COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12435

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CHELSEA COLLABORATIVE, MASSVOTE, AND RAFAEL SANCHEZ,

v.

WILLIAM F. GALVIN, AS SECRETARY OF THE COMMONWEALTH

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ON APPEAL FROM JUDGMENT OF THE
SUPERIOR COURT FOR SUFFOLK COUNTY
CIVIL ACTION NO. 2013-P-0047

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# *AMICUS* BRIEF FOR *AMICI CURIAE* DĒMOS, ROCK THE VOTE, SERVICE EMPLOYEES INTERATIONAL UNION MASSACHUSETTS STATE COUNCIL, AND MASSACHUSETTS COMMUNITY ACTION NETWORK IN SUPPORT OF APPELLEE AND AFFIRMANCE


Of Counsel:
Kyle C. Wong
Maxwell E. Alderman
COOLEY LLP
101 California Street
San Francisco, CA 94111

Dhruv Sud
COOLEY LLP
1299 Pennsylvania Avenue
Washington, DC 20004

Ellen A. Scordino (BBO #651680)
*escordino@cooley.com*
Michael E. Welsh (BBO #693537)
*mwelsh@cooley.com*
COOLEY LLP
500 Boylston Street
Boston, MA 02116
(617) 937-2300

Naila S. Awan
Allie Boldt
Dēmos
80 Broad Street, 4th Floor
New York, NY 10004


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Dēmos, along with Rock the Vote, Service Employees International Union Massachusetts State Council, and Massachusetts Community Action Network, respectfully submit this brief pursuant to *amici*'s accompanying motion under Rule of Appellate Procedure 17 for leave to file an amicus brief.

## STATEMENT OF INTEREST

Given their missions, *amici* have a strong interest in securing the rights of Massachusetts's diverse voting population, easing access to the polls, and working to ensure that voter registration systems empower individuals to fully participate in the political process. These organizations are uniquely positioned to comment on the state of voter and civic engagement in Massachusetts: Through their research and advocacy efforts, they have seen the deleterious effect early voter registration deadlines can have on voter turnout, particularly among traditionally marginalized populations. These organizations also bring expertise on the positive benefits of voter registration systems — like automatic or same-day registration — can have in enfranchising the American people.

**Dēmos** is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Dēmos was founded in 2000 and has offices in New York, Boston, and Washington, D.C. Dēmos strives to remove barriers to political participation and ensuring full representation for all Americans. Dēmos deploys original research, advocacy, litigation, and strategic communications to protect voting rights and ensure that all voices can be heard. In particular, Dēmos advocates to expand access to voting, emphasizing, in its research and advocacy, the ways alternative registration systems can enfranchise vulnerable populations.

**Rock the Vote** is a national, nonpartisan, nonprofit organization with a fundamental mission of engaging and building political power for young people in our country by increasing voter registration rates and voter turnout among younger voters. Its principal activities include assisting young voters with registering to vote and getting young voters out to the polls. It also engages in widespread public education efforts, including public service announcements, voter information distribution, and a highly trafficked website at www.rockthevote.org, which offers extensive voting and election information

and online opportunities to register to vote using the federal voter-registration form and links to official state websites.

**Service Employees International Union, Massachusetts State Council ("SEIU")** is a labor organization affiliated with nationwide SEIU, which has approximately one million members in the United States. It engages in educational activities, member mobilization, voter registration and efforts, legislative advocacy, and training.

**Massachusetts Communities Action Network ("MCAN")** is a network of faith-based community organizations in Massachusetts that works for economic and racial justice. MCAN works with local volunteer leaders from its member congregations or community institutions to decide on campaign priorities through shared decision-making, with an emphasis on allowing its leaders to guide its work. Of note, MCAN works to develop community leaders, increasing the voice of local populations and developing active civic engagement.

## SUMMARY OF ARGUMENT

Massachusetts's 20-day voter registration deadline excludes eligible voters from participation in the political process, directly violating the right to vote

guaranteed by the Massachusetts Declaration of Rights. As Appellees' brief makes clear, Massachusetts's registration deadline fails to properly serve a compelling or legitimate state interest, and improperly burdens an explicit state constitutional right. Regardless of the form of scrutiny applied, the Commonwealth's justifications for maintaining its 20-day voter registration deadline fail to legitimize this arbitrary requirement. [1] Numerous other, less restrictive, methods of ensuring orderly and accurate elections are available to Massachusetts.[2]

Over a century ago, this Court recognized that the inquiry into whether a voter meets registration qualifications was "simple, and susceptible of rapid investigation." Kinneen v. Wells, 144 Mass. 497, 502 (1887). The ease with which this determination can be made has only increased as new technologies have become

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[1] While appellees cogently argue, and amici agree, that strict or heightened scrutiny ought to apply, should the Court rely on rational basis review, amici stress that the availability and feasibility of alternative voter registration systems should assist in determining that Massachusetts's early voter registration deadline is not reasonably related to the Commonwealth's interest in preserving orderly elections.

[2] This brief focuses primarily on same-day registration as an alternative to Massachusetts's arbitrary deadline. However, the legislature can select from numerous, constitutional alternatives, including but not limited to: reducing the voter registration deadline, automatic voter registration, or portable registration.

available. These advances enabled legislatures in sixteen states across the U.S., as well as the District of Columbia - a number of which are demographically and administratively similar to Massachusetts — to adopt same-day registration ("SDR").

Same-day registration is a practice that allows voters to register and vote on the same day. SDR may be available during the weeks leading up to an election, as well as on Election Day. When available on Election Day, SDR is often called Election Day Registration ("EDR").[3]

In support of Appellees' position, *amici* examine the efficacy and feasibility of different approaches to SDR adopted by state legislatures around the country. SDR creates a more robust and inclusive democracy by increasing overall voter turnout, particularly among traditionally marginalized communities. Any initial costs or efforts associated with the implementation of SDR are minimal and are outweighed by the benefits SDR provides to states and individual voters in the form of increased access to the right to vote and increased political participation. Finally, SDR is no more

[3] EDR is a subset of SDR. Throughout the brief, we refer to both processes under the term "same-day registration," unless a state implements only EDR or the study being discussed only examines EDR.

susceptible to voter error than any other form of registration. Instead, SDR empowers individuals, who would otherwise be excluded from participation in the democratic process, to make their voices heard.

## ARGUMENT

Early voter registration deadlines like Massachusetts's unnecessarily burden eligible voters - particularly people of color, low-income populations, and young people - and keep them from casting their votes. Alternative methods of voter registration, like SDR, have been effectively implemented across the United States, guaranteeing the right to vote for millions of individuals without unduly burdening the state.

Section I of this brief provides a survey of states with SDR and highlights five specific states' SDR processes, which serve as cost-effective alternatives to Massachusetts's unconstitutional voter registration deadline. We use these same states — Wisconsin, Connecticut, North Carolina, Minnesota, and Montana — throughout the remaining sections to illustrate the concrete benefits and minimal burdens of SDR.

Section II identifies the benefits of SDR, which includes increased voter turnout, especially among people of color and other marginalized populations.

Section III demonstrates that any administrative burdens imposed by SDR are generally minimal and often negated or countered by decreased expenditures on other costly or time-consuming election procedures.

Finally, Section IV explains that SDR is no more susceptible to voter error than other forms of registration. Should this Court require the Legislature to reform its registration processes, SDR provides an effective model that guarantees Massachusetts's citizens their fundamental right to vote.

## I. STATES ACROSS THE U.S. USE SAME-DAY REGISTRATION TO INCREASE ACCESS TO VOTING.

Commonsense alternatives exist to Massachusetts's 20-day registration cutoff, including allowing voters to register to vote during early voting and/or on Election Day.[4] Beginning in 1973, states began experimenting with

[4] Of course, SDR is not the only alternative registration process available to the Massachusetts legislature, and SDR can be coupled with other inclusive registration processes. California, for example, pairs SDR with automatic voter registration. Brennan Center for Justice, Automatic Voter Registration (Feb. 10, 2018), https://www.brennancenter.org/analysis/automatic-voter-registration#table. With automatic voter registration, when California residents go to the DMV to renew or obtain a driver's license, they are given the option to opt-out of voter registration; if they do not opt out, they are automatically registered to vote. Cal. Assembly B. 1461 (2010). Automatic voter registration is also used in Oregon, where residents are automatically registered based on data possessed by the DMV. Or. H.B. 2177 (2015). When automatic voter registration includes other agencies, such as public assistance agencies, it helps to increase registration rates among traditionally disenfranchised populations.

SDR, allowing voters to both register and vote during early voting or on Election Day, after the technical voter registration deadline had passed.[5] In so doing, these states provided voters who missed the formal registration deadline an opportunity to participate in the democratic process. Abandoning antiquated registration rules like Massachusetts's, which deny people who do not register 20-30 days prior to an election their right to vote, these states expanded access to the polls.

As of 2018, sixteen states and the District of Columbia provide their residents with the opportunity to both register and vote at the same time, including California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Minnesota, Montana, New Hampshire, North Carolina, Vermont, Wisconsin, and Wyoming. FOF 197.[6] While these states have different election administration systems, populations, and geographies, and have made SDR available on different days and at different times, in each state SDR

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[5] NCSL, Same Day Voter Registration (Oct. 12, 2017), http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx (noting Maine as the first state to implement SDR in the US).

[6] Additionally, this year, the Washington State Senate passed legislation to adopt SDR and consideration of the bill is moving forward in the House. See Wash. S.B. 6021 (2018).

successfully increases voter turnout, particularly among traditionally marginalized populations. Infra Section II. Equally, SDR is popular among the public. In Montana, for example, when the state legislature attempted to roll back EDR through a voter referendum, an emphatic majority of Montana voters (57%) voted to keep it.[7]

As noted above, SDR works across a variety of states with diverse institutions, political ideologies, and populations. Its efficacy is not isolated to a specific region or "type" of state. Indeed, states with SDR represent a broad swath of the American electorate in terms of socio-economic status, education, race, and ethnicity. For example, California, with its 39.5 million residents and broad mix of races and ethnicities, managed to incorporate SDR provisional balloting at county-run voting centers.[8] North Carolina, with a population of 10 million, serves a diverse electorate of primarily high-school educated individuals.[9] Hawaii, with the highest proportion of people of color of any state in the U.S., made SDR

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[7] D. Daniels, Montana Voters Keep Same-Day Registration (Nov. 7, 2014), http://www.demos.org/blog/11/7/14/montana-voters-keep-same-day-registration.

[8] U.S. Census Bureau, QuickFacts Cal., https://www.census.gov/quickfacts/CA.

[9] U.S. Census Bureau, QuickFacts N.C., https://www.census.gov/quickfacts/NC.

available in 2014 and plans to implement EDR in 2018. Haw. Rev. Stat. § 11-15.2 (2018).

### A. How Same-Day Registration works in Wisconsin, Connecticut, North Carolina, Minnesota, and Montana.

Given the broad variety of same-day registration systems across the United States, we focus on five with varied SDR systems, administrative bodies, and populations to demonstrate an array of efficient and effective SDR regimes available to the Massachusetts legislature.

#### 1. Wisconsin provides Election Day Registration through municipal and county-run.

Since 1976, Wisconsin has allowed eligible voters to register and vote at the polls on Election Day.[10] In establishing EDR, the 1975 Wisconsin Legislature noted, "voting is the single most critical act in our democratic system of government" and "voter registration was not intended to and should not prevent voting." Section 1, Chapter 85, Laws of 1975. Finding that it is often difficult and expensive for voters to register during working hours at remote locations, the Legislature determined that expanded voter registration procedures

[10] Wisconsin Elections Commission, Election Day Registration, http://elections.wi.gov/elections-voting/election-day-registration.

were essential to ensuring that "all people" have the right to vote. Id.

Decades after its enactment of SDR, Wisconsin is a success story. As explored in more detail in Section II below, Wisconsin voter turnout and participation has expanded with the availability of SDR. See J.R. Neiheisel & B.C. Burden, The Impact of Election Day Registration on Voter Turnout and Election Outcomes, 40 Am. Pol. R. 636, 646 (2012). For example, Wisconsin was one of four states with a registration rate above 72% in 2004.[11] And, of all eligible Wisconsin voters, between 70% and 80% voted.[12] After the state passed restrictive voter identification requirements,[13] voter registration

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[11] K. Holder, Voting and Registration in the Election of Nov. 2004, at 8 (Mar. 2006), https://www.census.gov/prod/2006pubs/p20-556.pdf.

[12] Id. at 9. It is estimated that 11.4 percent of Wisconsin voters who participated in the 2008 Election registered to vote on Election Day. B.C. Burden et al., The Effects and Costs of Early Voting Election Day Registration and Same Day Registration in the 2008 Elections (Dec. 21, 2009), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2009/uwisconsin1pdf.pdf.

[13] Wis. Stat. 991.11. Prior to passage of the voter ID law, voters were "not required to show a photo ID to obtain a ballot." Wisconsin Elections Commission, Photo ID Law Update, http://elections.wi.gov/node/1956. Instead, voters could merely appear on Election Day and vote.

and turnout decreased in 2016;[14] yet Wisconsin still ranked 5th nationally, with 70.5% voter turnout.[15]

This success could be easily replicated in Massachusetts. As the Superior Court found in its July 24, 2017 order, Wisconsin's administration of elections, including its registration processes, are comparable to Massachusetts's, as "elections in Wisconsin are conducted at the municipal level."[16]

In both Massachusetts and Wisconsin, a voter's first point of contact when registering in person with

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[14] Wisconsin's new, strict voter ID laws left thousands of legitimate voters unable to vote. See J. Kaleem, Election officials focus on whether voter ID laws contributed to Hillary Clinton's defeat (Dec. 17, 2016), http://www.latimes.com/nation/la-na-minority-voter-suppression-2016-story.html; Nonprofit VOTE, supra p.11. Research shows that black Wisconsinites were disproportionately disenfranchised. See M. Sommerhauser, Study: Black Voter Turnout in Wisconsin Declined by Nearly One-Fifth in 2016 (Nov. 7, 2017), http://host.madison.com/wsj/news/local/govt-and-politics/study-black-voter-turnout-in-wisconsin-declined-by-nearly-one/article_d3e72e41-96a0-51fb-83ba-11dfc6693daf.html.

