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Solutions to the Florida 2012 Voting Problem

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Solutions to the Florida 2012 Voting Problem

In 2012 Florida made national headlines after the presidential election.¹ Sadly, the coverage was not praising Florida's system, but instead negatively highlighting numerous shortcomings of the established voting procedures.² A national discussion emerged within the weeks after the election where numerous questions were asked, but very few answers or solutions for the future were given. National coverage focused specifically on the seven or eight hours some precincts had to wait in line to vote.³ Other news outlets reported that numerous districts stayed open well past ten o'clock just so its registered voters could cast their ballots.⁴ In the end, long after the election had been called for President Obama, Florida was still trying to call the election outcome.⁵ Citizens felt a lot of uncertainty surrounded the vote, and further charged that the Florida legislature was attempting to engage in voter suppression by limiting early voting which lead to the long lines on Election Day.⁶ The overall result culminated in a national discussion about how the state of Florida struggled to vote efficiently in the 2012 election, but is that really an accurate review of the last presidential election in Florida?

¹ Alan Greenblatt, *Once Again, Florida's Voting Doesn't Add Up*, NPR (Nov. 8, 2012), available at <http://www.wbur.org/npr/164693601/once-again-floridas-voting-doesnt-add-up>.

² Steve Bousquet, *Gov. Rick Scott Defends Florida Election as his Chief Says, 'We Could Have Done Better'*, TAMPA BAY TIMES, November 9, 2012, available at <http://www.tampabay.com/news/politics/national/gov-rick-scott-defends-florida-election-as-his-chief-says-we-could-have/1260762>.

³ Steven Bousquet, *Florida Will Investigate Voting Problems in 5 Counties*, TAMPA BAY TIMES, December 4, 2012, available at <http://www.tampabay.com/news/politics/national/florida-will-investigate-voting-problems-in-5-counties/1264547>.

⁴ David Firestone, *Problems at the Polls*, NEW YORK TIMES EDITORIAL PAGE BLOG, November 6, 2012, available at <http://takingnote.blogs.nytimes.com/2012/11/06/problems-at-the-polls/>.

⁵ Bousquet *supra*, note 2.

⁶ Lloyd Dunkelberger, *Groups Call for Sweeping Election Changes in Florida*, HERALD-TRIBUNE, November 12, 2012, available at <http://politics.heraldtribune.com/2012/11/12/groups-call-for-sweeping-election-changes-in-florida/>.

I. Specific Solutions to Long Voting Lines in Florida

A. Review of the Problem:

As previously mentioned, reports flooded national news about the seven-hour wait time some voters encountered in the 2012 Presidential election.⁷ Voters faced lines that stretched around buildings with no place to sit. Reports also stated that many potential voters left the lines because they had to return to work.⁸ One citizen described the lines as “more of a tailgate than a voting line.”⁹ In Central Florida, it was reported by the Orlando Sentinel that close to 50,000 people were turned away from polls after a voting center closed for the day.¹⁰ The national discussion about voting culminated in President Obama’s State of the Union address on February 12, 2013, when the President laid out his administration’s plan for a bi-partisan committee to review voting issues around the country.¹¹ Also, at the federal level, Florida’s U.S. Senator Bill Nelson recently co-sponsored a bill with California’s U.S. Senator Barbara Boxer which will federally mandate that citizens cannot be forced to wait longer than an hour in line on Election Day to cast their ballot.¹² Overall there is no denying that Florida citizens struggled to vote efficiently in the last election, but that should not be the end of the inquiry. Questions that were lacking from the national discussion of Florida struggles included: were the voting lines a

⁷ Bousquet *supra*, note 3.

⁸ Dunkelberger *supra*, note 6.

⁹ Pam Fessler, *Fixing Long Election Lines May Be Easier Said Than Done*, NPR, November 8, 2012, available at <http://www.npr.org/blogs/itsallpolitics/2012/11/08/164651410/fixing-long-election-lines-may-be-easier-said-than-done>.

¹⁰ David Damron, *Long Poll Lines Caused 49,000 to Not Vote in Central Florida*, ORLANDO SENTINEL, December 30, 2012.

¹¹ Richard Wolf, *Obama Proposes Commission to Address Long Polls*, USA TODAY, February 12, 2013, available at <http://www.usatoday.com/story/news/2013/02/12/obama-voting-election-commission-lines/1914249/>.

