennsylvania) over the past several years adopt this voter integrity procedure. EDR bills in at least three other states (Connecticut, Iowa, Pennsylvania) go further and require that the return of these non-forwardable notices be reported to the proper authorities for investigation and possible prosecution.

Maine and Minnesota have adopted an additional means of avoiding voter fraud. Maine sends out postcards to jurisdictions where voters had previously registered, canceling that registration. Maine also prominently posts notices advising voters of the penalties for voter fraud. Wisconsin is soon to implement the same procedure.

Maine additionally uses "challenged ballots". Any voter who has reason to suspect that a ballot was cast by an ineligible voter may cause that ballot to be marked for further review. Challenged ballots are also used where election day registrants provide insufficient proof of identity or residence. The state subsequently investigates these ballots in close races where they might have affected the outcome of an election.

Measures such as these have been proven successful. Officials in EDR states report minimal problems with fraud. Reports on voting problems and irregularities in the 2000 election found little incidence of fraud overall across the United States. Those few states where fraud allegations did arise were not states with EDR. In New Hampshire, a special House committee established to study voter fraud found that of the more than 1.5 million ballots cast in the year 2000, there was only one case of substantiated fraud.²³

Improving Upon House, No. 2415 and Senate, No. 342

With adoption of Election Day Registration legislation, Massachusetts can expect to enjoy many of the positive results achieved in EDR states. It is a proven innovation that is welcomed by the voters. EDR administrators report that it can be operated without undue burden, at minimal costs, and without fear of widespread fraud.

Dēmos recommends that the Committee consider amending House, No. 2415 and/or Senate, No. 342 in several regards to achieve even better results. First, the identification provisions of the House bill are clearly preferable to those provided for in Senate, No. 342. While the former would allow proof of residency to be substantiated by a driver's license, recent utility bill, rent receipt, lease, copy of voter registration affidavit, or other identification bearing a voter's name and address, Senate, No. 342 only allows for a much more restricted list of documents -- U.S. passport; drivers license; or other printed identification with the voter's name, address, and photo. These Senate provisions would likely work to exclude many low-income voters, voters of color, and voters with disabilities. These categories of individuals are less likely than other citizens to own a car and possess a drivers license, and also less likely to travel abroad and possess a passport. (In any event, U.S. passports do not bear the address of the passport holder, and are therefore ill suited to provide proof of residence.) Senate, No. 342's provision for "other printed identification" is unlikely to mitigate these exclusionary provisions. The range of documents that contain a voter's name, address, and photo is likely to be quite limited.

Second, *Dēmos* suggests that the Committee consider eliminating Massachusetts' 20-day, pre-election deadline altogether. As drafted, both House, No. 2415 and Senate, No. 342 appear to maintain a registration blackout period from the 20th day before an election until election day. Given the experience of the six EDR states, Massachusetts could readily drop the 20-day provision with little hardship, and likely boost voter participation even further. This revision would in effect allow late, pre-election day registrants a second chance to properly register, should their registration applications be denied in the days leading up to election day. Indeed, a voter who cannot provide adequate proof of residence on her first attempt to register could bring such proof with her to the polls on election day and successfully have her name added to the voter rolls – and cast a ballot.

Finally, *Dēmos* recommends that the Committee amend House, No. 2415 and Senate, No. 342 to adopt several innovations pioneered in Minnesota. In the instance where the registration of same-day registrants on election day is found to be deficient, that state mails those individuals notice of such deficiency. By providing notice, the otherwise unaware citizen is advised in advance of the next election of her need to re-register. A bill introduced in Arizona last session (H.B. 2367) would have adopted that procedure. Minnesota also allows a registered voter to vouch for an election day registrant's address if no other proof of residence is available. They also require that records be kept of instances where would-be registrants could not produce proof of residency. Pending legislation in Pennsylvania adopts these provisions.

ENDNOTES

¹ Caltech-MIT Voting Technology Project, *Voting - What Is, What Could Be*, July 2001, p. 8.

² Democratic Investigative Staff, House Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Slight of Hand in the 2000 Presidential Election*, U.S. Congress, House Committee on the Judiciary, August 20, 2001, p. 18.

³ *Ibid*, p. 4.

⁴ Minority Staff, Special Investigations Division, Committee on Government Reform, *Income and Racial Disparities in the Undercount in the 2000 Presidential Election*, Committee on Government Reform, U.S. House of Representatives, July 9, 2001, p. 5. This study of forty congressional districts also found that in the two districts with the highest percentage of uncounted ballots -- both of them low-income, high minority districts -- the percentage of uncounted ballots was *twenty times higher* than in the affluent, low-minority district with the lowest percentage of uncounted ballots.

⁵ Dayna L. Cunningham, *Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 *Yale L. & Policy Rev.* 370, 373 (1991).

⁶ Federal Election Commission, "Voter Registration and Turnout 2000," p. 1. FEC numbers reflect the entire voting age population (VAP), including many non-citizens, prison inmates, ex-offenders, and mentally disabled who are not eligible to vote. An estimated ten percent of U.S. residents of voting age -- over 20 million people -- do not have voting rights due to their citizenship status, the impact of felony disenfranchisement laws, and prohibitions against voting among the mentally disabled. Non-citizen immigrants comprise the largest number of non-eligible residents of VAP.

⁷ U.S. Census Bureau, "Voting Age Population, Percent Reporting Registered, and Voted: 1980 to 1998."

⁸ U.S. Census Bureau, "Voting and Registration in the Election of November 2000," p. 7. These percentages are based upon citizen self-reporting, which may vary somewhat from actual registration data.

⁹ *Ibid*, p. 6.

¹⁰ *Ibid*, p. 6.

¹¹ *Ibid*, p. 7.

¹² U.S. Census Bureau, "Geographic Mobility: Population Characteristics, March 1999 to March 2000," May 2001.

¹³ *Ibid*.

¹⁴ Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly*, Volume 82, Number 1, March 2001, pp. 171-183.

¹⁵ Committee for the Study of the American Electorate, "Creating the Opportunity: Voting and the Crisis of American Democracy," *Policy Studies Review*, Volume 9, Number 3, Spring 1990, p. 585.

¹⁶ Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly*, Volume 22, Number 1, 1994, p. 84.

¹⁷ See Steven Rosenstone and Ray Wolfinger, *Who Votes?*, New Haven: Yale University Press, 1980; and Steven Rosenstone and Ray Wolfinger, "The Effect of Registration Laws on Voter Turnout," *The American Political Science Review*, Volume 72, Number 1, March 1978.

¹⁸ Remarks by Julie Flynn, Deputy Secretary of State, Maine; Joan Grove, former Minnesota Secretary of State; and Julietta Henry, Executive Director, City of Milwaukee Board of Election,

at Demos/Brennan Center for Justice conference, “Eliminating Barriers to Voting: Election Day Registration,” New York, NY, November 30, 2001.

¹⁹ Remarks by Joan Growe at “Eliminating Barriers to Voting: Election Day Registration,” New York, NY, November 30, 2001.

²⁰ Remarks by Julietta Henry at “Eliminating Barriers to Voting: Election Day Registration,” New York, NY, November 30, 2001.

²¹ Remarks by Rep. Martha Fuller Clark at “Fulfilling Democracy’s Promise,” Worcester, MA, January 11, 2002.

²² See <http://www.state.ma.us/legis/laws/mgl/56-6.htm>

²³ Remarks by Rep. Martha Fuller Clark, New Hampshire House of Representatives, at Northeast Action conference, “Fulfilling Democracy’s Promise,” Worcester, MA, January 11, 2002.