[15] Nonprofit VOTE, America Goes to the Polls 2016, http://www.nonprofitvote.org/documents/2017/03/america-goes-polls-2016.pdf.

[16] State of Wisconsin Gov't Accountability Bd., Final Report on the Impacts and Costs of Eliminating Election Day Registration in Wisconsin (Feb. 18, 2013), http://elections.wi.gov/sites/default/files/publication/65/final_edr_report_02_18_2013_pdf_86368.pdf. Some of these tasks include entering voter registration applications into the voter registration database and entering provisional ballot information into Wisconsin's Customer Relationship Management Tool on election night. Id.

election officials is at their town clerk's office.[17] And, the task of verifying voter registration and reporting the information to the Secretary of State falls to municipal clerks.[18] The Superior Court found that, under Wisconsin's election system, officials can process same-day voter registrations in two to four minutes each. Sup. Ct. Order ¶ 237 (July 24, 2017). Given its similarities to the Wisconsin election systems, there is no reason Massachusetts could not do the same.

### 2. Connecticut, a state demographically and administratively similar to Massachusetts, allows residents to register and vote on Election Day.

Connecticut began offering Election Day Registration in 2012. G.B. Hladky, Connecticut Has Same-Day Registration for Wannabe Voters (Nov. 3, 2014), available at http://www.courant.com/politics/capitol-watch/hc-sameday-registration-for-wannabe-voters-20141103-story.html. Though more limited in its offering than other SDR states (like Minnesota), Connecticut's system has boosted turnout without overburdening election officials. According to state officials, 3,000

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[17] Compare Secretary of the Commonwealth, Registering to Vote, https://www.sec.state.ma.us/ele/eleifv/howreg.htm, with Voter Registration in Wisconsin, https://www.dmv.org/wi-wisconsin/voter-registration.php.

[18] Compare G.L. c. 51, § 42E, with Wis. Stat. 6.275.

Connecticut residents took advantage of EDR in 2013's off-year elections alone. Id. Additionally, Connecticut was among the top four states to see the greatest increase in turnout between 2012 and 2016, growing by 4%.[19]

Connecticut and Massachusetts share several similarities in how they administer elections. Both states conduct their elections via municipalities, with city and town officials responsible for registering voters, tabulating results, counting ballots, and verifying registration requirements. C.G.S.A. § 9-19j.[20] Neither state requires residents to show photo identification to vote; residents instead provide some sort of identification, not necessarily with a photo attached, and proof of residency in order to take advantage of EDR.[21]

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[19] Nonprofit VOTE, supra p.11. Illinois (another late-adopter of SDR), Oregon (with newly-implemented automatic voter registration), and Pennsylvania rounded out the top four. Id. (stating New adopters should continue to see the participation benefits as research suggests states implementing SDR should over time expect a turnout increase closer to 5-7% points).

[20] Hladky, supra note 19.

[21] Compare CGSA § 9-19j, with Secretary of the Commonwealth of Massachusetts, Identification Requirements, https://www.sec.state.ma.us/ele/eleidreq/idrequirementsidx.htm.

Given Connecticut's administrative and demographic similarity to Massachusetts,[22] Connecticut's use of EDR should stand as a testament to the process's efficacy.

### 3. Serving a Diverse Population, North Carolina Offers Same-day Registration Prior to an Election.

North Carolina offers its population an extended early voting period, during which time SDR is available. There, individuals may register and vote from the third Thursday prior to the election until the last Saturday before the election. [23] Same-day registrants are permitted to use any voting site in their county, unlike voters who wait until Election Day and must vote in their precinct.[24] To register, voters must (a) attest to their eligibility and (b) provide proof of residence. Id. North Carolina county officials are required to verify the person's registration within two business days; the

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[22] Though Connecticut is half the size of Massachusetts, its demographic breakdown is similar. U.S. Census Bureau, QuickFacts Conn., https://www.census.gov/quickfacts/fact/table/CT/PST045216. Indeed, Connecticut is 67.7% white non-Hispanic; 11.8% black; 15.7% Hispanic; 4.9% Asian, as compared to Massachusetts, which is 73% white, non-Hispanic; 8.6% black; 11.5% Hispanic or Latino and 6.7& Asian. Id.

[23] North Carolina State Bd. of Elections & Ethics Enf't, One Stop Early Voting, https://www.ncsbe.gov/Voting-Options/One-Stop-Early-Voting; see S. Coal. for Social Justice, Use of Same-Day Registration in North Carolina General Election 2016, (Apr. 2017), http://www.southerncoalition.org/wp-content/uploads/2017/01/Use-of-SDR-in-NC.pdf.

[24] SCSJ, supra note 24.

registrant's vote will not be counted if the county board of elections determines – via cross-checking the voter's credentials with the voter registration database – that the voter is not qualified to do so. Id. North Carolina "reported minimal costs when introducing SDR in the 2008 presidential election." J.M. Cha & L. Kennedy, Millions to the Polls: Same Day Registration (Feb. 18, 2014), http://www.demos.org/publication/millions-polls-same-day-registration.

North Carolina's population is diverse and, as will be shown in greater detail in Section II, well-served by a flexible registration system that benefits those most often disadvantaged by traditional voter deadlines.[25]

#### 4. Minnesota Allows Potential Voters to Register and Vote on Election Day, during Early Voting, or When Voting by Mail.

Minnesota offers same-day registration both during its early voting period and on Election Day. Minn. Stat. Ann. 201.023; 2017 Minnesota Election Laws "Registration

[25] Of North Carolina's 10.3 million citizens, 22.2% are African American and 9.2% are Hispanic or Latino. North Carolina State Bd. of Elections & Ethics Enf't, supra note 24. 15.3% of North Carolina's population moved in the last year and 29.0% hold a college degree or higher. Id. On average, 15.4% of its population lives below the federal poverty line. Id.

on or Before Election Day."[26] Minnesota also permits registration and voting by mail, so long as a potential voter includes a registration form with her absentee ballot and has her ballot witnessed by someone to whom she has shown proof of her address (including any other registered voter). 201.023 Voter Registration.[27]

Given Minnesota's expansive same-day registration practices, it is not surprising that the state often boasts the highest rate of voter turnout in the United States. Nonprofit VOTE, supra p.11; J. Hargarten, Minnesota had the nation's largest voter turnout-again. Here's one reason why (Mar. 17, 2017), http://www.startribune.com/minnesota-had-the-nation-s-highest-voter-turnout-again-here-s-one-reason-why/416247753/. By eliminating strict registration deadlines, Minnesota has led the country in voter turnout for eight out of the last nine Presidential elections. In 2016, 74.8% of Minnesota's eligible voting population turned out to vote. Nonprofit VOTE, supra p.11.

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[26] Minnesota Sec. of State Elections Div., 2017 Minnesota Election Laws, http://www.sos.state.mn.us/media/2304/minnesota-election-laws-statutes-and-rules.pdf.
[27] Id.

### 5. Montana Permits Residents to Register and Vote Beginning 25 Days Before the Election and on Election Day.

Same-day registration has been available in Montana since 2006. Montana maintains a traditional 30-day registration deadline, but permits voters to late-register until noon the day before the election.[28] Voters may also submit absentee ballots by mail or in person at their county elections office beginning 25 days before the election until noon the day prior to the election.[29] After that, late-registration is not available, but voters may register and vote on Election Day itself. Montana Secretary of State, How to Register to Vote, https://sos.mt.gov/elections/vote/index#370474451-how-to-register-to-vote. By concentrating SDR at designated election offices, Montana's system is ostensibly designed to streamline the voting process and decrease expenses and overhead associated with additional staffing requirements. Though, of course, restricting registration and voting to designated offices in each county or municipality might stifle the full enfranchising benefits associated with SDR, this sort of

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[28] Montana Sec. of State, How to Register to Vote, https://sos.mt.gov/elections/vote/index#370474451-how-to-register-to-vote.

[29] Montana Sec. of State, How to Vote by Absentee Ballot, https://sos.mt.gov/elections/absentee.

administrative compromise can reduce costs while still providing some of the benefits of SDR. This remains particularly true if efforts are made to ensure that designated offices are widely accessible (e.g., accessible by public transit, open during evenings and weekends, and accessible to individuals with disabilities and Limited English Proficiency). In all, nearly 30,000 Montanans have registered and voted using SDR between 2006 and 2014.[30]

In sum, given the diverse options available to the Commonwealth's legislature, devising an alternative to its arbitrary and burdensome voter cutoff law should be straightforward. Similarly-situated states have been able to effectively implement SDR. No reason exists to prevent Massachusetts from doing the same.

## II. SAME-DAY REGISTRATION REDUCES BARRIERS TO VOTING FOR TRADITIONALLY MARGINALIZED POPULATIONS TO CREATE A MORE INCLUSIVE AND REPRESENTATIVE DEMOCRACY.

Same-day registration guarantees greater access to voting. SDR also counteracts the significant negative effects that traditional voter registration deadlines,

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[30] P. Bellinghausen, Billings Gazette, The Voting Rights Threat on November Ballots (Sept. 14, 2014). In 2014, Montana had 798,555 eligible voters. U.S. Census Bureau, Voting-Age Population: Montana, https://www.census.gov/library/visualizations/2016/comm/voting_age_population/cb16-tps59_voting_montana-social.html.

like Massachusetts's, produce, including confusion of would-be voters and low voter turnout, which ultimately serve to disenfranchise many already underserved communities — including people of color, low-income populations, those who have recently moved, young adults, and the elderly.

### A. Arbitrary Registration Deadlines, Like Massachusetts's, Disenfranchise Underrepresented Communities and Deter Them from Voting.

Voter registration deadlines "stand[] as perhaps the foremost legal barrier to voting." Neihesel & Burden, supra p.11, at 639.[31] Ostensibly designed to ensure state residency and other requirements for voter eligibility are met, the registration process is "often much more difficult than voting itself." S.J. Rosenstone, J.M. Hansen, Mobilization, Participation, and Democracy 136 (1993). As shown in both appellees' brief and fellow *amici*'s briefs, these requirements (a) are often unclear, (b) depress voter turnout among people who grow increasingly interested in elections as they draw near, (c) disproportionately affect historically marginalized communities, and (d)

[31] See E. Shino & D.A. Smith, Timing the Habit: Voter Registration and Turnout, Electoral Studies (2017).

disenfranchise people whose registration was not properly processed.

It is a well-studied conclusion that state-level regulations – like harsh and exacting early registration dates – affect voter participation levels and dampen voter turnout. See R.E. Wolfinger & S.J. Rosenstone, Who Votes? (1980).[32] Voting in Massachusetts (as in other states across the U.S. with arbitrary voter cutoffs) requires two temporally and geographically distinct actions: (1) registering and (2) voting. Indeed, both of these actions differ significantly in place, time, and kind. R.J. Timpone, Structure, Behavior, and Voter Turnout in the United States, 92 Am. Pol. Sci. R. 145, 146 (1998). A potential voter must register in one location (requiring certain documents), wait for the election, and then vote in an entirely different location (often with a different set of documents) – a daunting and time-consuming process. Id.

Though Americans become more interested in elections as they approach, many are unable to vote because they failed to register 20-30 days before

[32] See B.C. Burden & J.R. Neihesel, Election Administration and the Pure Effect of Voter Registration on Turnout, 66 Pol. R. Q. 77, 77 (2013) (summarizing existing studies examining the administrative processes that cause disenfranchisement).

Election Day.[33] Survey and statistical data bears this out. A series of Gallup polls in 2014 found that the proportion of Americans giving the elections "quite a lot of thought," rose as the election itself neared: from 77% in mid-September to 91% by mid-October. Dorsey et al., Election Day Registration, 36 Policy Studies J. 671, 672 (2008). And, as Alex Street found in his broad statistical analysis of internet-search data and registration inquiries, at least 3-4 million Americans would have registered and voted "if deadlines had been extended to Election Day." Street et al., Estimating Voter Registration Deadline Effects with Web Search Data, 23 Pol. Analysis 225, 225 (2015).

Early registration deadlines do not just depress overall voter turnout; they disproportionately disenfranchise historically marginalized communities. Because voter registration is tied to a particular address, registrations deadlines before Election Day are a particular barrier to people who have recently changed addresses or who are about to do so. See A.M. Lee, Don't Save the Date: How More Restrictive State Voter

[33] Twenty-seven states currently have a voter registration deadline preceding Election Day by more than 20 days. Vote.org, Voter Registration Deadlines, https://www.vote.org/voter-registration-deadlines/.

Registration Deadlines Disenfranchise Minority Movers. 43 Colum. J.L. Soc. Problems 248 (2010). This predominantly impacts people of color who, "when controlling for age, education level, and economic characteristics," move more frequently than white people.[34] State Conference of NAACP v. McCrory, 831 F.3d 204, 217 (4th Cir. 2016) (noting that African Americans "are more likely to move between counties," and thus "are more likely to need to re-register"). These cutoffs also disproportionately affect young people, who move more frequently for school, jobs, and families.[35] It is, therefore, unsurprising that people of color and young adults are less likely to be registered at their present address: in the 2008 election, 30% of eligible black voters, 40% of Hispanics, 45% of Asian Americans, and 41% of young adults were not registered to vote.[36] In

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[34] Id.; see M. Chalabi, How Many Times Does the Average Person Move? (Jan. 29, 2015), https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/ (noting that "Ten percent of non-Hispanic white Americans moved between 2012 and 2013, compared to 13 percent of Asian-Americans, 13 percent of Hispanics and 14 percent of African-Americans").

[35] P. Taylor, et al., Who Moves? Who Stays Put? Where's Home?, at 3 (Dec. 17, 2008), http://www.pewsocialtrends.org/files/2010/10/Movers-and-Stayers.pdf; Chalabi, supra note 37.

[36] Dēmos Explainer, Why are 51 Million Americans Not Registered to Vote, at 1 (Nov. 2012), http://www.demos.org/sites/default/files/publications/WhyAre51MillionEligibleAmericans-v1-1.pdf.

contrast, only 26.5% of eligible white individuals were not registered).[37]

In Massachusetts, race-based disparities in voter registration have been even more pronounced. For example, "in 2014, more than 70 percent of eligible white citizens in Massachusetts were registered to vote compared to only 45 percent of eligible Black citizens."[38]

### B. Same-Day Registration Encourages Voter Participation.

Same-day registration addresses the primary disadvantages of traditional voter registration regimes. By allowing voters to register and vote at a single location and time, SDR eliminates procedural barriers, increases voter participation and turnout, and allows election administration errors to be corrected so no eligible voter is denied her right to vote.