¹² PROPOSED ELECTION REFORM BILL TO SHORTEN VOTING WAIT TIMES, February 12, 2013, available at http://www.wtxl.com/news/proposed-election-reform-bill-to-shorten-voting-wait-times/article_e1d29696-7538-11e2-a07c-001a4bcf6878.html.

centralized problem, or was the whole state affected; were there any correlations between resource shortages and voting lines; and finally are there simple solutions to address the long line problem in Florida that do not require state or, even federal intervention? In the next section each of these questions will be addressed, answered, and discussed in full.

B. Solutions to the Problem:

First, during the days following the election reports suggested that the long line problem permeated the whole state from the Panhandle to South Florida.¹³ However, in the following weeks data emerged to suggest that the problem was much more centralized to South Florida.¹⁴ Specifically, the Miami Herald reported that the precincts where voters faced the longest lines centered around Miami-Dade, Palm Beach, St. Lucie, and Lee County.¹⁵ Even within these counties there was a large variation surround the wait time. Reports suggest that voting in the morning of Election Day was not a problem, but that lines started to form around the lunch hour. In reality, it seems that the actual problem was much more centralized to a few of the larger precincts in South Florida, and a select few around Orange County, than an overall State issue.¹⁶ This is not to say that some of the smaller precincts in Northern Florida did not face lines on Election Day, but overall fewer Florida citizens were trying to vote in these precincts so lines did not stretch for hours.

¹³ *Long Lines at the Polls*, THE HUFFINGTON POST, available at <http://www.huffingtonpost.com/news/long-lines-at-the-polls>.

¹⁴ Bousquet *supra*, note 3.

¹⁵ *Id.*

¹⁶ *Long Lines at the Polls supra*, note 13; see also, *Fixing Florida's Voting System*, TAMPA BAY TIMES, December 5, 2012, available at <http://www.tampabay.com/opinion/editorials/fixing-floridas-voting-system/1264793>.

Second, since the problem seemed to be more centralized than initial national reporting suggested, a review of some simple logistical factors might explain the long lines. So far no specific correlative data has been published which compares variables like recourse cuts, last minute voter registration drives, or get out the vote campaign's effect on explaining the long lines in South Florida on Election Day.¹⁷ No doubt if Election Supervisors can show a correlation between a direct cut in financial budgets or resources and longer lines, the overall question of causation would be solved. However, from a review of interviews with Supervisors post-election, budgetary cuts were suggested as a potential source of the problem, but were not universally blamed for the long lines.¹⁸ Furthermore, it seems logical that Election Supervisors had a realistic model projecting the potential turnout of the 2012 election, since just four years earlier, in 2008, Florida saw historical voter turnout and handled the lines effectively.¹⁹ Thus, it seems the news reports that suggested that the 2012 Election Supervisors were simply surprised by the substantial turnout during the 2012 election are nonsensical. Perhaps it could be argued that the data were simply not preserved from the 2008 election cycle or that there was a large turnover in Election Supervisors in these precincts, but again these excuses seem weak.

In reality, one of the frustrating problems surrounding the Florida long voting line problem is that no direct data have been published since the election that pinpoints the causation of the lines on Election Day. Overall the goal is to ensure that the number of voters multiplied by

¹⁷ Lydia Depillis, *Obama Doesn't need Tech Wizardry to Fix Voting*, NEW REPUBLIC, November 8, 2012, available at <http://www.newrepublic.com/blog/plank/109919/obama-doesnt-need-tech-wizardry-fix-voting>.

¹⁸ Deborah Charles, *Complaints about Voter Ids, Long Lines in Election*, CHICAGO TRIBUNE, November 7, 2012, available at http://articles.chicagotribune.com/2012-11-07/news/sns-rt-us-usa-campaign-votingbre8a60uz-20121106_1_id-requirements-vote-by-provisional-ballot-election-protection.

¹⁹ Wendy Weiser, *FIX FLAWED VOTING PROCESS*, BRENNAN CENTER FOR JUSTICE, February 14, 2013.

the time per voter is less than the total polling hours of a voting location, but it is hard to test this formula when the data on a per precinct bases is not widely available yet.²⁰ Most likely, one or more of the factors described above was out of balance and thus caused the long lines seen in South Florida; however, much would be gained by studying each of the factors discussed above in greater detail to determine a direct link to causation.

Third, even though the exact causation of the long voting lines in Florida is not clear, numerous practical solutions can be advanced to help alleviate the problem in the future. These solutions are broadly suggested because they can be viewed as cost efficient and will help Florida vote efficiently in the long run. Some of these solutions are directly achievable at the state level, while some require a national effort to succeed in Florida. Thus an interesting question comes to light: is the voting problem Florida faced better dealt with at the local level with the County Election Supervisors, at the state level with the Florida Legislature, or at the national level with the Federal Government? Do you really need to have the federal government intervene, or is there a simple logical solution that would rectify the long lines that voters faced in 2012? In reality, it is probably a delicate combination of these three levels of government that would make the ideal solution.

