

# Trends in America



Issue Brief

The Council of State Governments

November 2007

## VOTING IN THE STATES

In a representative democracy like the United States, democratic participation is essential. Yet according to a recent study from the Pew Research Center for the People and the Press, only 35 percent of the adult population votes regularly. And though most Americans are not regular voters, the vast majority—90 percent—believe it is the duty of citizens to always vote, according to a separate Pew study.

This paradox of voting behavior in the United States has led many political scientists to study voter attitudes to better understand why Americans stay away from the polls. Voter turnout varies significantly by educational attainment, age and race. But people also stay away on Election Day because of distrust of government, boredom with politics and lack of knowledge about the candidates. These reasons combined with registration difficulties and new

voter security requirements all impact democratic participation.

Australia and other representative democracies around the world mandate public involvement by requiring citizens to vote or face fines. Though the United States is unlikely to follow suit, states are trying diverse tactics to increase voter turnout and voter confidence.

By ramping up identification requirements at the polls, states are trying to increase voting security—but at what cost to voter turnout? Are voting machines part of the problem or the solution? Through same-day voter registration, states are increasing voter turnout—but is it secure?

This policy brief examines three ways states are trying to strike a balance between increasing voting security and encouraging citizens to vote: voter ID laws, electronic voting and Election Day Registration.



## The States Respond

### Voter ID Laws

In light of the contentious 2000 presidential election and the heated 2004 election, state lawmakers have been very active on election reform. The National Voter Registration Act and the more recent Help America Vote Act have forced states to rethink voter databases and accessibility, but perhaps the most controversial election reforms in the states today are voter ID laws.

Proponents of voter ID laws argue that increasing security at the polls by requiring voters to present some form of identification before stepping into the voting booth will help eliminate voter fraud and clean up elections. They argue identification verifica-

tion is a part of routine life in the 21st century and should be an integral part of the right to vote.

Opponents of voter ID laws contend personal identification may be a way of life for middle- and upper-class Americans, but poor, elderly, minority and disabled populations are disproportionately affected because these groups are less likely than others to use or possess identification. Because of this, voter ID laws have even been called modern-day Jim Crow-era poll taxes. Opponents of the laws argue we should be encouraging nontraditional voters to participate in the electoral process, not erecting more barriers to democratic participation.

Twenty-four states have passed laws in-

structing election officials to either request photo IDs from electors or require them to present some alternate form of identification at the polls. Types of identification requested may vary by state, but most often include forms of ID such as state-issued driver's licenses, passports, military IDs, birth certificates, naturalization papers, utility bills, bank statements, tax records and government documents.

No state turns away voters without proper identification, but contingency rules for electors not providing ID vary widely. In many voter ID states, electors must either swear an oath to their identity or sign an affidavit under penalty of perjury. Other states permit election officials to

request recitation of personal information, such as address or birth date, and check that against the registration rolls. Alabama, Alaska, Missouri and North Dakota allow election workers to vouch for the identity of the elector. In many states, residents without proper identification are given provisional ballots that will only be counted when ID can be provided, usually at a specific time and place.

Voter ID laws have recently come under judicial scrutiny. Georgia and Missouri passed especially controversial voter ID laws, requiring residents to present photo IDs in order to vote. But in October 2006, both laws were ruled unconstitutional and struck down because of their potentially discriminatory effects on minority voters. Both states were forced to expand their lists of acceptable forms of identification

to include some forms without a photo. Electors in Georgia may now present Social Security cards, naturalization documentation, court records, utility bills and bank statements as valid forms of identification at the polls. Missouri voters may now present paycheck stubs, utility bills, university ID cards and government documents.

In September 2007, the U.S. Supreme Court agreed to hear the case against Indiana's voter ID law, which requires electors to present a government-issued photo ID at the time of voting or cast a provisional ballot. The decision, expected by June 2008, will affect voter ID laws for many other states and will ultimately tip the balance between voting security and voter disenfranchisement.

## As American society has become digitized, our voting systems have logically progressed from paper-based to electronic.



such that the accuracy of these electronic voting machines can be checked independently of the software in the systems. In the report, NIST suggests one way to make the machines software independent is through voter-verifiable paper records with manual audits. Not only should voting produce a paper trail, but the paper should be checked against the machine to ensure accuracy.