Many individuals take advantage of SDR where it is offered. In federal election years, hundreds of

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[37] T. File & S. Crissey, Voting and Registration in the Election of Nov. 2008, at 4 (July 2012), https://www.census.gov/prod/2010pubs/p20-562.pdf.

[38] L. Kennedy, et al., Automatic Voter Registration: Finding America's Missing Voters (Jan. 20, 2016), http://www.demos.org/publication/automatic-voter-registration-finding-americas-missing-voters (noting an under-representation of low-income individuals amongst registered voters).

thousands of Americans have been able to vote, solely because their state provides the opportunity to register and vote simultaneously. For example, in 2012, nearly 1.5 million Americans used SDR to vote. Cha & Kennedy, supra p.15. In 2008, 15.6% of Minnesotan voters, 11.4% of Wisconsin voters, 16.5% of Wyoming voters, and 13.5% of Idaho voters registered and voted on Election Day.[39]

Same-day registration states "consistently lead the nation in voter participation." Project Vote Factsheet, Project Vote (2015), http://www.projectvote.org/wp-content/uploads/2015/06/SameDayFactSheet-PV-Feb2015.pdf. In 2016, voter turnout in states with SDR was, on average, seven points higher than in states without it. Nonprofit VOTE, supra p.11. Other studies indicate that states with EDR have voter turnout rates up to ten to twelve points higher than states without EDR. B. Lierman, Election Day Registration: Giving All Americans a Fair Chance to Vote, 2 Harv. L. & Pol'y Rev. 173, 177 (2008) (noting also that, in 2006, states with Election Day Registration boasted 48.7% voter turnout, as opposed to the 38.2% average turnout for states

[39] Burden et al., supra note 12(recording percentages of voters who actually voted in the election, not percentage of people broadly eligible to vote).

without Election Day Registration).[40] It is therefore unsurprising that in 2016, the six states with the highest voter turnout rates were also states that offered some form of SDR. Nonprofit VOTE, supra p.11.

Importantly, SDR does not just correlate with high voter turnout; both inter- and intrastate comparative studies reveal that SDR actually *causes* higher voter turnout. A survey of data from six states with Election Day Registration found that EDR resulted in 3-6% more voter engagement. Alvarez & Nagler, Election Day Voter Registration in California (2011), http://www.demos.org/sites/default/files/publications/CA_EDR_Report-Demos.pdf.

Barry Burden and Jacob Neiheisel rigorously analyzed voter turnout in Wisconsin. Unlike many of the previous studies, which compared states with SDR to states without, Burden and Neiheisel examined a single state, in which some municipalities implemented EDR while others had not. Their approach eliminated the necessity of controlling for interstate comparative variables — like administrative process, population size, and state history of voter disenfranchisement —

[40] Some studies indicate the increase in voter turnout may average 3-6 percentage points. NCSL, supra p.5.

and localized data to a single state. The study showed a 3% increase in voter turnout in municipalities that began offering EDR as opposed to those that did not. Neiheisel & Burden, supra p.11.

Though 3% may appear at first blush as a small increase, its import should not be understated. If voter registration and turnout in Massachusetts increased by just 3%, tens of thousands of Bay Staters would be brought into the democratic process.

### C. Same-Day Registration Increases Opportunities for Traditionally Marginalized Populations to Participate in the Political Process.

SDR increases voter turnout and is also particularly effective at increasing electoral participation in historically marginalized communities – notably, people of color, low-income people, those who have recently moved, the homeless, young adults, and the elderly. Voters, of course, rarely inhabit a single identity. For example, due in part to a long history of race-based exclusion in our democracy and our economy, being a person of color can, and often does, intersect with membership in other marginalized communities, including people who have recently moved, people experiencing homelessness or unstable housing, new

citizens, and low-income residents. The burdens associated with early registration deadlines like Massachusetts's are disproportionately shouldered by these communities and often compound with other barriers, markedly disadvantaging these potential voters. SDR helps break down these barriers.

**1. Voters of Color.**

Same-day registration increases voter participation among people of color. White voter turnout has "long eclipsed minority turnout," with eligible white voters coming out on Election Day roughly 10-12% more than voters of color.[41] While many hypothesize as to why, for our purposes, one fact remains clear: voters of color rely on the availability of SDR and take advantage of it when offered the chance. For example, in North Carolina, African Americans make up only 22% of the general, eligible voting population, but comprise 35% of same-day registrants. See Z. Green, A. Mach, Interactive Map: Does Same-day Registration Affect Voter Turnout in the U.S.?, PBS News Hour (Oct. 4, 2015).[42]

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[41] W. Frey, Census Shows Pervasive Decline in 2016 Minority Voter Turnout (May 18, 2017), https://www.brookings.edu/blog/the-avenue/2017/05/18/census-shows-pervasive-decline-in-2016-minority-voter-turnout/.

[42] Z. Green & A. Mach, Interactive Map: Does Same-day Registration Affect Voter Turnout in the U.S. (Oct. 4, 2015),

Additionally, in Ohio, data from the state's (recently-eliminated) "Golden Week" – in which voters could register and vote at the same time – indicated that a disproportionate number of African Americans took advantage of SDR. Notably, black voters were 3.5 times more likely than their white counterparts to vote during Ohio's Golden Week in 2008 and 5 times more likely to do so in 2012. See Ohio NAACP v. Husted, 888 F. Supp.2d 897 (S.D. Ohio 2012); E. Rogers, Project Vote, Same Day Registration (June 2013), http://www.projectvote.org/wp-content/uploads/Policy-Paper-Same-Day-Registration.pdf. Finally, analysis of current voter trends and populations indicates that SDR could increase turnout for Latinos and newly-naturalized citizens by 5.1% each. Alvarez & Nagler, Election Day Voter Registration in Cal. (Apr. 2011), http://www.demos.org/sites/default/files/publications/CA_EDR_Report-Demos.pdf.

For Massachusetts's significant and growing populations of color, eliminating its arbitrary voter registration deadline could have huge implications. From 2010 to 2016, Massachusetts's population of color grew

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https://www.pbs.org/newshour/nation/day-registration-affects-voter-turnout-u-s.

3.9%, as compared to overall US growth of 2.6%.[43] In two years alone, 2013-2015, Massachusetts saw its black population grow by over 30,000 individuals and its Latino population increase by roughly 55,000. Data USA, Mass., https://datausa.io/profile/geo/massachusetts/. Equally, over the same period, Massachusetts's percentage of white, non-Hispanic residents fell from 74.6% of the population to 73%. Id. And, as noted above, Massachusetts's population is already diverse, with a significant number of African American, Asian, and Latino residents — but with significant race-based disparities in voter registration rates. Empowering these voices through alternate-registration regimes is essential to upholding the Commonwealth's constitutional obligation to protect its people's right to vote.

**2. Low-income Households and Recent Movers.**

Same-day registration also benefits two populations that often intersect: low-income households and those who have recently moved. The frequency with which a person moves is often negatively correlated to the

[43] UMass Donahue Institute, Percentage Point Change in Minority Population by Massachusetts County (June 22, 2017), http://www.massbenchmarks.org/statedata/data/cc2016/Map%202%20-%20Percent%20Change%20Minority%20Population%202010-2016.pdf.

likelihood that they will be registered at their current address and able to participate in the political process. First, moving creates more complicated voter registration processes that might confuse voters. As examined in one recent survey, while most voters knew they needed to register to vote when they moved across state lines, 41% of survey respondents either did not know or did not believe they needed to re-register when they moved across town. N. Adona, Sneak Peak: New Data on What Americans Think About Voter Registration, Democracy Fund (Sep. 22, 2017).[44] Over 25% of voters were unclear as to registration requirements when they moved out of the country and 20% erroneously thought they did not need to re-register after an out-of-state move. Id.

Second, recent movers themselves state that registration deadlines are a significant deterrent to voting. For example, 23% of Delaware non-voters who lived in their residences for less than a year cited "voting registration problems as a 'major reason' for not voting."[45] Compared to the 8% of non-voters who lived

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[44] N. Adona, Sneak Peek: New Data on What Americans Think About Voter Registration (Sept. 22, 2017), https://www.democracyfund.org/blog/entry/sneak-peek-new-data-on-what-americans-think-about-voter-registration.

[45] Alvarez et al., 2008 Survey of the Performance of American Elections, 47, https://elections.delaware.gov/pdfs/SPAE_2008.pdf.

in their residences at least five years and cited registration problems as a major reason for their non-participation, these numbers indicate that registration deadlines significantly disadvantage recent movers. Id.

Third, those who frequently move or have recently moved are often low-income. In the United States, 90 million eligible voters – roughly 45% of the voting population – move every five years.[46] And, 2012 Census data indicated that nearly half of the 36 million people who moved the previous year had low-incomes. Project Vote, supra p.25.

There is a significant disparity in voter turnout between wealthy voters and low-income voters. Research examining over 30 years of state-level voter data, including data from Massachusetts, could not identify a single year in which low-income voters turned out to vote more than their high-income counterparts.[47] Indeed, "states with voter registration deadlines have lower registration rates" and as "these deadlines reduce

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[46] M. Perez, When Voters Move, https://www.brennancenter.org/sites/default/files/legacy/MoversGuideNEW.pdf.

[47] S. McElwee, Why the Voting Gap Matters (2014), available at http:// www.demos.org/sites/default/files/publications/Voters&NonVoters.pdf; see S. McElwee, Income Gap at the Polls (Jan. 7, 2015), https://www.politico.com/magazine/story/2015/01/income-gap-at-the-polls-113997 (noting that in the 2012 election, 80.2% of those making more than $150,000 voted, while 46.9% of those making less than $10,000 voted).

overall registration rates, the registration disparities between lower- and higher-income Americans increase." P. De Oliveira, Same-day Voter Registration: Post-Crawford Reform to Address Growing Burdens on Lower-Income Voters, 16 Geo. J. Poverty L. & Pol'y 345, 348 (2010). Consequently, recent movers and low-income populations are disproportionately disenfranchised by registration deadlines.

The adoption of SDR, and EDR in particular, appears to bolster the turnout of the "residentially mobile relative to nonmovers," as well as their low-income counterparts. S. Knack & J. White, Election-Day Registration and Turnout Inequality, 22 Pol. Behavior. 29, 30 (2000). This argument makes sense, since removing the gap between voter registration and actual voting (a) makes it much easier to vote; (b) allows low-income populations, who are often bound by strict work schedules or limited resources, to dedicate less time to the voting process; and (c) benefits those who do not understand registration requirements in their state. Researchers estimate that the implementation of SDR could increase turnout for those who have moved in the last six months by 7.3%. Alvarez, supra p.29. For Massachusetts, where 12.9% of people did not even live

in the same house a year prior and 10.4% live in poverty, same-day registration opportunities could significantly increase political participation among these traditionally underrepresented populations.[48]

**3. Young Adults and Elderly Voters.**

Finally, same-day registration encourages both the young adult and elderly populations to turn out and vote more frequently. Young adults of all income levels move frequently, whether for school, jobs, or family. Taylor, supra p.23. An analysis of presidential election year voting data from 1972-2000 indicates that SDR increased young adult turnout in presidential elections by as much as fourteen percentage points. M. Fitzgerald, Easier Voting Methods Boost Youth Turnout, Center for Info. and Research on Civic learning and Engagement 9 (2003). Equally, more contemporary analysis predicts that national implementation of SDR could increase youth voting by 9.0%. Alvarez, supra p.29.

Young adults are a large segment of Massachusetts's population. In 2015, roughly 775,000 young adults (11.4% of the population), aged 18-24, called Massachusetts home. Data USA, supra p.29. Fifteen percent of Boston's

[48] U.S. Census Bureau, QuickFacts Mass., https://www.census.gov/quickfacts/fact/table/MA/POP715216#viewtop.

young adult population live in dormitories – indicating a transient population, likely to move and fall through voter registration cracks.

The benefits of SDR are not limited to young adults; seniors also benefit from SDR. 7.6% of individuals aged 65 and over living in SDR states rely on SDR to vote. Rogers, Project Vote, supra p.31. Because seniors are more likely to be physically impaired or home-bound, eliminating the need to separately register and vote reduces barriers to participation.

Given the obstacles early registration deadlines, like Massachusetts's, place on potential voters, alternative registration and voting regimes are essential to promoting the Commonwealth's constitutional commitment to democracy. By eliminating temporal barriers and streamlining the electoral process, SDR increases access to the polls for people of color, low-income people, people who have recently moved or who will soon be moving, young adults, and elderly individuals.

## III. SAME-DAY REGISTRATION PROVIDES AMPLE TIME TO ENSURE VOTER QUALIFICATIONS ARE MET AND ALLOWS FOR THE ORDERLY ADMINISTRATION OF ELECTIONS, WITHOUT OVERLY BURDENING STATE ELECTORAL BODIES.

Same-day registration is an efficient and effective process, providing states the necessary time to properly register voters and maintain orderly elections. Critics of SDR allege that the costs associated with such systems are likely exorbitant because (1) SDR requires additional officials to process registration applications and ballots at both the polling place and the county/municipal office; and (2) SDR results in two "classes" of voters (those who are already registered and those who are not), which might confuse election officials. This is not so.

