

2008 ELECTION PRIMER

ELECTION ADMINISTRATION, VOTING RIGHTS & LEGAL CHALLENGES

***This is a work in progress and will be updated on a weekly basis.**

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Issue	Comments	Litigation	Documentation	Where to Watch	Resources	Contacts Info
Provisional balloting	Many provisional ballots are ultimately rejected in states with restrictive rules on their validation. The expected record turnout in November, combined with high numbers of new voters, could lead to a record number of provisional ballots being cast.		Forthcoming Dēmos report; Advancement Project, <i>Provisional Voting: Fail-Safe Voting or Trapdoor to Disenfranchisement</i> ; Dēmos, <i>A Fallible 'Fail-Safe', An Analysis of Provisional Balloting Problems in the 2006 Election</i> ; Election Law @ Moritz, <i>Key Questions for Key States</i> .	Fourteen states rejected over 50% of provisional voters cast in 2006 general election: AL, AR, DE, HI, IL, IN, KY, MI, MO, OK, SD, VA. Rejection rates highest in DE (84%), MI (80.9%) and KY (92%). FL, MI, MO and OH don't count provisional ballots cast by voters in wrong precinct.	Dēmos, Advancement Project, Moritz School of Law at Ohio State University	Scott Novakowski, Dēmos; Eddie Hailes, Advancement Project; Ned Foley and Dan Tokaji, Moritz
Surge in registration of low-income voters	A national campaign to require states to re-implement voter registration at public assistance, as required by federal law, has led to thousands of new registrations there.	<i>ACORN v. Scott*</i> (W.D. Mo.) http://www.demos.org/pub1576.cfm <i>Harkless v. Brunner*</i> (N.D. Ohio) http://www.demos.org/pubs/9.21.06%20OH%20NVRA%20Complaint.pdf *Dēmos involved in litigation.	Dēmos, <i>Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the National Voter Registration Act</i> ; <i>Unequal Access: Neglecting the National Voter Registration Act, 1995-2007</i>	Missouri, North Carolina, Michigan, Virginia	Dēmos, Project Vote	Scott Novakowski, Brenda Wright and Lisa Danetz, Dēmos; Brian Mellor, Project Vote