The federal government has not yet passed national paper trail requirements, so states are picking up the slack. Thirty states currently require some form of voter-verifiable paper records, but only 16 states require paper records and mandate a certain percentage of votes be manually audited.

Many states have responded to the paper trail need by purchasing machines that print out a paper receipt of the votes cast. The elector then reviews the receipt for accuracy and turns it in for a potential recount or manual audit. Experts agree, however, a paper receipt generated from the machine itself is not the best way to solve the problem of software independence.

Optical scan technology, however, is recommended by voting experts as the most trustworthy voting method currently available. Using optical scanning machines, voters fill out a ballot by hand then send the ballot through the machine to be read, creating a paper trail independent of the machine's software. Fifteen states currently use the optical scan method in all counties state-

wide: Alabama, Alaska, Hawaii, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Washington and Wyoming.

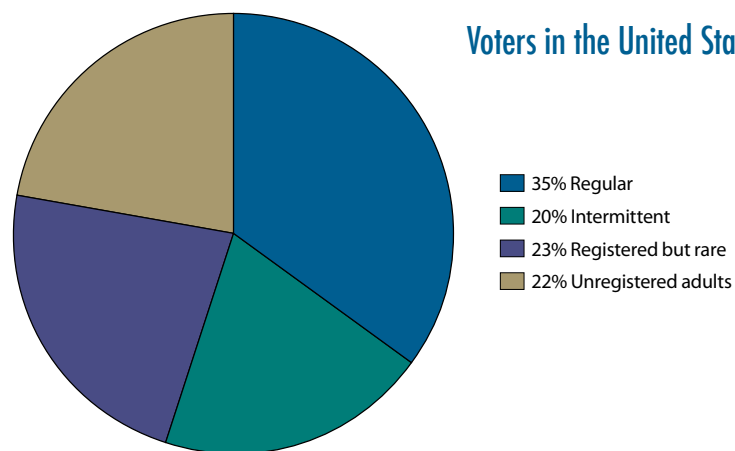
According to a 2006 report from Election Data Services, more than one-third of America's voters faced changes in voting machines for the 2006 elections. A large percentage of voters will see changes in the next election because many state legislatures took up the paper trail issue in the 2007 legislative session. Fifteen states

introduced bills that would require voter-verified systems for the first time or toughen existing paper records requirements.

## Election Day Registration

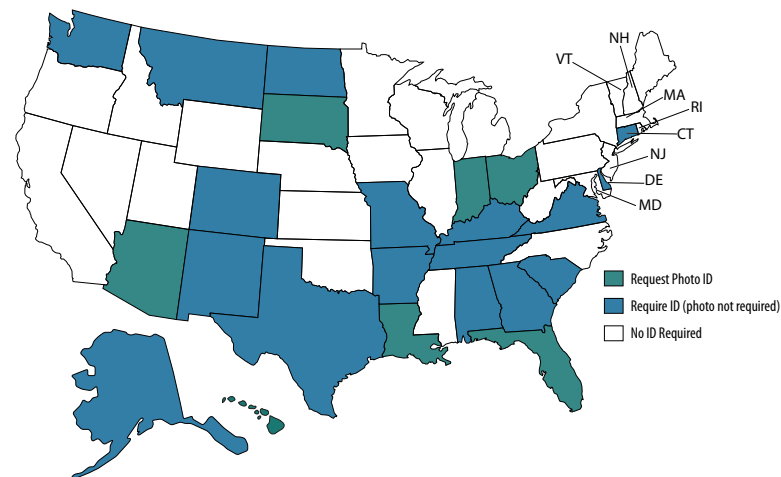
Low voter turnout is a problem with which many states continue to wrestle. Some states are tightening ethics reforms and implementing transparency initiatives to increase trust in government. Other states are focusing on civics education for future voters as a way to instill the habit of participation early. But nothing has had

Voters in the United States



Source: *Who Votes, Who Doesn't, and Why*, Pew Center for the People and the Press, October 2006, <http://people-press.org/reports/pdf/292.pdf>, p. 5