At the local level, Florida should make an effort to free up more cumulative resources for Election Supervisors. Most likely the best data about historical voting trends is found at the local level, and thus theoretically the resources could be put to the best use if in the hands of the local government.²¹ As an example one county in particular has spearheaded a new initiative that is

²⁰ Doug Chapin, *The Secret to Fixing Long Lines? Math. [Yes, Math]*, UNIVERSITY OF MINNESOTA HUMPHREY SCHOOL OF PUBLIC AFFAIRS, November 12, 2012.

²¹ Gloria Shur Bilchik, *How to Fix Long Lines at Polling Places*, February 14, 2013, available at <http://www.occasionalplanet.org/2013/02/14/how-to-fix-long-lines-at-polling-places/>.

simple, cost efficient, and might be a simple logical fix to long lines at polling locations. Miami-Dade plans to set up an interactive website that will list all wait times for given voting locations, and thus might help to alleviate some of the longest voting lines if people can plan according to demand.²² Other areas of Florida have created a more streamlined voting procedure to help shave off some of the administrative time affiliated with voting on Election Day.

At the state level, Florida should make an effort to modernize registration procedures.²³ Even though specific issues regarding registration are discussed in greater detail below, Florida should allow all consenting citizens to update their information or register for the first time when they interact with various governmental agencies (like the DMV or the Social Security Office).²⁴ This one simple step would have numerous benefits including drastically reducing mistakes on current registration polls, limiting the wait time by lessening the number of citizens that would be forced to fill out provisional ballots, and finally would help get an accurate number of voting citizens in each precincts to help with the logical preparation of moving resources (machines and volunteers) for Election Day.²⁵ Also, Florida has seen a recent push by the legislature to limit the length of initiatives on the ballot.²⁶ Theoretically this would shorten the amount of time that citizens require to read through the full ballot on Election Day and thus help citizens to vote

²² VOTING WAIT TIMES, Miami-Dade Elections, *available at* <http://www.miamidade.gov/elections/wait-times.asp>.

²³ BRENNAN CENTER FOR JUSTICE, THE CASE FOR VOTER REGISTRATION MODERNIZATION, January 23, 2013, *available at* <http://www.brennancenter.org/publication/case-voter-registration-modernization>.

²⁴ Chelsea Kiene, *Report Outlines Plan to Fix Long Lines on Election Day*, HUFFINGTON POST, February 4, 2013.

²⁵ BRENNAN CENTER FOR JUSTICE, HOW TO FIX LONG LINES, February 4, 2013 *available at* <http://www.brennancenter.org/publication/how-fix-long-lines>.

²⁶ *Voting Reform Passes House Panel*, HERALD-TRIBUNE, February 13, 2013, *available at* <http://politics.heraldtribune.com/2013/02/13/36639/>.

quicker and move more people through voting lines efficiently.²⁷ This initiative seems undercut to some extent, however, because all citizens are mailed a copy of the ballot before the election and historically political science data suggests that most people do not read the complete ballot on Election Day in the voting booth.

Finally at the national level, it has been suggested that Florida would greatly benefit from a fixed time period of early voting, which in turn would take pressure off voting precincts on Election Day by distributing eligible voters over a longer voting window.²⁸ The proposed national fixed time would include 10 weekdays of early voting including at least two weekends (specifically selected to include the weekend before Election Day).²⁹ The proposed bill also would strive to establish Early Voting Centers where any voter from a particular county could vote regardless of their established precincts.³⁰ In reality, statistics show that the drastic cuts in Florida's early voting days (as compared to 2008) seem to correlate with the longer lines voters faced in 2012. Furthermore, if this fixed national early voting time period was established, with larger voting hubs, it might be able to alleviate some of the confusion around voting precinct locations, where registered voters are allowed to cast ballots, etc. and thus cut down on the need for provisional ballots to be issued and later counted.³¹ Finally, voting machine technology should attempt to be standardized and educational exhibits should be set up throughout the voting lines to explain to people how to use the machines.³² Any simple efficiency measures that could be taken to speed up the average overall time it takes for an individual to vote would in

²⁷ *Id.*

²⁸ HOW TO FIX LONG LINES, *supra* note 25.

²⁹ *Id.*

³⁰ Mark Matthews, *Federal Election Commission May take Back Seat to Florida Reforms*, ORLANDO SENTINEL, March 11, 2013.

³¹ HOW TO FIX LONG LINES, *supra* note 25.