<p>Election Day Registration</p>	<p>Nine states allow individuals to register and vote on the same day. Election Day Registration states historically lead the nation in voter turnout. They also allow for on-the-spot correction of registration errors. Ohio allowed Same Day Registration for absentee voters from September 30 through October 6.</p>	<p><i>State ex rel. Colvin v. Brunner*</i> (Ohio Supreme Court) http://demos.org/generatePub.cfm?pubID=1594</p> <p><i>Project Vote v. Madison County Board of Elections*</i> (N.D. Ohio) http://www.demos.org/pub1596.cfm</p> <p><i>Ohio Republican Party v. Brunner*</i> (6th Cir.) http://www.demos.org/pubs/6th%20Cir.%20Opinion.pdf</p> <p>*Demos involved in litigation.</p>	<p>Demos, <i>Voters Win with Election Day Registration; Election Day Registration, A Study of Voter Fraud Allegations and Findings on Voter Roll Security</i></p>	<p>Iowa, North Carolina and Montana will offer Same Day Registration in presidential election for the first time this year. Election Day Registration also available in New Hampshire, Maine, Wisconsin, Minnesota, Wyoming, Montana and Idaho. Hamilton County, Ohio prosecutor has subpoenaed personal information on hundreds of individuals who registered and voted during the state's absentee voting period, without evidence of any impropriety. Greene County prosecutor dropped a similar investigation.</p>	<p>Demos</p>	<p>Stuart Comstock-Gay, Steven Carbó and Regina Eaton, Demos</p>
<p>Fraud allegations</p>	<p>The incidence of intentional voter fraud in recent elections is rare. Most instances of alleged "voter fraud" are instead shown to involve faulty voter rolls, pollworker error, mistaken identity and misinformed voters.</p>		<p>Lorraine C. Minnite and Demos, <i>An Analysis of Voter Fraud in the United States</i>; Mexican American Legal Defense and Educational Fund, <i>The Myth of Widespread Non-Citizen Voting: A Response to the Heritage Foundation</i></p>	<p>Indiana, Wisconsin, Nevada, Ohio</p>	<p>Demos, Brennan Center for Justice, MALDEF</p>	<p>Prof. Lorraine C. Minnite, Barnard College and Demos; Steven Carbó, Demos</p>
<p>Election administration and reform</p>	<p>Implementation of new federal voting requirements (Help American Vote Act), upholding voting rights, adequately training poll workers, partisan election administration, future reform</p>	<p><i>League of Women Voters of Ohio v. Brunner*</i>, http://moritzlaw.osu.edu/electionlaw/litigation/lwv05.php, www.demos.org</p> <p><i>United States v. Alabama</i> (M.D. Alabama) http://moritzlaw.osu.edu/electionlaw/litigation/alabama.php</p> <p><i>United States v. New York State Board of Elections</i> (N.D.N.Y.) http://www.usdoj.gov/crt/voting/hava/ny_hava.php</p> <p>Virginia NAACP v. Kane (E.D. VA)</p> <p>*Demos involved in litigation.</p>	<p>electionline.org, "Election Preview 2008: What If We Had an Election and Everyone Came?" and "12 States to Watch on November 4." Advancement Project, The End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election</p>	<p>Ohio, Florida. Inadequate allocation of poll workers in Ohio, Virginia and Pennsylvania. Insufficient voting machines in Virginia and Pennsylvania. North Carolina: confusing ballot, which requires presidential choice even if voter chooses straight party-line vote, leads to high presidential undervotes.</p>	<p>Demos, Common Cause, Brennan Center for Justice, Lawyers Committee for Civil Rights Under Law, People for the American Way, The Advancement Project</p>	<p>Miles Rapoport, Stuart Comstock-Gay and Steven Carbó, Demos; Tova Wang, Common Cause; Wendy Weiser, Brennan Center for Justice; Jon Greenbaum, Lawyers Committee for Civil Rights Under Law; Ned Foley and Dan Tokaji, Moritz; Doug Chapin, electiononline.org; Judith Browne, The Advancement Project</p>