State Requirements for Voter Identification

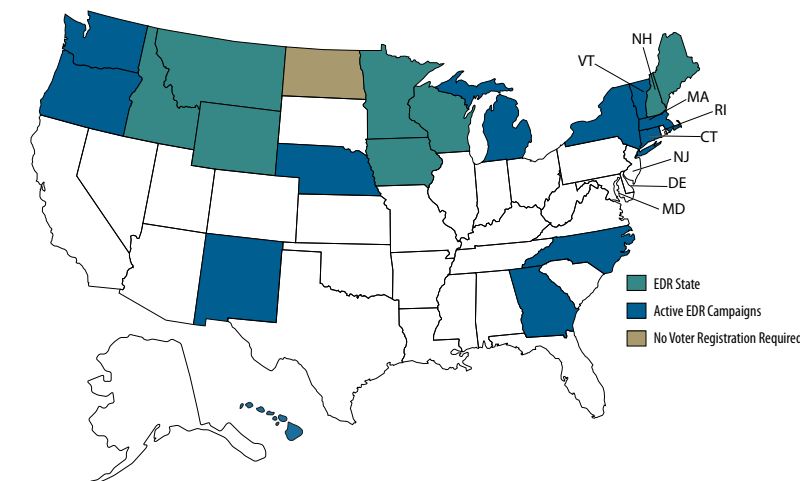


Source: The Council of State Governments

Numerous studies conducted by universities, independent researchers and the National Institute of Standards and Technology (NIST) have shown electronic voting machines are susceptible to technical malfunction and can be intentionally manipulated. This means the accuracy and reliability of the tallies coming out of the machines could be intentionally thrown by hackers or can be wrong due to computer glitches or mishandling of the machines. Votes have vanished or been switched between candidates, inevitably raising questions about the declared results. For this reason, many experts agree electronic voting machines alone cannot be trusted to accurately record votes.

According to a recent NIST report, voting machines should be "software independent"

Election Day Registration in the States



Source: Regina Eaton, Deputy Director, Demos Democracy Program



more encouraging results on increasing voter turnout than the controversial Election Day Registration or EDR.

Most states currently end voter registration 20 days or more prior to an election, but Election Day Registration is designed to allow voters who have moved from a different state or voting precinct, voters who forgot to register prior to the election, or impromptu voters to register and cast a ballot on the same day. States without EDR do not allow voters who have not registered by the state-determined cutoff date to cast a ballot for the current election.

Six states—Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming—offered EDR during the 2004 presidential election. According to data collected by the United States Election Project, the turnout rates for those six states averaged 13 percent higher than the national average among the voting eligible population. In the 2006 midterm election, total U.S. voter turnout was estimated around 40.4 per-

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cent. Seven states, now including Montana, offered EDR in 2006 and the average voter turnout in these states was 51.6 percent—11.2 percent higher than the national average. EDR states consistently average voter turnout rates 10 to 12 percentage points higher than the U.S. average.

Montana is the state with the youngest fully-implemented EDR law. Unlike other EDR states, Montana is the only one that requires Election Day registrants to register to vote at local election offices rather than their regular polling places. According to a recent [electiononline.org](http://electiononline.org) brief, election officials in Montana were overwhelmed by turnout, lines were long and people were confused at the polls. Nearly 4,000 Montanans showed up to register on Election Day.

Election Day Registration, though promising for voter turnout, has opponents worried about transferability to more urban states and security issues. Skeptics question whether EDR could survive administrative challenges if implemented in states with denser populations such as California, New York or Florida. While administration remains a concern, the majority of EDR critics cite concerns about election fraud. To date, however, there is no evidence that EDR increases fraud or that

states with EDR experience more election fraud than states without it.

Election Day Registration appears to be gaining momentum in the states. Maine, Minnesota and Wisconsin have permitted EDR since the 1970s. New Hampshire, Idaho and Wyoming implemented state-wide EDR in the 1990s, but two states, Montana and Iowa, adopted EDR recently. According to Demos, a non-partisan public policy research and advocacy group, 22 EDR bills were introduced during the 2007 legislative session and 12 states currently have active EDR campaigns.

## Balancing Security and Access

Voting, an integral part of any democratic society, largely falls to the states to regulate. The federal government has passed several election laws affecting all states, such as the Help America Vote Act, the National Voter Registration Act, and the Voting Rights Act, but states will ultimately decide how to strike the balance between voting security and civic participation.

—Meggan Trevey is a research analyst at *The Council of State Governments*.

## Trends in America

The most dominant characteristic of the 21st century is not just change, but the rate of change. Understanding change is the first step toward identifying and implementing effective responses. Trends in America Issue Briefs are designed to help state leaders promote positive change through forward-looking policies and strategic investments.