³² *Id.*

effect help cut down on the wait time for other voters. Lastly, the review, data collection, and financial resources of the Election Assistance Commission should be expanded so that actual data is centralized and easily accessible to plan logistics based on past turnout and resources.³³

II. Voter Registration

Background

Voter registration laws were initially introduced in the United States in the early 1800s in efforts to control who had access to the voting process,³⁴ and to prevent voter fraud.³⁵ Today, voter registration is a critical component of administering most elections,³⁶ and is said to help increase the accuracy and efficiency of the election process.³⁷ Historically, most voter registration activities, and maintenance of voter rolls, have occurred at the local level of government, with county officials maintaining responsibility in many states.³⁸ However, in recent years, this decentralized method of maintaining voter rolls has led to both intra- and inter-state problems in maintaining the accuracy of these rolls, which, in turn, has led to alternative

³³ UNITED STATES ELECTION ASSISTANCE COMMISSION, ELECTION ADMINISTRATION AND VOTING SURVEY, and other reports conducted by the Commission *available at* <http://www.eac.gov/>.

³⁴ ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (2001); *see also* Dayna L. Cunningham, *Who Are to be the Electors?: A Reflection on the History of Voter Registration in the United States*, 9 *YALE L. & POL'Y REV.* 370 (1991).

³⁵ R. Michael Alvarez, *Voter Registration: Past, Present and Future* (June 17, 2005) (written testimony before the Commission on Federal Election Reform), *available at* <http://www.american.edu/spa/cdem/upload/2-alvarez.pdf>.

³⁶ *See generally* Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 *WM. & MARY BILL RTS. J.* 453 (2008) (discussing the central role that voter registration now plays).

³⁷ *Id.*; In fact, only one state, North Dakota, does not require any kind of voter registration, *available at* <https://vip.sos.nd.gov/pdfs/Portals/votereg.pdf>

³⁸ *See Alvarez, supra* note 2.

claims that there are ineligible voters registered to vote or that eligible voters are not being allowed to register to vote.³⁹

In addition to state level reforms that have taken place, two recent national attempts at reforming the voter registration process have also taken place: These are the National Voter Registration Act (NVRA), popularly known as the Motor Voter Act, which Congress passed in 1993⁴⁰ and the Help America Vote Act (HAVA), which Congress passed in 2002.⁴¹ The reforms proposed in HAVA were largely in response to many of the problems faced during the 2000 Presidential election,⁴² with the biggest reform, aside from provisional balloting requirements, being its requirement that states maintain a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level. . . .”⁴³ While states have made strides toward complying with this requirement, many are still struggling.⁴⁴

Is Registration Worth the Costs?

Registration clearly raises the cost of voting, and some scholars, politicians, and activists argue that registration requirements should be minimized.⁴⁵ Those who favor minimizing registration requirements generally favor ideas such as election day registration, registration by

³⁹ Daniel P. Tokaji, *Teaching Election Administration*, 56 ST. LOUIS U. L.J. 675 (2012).

⁴⁰ National Voter Registration Act of 1993, 42 U.S.C. § 1973gg (2006).

⁴¹ Help America Vote Act of 2002, PUB. L. No. 107-252, 116 Stat. 1666 (codified at 42 U.S.C. §§ 15301-15545 (2006)).

⁴² Brian Kim, *Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (2003).

⁴³ Help America Vote Act of 2002, PUB. L. No. 107-252, 116 Stat. 1666 (codified at 42 U.S.C. §§ 15301-15545 (2006)).

⁴⁴ Claire Martin, Comment, *Block the Vote: How a New Wave of State Election Laws Is Rolling Unevenly Over Voters & the Dilemma of How to Prevent It*, 43 CUMB. L. REV. 95 (2012).

⁴⁵ See R. Michael Alvarez et al., *How Hard Can It Be: Do Citizens Think It is Difficult to Register to Vote*, 18 STAN. L. & POL’Y REV. 382.

mail, and vastly extending the hours available for voter registration.⁴⁶ However, despite the implementation of reforms such as these, and the general liberalization of registration requirements over the years, there has been relatively little uptick in either voter turnout or the representativeness of those who do turnout.⁴⁷ The current questions regarding registration, which have generated conflicting answers, is whether those affected by the registration requirement are equally distributed among the population and whether tougher registration laws tend to disproportionately affect lower-income and minority voters.⁴⁸

Purging of Voter Rolls

Another problem frequently mentioned in conjunction with election reform involves voter roll purges.⁴⁹ Controversy involving purges have been a part of the election reform conversation for many years; however, the conversation surrounding voter roll purges have taken on renewed importance after the 2012 elections, when several states conducted high-profile, controversial purges of their voter rolls.⁵⁰ While the purpose of these purges were to maintain the accuracy of the voter rolls and the integrity of the election process, the battles over the purges

⁴⁶ Richard F. Shardt, Note, *Not Registered to Vote? Sign This, Mail It, and Go Hire a Lawyer*, 78 GEO. WASH. L. REV. 438.