### A. Implementing Same-Day Registration Does Not Impose Unmanageable Administrative Burdens.

The costs associated with implementing SDR are not unduly burdensome. The majority of surveyed election officials in states that offer SDR are quick to point out that costs associated with the implementation of same-day registration are "minimal." Dēmos, Election Day Registration: a ground-level view, http://www.demos.org/sites/default/files/publications/EDR%20-%20A%20Ground%20Level%20View.pdf. One Idaho election administrator, for example, whose tenure predated the

state's adoption of EDR, said she could not recall any rise in election expenses at the time the state introduced SDR. Id. In Iowa, official tallies indicate the state spent less than $40,000 to introduce the system in 99 counties. Rogers, supra p.31. The state's single, largest expense was a one-time expenditure: $26,000 spent on a training video used by statewide auditors and precinct officials.[49] Moreover, half of surveyed Iowa election officials – ranging in counties with 8,983 registered voters to 46,295 – noted that SDR either resulted in no costs or minimal costs associated with printing forms or purchasing office supplies.[50]

Many state officials report that they do not need to hire additional staff to handle SDR or, if they do, the cost of additional hiring is offset by other cost reductions or legitimized by greater voter turnout. For example, an "overwhelming majority" of officials in Iowa counties reported that they were able to offer same-day registration with existing staff.[51] This remained true

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[49] S. Carbo, Testimony in Support of Same Day Registration in Connecticut (Mar. 1, 2012), http://www.demos.org/publication/testimony-support-same-day-registration-connecticut-steven-carbo.

[50] L. Rokoff & E. Stokking, Small Investments, High Yields: A Cost Study of Same Day Registration in Iowa and North Carolina (Feb. 2012), http://www.demos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf.

[51] Id.

at both polling locations and county offices, where 70% of polling officials reported no staff increases and 80% of county officials said the same.[52]

When thoughtfully implemented, SDR creates no more bureaucratic challenges at polling stations and municipal clerk offices than any other method of voting. Alvarez, supra p.29. In a survey, the vast majority of respondents noted that EDR created "no confusion at polling places."[53]

While implementing SDR does require some additional training, many states have developed best practices and effective voter registration models.[54] These practices extend from poll worker recruiting and training to using laptops at the polls. Id. Indeed, the development of technologies like electronic-poll books, which connect poll workers to the statewide voter registration database, allow election officials to instantaneously see if a prospective voter is registered elsewhere in

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[52] Id.
[53] Dēmos, Election Day Registration, supra p.31, at 3.
[54] C. Vasile, R. Eaton, Election Day Registration Best Practices (July 2010), http://www.demos.org/sites/default/files/publications/EDR%20Best%20Practices%20-%20FINAL%207-6-2010.pdf (surveying 21 election officials across six states on their SDR practices).

the state or has already voted.[55] Such technologies not only render same-day registration entirely feasible, but also promote more immediate access to democracy. However, states that wish to implement SDR need not purchase additional equipment. Connecticut, Hawaii, Idaho, Maine, Montana, New Hampshire, and Vermont all report that they do not use additional technologies, like electronic-poll books, while still offering SDR. NCSL, supra p.5

Given that the costs associated with implementing SDR depend heavily on the individual state and its administrative processes, it is worth briefly examining the experience of the five states discussed in Part I to explore SDR's potential administrative burdens.

Wisconsin's approach to SDR has been deemed both economical and efficient. While 55% of Wisconsin clerks believed that EDR moderately increased their administrative burden, 60% of all surveyed clerks also agreed that the benefits of EDR outweighed its costs, particularly since SDR significantly increases voter turnout in the state. Burden et al., Early Voting and

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[55] NCSL, Election Day Registration (May 2013), http://www.ncsl.org/documents/legismgt/elect/Canvass_May_2013_No_40.pdf.

Election Day Registration in the Trenches: Local Officials' Perceptions of Election Reform, 10 Election Law Journal: Rules, Politics, and Policy, 89-102 (2011); Dēmos, Election Day Registration, supra p.31 (documenting a Wisconsin official in a municipality of 70,000, who mentioned spending $5,000 on temporary workers to process EDR registrants after the November 2006 election). Further, the availability of SDR at the polls does not diminish the experience of Wisconsin voters on Election Day. Following the 2008 General Election, 99% of all Wisconsin voters responded that they were either "somewhat satisfied" or "very satisfied" with their voting experience.[56]

In 2013, Wisconsin government officials examined the impacts of eliminating EDR in Wisconsin and found that the costs of eliminating EDR while remaining compliant with federal voting laws would be prohibitive. Id. The report extolled EDR's benefits, including that EDR saves money because provisional ballots do not need to be issued and additional staff do not need to be hired to count ballots.

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[56] State of Wisconsin Gov't Accountability Bd., Final Report on the Impacts and Costs of Eliminating Election Day Registration in Wisconsin (Feb. 18, 2013), http://elections.wi.gov/sites/default/files/publication/65/final_edr_report_02_18_2013_pdf_86368.pdf.

Connecticut officials, including its Secretary of State, laud the efficiency and efficacy of EDR. In a 2012 hearing, the Secretary noted EDR's ability to combat voter and tallying errors.[57] She specifically praised EDR's tendency to limit, or even eliminate, the necessity of provisional balloting. Under a provisional balloting system, a voter whose registration has yet to be processed by municipal clerks must wait to have their ballot counted until their registration has been received. In other words, their ballot enters limbo. Under an SDR system, the municipal official can immediately register the voter by checking her registration documents and processing her vote. Id. As the Secretary reported, "EDR can also help with situation[s] involving change of name, mis-entered data and other confusion that arises in a human run system." Id. By checking the registration form in person, against the documents provided by the would-be voters, municipal officials insert an additional, protective backstop into the system. Finally, Connecticut officials reported

[57] Secretary of the State Connecticut, GAE Comm. Pub. Hearing Testimony (Mar. 2, 2012), https://www.cga.ct.gov/2012/gaedata/tmy/2012HJ-00002-R000302-Denise%20Merrill,%20Secretary%20of%20the%20State,%20Connecticut-TMY.PDF.

rolling out EDR "without any significant boost in funding" or the "need for any special technology."[58]

North Carolina, one of the few states to associate additional costs with SDR, still reported minimal administrative overhead. Over 30% of election officials, when surveyed, reported that they did not incur any additional costs or have to hire additional election officials. Rokoff & Stokking, supra note 50. While some small and large counties reported incurring additional costs, Rokoff and Stokking challenged those reports, noting that respondents who identified additional overhead to implement SDR were unable to disaggregate SDR costs from other voting measures implemented in the state that year.[59] Id.

Minnesota began offering SDR in 1974, allowing individuals to register and vote simultaneously during the early voting period, by mail, and on Election Day. NCSL, supra p.5. The state has been cited as a "successful example" of cost-effective SDR-

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[58] M. Rocheleau, States with Election Day Registration See Bonus for Democracy (Aug. 2, 2017), https://www.bostonglobe.com/metro/2017/08/02/states-with-election-day-registration-see-bonus-for-democracy/RkdGMQXCqJd1kEoJM1cW4J/story.html.

[59] Rokoff and Stokking draw attention, in particular, to the sharp rise in early voting" that year. Rokoff & Stokking, supra note 50.

implementation, noting that it countermands "the worry that costs might be prohibitive due to the need for added staff at polling places." B. Lierman, Election Day Registration: Giving All Americans a Fair Chance to Vote, 2 Harv. L. & Pol'y Rev. 173, 178 (2008).

Montana is another example of feasible SDR that does not burden the state budget. A 2013 fiscal note from the state legislature indicated that the elimination of EDR within the state would have "no fiscal impact to the counties or to the state," neither costing nor saving money.[60]

### B. Implementing Same-Day Registration Will Benefit Massachusetts, Removing Unnecessary, Inaccurate, and Burdensome Processes.

SDR provides administrative benefits to the states in which it is implemented. First, SDR lowers costs to voters by allowing them to register and vote at a single point in time. See B.C. Burden, et al., The Effects and Costs of Early Voting, Election Day Registration, and Same-day Registration in the 2008 Elections, Pew Charitable Trusts 5 (2009). Burden et al., supra note 12. Indeed, resources needed for registering individuals

[60] Fiscal Note 2015 Biennium, http://leg.mt.gov/bills/2013/FNPDF/HB0030.pdf; house bill 30.

ahead of time can be redirected to the polls, were the Massachusetts legislature to adopt SDR.[61]

Second, SDR decreases administrative burdens municipalities and counties face when tallying votes. SDR significantly reduces the number of provisional ballots (ballots cast by individuals who do not appear on voter rolls). Project Vote, supra p.25.[62]

Relatedly, SDR provides an important backstop to administrative error – protecting voters from election officials' errors. Thanks to SDR, "Election Day transactions may in fact be more accurate and less time-consuming because they entail face-to-face interaction with the voter." Rogers, supra p.29. In many ways, SDR provides an additional, necessary check in the system for those who might fall through registration cracks – like potential voters who have properly submitted registration forms, only to have their registrations be improperly transmitted, unrecorded, or purged.

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[61] See, e.g., Rogers, supra p.31 ("It is axiomatic that many same-day registrations and updates simply take the place of clerical work that must be done by election administrators and staff at one time or another anyway.").

[62] For example, in 2008, after the implementation of EDR, Iowa saw a 67% decline in the number of provisional ballots used (from 15,000 in 2004 to less than 5,000 in the 2008) and North Carolina needed 23,000 fewer provisional compared to 2004. Rokoff & Stokking, supra note 50.

This scenario is not merely hypothetical. In 2000, officials in Portland, Maine, were accused of illegally purging 15,000 voters from the rolls. B. Lierman, supra p.25, at 184 (2008). Because Maine has EDR, voters were able to re-register on Election Day and vote. Thanks to SDR, these voters – who had registered prior to the registration cut-off were not disenfranchised by human error. Id.

## IV. SDR DOES NOT CONTRIBUTE TO WITH THE "MYTH OF VOTER FRAUD."

Despite widespread public misinformation, voter error (or "fraud") has been studied many times and the "consensus from credible research and investigation is that the rate of illegal voting is extremely rare."[63]

Any fear that same-day registration heightens the risk of voter error is not substantiated. First, SDR

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[63] Brennan Center for Justice, Resources on Voter Fraud Claims (Jun. 26, 2017), https://www.brennancenter.org/analysis/resources-voter-fraud-claims. See, e.g., L.C. Minnite, The Myth of Voter Fraud 6 (2017) ("The results are reported in the chapters to come, but I can short-circuit the suspense—voter fraud is rare .... Voter fraud is a politically constructed myth."); Ahlquist, et. al., Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment, 13 Election L. J.: Rules, Politics, & Policy 460 (2014) (finding that "the proportion of the population reporting voter impersonation is indistinguishable from that reporting abduction by extraterrestrials"); S. Goel, et al., One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections, (Oct. 24, 2017) (estimating that the statistical likelihood of double voting is .02%).

brings the registration process itself into the polling place, under the care and authority of trained election officials. Second, states that offer SDR usually have strict requirements about proving residency at the polls, requiring officials to cross-check voter identities with state or government databases.[64] To tarnish SDR's democracy-enhancing systems with unsupported accusations of voter error would do a disservice to a process that provides millions of potential voters with the ability to exercise their fundamental right to vote.

Research examining whether there is any correlation between SDR and voter error has concluded that "there is no evidence that EDR states have more fraud" than states, like Massachusetts, "who close their voter registries 30 days out." T.E. Hall, US Voter Registration Reform, 32 Electoral Studies 589, 595 (2013). Loraine Minnite's survey of voter error found that "[t]he crime of voter fraud [from 1970-2004] was exceedingly rare or nonexistent in states that offer Election Day Registration." L. Minnite, Election Day Registration: A

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[64] Dēmos, Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security, available at https://www.brennancenter.org/sites/default/files/analysis/edr_fraud.pdf.

Study of Voter Fraud Allegations. Comparing incidents of voter fraud in six SDR states over several decades (Idaho, Maine, New Hampshire, Minnesota, Wisconsin, and Wyoming), Minnite notes that, while the federal government prosecuted 40 voters nationwide for election crimes, Wisconsin was the only EDR state with any voter fraud prosecutions (five individuals there were ultimately convicted; Wisconsin's reaction is discussed below). Id. at 2. Equally, Minnite quotes various government officials – including Wyoming's former Attorney General and Secretary of State, as well as the Secretaries of State from Idaho and Maine – who each conclude that voter fraud has been nonexistent in their SDR-practicing states. Id. at 3. Indeed, Secretary of State Matthew Dunlap of Maine claimed that Maine has "benefited from same-day registration since the early 1970s and no case of voter fraud has ever been attributed to the policy." Id. at 5.

A look at our focus states illustrate SDR's efficiency and resistance to mistake.[65]

[65] Due to the recent implementation of EDR in Connecticut, no data exists as to whether EDR has increased the possibility of error or mistake in the state.

Wisconsin and Minnesota, two of the few states to report limited or alleged voter error, have effectively implemented SDR. Minnite's survey explains that four Milwaukee voters were charged with double voting and 10 were charged for casting votes while disenfranchised because of a felony conviction – but ultimately, the charges were "dismissed or the defendants exonerated in all of the alleged double voting cases and all but five of the felon voting cases."[66] Two county prosecutors in Minnesota also investigated complaints of voter error in 2004 and 2005. However, no Minnesota voters were ever prosecuted. Accordingly, Minnite estimates that, in Minnesota, there was a "voter fraud rate of zero when considering convictions, and a 0.0000088 percent rate if counting investigations." Id.

In response, perhaps, to these bare allegations of voter "fraud," Wisconsin and Minnesota provide a model for robust tactics designed to decrease the likelihood of double voting. Barbara Hansen, Director of Wisconsin's Statewide Voter Registration System, described preventative measures the state takes to

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[66] Dēmos, Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security, at 4, available at https://www.brennancenter.org/sites/default/files/analysis/edr_fraud.pdf (taking into account election results from 2002-2005).

counteract and address voter error.[67] Of note, for Election Day Registrants, the municipal body checks for proof of residence, then holds a post-election audit. Barbara Hansen, presentation, video conference with State of Illinois Election Day Voter Registration Commission, Springfield, IL, June 25, 2008.

North Carolina, like other SDR states, has no known history of voter error, much less error caused by the existence of SDR. In her expert report for McCrory, Minnite examined empirical evidence of voter fraud in North Carolina, concluding that "fraud committed by voters registering to vote" at "the polls on Election Day" is "exceedingly rare."[68] Reviewing fourteen years of voter fraud data, she found 15 cases of alleged voter fraud not involving a felon barred from voting. Id. at 11. Of those fifteen, 12 cases were never fully investigated (status as "unknown" or "pending"), 2 individuals pled guilty, and 1 case was dismissed. Id. Minnite notes, there is "a common pattern of little to

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[67] These are procedures that the state had implemented well before the state's enactment of strict voter ID requirements.
[68] L. Minnite, Expert Report: North Carolina State Conference of the NAACP v. McCrory et al. (Apr. 11, 2014), http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1554.pdf.

no voter fraud in the state," and certainly none attributable to SDR. Id.

