



Nebraska Election Protection Report

November 6th 2012 General Election

This report was compiled based on the 2012 Nebraska Non-Partisan Election Protection Program run by Nebraskans for Civic Reform and with technical support from the Lawyers' Committee for Civil Rights.

The findings in this report were based on the observations of over 70 Nebraska volunteer election observers and attorneys. A special thanks to the countless Nebraskans who volunteered their time.

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Program Summary

Nebraskans for Civic Reform (NCR) partnered with the Lawyers' Committee for Civil Rights to be a part of the 2012 national non-partisan Election Protection Program. The Lawyers' Committee provided technical support, training materials, and use of their national election protection database to enter and track complaints live submitted through their national election protection hotline.

NCR recruited and trained 61 Nebraska non-partisan election observers and a legal action team comprised of fifteen attorneys and retired judges in Lincoln, Grand Island, and Omaha. The non-partisan election observers were trained to passively observe elections and monitor and record the following activities:

- Wait times
- Voter confusion
- Election fraud
- Poll worker confusion
- Use of uniform election guides (if provided)
- Use of provisional ballots
- Rationale for issuance of provisional ballot

Non-partisan election observers were instructed to immediately report to their supervisor the following activities:

- Voter intimidation
- Voter misinformation
- Requiring photo identification (except in limited lawful circumstances)
- Heavy issuance of provisional ballots
- Early closing/late opening of polling locations

In addition, NCR recruited and trained 15 attorneys and former judges to be a part of our legal action team on Election Day. The legal action team was trained in election law and potential duties on Election Day. The duties of the legal action team included but is not limited to:

- Observing unlawful election activities and preparing affidavits
- Filing emergency actions in state and federal district court
- Assisting voters through administrative hurdles on Election Day
- Providing legal research and support on Election Day and pre and post election
- Providing election observation support
- Serving as liaisons to election administrators, law enforcement, and other officials on Election Day.

NCR plans to use the gathered information to create as well as push and pass legislation in the upcoming 2013 legislative session and possibly beyond. The organization also has the intentions of fighting off legislation that has the

ability to limit a voter's access to the polls, the goal being to provide fair and equal voting and election opportunities to all Nebraskans.

Executive Summary

In Lincoln and Grand Island, elections were run efficiently, competently and without incident. In Omaha, voter confusion, long lines, and unlawful provisional ballot requirements were enforced in violation of state and federal law.

Omaha's long lines and voter confusion could be attributed in large part by the closing of nearly one-third of the polling locations just months before the 2012 primary election. Due to public outcry, the Douglas County Election Commissioner reopened nearly twenty polling locations. While this action improved accessibility, based on our observations, it may have actually engendered further confusion as many voters reported either never receiving updated polling place information in the mail, or receiving it and not realizing that it contained a new polling location notice.

Next, which will be discussed further in depth below, at numerous polling locations throughout the city of Omaha, voters were required to provide their "voter identification number" before receiving a provisional ballot at polling places even after they claimed they were registered at that polling location and lived within that precinct. This requirement is contrary to both state and federal law.

In Lincoln and Grand Island only isolated, and as a whole, insignificant issues surfaced. Improved communication about the ability to vote for president, even if a registered Nebraska voter has not reregistered in time, particularly at the university polling locations with highly mobile student populations would be beneficial. In Grand Island, the only issue, which seemed prevalent was the need for bilingual ballots or at the very least translators for a growing population of citizens whose primary language is Spanish. One of NCR's observers in Grand Island was fluent in Spanish but was instructed by NCR's field director to not assist for fear of violating law requiring observers to be passive and not interfere with elections.

Omaha Findings

The voting process, in Omaha on Election Day, was far from smooth process at a first glance as well as comparatively speaking. According to the twenty-six non-partisan election observers we had stationed in Douglas County, problems that voters encountered, but were not limited to, included the lack of a sufficient number of provisional ballots, inoperable polling equipment, campaigning being done by poll workers, voter identification numbers were required, and county election officials were unreachable during times of need. (Nebraskans for Civic Reform, 2012)

It was learned that of the twenty one observed polling locations at 6:30 pm, nine of them required voter identification numbers in order for voters to vote provisionally at some point throughout the day. This requirement is again, contrary to both state and federal laws, specifically to Neb. Rev. Stat. 32-915 and more importantly federal law, the Help America Vote Act (HAVA) Sec. 302(a) (1)-(2) which states (emphasis added);

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

- (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.
- (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is...
 - (A) a registered voter in the jurisdiction in which the individual desires to vote; and
 - (B) eligible to vote in that election.

Further, Neb. Rev. Stat. 32-915 states (emphasis added);

- (1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or

whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

- (a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;
- (b) Is not entitled to vote under section 32-914.0 or 32-914.02
- (c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;
- (d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and
- (e) Completes and signs a registration application before voting.