⁴⁷ Kimberly C. Delk, Comment, *What Will It Takes to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L 133 (2001).

⁴⁸ Justin Levitt, *Election Deform: The Pursuit of Unwarranted Electoral Regulation*, 11 ELECTION L.J. 97 (2012).

⁴⁹ Barber, et. al., Comment, *The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act*, 23 HARV. C.R.-C.L.L. REV. 483 (1988).

⁵⁰ Kathleen M. Stoughton, Note, *A New Approach to Voter ID Challenges: Section 2 of the Voting Rights Act*, 81 GEO. WASH. L. REV. 292 (2013).

typically pitted Democrats against Republicans, with Democrats, who generally opposed the purges, accusing Republicans of trying to suppress voter turnout.⁵¹

Most agree, though, that if done properly, purges can be an important way to ensure that voter rolls are dependable, accurate, and up-to-date.⁵²

Problems with Purges and the Future of Purges

However, “no effective national standard [currently] governs voter purges. This makes the risk of being purged unpredictable and difficult to guard against.”⁵³ Additionally, there tend to be three common major problems with voter list purges: 1) Purges often rely on error-riddled lists; 2) Voters are often purged without notice; and 3) Bad matching criteria leave many purges vulnerable to manipulation.⁵⁴

Due to past criticisms and studies, states conducting voter purges do seem to be increasingly sensitive to these concerns, though. For instance, states can compare their voter registration lists against several national databases, the two most prominent of which are the Department of Transportation’s Database and the Department of Homeland Security’s System Alien Verification for Entitlements (SAVE) Database.⁵⁵ Many states also now attempt to notify individuals who have been identified as potential purgees before officially purging them from the voter rolls.⁵⁶ That way, if a mistake has been made, the state can correct it as soon as possible. Furthermore, there is also now more interstate cooperation in checking the accuracy of voter

⁵¹ See, e.g., Lucy Madison, *Florida Dems Push Back Against Voter Purge*, (May 30, 2012), available at http://www.cbsnews.com/8301-503544_162-57443732-503544/florida-dems-push-back-against-voter-purge/.

⁵² Myrna Perez, *Voter Purges*, *Brennan Center for Justice* (2008), available at <http://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>

⁵³ *Id.* at 3.

⁵⁴ *Id.*

⁵⁵ Fatma Marouf, *The Hunt for Noncitizen Voters*, 65 *STAN. L. REV. ONLINE* 66 (2012).

⁵⁶ *Id.*

registration rolls than ever before.⁵⁷ The best example of this is the Interstate Cross Check Program, where participating states can see if someone registered to vote in their state is simultaneously registered to vote in another state as well.⁵⁸

While Colorado and Florida were at the center of the voter purge storm in 2012,⁵⁹ several states, especially Iowa and Virginia, are set to become the central battlegrounds for the battle over voter roll purges in the future.⁶⁰

⁵⁷ *Interstate Voter Registration Crosscheck Program*, National Association of State Election Directors (January 26, 2013), available at http://www.nased.org/NASED_Winter_2013_PP_Presentations/KANSAS.pdf.

⁵⁸ Currently fifteen states participate in the program. These states are: Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, and Tennessee. *Id.*

⁵⁹ Erin F. Lee, *Voter Purge Bill Defeated in Colorado*, Project Vote (Jan. 30, 2013), <http://www.projectvote.org/blog/2013/01/voter-purge-bill-defeated-in-colorado/>; see also Ken Detzner, *Recommendations for Increased Accessibility & Efficiency in Florida Elections*, Secretary of State (February 4, 2013), available at http://www.dos.state.fl.us/pdf/2-4-2013_Recs_for_Increased_Accessibility_and_Efficiency_in_FL_Elections.pdf

⁶⁰ Nicole Flatow, *Undeterred by Court Order, Iowa Official Tries Again to Push Through Voter Purge*, THINKPROGRESS (Jan. 4, 2013, 1:00 PM), available at <http://thinkprogress.org/tag/voter-purge/>; see also Aviva Shen, *Virginia Lawmakers Approve Strict Measure Requiring Voters to Show Photo ID* (Feb. 21, 2013, 3:00 PM); <http://thinkprogress.org/justice/2013/02/21/1622471/virginia-lawmakers-approve-strict-measure-requiring-voters-to-show-photo-id/>.