<p>Voter registration databases; improper removal or refusal to add eligible voters to the voter rolls</p>	<p>States periodically update their voter registries to remove outdated voter files. Although federal law provides some protection against the removal of eligible voters, impermissible voter “purges” persist. New risks have developed in recent years with the introduction of computerized, state-wide voter registration databases.</p>	<p><i>USSAF v. Land</i> (E.D. Mich.) http://moritzlaw.osu.edu/electionlaw/litigation/ussafv.land.php</p> <p><i>Florida NAACP v. Browning</i> (11th Circuit) http://moritzlaw.osu.edu/electionlaw/litigation/FloridaNAACPv.Browning.php</p> <p><i>Van Hollen v. Government Accountability Board</i> (Dane County Circuit Court) http://moritzlaw.osu.edu/electionlaw/litigation/vanhollenvgab.php</p> <p><i>Ohio Republican Party v. Brunner*</i> (6th Cir.), http://moritzlaw.osu.edu/electionlaw/litigation/documents/orpvbrunnerenbanc.pdf</p> <p>Common Cause of Colorado v. Coffman (D. CO)</p> <p>*Dēmos involved in litigation.</p>	<p>Brennan Center for Justice, <i>Voter Purges; Making the List: Database Matching and Verification Processes for Voter Registration</i>; Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i>; Election Law @ Moritz, <i>Key Questions for Key States</i>; U.S. PIRG, <i>Vanishing Voters: Why Registered Voters Drop Off the Rolls</i>; Dēmos, <i>Purged! Will Eligible Voters Be Purged From Election Rolls?</i></p>	<p>Ohio: 200,000 voters may be challenged at polls or forced to vote provisional ballots because registration records didn’t match government database files; Florida: ballots cast by over 12,000 newly registered voters in jeopardy because voter registration data didn’t match motor vehicles, social security data; Oregon: “no-match” standard affects votes for federal office; Georgia: federal court blocks purging of voters based on database mismatches pending pre-clearance from US Dept Justice. Georgia, Missouri, New Mexico, Ohio: Vague standards for data matching. Wisconsin: Attorney General filed suit to compel database match of voter registrations since January 1, 2006. Michigan: federal judge halts purge of newly-registered voters where voter ID cards returned as undeliverable. Colorado: Secretary of State rejecting over 6000 new voter registration because voters did not also check a box indicating they did not have a state driver’s license or identification number; state sued for late purges of about 30,000 voters; county problems in connecting with statewide database problems may slow “check in” of voters at the polls; Wisconsin: state dissolved contract with private database contractor because of system flaws; New York, Alabama: delayed introduction of new databases</p>	<p>Brennan Center for Justice; Common Cause; Moritz College of Law, Ohio State University; Dēmos; Bradley Heard, Advancement Project (Michigan lawsuit); Meredith Bell-Platts, ACLU Voting Rights Project (Michigan lawsuit)</p>	<p>Wendy Weiser, Brennan Center for Justice; Tova Wang, Common Cause; Ned Foley, Moritz; Brenda Wright, Dēmos</p>
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<p>Voter challenges and caging</p>	<p>Partisan operatives improperly challenge voters' eligibility at the polls. Caging involves list of individuals whose mail was returned as undeliverable. Expect to see challenges of voters involved in home foreclosures.</p>	<p><i>Montana Democratic Party v. Eaton</i> (D. Mont.), http://moritzlaw.osu.edu/electionlaw/litigation/mdpv.eaton.php</p> <p><i>Maletski v. Macomb County Republican Party</i> (E.D. Mich.) http://moritzlaw.osu.edu/electionlaw/litigation/maletskiv.macombcrp.php (challenges based on foreclosures)</p> <p>Herring v. Marion County Election Board</p>	<p>Election Protection briefing paper: <i>Michigan Voters and the Home Mortgage Crisis</i>; Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i>, Campaign Legal Center, <i>Vote Caging and the Attorney General</i>; www.866OurVote.org</p>	<p>Michigan, Ohio, Indiana: Recent news of GOP intentions to use foreclosure lists to challenge voters. Virginia: little protection against widespread voter challenges. Montana: federal judge blocks state GOP challenge to registrations of 6,000 voters in counties with high numbers of Democrats. Florida: In caging tactic, McCain campaign targeted older Democrat voters with nonforwardable mailings asking them to "confirm" their non-existent membership in the Republican Party.</p>	<p>Dēmos, Lawyers Committee for Civil Rights Under Law, Brennan Center for Justice, Common Cause, Campaign Legal Center</p>	<p>Brenda Wright, Dēmos; Jonah Goldman, Lawyers Committee for Civil Rights Under Law; J. Gerald Hebert, Campaign Legal Center</p>
<p>Deceptive practices and voter intimidation</p>	<p>Intentional dissemination of misinformation and other acts to suppress voting</p>	<p>Escobedo v. Rogers (D NM)</p>	<p>Dēmos press release and joint organizational letter, http://www.demos.org/home.cfm; Testimony of John Trasvina, MALDEF, Senate Judiciary Committee, July 7, 2007, http://www.maldef.org/pdf/Trasvina.S453.Testimony.pdf; Testimony of Ralph Neas, PFAW, House Judiciary Committee, May 7, 2007, http://www.workingfordemocracy.org/testimony/neas_reform.pdf; Election Privacy Information Center, E-Deceptive Campaign Practices Report: Internet Technology & Democracy 2.0.</p>	<p>Pennsylvania: anonymous flier circulated in African-American neighborhoods in Philadelphia and at Drexel University warned that voters with outstanding arrest warrants or unpaid traffic tickets could be arrested at polls on Election Day. New Mexico: anonymous "investigator" harassed newly naturalized citizen at her home, accusing her of voter fraud, threatened to report her to immigration authorities, and made public her personal info. California: private contractor affiliated with GOP dupes Democratic voters into switching party affiliation and changing voting status from in-person to absentee. Texas: Anonymous email erroneously warns that voters voting "Straight Democrat" must also make presidential choice; doing so cancels out presidential vote on eSlate machines. Virginia, Colorado, New Mexico: "Robo" calls with incorrect information were pronounced in 2006. Nevada: Latinos receive bogus phone calls from purported Obama campaign worker asking them to vote by phone.</p>	<p>Lawyers Committee for Civil Rights Under Law, Dēmos, People for the American Way</p>	<p>Brenda Wright, Dēmos; Jonah Goldman, Lawyers Committee for Civil Rights Under Law; Tanya Clay House, People for the American Way; Nina Perales, MALDEF; Lillie Coney, EPIC</p>