Likewise, Montana officials rebuff the idea that SDR would increase voter "fraud." In response to 2013 legislative calls to eliminate Montana's version of SDR because it resulted in mistakes, then-Secretary of State Linda McCulloch indicated that "the state uses a voter database and no voter fraud has ever been found."[69] Even the state's current Secretary of State, Corey Stapleton — who earlier last year raised the possibility of voter fraud in the 2016 election — said after reviewing election data that he has not seen any evidence showing a coordinated effort to cast mismatched, or illegal, signatures on ballots.[70] Simply put, there is no evidence that links SDR to an increased likelihood of voter error.

## CONCLUSION

Striking down Massachusetts's early voter cutoff is imperative, and it will neither unduly burden the state nor impair its ability to provide orderly and efficient

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[69] M. Greener, Same-day Voter Registration Under Fire (Jan. 14, 2013), https:// www. bozemandailychronicle.com/news/state_government/legislature/article_d17d071a-5ea7-11e2-b14c-0019bb2963f4.html.

[70] C. Cates-Carney, Montana Public Radio, Stapleton Says No Evidence of Widespread Voter Fraud (Nov. 28, 2017), http://mtpr.org/post/stapleton-says-no-evidence-widespread-voter-fraud.

elections. Alternative voter registration systems including SDR promote a more inclusive democracy and empower traditionally marginalized communities, preserving the Commonwealth's explicit, constitutional commitment to protecting the right to vote.

Respectfully submitted,

Ellen A. Scordino (BBO #651680)
*escordino@cooley.com*
Michael E. Welsh (BBO #693537)
*mwelsh@cooley.com*
COOLEY LLP
500 Boylston Street
Boston, MA 02116
(617) 937-2300

## CERTIFICATE OF SERVICE

I, Ellen A. Scordino, hereby certify that on February 20, 2018, I caused two copies of the foregoing *Amicus* Brief for *Amici Curiae* Dēmos, Rock the Vote, SEIU, and MCAN in Support of Affirmance to be delivered via first-class mail on each of the following counsel:

Jessie J. Rossman, Esq.
ACLU Foundation of Massachusetts
211 Congress Street
Boston, MA 02110
jrossmanSaclum.org

David C. Kravitz
One Ashburton Place, 20th floor
Boston, Massachusetts 02108
david.kravitz@state.ma.us

Ellen A. Scordino

**Addendum**

# ELECTION DAY VOTER REGISTRATION IN CALIFORNIA

R. MICHAEL ALVAREZ
CALIFORNIA INSTITUTE OF TECHNOLOGY

JONATHAN NAGLER
NEW YORK UNIVERSITY

## EXECUTIVE SUMMARY

We have analyzed the likely impact on voter turnout should California adopt Election Day Registration (EDR).[1] The availability of EDR procedures should give voters who have not previously registered or need to update their information the opportunity to vote. Consistent with existing research on the impact of Election Day Registration in the other states that use this process, we find that EDR would likely lead to substantial increases in voter turnout.[2] We offer the following voter turnout estimates for California under EDR:[3]

- Overall turnout could go up by 4.8 percent.
- Turnout among those aged 18 to 25 could increase by 9.0 percent.
- Turnout for those who have moved in the last six months could increase by 7.3 percent.
- Turnout for Latinos and newly-naturalized citizens could each rise by 5.1 percent.

## INTRODUCTION

The purpose of voter registration in the United States is to make sure that only eligible citizens vote. Voter registration also provides election officials with convenient lists they can use to notify voters about upcoming elections, as well as other information about elections and voting. Lastly, when individuals enter a polling place, a voter registration list gives poll workers the information they need to authenticate voters before they cast ballots.

At the same time, the process of voter registration imposes costs on voters — such as forcing voters to register well in advance of an election, which might involve a complicated process of determining where and how to register — and these costs have been shown in various studies to serve as barriers to many potential voters.[4] In California, eligible citizens who wish to register by mail must do so at least 15 days before the election. For some eligible citizens, especially those who have recently moved, requiring registration well in advance of Election Day might make it very difficult for them to cast a ballot. Given that non-registered but otherwise eligible citizens are not on the lists that election officials or other political groups use to mobilize voters, some non-registered eligible citizens may not be aware of an upcoming election or about how and when they can register to vote.

In the last few decades, the costs associated with voter registration have been the focus of significant federal legislation. The National Voter Registration Act of


MEDIA INQUIRIES: TIM RUSCH | COMMUNICATIONS DIRECTOR | TRUSCH@DEMOS.ORG | 212-389-1407

1993 (NVRA) required states to provide voter registration forms in places where residents register their motor vehicles, and in other state agencies like public assistance offices. The NVRA also required that states allow for mail-in voter registration. More recently, the Help America Vote Act of 2002 (HAVA) attempted to significantly improve voter registration practices across the nation by requiring states to develop computerized, statewide voter registries, and offer provisional voting.

Currently, there are six states that have substantial experience allowing eligible citizens to register to vote on Election Day: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming.[5] Three other states — Iowa, Montana and North Carolina — and the District of Columbia have more recently adopted EDR procedures. The six states with substantial experience with EDR have shown that it is an effective way to increase voter participation without complicating election administration or leading to increased voter fraud. Research regarding the experiences of these six states with Election Day Registration has shown that:

- Voter participation is somewhere between 3 and 6 percentage points higher than it would be if EDR was not used in those states;
- Citizens who have recently moved or are younger find it easier to register and vote;
- Election administration can be improved when EDR is thoughtfully implemented, and EDR does not undermine the Election Day experience of poll workers or voters; and
- There is no evidence that the prospects for election fraud are increased.[6]

Thus, based on the previous experience of these states, previous research that we have conducted, academic research on voter participation and Election Day Registration, and new research we present below, we believe that California will have a positive experience with Election Day Registration, provided that it is appropriately implemented. We estimate that turnout could increase in California—possibly by 4.8 percent. In California, this could result in more than 1,065,511 new voters in future presidential elections.[7] Having more voters on the rolls, and allowing previously-registered voters to use EDR to update their addresses will improve election administration and give election officials throughout the state better information when they want to contact voters about upcoming elections and provide them with related information. Finally, increasing voter participation should lead to a stronger democracy and a strengthened civic culture in California.

The analysis in this report and its voter turnout projections are based on the assumption that California would implement EDR as it traditionally has been used, allowing eligible individuals to register (or update their registration) and vote at the polling place on Election Day. Of course the effects of any EDR system can depend upon its implementation. For EDR to be effective, the registration process must be something that the typical voter can proceed through without excessive complications.

Any EDR system that restricts the number of registering and polling places, or the time of registering and voting would obviate the primary advantage of EDR as it has been used in other states – i.e., that it removes registration burdens. Effective EDR systems offer a one-stop method for voting—a voter registers and votes at a regular, local polling place. This relieves the voter of having to engage in two distinct activities—registering prior to election day, and then voting at a different time and place. An EDR system requiring voters to engage in two-stop shopping—registering in one place on election day, and voting in another place on election day, would not likely be used by as many voters as a one-stop procedure. And a procedure requiring voters to engage in excessive travel on election day is not likely to facilitate as many voters utilizing it as would a system allowing voters to simply register and vote at their local polling place.

## EDR, REGISTRATION AND TURNOUT

Determining a voter's eligibility before allowing them to cast a vote has a long history in the United States. Studies of early American political history have shown that eligibility was determined by party observers at the polling places, who could challenge a voter's ability to participate in an election.[8] Pre-election voter registration practices began early in American history, but became widespread in the decades after the Civil War.[9] In some states voter registration requirements were part of an array of measures, including poll taxes and literacy tests, that were used to disenfranchise segments of the potential electorate, including immigrants, the poor, and minorities. Early registration practices were often quite restrictive themselves, for example, requiring annual or periodic, in-person registration at a county office during weekday business hours.[10]

Liberalization of voter registration laws began with the civil rights movement, culminating in the passage of the Voting Rights Act of 1965 (VRA). The VRA eliminated many of the systematic barriers that made registration and voting difficult for poor and minority voters, and empowered the federal government to oversee the elimination of voting restrictions. Many states substantially reformed their registration and voting procedures after passage of the VRA.

But even with these reforms in some states, many other states continued to use restrictive registration practices after the passage of the VRA. In particular, local election officials in many places had substantial discretion regarding the implementation of registration and voting procedures. A patchwork quilt of registration practices developed across the nation. Research by scholars showed that many voting and registration practices, particularly the practice of requiring registration well in advance of Election Day, substantially reduced voter turnout.[11] This led to the enactment of the National Voter Registration Act of 1993 (NVRA), which sought to simplify the registration process and to improve the integrity of voter registries. Key to the NVRA was an expansion of avenues by which a citizen could register to vote, including registration by mail, in department of motor vehicles offices, and in state public assistance offices. The NVRA also provided for new rules regarding procedures for how voters could be removed from registration rolls.

More recently, problems in the 2000 presidential election led to additional federal efforts to reform the voter registration process. Congress passed the Help America Vote Act (HAVA) in 2002, requiring that states centralize their voter registries, and that those voter registries be a "centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level" (HAVA 303(a)(1)(B)). HAVA also required that states implement "fail-safe" or provisional voting procedures, if they did not already have them, so that otherwise eligible citizens could cast a ballot rather than be disenfranchised due to an error in a voter registry.

The liberalized voter registration procedures adopted in Election Day Registration states have had an impact comparable to those achieved by these federal statures. The six, longstanding EDR states have generally had higher rates of voter turnout than states that do not have EDR. According to the official voting statistics reported by secretaries of state and the U.S. Census Bureau estimates of state population, EDR states had a voter turnout rate of 70.3 percent in the 2004 presidential election, while non-EDR states had a turnout rate of only 54.7 percent.[12] The number of states using EDR or similar procedures swelled to nine by the 2008 presidential election. Analysis of voter participation data collected and distributed by the United States Election Project has shown that participation in the nine EDR states in that election averaged 69 percent, relative to an average 62 percent participation in the non-EDR states.[13]

Were California to implement the proposed Election Day Registration plan well, and the state experienced the typical increase in voter turnout that other states have seen once they have implemented EDR, voter

participation could increase substantially. Furthermore, voter participation might increase noticeably among sectors of the population that typically vote at lower rates, such as newly relocated eligible citizens or young voters. Previous research has shown that EDR often helps these voters. We returns to this issue in the next section of this report, and provide precise estimates of EDR's potential impact on registration and turnout in California.

## EDR IN CALIFORNIA

California ranked 34th in the nation in terms of voter-eligible participation in the 2008 presidential election.[14] To estimate the potential impact of EDR, we turn to data from the U.S. Census Bureau's Current Population Survey (CPS) for the presidential elections of 1996, 2000, 2004, and 2008 and use a methodology similar to one that we have employed in past research on voter turnout, discussed in the Technical Appendix below.[15] In summary, we estimate a statistical model predicting whether individual respondents in the 1996, 2000, 2004, and 2008 CPS report being registered and whether they voted. In this estimation, we control for many factors, including the voter registration process in the state. We control for the respondents' age and level of education, whether or not respondents have moved recently, their ethnic background, and whether or not they are a native-born citizen or have been recently naturalized. We then use these estimates to simulate what turnout would have been in California if California had used Election Day Registration in these four elections, and we compute the number of additional voters California would have had in the 2008 election with Election Day Registration.[16]

Estimates of EDR's potential effect on voter turnout in the presidential elections in California are provided in Table 1. The analysis presented here predicts a 4.8 percent increase in voter turnout in future presidential elections were California to adopt EDR.

Our analysis suggests other substantial increases in voter turnout for those who might be most affected by EDR:

- Turnout among those aged 18 to 25 could increase by 9.0 percent under EDR.
- Turnout for those who have moved in the last six months could increase by 7.3 percent under EDR.
- Turnout for Latinos and newly-naturalized citizens could each rise by 5.1 percent.
- Over 720,700 additional citizens who do not have college degrees would vote compared to slightly more than 343,100 new voters with college degrees.

Thus, those eligible citizens who are most typically affected by Election Day Registration in other states would also be strongly affected in California.

## CONCLUSION

One of the more consistent conclusions in the study of turnout over the last 35 years has been that making the registration and voting process easier will increase turnout among eligible voters.[17] Our analysis of the impact of EDR in California is merely another piece of evidence supporting this claim. By comparing voter turnout in states with EDR and states without EDR, we have estimated the impact EDR would have in California. Adoption of EDR could raise turnout by 4.8 percent according to our estimates; it could raise turnout substantially more among groups such as young voters and voters who have moved in the period preceding the election.

The trend in the United States has been to ease the barrier that registration places on voting by moving the deadline closer to Election Day. Moving towards Election Day Registration would ease that barrier for thousands of citizens in California, and bring more participants into the democratic process.

## TECHNICAL APPENDIX

To estimate the impact of EDR in California we analyzed individual survey data collected by the Census Bureau. Each month the Census Bureau surveys approximately 50,000 households in the Current Population Survey. In even numbered years the November survey includes a battery of questions asking respondents whether or not they were registered to vote, how they registered, and if they voted. The CPS is considered to be the "gold standard" of datasets for analyzing individual-level factors affecting turnout, and turnout across states. The Census Bureau has a higher response rate than any other survey and the sample size is large enough to draw statistically valid samples within a state. Whereas the typical media poll might have 1,500 respondents nationwide, the November 2008 CPS included 8,188 respondents from California. And to increase our statistical power even more, we pooled the CPS from the presidential elections of 1996, 2000, 2004, and 2008, giving us over 30,400 respondents from California, and over 278,000 respondents in total.

Our model incorporates factors that have been shown in extensive research on voter turnout to be correlated with an individual's decision on whether or not to vote. We utilize categorical variables to indicate whether or not the person is in one of six age groups: 18 to 25, 26 to 35, 36 to 45, 46 to 60, 61 to 75, or 76 to 84. We utilize categorical variables for education placing the respondent as having less than a high school degree, a high school degree, some college education, or a bachelor's degree or beyond. For annual family income, we include brackets of less than $20,000, between $20,000 and $40,000, between $40,000 and $60,000, and above $60,000. The respondent's ethnicity is measured as white-non Hispanic, black, Latino, or other. We also included variables indicating whether or not the respondent was a naturalized citizen, and if so, whether they had come to the United States within 10 years of the election or within 16 years of the election. We also included a variable for whether the respondent lives in an urban or rural area. And we include a variable for whether or not the respondent moved in the six months prior to the election.