Specifically the precincts that engaged in this practice included 03-18, 02-19, 03-17, 02-05, 02-21, 03-06, 03-21, 03-07, and 03-17. (Nebraskans for Civic Reform, 2012) One location was asking for identifications, such as a driver's license due to the volume levels within the precinct. Poll workers could not hear voters and needed to actually see the name in order to provide the voter with a ballot. (Nebraskans for Civic Reform, 2012)

In addition to the voter identification number requirement to vote provisionally, a number of precincts actually were continuously running out of provisional ballots due to the high numbers of confusion among voters about the whereabouts of their polling location. (Nebraskans for Civic Reform, 2012) The confusion was so great that in a two hour time period some locations had handed out about thirty provisional ballots or about 20 percent of the voters were voting provisionally. There are a number of reasons behind the large numbers of provisional ballots, but the most common explanation is that an individual's name was not on the rolls but received a card in the mail indicating it should have been.

As large number of provisional ballots were being handed out and as locations were running out of ballots, multiple calls were made to the Douglas County Election Commissioner's office. The calls were made by both poll workers as well as our own Election Protection volunteers. In most cases the calls were left unanswered and unresolved, leaving polling locations without provisional ballots for long durations of time throughout the day. Times ranged from 30 minutes to possibly over an hour at some locations. (Nebraskans for Civic Reform, 2012)

The voter confusion paired with the long lines and wait times resulted in voter frustration and eventually a significant number of individuals leaving the polls without even casting a vote. According to the data that was collected 5 to 10

percent of voters, on average, were leaving at specific times throughout the day and into the evening. (Panowicz, 2012)

Lincoln Findings

As previously stated the polls on Election Day in Lincoln ran quite smoothly and competently. The poll workers appeared calm, collected, as well as competent. The majority of the day was flawless; however, the entire day was not as each location had a few of their own problems. The problems encountered were isolated and inconsistent.

The issues that were encountered were the waiting times some individuals had in order to cast their ballot and uninformed voters. There were many cases in which voters did not know where their polling location or even precinct was. The confusion resulted in most time a simple redirection but in some cases enough frustration to cause the voter to simply lose the desire to cast their vote.

Waiting times, is an issue that is affected by many different variables. These variables can range from voter turnout, time of day, and how efficiently the location is ran by poll workers. In Lincoln wait times ranged from a low of two or three minutes at Everett Elementary School and First Presbyterian Church to a max of thirty minutes at the site of American Lutheran Church. (Nebraskans for Civic Reform, 2012) The city average was about 7 minutes, showing us that wait times were not a significant problem throughout the city.

When compared with the Election Day troubles that were encountered in Omaha, Lincoln's polling locations again were ran quite smoothly. Voters and poll workers alike were more educated and informed allowing for an efficiently ran Election Day.

Grand Island Findings

The Election Day activities in Grand Island were much like that of Lincoln. The polls were run very smoothly and had limited problems. This in part is likely due to the smaller number of locations that were observed. These few locations did have issues.

The first problem that was encountered is that voters again were confused about their locations. In each case the voters were able to be redirected to the correct location. In addition to the need of more information to be accessible by voters, the need for bilingual poll workers continues to grow with Grand Island's diversity. (Morfeld, 2012)

Recommendations

1. Voters should be made aware of their rights (e.g. casting a ballot for *just* president) under law through an enumerated but short list of a “Voters Bill of Rights.”
2. The Secretary of State’s office should issue easy to use guides for poll workers and election administrators explaining not only when to issue a provisional ballot, but also reasons for which a voter *cannot* be denied a provisional ballot (e.g. requiring a voter identification number).

There was clear variance in procedures in the issuance of such ballots on Election Day and based on NCR’s visits with over 45 election administrators across the state.

3. At least one bilingual poll worker should be present during poll hours at polling locations which historically have received a high number of minority turnout.
4. The county Election Commissioner and/or representatives of the Commissioner should be accessible throughout the day in order to assist in the problems that arise within polling locations on Election Day.

Appendix

Help America Vote Act Section 302

(a) Provisional Voting Requirements.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) NOTE: Notification. An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

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(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 4(b) of the National Voter Registration Act

of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting Information Requirements.--

(1) Public posting on election day.--The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined.--In this section, the term "voting information" means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 303(b);

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

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(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters Who Vote After the Polls Close.--Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective Date for Provisional Voting and Voting Information.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

Neb. Rev. Stat. 32-915

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section [32-914.02](#), or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section [32-914.01](#) or [32-914.02](#);

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section [32-318.01](#) but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in County;

(b) My name or address did not correctly appear on the precinct list of registered voters;

(c) I registered to vote on or about this date

(d) I registered to vote

.... in person at the election office or a voter registration site,

.... by mail,

... on a form through the Department of Motor Vehicles,

... on a form through another state agency,

... in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

(5) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.