<p>Voter ID</p>	<p>Some states have adopted very strict voter identification requirement for voters on Election Day. Voters without proper ID must vote provisional ballot and return later with ID for provisional vote to count.</p>	<p><i>Crawford v. Marion County Election Board</i> (U.S. Supreme Court) http://moritzlaw.osu.edu/electionlaw/litigation/indy-dems.php</p> <p><i>Gonzalez v. Arizona</i> (D. Ariz.) http://moritzlaw.osu.edu/electionlaw/litigation/gonzalez.php</p>	<p>Election Law @ Moritz, <i>Key Questions for Key States</i>; Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i></p>	<p>Indiana, Georgia, Colorado, Missouri, Arizona</p>	<p>Brennan Center for Justice, Common Cause, Dēmos, Lawyers Committee for Civil Rights Under Law, ACLU, People for the American Way</p>	<p>Neil Bradley, ACLU; Jonah Goldman, Lawyers Committee for Civil Rights Under Law; Steven Carbó and Brenda Wright, Dēmos; Wendy Weiser, Brennan Center for Justice; Tova Wang, Common Cause; Tanya Clay House, People for the American Way</p>
<p>Third-party voter registration</p>	<p>Some states have imposed onerous restrictions on voter registration drives by third-party organizations.</p>	<p><i>American Association for Persons with Disabilities v. Herrera</i> (D. New Mexico) http://moritzlaw.osu.edu/electionlaw/litigation/LWVFv-Browning.php</p> <p><i>League of Women Voters of Florida v. Browning</i> (11th Circuit) http://moritzlaw.osu.edu/electionlaw/litigation/LWVFv-Browning.php</p>	<p>Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i></p>	<p>Florida, New Mexico, Washington State</p>	<p>League of Women Voters, Brennan Center for Justice, Common Cause</p>	<p>Lloyd Leonard, League of Women Voters; Wendy Weiser, Brennan Center for Justice; Tova Wang, Common Cause</p>
<p>Felon voting rights</p>	<p>5 million citizens unable to vote due to felon disenfranchisement laws. Many more disenfranchised by widespread public confusion about the law.</p>	<p><i>Muntaqim v. Coombe</i>* (2nd Circuit) http://www.nvri.org/about/new_york_state_policies.shtml</p> <p><i>Farrakhan v. Locke</i> (9th Circuit) http://moritzlaw.osu.edu/electionlaw/litigation/aadpv.herrera.php</p> <p><i>Young v. Houseman</i> (Southern District of Mississippi) http://moritzlaw.osu.edu/electionlaw/litigation/youngv.hosemann.php</p> <p>*Dēmos involved in litigation.</p>	<p>The Sentencing Project, <i>Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2008</i>; Brennan Center for Justice, ACLU, <i>De Facto Disenfranchisement</i></p>	<p>New Mexico: voter registration denied to eligible felons because of faulty Department of Corrections database; Alabama: records from state Board of Pardons and Paroles not built into new voter registration database; registrations rejected for felons who've been pardoned. Florida, Kentucky, and Virginia.</p>	<p>The Sentencing Project, Brennan Center for Justice, ACLU, NAACP Legal Defense Fund</p>	<p>Marc Mauer, The Sentencing Project; Ryan Haygood, NAACP Legal Defense Fund; Erika Wood, Brennan Center for Justice; Nancy Abudu, ACLU</p>