We include variables at the state level for the number of days before the election that registration closes and for the presence of a competitive election. We include three categorical variables indicating the presence (or absence), respectively, of a senate, gubernatorial, or presidential race within the state that was decided by a margin of 5 percent or less.

To be able to determine the impact of EDR on particular groups of the population, and because we expect that EDR will have larger effects on those who have the most difficulty meeting the burden of pre-election registration, we include interaction terms between the availability of EDR, and the respondent's age, education and income, as well as whether or not the respondent had moved previously and whether the respondent was a native-born citizen or a naturalized citizen (and if so, whether recently immigrated or not).

Given these specifications, we estimated the model on all respondents in the CPS for the presidential election years of 1996, 2000, 2004, and 2008. And since we were estimating the model on multiple elections, to allow for differences in turnout across the elections, we included year-dummy variables. Estimating the model gave us estimates of the model parameters. We then compute the predicted probability of each respondent in our sample in California voting under the current legal conditions—that is the state's requirement that voters register well before Election Day. We also compute the probability of each respondent in the sample in California voting under the counterfactual condition that California had Election Day Registration available. By aggregating those predicted probabilities over different sub-groups of interest, we are able to estimate the impact of EDR on any sub-group within the population, or we can estimate the impact of EDR on all voting age persons in California.

| TABLE 1: SIMULATED TURNOUT INCREASES IN CALIFORNIA UNDER EDR | | |
|---|---|---|
| | ESTIMATED PERCENTAGE POINT INCREASE W/ EDR | ESTIMATED ADDITIONAL VOTES W/EDR |
| ENTIRE STATE | 4.8 | 1,065,511 |
| PERSONS WHO HAVE MOVED IN THE LAST 6 MONTHS | 7.3 | 181,921 |
| PERSONS AGE 18-25 | 9.0 | 291,862 |
| PERSONS AGE 26-35 | 6.4 | 262,061 |
| PERSONS AGE 36-45 | 4.2 | 195,353 |
| PERSONS AGE 46-60 | 3.5 | 206,469 |
| PERSONS AGE 61-75 | 2.3 | 75,294 |
| PERSONS AGE 76-84 | 2.7 | 29,542 |
| LATINOS | 5.1 | 231,534 |
| WHITES (NON-HISPANIC) | 4.4 | 599,217 |
| BLACKS | 4.0 | 62,033 |
| NATURALIZED CITIZENS | 5.1 | 197,172 |
| | | |
| LOWER INCOME ($0-$20,000 HOUSEHOLD INCOME) | 4.5 | 156,460 |
| MIDDLE INCOME ($20,000 - $40,000) | 4.7 | 237,157 |
| UPPER INCOME ($40,000 - $60,000) | 4.8 | 191,091 |
| TOP INCOME ($60,000 AND ABOVE) | 4.9 | 480,793 |
| RURAL | 3.8 | 18,602 |
| URBAN | 4.8 | 1,047,118 |
| PERSONS WITH GRADE SCHOOL EDUCATION | 3.5 | 88,580 |
| PERSONS WHO ARE HIGH SCHOOL GRADUATES | 4.7 | 266,359 |
| PERSONS WITH SOME COLLEGE | 4.9 | 365,782 |
| COLLEGE GRADUATES | 5.2 | 343,126 |

Source: Computed by authors, based on analysis of the Current Population Survey, US Bureau of the Census, various years.

## ENDNOTES

1. This report is similar to an analysis we produced for Demos on the impact of Election Day Registration (EDR) in Iowa, and borrows liberally from that report in the general discussion of the impact of voter registration laws. See R. Michael Alvarez & Jonathan Nagler, *Election Day Voter Registration in Iowa*, Demos: A Network for Ideas and Action, 2007, http://www.demos.org/pubs/updatedIOWA.pdf.

2. Current information on the process of voter registration in California can be found at http://www.sos.ca.gov/elections/elections_vr.htm.

3. A '5 percent increase' refers to an increase of 5 *percentage points*, or 5 percent of voting age population, not 5 percent of those *already voting*. Thus, an increase from 50 percent turnout to 55 percent turnout is referred to as a 5 percent increase.

4. How voter registration imposes costs on potential voters was originally researched by Raymond E. Wolfinger and Steven J. Rosenstone, *Who Votes?*, New Haven: Yale University Press, 1980.

5. North Dakota does not currently require voter registration. Iowa and Montana recently adopted Election Day Registration. North Carolina now permits individuals to register and vote at its in-person absentee voting sites, open from the end of the regular voter registration period to three days before Election Day.

6. See, for example, R. Michael Alvarez and Stephen Ansolabehere, "California Votes: The Promise of Election Day Registration," Demos: A Network for Ideas and Action, 2002 (available at Demos upon request); R. Michael Alvarez, Jonathan Nagler and Catherine Wilson, "Making Voting Easier: Election Day Registration in New York, Demos: A Network for Ideas and Action, 2004, http://www.demos.org/pubs/NY%20EDR%20report%202004%20-%20FINAL.pdf; M.J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly* 22(1) (1994): 74-87; B. Highton, "Easy Registration and Voter Turnout," *The Journal of Politics* 59 ( 2 ) (1997), 565-575; Lorraine C. Minnite, *An Analysis of Voter Fraud in The United States*, Demos: A Network for Ideas and Action, 2004, http://www.demos.org/pubs/Analysis.pdf; Demos: A Network for Ideas and Action, *Election Day Registration: A Ground Level View* (2007), http://www.demos.org/pubs/EDR_Clerks.pdf; S. Knack, "Election-Day Registration: The Second Wave," *American Politics Quarterly* 29(1) (2001), 65-78.

7. We arrive at this estimate via a statistical analysis of the impact of EDR on voter turnout in each presidential election from 1996 thru 2008 using data from the U.S Census Bureau's Current Population Survey. See the Technical Appendix for details.

8. Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century*, New York, Cambridge University Press, 2004, pages 22-30, 90.

9. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, New York: Basic Books, 2001.

10. J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, New Haven: Yale University Press, 1980.

11. Wolfinger and Rosenstone (1980).

12. Turnout figures are taken from the U.S. Census Bureau, *2007 Statistical Abstract of the United States*, Table 408, available at http://www.census.gov/prod/2006pubs/07statab/election.pdf. These data are in turn based on reports of secretaries of states on votes cast for president and on Census Bureau estimates of state voting age population.

13. The data are from http://elections.gmu.edu/voter_turnout.htm; the calculations of average turnout in each set of states (excluding North Dakota) comes from Steven Carbó and Regina Eaton, "Voters Win With Election Day Registration," Demos, 2009, http://www.demos.org/pubs/voterswin_09.pdf.

14. Data from http://elections.gmu.edu/voter_turnout.htm. All states were ranked by voting-eligible participation, computed as number of votes cast for president divided by number of citizens eligible to vote.

15. The analysis here differs from past reports we have done on the effects of Election Day Registration in that here we utilize data from the four most recent presidential elections – 1996 through 2008 – rather than data only from the most recent presidential election.

16. The reported registration and turnout rates in the CPS data differ from those found in the EAC's Election Day Survey. The CPS data are based on surveys of households, and thus are affected by both sampling error and response error.

17. R.E. Wolfinger and S. J. Rosenstone, *Who Votes?* (New Haven: Yale University Press, 1980); J.E. Leighley and J. Nagler, "Individual and Systemic Influences on Turnout: Who Votes? 1984," *Journal of Politics*, 54 (1992): 718—740.

## AUTHORS

Jonathan Nagler
Professor, Department of Politics
New York University
New York, NY 10012
jonathan.nagler@nyu.edu
Tel: 212 992 9676

R. Michael Alvarez
Professor of Political Science
Caltech/MIT Voting Technology Project
California Institute of Technology
Pasadena, CA 91125
rma@hss.caltech.edu
Tel: 626-395-4089

Jonathan Nagler is Professor of Politics at New York University. Professor Nagler received his BA in Government from Harvard University in 1982, and his Ph.D. from the California Institute of Technology in 1989. He has been a visiting associate professor at Caltech and Harvard, and has taught at the Summer Program, European Consortium for Political Research, Essex University, England, and the Summer Program, Inter-university Consortium for Political and Social Research, University of Michigan, as well as the ESRC Oxford Spring School in Quantitative Methods for Social Research. Professor Nagler's research focuses on voting and elections.

R. Michael Alvarez is currently a Professor of Political Science at the California Institute of Technology and a Senior Fellow at the USC Annenberg Center for Communications. Alvarez is Co-Director of the Caltech/MIT Voting Technology Project, which since 2000 has studied election administration and voting technologies in the U.S. and abroad, and which has worked to translate those research studies into policy-making efforts at all levels of government.

## ABOUT DĒMOS

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# Election Day Registration:

## A Study of Voter Fraud Allegations and Findings on Voter Roll Security

A PRELIMINARY REPORT
BY LORRAINE MINNITE, SENIOR FELLOW

Dēmos: A Network for Ideas & Action

The specter of fraud in American elections has pervaded our political and media landscape for a long time. In recent years it has been raised again as a key lever in arguments for or against certain state or federal election reforms—in legislative and judicial bodies, and in the media. Allegations of voter fraud in elections have been widely publicized, but the question of whether voter fraud threatens the integrity of elections in the United States has long been neglected by serious researchers. This report draws on my research into the scale and scope of the problem of voter fraud and the politics of election reform. Here I look at the question of voter fraud in states with Election Day Registration (EDR), a vital reform which, like other procedures that lower barriers to the vote, has been resisted based on unfounded allegations of fraud.

## I. DEFINING AND MEASURING VOTER FRAUD

The federal government defines election fraud as an election crime involving conduct that corrupts the process of "obtaining and marking of ballots, the counting and certification of election results, or the registration of voters."[1] Voter fraud is a subsidiary form of election fraud defined as *the intentional corruption of the electoral process by voters.* Measuring the actual incidence of voter fraud is difficult. There are no reliable, officially compiled, national or even statewide statistics on the incidence of voter fraud crimes upon which we can draw. Though many criminal acts associated with "voter fraud" are classified as felonies, voter fraud crimes fail to appear in the F.B.I.'s uniform crime reports. There are no publicly available criminal justice databases that include voter fraud as a category of crime, and no states collect and publish statistics on voter fraud.[2]

## II. EDR DOES NOT INCREASE OPPORTUNITIES TO COMMIT VOTER FRAUD

The focus of this study is the recent record of voter fraud in Idaho, Maine, New Hampshire, Minnesota, Wisconsin and Wyoming, the six states where Election Day Registration has been law for the last several decades.[3]

To compile the record, I carefully examined a number of different sources of information since no one source measuring the incidence of voter fraud is available. I studied news reports, federal government prosecution records, and conducted a survey of county prosecutors. A summary of the findings follows:

*News reports*

I reviewed nearly 4,000 news reports for the six EDR states over three federal election cycles (1999-2005) and found only 10 discrete incidents of voter fraud or alleged voter fraud that appeared to have some merit.[4] Of these, there was only one case of voter impersonation at the polls—ironically one of the most frequently claimed abuses when fraud enters the public debate. A 17-year-old New Hampshire high school student, who shares his father's name, cast his father's ballot in the 2004 Republican presidential primary, knowing that his father was out of town. The polling place was in the student's school. The fraud was uncovered after a teacher overheard the student tell others that he had "subbed" for his father and voted for George W. Bush. This young man lied about his identity to the poll worker. The fraud was unrelated to Election Day Registration rules because the student's father was already registered and enrolled in the poll book. See Table 1 for a summary of these incidents and the Appendix for additional details.

*Federal prosecutions*

Under a new initiative of the U.S. Department of Justice (DOJ), the federal government has been concentrating more effort and resources on investigating and prosecuting voter fraud in recent years. "Under the ongoing initiative," reports DOJ's Election Offenses manual, "election crimes are a high law enforcement priority of the Department."[5]

Despite the high priority, the federal government prosecuted only 40 voters nationwide for election crimes related to illegal voting between 2002 and 2005.[6] Among EDR states, Wisconsin was the only one where a federal investigation led to any voter fraud prosecutions. Four Milwaukee voters were

charged with double voting and 10 were charged for casting votes while disfranchised because of a felony conviction. The charges, however, were dismissed or the defendants exonerated in all of the alleged double voting cases and all but five of the felon voting cases.[7] This record of convictions compares poorly with an average 90 percent conviction rate obtained by the federal government in nearly all felony crime cases.[8]

*Survey of local county prosecutors*

Election administration and the enforcement of state election laws rests in most states on the shoulders of local officials. I therefore designed and implemented a survey of county prosecutors, requesting statistics on fraud complaints investigated, cases prosecuted, type of defendant, and disposition of such cases across three broad categories of voter fraud for 2004 and 2005. These categories are: voter registration fraud, illegal voting, and absentee ballot fraud. This survey is still in the field, but partial results are available for 36 of 252 prosecutorial jurisdictions (mostly counties) in the six EDR states.

Among those sampled, only two county prosecutors—both in Minnesota—report that they investigated complaints of voter fraud in 2004 or 2005. These resulted in the investigation of 11 people, seven in County A and four people in County B.[9] The cases in County B were dismissed, and the seven people accused of illegal voting in County A were not prosecuted (they were sent warning letters). There were 1,238,021 ballots counted in the 2004 election in the sample counties, yielding a voter-fraud rate of zero when considering convictions, and a 0.0000088 percent rate if counting investigations.

The near absence of voter fraud is echoed by election officials in EDR states. In the course of litigation challenging Connecticut's voter registration

## TABLE 1

VOTER FRAUD ALLEGATIONS[10] REPORTED IN SELECTED STATE AND LOCAL NEWSPAPERS BY NUMBER OF INDIVIDUALS ALLEGEDLY INVOLVED, AND NUMBER OF INCIDENTS

IN EDR STATES: IDAHO, MAINE, MINNESOTA, NEW HAMPSHIRE, WISCONSIN, WYOMING

January 1999 – February 2005

| | Types of Claims | Individuals | | | | Cases |
|---|---|---|---|---|---|---|
| | | Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud | Reports of official charges or official reports of voter fraud (final disposition unknown) | Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown) | Total number of people involved | Total number of incidents |
| 1 | Registration fraud | 95 | | | 95 | 2 |
| 2 | Voter impersonation at the polls | 1 | | | 1 | 1 |
| 3 | Multiple voting | 1 | | 1 | 2 | 2 |
| 4 | Absentee ballot fraud (forgery or use of an illegal address) | 9 | 2 | | 11 | 3 |
| 5 | Illegal voting by disfranchised felons | | 7 | 361 | 368 | 2 |
| | TOTAL | 106 | 9 | 362 | 477 | 10 |

*Source:* See endnote 4, and note: the Wisconsin search covered only 8/21/03-2/12/05. For a description of the cases, see the appendix.

## TABLE 2

## ELECTION DAY REGISTRATION STATES—2004 PRESIDENTIAL ELECTION ELECTION ADMINISTRATION AND VOTING STATISTICS

| | Idaho | Maine | Minnesota | New Hampshire | Wisconsin | Wyoming |
|---|---|---|---|---|---|---|
| **Estimated citizen-eligible population** | 986,664 | 1,022,248 | 3,736,578 | 975,065 | 4,091,525 | 380,564 |
| **Registered voters** | 798,015 | 1,023,956 | 2,977,496 | 855,861 | 2,439,282 | 232,396 |
| **EDR applications** | 117,622 | N/A | 590,242 | 94,431 | 443,772 | 41,554 |
| **% EDR applications** | 12.8 | N/A | 19.8 | 9.9 | 15.3 | 15.2 |
| **Total ballots counted** | 612,786 | 754,777 | 2,842,912 | 686,390 | 3,009,491 | 245,789 |
| **Absentee ballots counted** | 34,609 | 162,663 | 231,711 | 62,059 | 264,898 | 47,008 |
| **Provisional ballots cast** | 0 | 483 | N/A | N/A | 374 | 95 |
| **Federal voter fraud convictions** [14] | 0 | 0 | 0 | 0 | 5 | 0 |

*Sources:* U.S. Election Assistance Commission, Final Report of the 2004 Election Day Survey (September 27, 2005); available online at: http://www.eac.gov/election_survey_2004/pdf/EDS-Full_Report_wTables.pdf; Maine Secretary of State author's analysis of federal prosecution records.

deadline, Wyoming's former Republican Attorney General and Secretary of State Joseph B. Meyer said that, "there have been very few cases, if any...of voter fraud," and that in his 35 years of governmental experience, "there has not been much evidence of it" in his state.[11] In a May 11, 2007, op-ed appearing in *The New York Times*, Secretaries of State Ben Ysursa of Idaho (a Republican) and Matthew Dunlap of Maine (a Democrat), wrote that the crime of voter fraud was,

> "exceedingly rare or nonexistent in states that offer Election Day registration. Citizens of Maine, for instance, have benefited from same-day registration since the early 1970s and no case of voter fraud has ever been attributed to the policy."[12]

New Hampshire officials "made a major effort" to enforce the election laws during the 2004 election. According to a report by the Attorney General's Office, "attorneys and investigators from the...[o]ffice and specially trained Deputy Sheriffs were either positioned at polling places or were traveling around the State checking polling places and responding when complaints were received."[13] Staff also set up and monitored a toll-free number to receive complaints and after the election, met with concerned citizens who suspected fraud may have occurred on Election Day. The state legislature held a hearing at which several people testified about suspected fraud in the November election. Overall, the main concerns were about EDR leading to multiple voting and voting by people who were not legally domiciled in New Hampshire.

Each specific complaint or allegation was investigated, which involved an initial database analysis of thousands of voting and registration records and follow-up investigations of about 240 people, most of whom had registered to vote on Election Day. In the end, all but six people who provided false information when they either registered or voted were shown to be legal voters in New Hampshire. Four who registered to vote on Election Day provided recent but no longer accurate addresses on their registration forms. Three of these four still lived in New Hampshire and were prosecuted for providing a false address; by the time of the investigation, the fourth had moved to another state and a warrant was issued for his arrest. The other two people used or forged false names—one was the 17-year-old who "subbed" for his father, and the other was a man who signed a nominating petition twice, once using his name and a second time with the name of a relative. Both of these individuals were prosecuted. The attorney general found no evidence that

anyone voted more than once.

## III. EDR DOES NOT COMPROMISE VOTER ROLL SECURITY

There are several possible reasons why Election Day Registration does not facilitate voter fraud and, in fact, may help deter it. First, EDR brings the registration process into the polling place where it is conducted under the eyes and authority of election officials on one day, Election Day. One would expect to see more polling place fraud in the EDR states if it actually threatened ballot security.

Critics of EDR argue that reopening voter registration at the polls on Election Day could facilitate voter impersonation and polling place fraud because election officials have no opportunity to verify information provided in a voter registration application before the applicant casts a ballot. But across the nation, the most egregious (though rare) types of election fraud involving voters are vote-buying and absentee ballot fraud—forms of electoral corruption that occur 1) before Election Day and 2) away from the polling place. They are not affected by EDR procedures.

The second reason why EDR procedures do not compromise voter roll secrutiy is that states offering Election Day Registration require registrants to substantiate their residency and identity at the polls. They do this by allowing voters to present a wide variety of acceptable forms of documentation.[15] The Help America Vote Act of 2002 added new safeguards by requiring states to collect information from registrants that could be used to cross-check their identity and residency with other state or government databases, principally through the collection of driver's license or partial social security numbers on all voter registration forms.

Third, some of the EDR states adopted procedures for list maintenance and post-election audits of Election Day Registration applications that add an extra identity-verification level for newly registered voters who may have registered at the polls. New Hampshire recently adopted a new law requiring the secretary of state to send a non-forwardable letter to all first-time EDR voters who did not provide photo ID when they registered at the polls. If the letters are returned, the secretary of state's office conducts an investigation and refers any possible criminal matters to the attorney general. Minnesota requires post-election audits of a sample of EDR voters and compels district attorneys by law to investigate any irregularities.

## IV. CONCLUSION

The data on voter fraud in the states with the most convenient registration rules suggest that liberalized registration procedures on their own do not cause voter fraud, nor do they compromise voter roll security. If they did, one would expect more press reports on fraud and more prosecutions and enforcement actions by the federal government and county prosecutors. Instead, the collective evidence suggests there has been very little voter fraud in EDR states over the past several election cycles. The problems leading to the federal investigation in Wisconsin, for example, were directly attributable to clerical errors, poll worker shortages and incompetence, not any organized scheme or intent on the part of voters to scam the system.[16] State and local election officials are addressing these problems with the implementation of a computerized statewide voter registration system, an overhaul of the administrative rules and procedures for registration, and enhanced poll worker training.

Administered effectively, Election Day Registration may actually provide more security for the ballot, not less. As the secretary of state of Minnesota recently put it, "EDR is much more secure because you have the person right in front of you—not a postcard in the mail. That is a no-brainer. We have 33 years of experience with this."[17]

## Endnotes:

1. Craig C. Donsanto and Nancy L. Simmons, *Federal Prosecution of Election Offenses*, 7th Ed. (U.S. Department of Justice, May 2007), pg. 2.

2. The California Secretary of State's office has compiled information on electoral fraud cases referred to it from 1994 to 2006, but that data is not publicly available.

3. Maine, Minnesota, and Wisconsin all adopted Election Day Registration in the 1970s; Idaho, New Hampshire, and Wyoming followed in the mid-1990s. Montana, Iowa and North Carolina recently adopted forms of Same Day Registration, but are excluded from the analysis because their experience with EDR is too recent. North Dakota is excluded because it does not require voters to register.

4. To be precise, I reviewed 3,890 news stories mentioning voter or election fraud retrieved from Lexis-Nexis databases for the period 1999-2005. The Wisconsin search was for the period August 21, 2003 to February 12, 2005. The newspapers searched include *AP* state and local wire services in all six states; and, in Idaho: *The Idaho Business Review, Idaho Falls Post Register, Lewiston Morning Tribune*; Maine: *Bangor Daily News, Portland Press Herald*; Minnesota: *The Legal Ledger, The Minnesota Lawyer, The Star Tribune*; New Hampshire: *The Manchester Union Leader*; Wisconsin: *The Capital Times, The Daily Reporter, The Milwaukee Journal Sentinel, Wisconsin Law Journal, Wisconsin State Journal*; Wyoming: *Wyoming Tribune-Eagle.*

5. Donsanto and Simmons, pg. 10.

6. Only 26 voters were convicted, for an average of 8-9 people a year.

7. All five people convicted had felony convictions and had not yet had their voting rights restored. They used their real names and addresses, and there is reason to believe none of them understood the law, despite the prosecutor's ability to convince a jury to the contrary in the cases that went to trial. Poll workers contributed to the problem and at the time, Wisconsin's voter registration card did not clearly inform applicants that they were not eligible to vote if they were serving out a sentence on probation or parole.

8. In the period, October 1, 2003 through September 30, 2004, the Justice Department prosecuted 425 defendants for felony tax law violations, including tax fraud, and won a conviction rate of 95.3 percent. The conviction rates for all other cases of felony fraud (9,261 defendants) were 90.3 percent. The conviction rate for all offenses charged, including misdemeanors (83,391 defendants) was 89.7 percent. *See* Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2004* (U.S. Department of Justice: December 2006), pg. 62.

9. Until the survey is completed, the names of the jurisdictions must be concealed to protect grants of confidentiality to survey respondents.

10. These are reports of voter fraud in which there is some mention of the involvement of elections or law enforcement officials in the reporting, investigation, or criminal prosecution of the fraud. They do not include unsubstantiated allegations of fraud by party officials, candidates, campaign workers, or voters. "Voter fraud" refers to corruption of the voting process; specifically, violations of federal or state election laws or procedures regulating the voting process, and committed by voters or by others encouraging the commission of fraud by voters.

11. Deposition of Joseph B. Meyer, *ACORN, et al. v. Bysiewicz*, Civil Action No. 3:04-cv-1624, U.S. District Court for the District of Connecticut (2005).

12. Ben Ysursa and Matthew Dunlap, "Never Too Late to Vote," *The New York Times*, May 11, 2007.

13. Memorandum from Bud Fitch, Deputy Attorney General to Chairman Robert Boyce, and Members Senate Internal Affairs Committee Chairperson, Chairman Michael D. Whalley, and House Election Law Committee Chairperson, dated April 6, 2006.

14. These are convictions and guilty pleas stemming from federal indictments brought between 2002 and 2005. They do not include convictions and guilty pleas in state court.

15. Only one state, Idaho, requires a photo ID to register on Election Day.

16. Steve Schultze, "No Vote Fraud Plot Found; Inquiry Leads to Isolated Cases, Biskupic," *Milwaukee Journal-Sentinel*, December 6, 2005.

17. Email communication with author, May 10, 2007.

## APPENDIX

1. **Registration fraud: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

**Two incidents, one in Minnesota and one in Wisconsin.**

The Minnesota case involved an on-going dispute between Richard J. Jacobson (of Prescott, Wisconsin), the owner of Jake's Gentleman Club in Coates, Dakota County (pop. 163), about 13 miles south of St. Paul, and the local five-member city council that kept changing city ordinances, as Jacobson evaded them, to shut down his club. The mayor and two city council members were facing contested elections at the time. Jacobson, who planned to run for mayor of Coates, was charged with felony conspiracy to commit forgery, and felony conspiracy to commit forgery for promoting a vote fraud scheme in which 93 other people fraudulently registered to vote using Jake's Gentleman Club as their legal address. The other 93 people were all charged with felony forgery and felony conspiracy to commit forgery. None actually voted and were offered a deal to pay a $240 fine and plead guilty to a misdemeanor. The scheme was uncovered when the county treasurer-auditor rejected a batch of suspicious voter registration cards. Eighty-nine these cards, bearing the address of Jake's as the applicants' addresses, were postmarked and mailed on October 5, the day after U.S. District Judge Donovan Frank ruled in a 10-year dispute between Jacobson and the town by upholding the city ordinances regulating sexually-explicit businesses, and ordering Jake's closed for violating the ordinances. The court found Jacobson in contempt for violating previous court orders, fined him $68,000 and ordered him to pay legal and other fees. In February 2004, the Eighth Circuit Court of Appeals overturned the ban on clothed lap dancing and the fine, but left the ban on nude dancing in place.

Update: A March 14, 2007, press release from the Dakota County Attorney announced: "Dakota County Attorney James C. Backstrom announced today that a Dakota County jury has found Richard Jacobson, age 36, formerly of Prescott, Wisconsin, not guilty of Conspiracy to Procure Unlawful Voting and Conspiracy to Commit Forgery, both felonies, in connection with a scheme to have 93 patrons, employees and other persons solicited elsewhere register to vote falsely in a 2002 election in the city of Coates, listing the strip club as their residence."

*Source:* Steve Karnowski, "Dakota County Charges 95 People in Alleged Voter Fraud Scheme," *The Associated Press State & Local Wire* (October 16, 2002); Jim Adams, "The Charges Laid Bare: Trying to Rig Election; 94 Accused of Helping Coates Strip Club Owner," Star Tribune (October 17, 2002); "Nearly All of Coates Votes to Send Message to Strip Club Owner," *The Associated Press State & Local Wire* (November 11, 2002); Amy Becker, "Strip Club Owner Jacobson Is Dancing Around the Law," *St. Paul Pioneer Press* (January 26, 2003); Jim Adams, "Array of Stories Emerging in Voter Fraud Case; Defendants Testify in a Case Connected to the Former Jake's Gentlemen's Club in Coates," *Star Tribune* (February 13, 2003); Ben Severman, "Court Overturns Fine on Coates Strip Club; Jake's Has Fought Court Battles Over Zoning Ordinances and Other Issues for 10 Years," *Star Tribune* (February 11, 2004).

For the Wisconsin case, see #3 below: Even though the case involves only one person, it is counted twice—once as registration fraud, and once as multiple voting involving absentee ballots—because the defendant was charged with felony voting for voting more than once (using an absentee ballot in one town and voting in person in another), but pled down to a misdemeanor charge of providing false information on a registration form.