Protecting Internet political association		<i>Van Hollen v. Government Accountability Board</i> (Dane County Circuit Court), http://moritzlaw.osu.edu/electionlaw/litigation/vanhollenv.gab.php			Dēmos, ACLU of Southern California	Brenda Wright and Lisa Danetz, Dēmos; Peter Eliasberg, ACLU
Voting machine technology	States continue to struggle with new voting machine technology. Systems glitches and human error cause machine failure, lost ballots, and confusion at the polls. The adequate and fair allocation of voting machines within a state is another important issue to watch.	NAACP-SCP v. Cortes, (E.D. PA)	Common Cause and Verified Voting, <i>Voting at Risk in 2008</i> ; Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i>	West Virginia: early voters report machines switching their votes to other candidates. Pennsylvania: concerns that insufficient emergency ballots will be on-hand in case of voting machine breakdowns. Florida, New Jersey, New York, Pennsylvania, Michigan, Missouri.	Common Cause, Verified Voting Foundation, Voter Action	Tova Wang, Common Cause; Jon Bonifaz, Voter Action
Student voting	Students' legal right to register and vote at campus addresses improperly challenged		Brennan Center for Justice, <i>Legal Guide to Student Voting</i> ; Common Cause, Century Foundation, <i>Voting in 2008: Ten Swing States</i> ; www.866OurVote.org	Texas, Virginia, Colorado, Pennsylvania	Brennan Center for Justice, ACLU, Student Association for Voter Empowerment (SAVE)	Gary Kalman, U.S. PIRG; Wendy Weiser, Brennan Center for Justice; Matthew Segal, SAVE
Accommodating disabled voters			Bazelon Center for Mental Health Law, <i>Vote. It's Your Right; A Guide to the Voting Rights of People with Disabilities</i>	Florida: Secretary of State Kurt Browning has refused to allow Government Accountability Office (GAO) to conduct national voting accessibility survey in his state. Twenty-nine Secretaries of State are permitting the survey to go forward in their states.	American Association of People with Disabilities, National Disability Rights Network, the Bazelon Center for Mental Health Law	Jim Dickson, AAPD
Attacks, threats of violence	Members of Congress have called on the Department of Justice and FBI to investigate violence and threats against voter registration workers.			Ohio: ACORN organizer received email saying "she is gong to have her life ended." Rhode Island: ACORN office received threatening phone call laced with racist language. Massachusetts, Washington State: ACORN offices vandalized in Boston and Seattle. Wisconsin: Obama canvasser mistaken for ACORN worker assaulted. North Carolina: Hecklers harass African Americans using early voting sites in Fayetteville; tires slashed on 30 vehicles at Obama campaign rally.		

Early Voting	Many voters are opting to vote before election day as more states allow no-excuse early voting. Political campaigns are encouraged early voting to avoid problems at the polls on election day. Partisans are wrangling over where to open early voting sites.			Indiana: The Republican Party in Lake County, Indiana filed suit in state court to close early voting sites in Gary, Hammond and East Chicago, three cities with predominantly minority populations. They support just one early voting site in Crown Point, 45 minutes away and predominantly white.	Paul Gronke, Reed College
Bilingual assistance	Information available in forthcoming update.				
Partisan election administration					

About Dēmos

Dēmos is a non-partisan public policy research and advocacy organization. Headquartered in New York City, Dēmos works with advocates and policymakers around the country in pursuit of four overarching goals: a more equitable economy; a vibrant and inclusive democracy; an empowered public sector that works for the common good; and responsible U.S. engagement in an interdependent world.

About the Democracy Program

The Democracy Program works to strengthen democracy in the United States by reducing barriers to voter participation and encouraging civic engagement. Dēmos supports state and national reform efforts by conducting research on current and long-range issues; advancing a broad agenda for election reform; providing advocates and policymakers with technical support; and strengthening reform networks. Through our recent alliance with the National Voting Rights Institute, we are now able to utilize complementary channels of policy, advocacy and litigation to achieve our goals.

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