2. **Voter impersonation at the polls: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

**One incident in New Hampshire.**

The case involved an underage voter, Mark Lacasse, a 17-year old honors student at Londonderry High School, who lied to elections officials giving them his father's name so that he could vote in the January 2004 Republican presidential primary. A teacher overheard Lacasse say he voted, telling others he had "subbed" for his father and voted in his father's name because he had known that his father, who was out of town, wanted to vote for George W. Bush. The polling site was located in his school and his teacher or class had visited the site to observe the voting process. The students were encouraged to vote if they were 18 years old. The teacher turned in the student to an elections moderator and his illegal voting was discovered. Lacasse eventually pled guilty to a misdemeanor and was sentenced to eight hours of community service and required to deliver a speech on voting to his high school class.

*Source:* David Lazar, "Trial Set in Illegal Voting Case," *The Union Leader* (April 21, 2004); David Lazar, "Underage Voter Gets Civics Lesson," *The Union Leader* (June 29, 2004).

3. **Multiple voting: Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

**One incident in Wisconsin.**

Michael R. Howard, 20, of Appleton, Wisconsin, was charged with felony voting for requesting and voting an absentee ballot from the Appleton city clerk in an April 6, 2004, nonpartisan state primary election. He then registered and voted in the same election in Eau Claire where he was a student at the University of Wisconsin. Howard claimed he did not know he couldn't vote twice in the same election, nor had he ever been informed in any of his civics classes at college that he couldn't vote twice. The Outagamie County assistant district attorney, John Daniels, said it was a rare case: "The clerks caught this one somehow. This is pretty uncommon. I have been doing this for 14 years and this is the first case of voter fraud I have seen." Daniels continued: "He did not vote twice for the same individuals. Therefore, the state does not believe at his young age he should be labeled a felon for the rest of his life." When asked by the judge why he thought he could vote twice, Howard replied, "I became aware of the city council elections and not thinking, I did it." He pled down to a misdemeanor, one year probation and 150 hours of community service, the conviction for making a false statement on a voter registration form to be expunged at the completion of probation.

*Source:* "College Student Accused of Voting Twice in Primary," *The Associated Press State & Local Wire* (August 11, 2004); "Student Charged with Voter Fraud," *Wisconsin State Journal* (August 13, 2002); "College Student Makes Court Appearance on Voter Fraud Charge," *The Associated Press State & Local Wire* (September 10, 2004); "Plea Deal Ends in Probation for Voting in Appleton, Eau Claire," *The Associated Press State & Local Wire* (January 10, 2005).

**Multiple Voting: Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown)**

**One incident in New Hampshire.**

According to a report in *The Union Leader,* "Last year [in 1999], a Nashua [New Hampshire] man voted in one ward and then traveled to another ward and asked for a ballot using another's name...although he received two ballots, he never voted, so the case wasn't prosecuted..."

*Source:* Mark Hayward, "Thousands In New Hampshire Register, Vote at Same Time; Inquiry Reveals Some Weak Links in the Six-Year Old System," The Union Leader (December 13, 2000).

4. **Absentee ballot fraud (forgery or use of an illegal address): Reports of convictions, guilty pleas, admissions of guilt in committing voter fraud**

**Three incidents, one in Wisconsin and two in Wyoming.**

The Wisconsin case involved a March 2003 special Milwaukee County Board recall election for Board chair, Lee Holloway. Holloway won the election easily, but nine people who sought absentee ballots through a voter group, the African American Coalition for Empowerment, Inc. (ACE), were charged with a variety of election law violations. Vincent Knox, a longtime local voting rights activist, spearheaded a campaign for ACE to increase the inner city vote by canvassing door-to-door to convince more people to apply for absentee ballots. ACE told voters to request that their absentee ballots be sent to ACE's office, and upon delivery, ACE workers would bring the ballots to the voter, witness the voted ballot and then deliver it to city hall. Forgeries (forged signatures, voting on behalf of phony people, and voting from nonexistent addresses in the forged ballots) were suspected in about 40 of 160 ballots returned by ACE and nine people who had signed the ballot envelopes as witnesses were charged with various election law violations. A jury found Knox, as supervisor of the drive, partially responsible for the forgeries—he was convicted of three felonies—felony election fraud, misconduct in office (he was a deputy registrar), and perjury—related to a single forged registration card. The girlfriend of the applicant of the forged card admitted in court that she had signed his name to the card while he slept; Knox's signature as a witness was on the card. Knox was sentenced to six months in the House of Detention with work release, and given three years probation. Circuit Judge David Hansher ruled that evidence at trial left it unclear whether there was a grand scheme to defraud, or merely widespread short-cutting by Knox and ACE canvassers, five of whom pled guilty to misdemeanors (Barbara Burton, Velma Jackson, Darcell Grafton, Charles Burton and Prentiss Grafton). One canvasser, Barbara Triblett, was acquitted. At the time of the news search, two continued to face felony charges (Dennis James and Michael Hanford). Because the disposition of their cases was unknown at the time the news search was conducted, they are recorded in the next column of the table under "Reports of official charges or official reports of voter fraud (disposition unknown)."

*Source: Milwaukee Journal-Sentinel* and *The Associated Press State & Local Wire* (various dates 3/27/03, 7/22/03, 7/24/03, 9/4/03, 12/13/03, 1/13/04, 1/14/04, 1/15/04, 1/17/04, 2/21/04, 1/17/04, 4/15/04)

The first Wyoming case involved state Representative Carolyn Paseneaux (R-Casper), an eight-year incumbent, who was charged with two counts of felony voter fraud—one count of false swearing and one count of false voting. Paseneaux had listed 1989 Glendo as her residence for purposes of obtaining absentee ballots over a 21-month period when she was moving around. Having sold her town house in 1997 for financial reasons, Paseneaux used the false address to vote in the 1998 and 2000 primaries and general elections. She worked out a deal and pled guilty to a misdemeanor, whereupon she was ordered to pay fine of $1,030 and placed on six months unsupervised probation.

*Source:* "Write-in Candidate Enters Tumultuous State House Race in Casper," *The Associated Press State & Local Wire* (November 4, 2000); "Paseneaux Pleads Guilty of Misdemeanor; Felony Charges Dropped," *The Associated Press State & Local Wire* (November 23, 2000).

In the second Wyoming case, Gary and Leila Blake pleaded no contest to misdemeanor voter fraud when it was discovered that they used absentee ballots to vote from an old address. They lived at 372 Curtis Street in Evansville before moving to 1372 Curtis Street in Casper, about five miles away. In 2000, they requested absentee ballots so they would miss none of the hunting season. The ballots were sent to the couple's post office box. According to an AP report:

> Natrona County Clerk May Ann Collins said the ballots should not have been sent to the post office box. She also said the wrong address might have been mistakenly listed. But she believes the couple bear some responsibility. "'They received a ballot that had Evansville Town Council and mayor on it, from their old address, so they should have said, 'Wait a minute, we don't vote in Evansville anymore,' she said." The Blakes claim they were unaware of any problem about the ballots until their arrest Dec. 11. The couple was fined $350 each and put on unsupervised six-month probation.

*Source:* "Couple Fined, Gets Probation for Miscast Votes," *The Associated Press State & Local Wire* (April 26, 2001).

5. **Illegal voting by disfranchised felons: Reports of official charges of official reports of voter fraud (final disposition unknown)**

**One incident in Wyoming.**

In his 2000 bid for re-election in the town of Hanna, Carbon County, Wyoming, longtime mayor I.W. "Bill" Coffman lost by 11 votes to challenger Ken Worman (the vote was 234-223). Supporters told Coffman that people who did not live in the town and felons had illegally voted in the election. Coffman filed a complaint and the Hanna police department launched an investigation. The Carbon County D.A. asked the state Division of Criminal Investigation for assistance. Seven people were eventually charged, some with felony false swearing and others with felony false voting. The seven had signed certifications that they were not convicted felons or that their voting rights had been restored, but the investigation by the state investigator, Mike Cole, who checked records back to 1963, showed this to be false. Carbon County D.A. Ed Risha commended Cole for spending hundreds of hours obtaining court records from all over the nation and determining whether the suspects had ever been pardoned, saying that Cole "did one of the most thorough, incredible investigations" he had ever seen.

*Source:* "Hanna Holds Recount After Allegations of Voter Fraud," *The Associated Press State & Local Wire* (November 14, 2000); "DCI to Probe Claims of Hanna Vote Fraud," *The Associated Press State & Local Wire* (November 25, 2000); "Seven Charged in Hanna After Probe into 2000 Election," *The Associated Press State & Local Wire* (August 7, 2002).

**Reports of violations of voting laws (no charges filed, charges dropped, or disposition unknown)**

**One incident in Wisconsin.**

Investigative reporting by the *Milwaukee Journal-Sentinel* determined some 361 felons had illegally voted in Milwaukee, Wisconsin, in the 2000 election (see report for more discussion and sources for this case). Three men were initially charged but charges were dropped when prosecutors determined that the men did not intentionally violate the law.

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## ABOUT THE AUTHOR

Lorraine C. Minnite teaches political science at Barnard College, Columbia University. She is also a Senior Fellow at Demos, and the co-author of the 2003 Demos report, *Securing the Vote: An Analysis of Election Fraud.* Some of the research and analysis presented here are derived from her forthcoming book on voter fraud in contemporary American elections.

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Visit www.demos.org or contact:
Stuart Comstock-Gay, Director, Democracy Program
scomstock-gay@demos.org | (617) 624-3900

Media inquiries: Timothy Rusch, Communications Director
trusch@demos.org | (212) 389-1407

220 Fifth Avenue, 5th fl., New York, NY 10001
T. (212) 633.1405 F. (212) 633.2015
info@demos.org | www.demos.org

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# The Impact of Election Day Registration on Voter Turnout and Election Outcomes

**Jacob R. Neiheisel[1] and Barry C. Burden[1]**

## Abstract

Voter registration is widely viewed as a barrier to voter participation in general, and especially so for likely Democratic voters. A popular remedy for both turnout effects is election day registration (EDR), which eliminates the closing date by permitting registration at the polls. Following earlier research we posit a small positive effect of EDR on turnout. But contrary to conventional wisdom, we theorize that individuals most likely to take advantage of EDR are in fact Republican voters. To investigate these causal effects we make use of a natural experiment in Wisconsin. When EDR was implemented in Wisconsin in 1976, only municipalities that already required registration were affected by the change in the law. Analysis of this intervention shows that EDR did increase turnout in Wisconsin but actually decreased the Democratic share of the two-party vote for president.

## Keywords

election day registration, election administration, voter turnout, partisan advantage

[1]University of Wisconsin, Madison, WI, USA

**Corresponding Author:**
Jacob R. Neiheisel, University of Wisconsin–Madison, 1050 Bascom Mall 110, North Hall
Madison, WI 53706, USA
Email: neiheisel@wisc.edu

Election day registration (EDR) has long been seen by reformers as a panacea for lower voter turnout and by Democrats as a means for attracting more supporters to the polls. In late 2009 Senator Russ Feingold (D-WI) and Representative Keith Ellison (D-MN) introduced bills in Congress that would allow all Americans to register at the polls on election day. It was little surprise that the primary sponsors of the legislation and a majority of the bill's cosponsors hailed from states that pioneered EDR. These legislative sponsors pointed to the high levels of turnout in their home states as evidence that EDR effectively increases voter participation. That all 22 cosponsors happened to be Democrats also suggests a partisan motivation for EDR. It is widely believed that reducing barriers to participation should increase turnout, which should also help the Democrats.

Scholarly research on the effects of EDR has helped to reinforce these views. Many studies conducted since the mid-1970s—when EDR was introduced in Wisconsin, Maine, and Minnesota—have produced varying and often sizable estimates of the increases in voter turnout attributable to EDR. Knowing whether EDR actually increases turnout is important in its own right. But politicians also care whether EDR affects the partisan composition of the voting public. Most observers assume that EDR increases turnout primarily by mobilizing supporters of Democratic candidates. Surprisingly, this assumption has yet to be tested. We suggest that the assumptions made by politicians about the partisan effects of electoral reforms may well turn out to be wrong.

In this article we seek to resolve these two debates with results from a natural experiment in Wisconsin during the 1970s. The setting is attractive because the state long had a dual system of voter registration whereby individuals in many parts of the state were not required to register before casting a ballot. When EDR was implemented in Wisconsin, only those communities that already had voter registration laws on the books were affected by the change in the law. This kind of within-state variation in the application of registration laws has been held up as the gold standard research design. Using the leverage afforded by this experiment, we employ a variety of statistical methods to show that EDR did increase county-level turnout, but to a lesser extent than some previous studies have led us to expect.

We also use this opportunity to test the partisan consequences of EDR. Because nonvoters tend to have demographic characteristics that are associated with voting Democratic, conventional wisdom suggests that "increases in turnout," such as those associated with the implementation of EDR in the state, should "enlarge the vote share of Democratic candidates" (Hansford & Gomez, 2010, p. 269; see also Berinsky, 2005; Franklin &

Grier, 1997; Hanmer, 2009; Knack & White, 1998). For instance, it has long been speculated that the introduction of EDR in Wisconsin may have contributed to Jimmy Carter's win in the state (Smolka, 1977). Here we test this conjecture by comparing the change in Democratic vote share from 1972 to 1976 in municipalities with EDR to the change in vote share in municipalities that continued to run elections without voter registration. Using difference-in-difference models, we find, contrary to common wisdom, that the introduction of EDR actually *decreased* the Democratic share of the two-party vote for president.

We contend that this finding should not be surprising based on what is known about the demographic profiles of likely voters and the varying consequences of individual registration processes. First, the traditional analogy between nonvoters and Democratic voters may be flawed because it fails to identify the nonvoters most likely to be influenced by changes in registration laws. Those most likely to take advantage of EDR are not randomly drawn from the pool of nonvoters; they tend to have higher levels of education and income, factors that also make them likely to vote Republican. Second, unlike the "motor voter" law, EDR does not create a preelection list of registrants from which Democratic campaigns might mobilize. This means that individual-level resources will continue to be important predictors of turnout. The result is that, at least in the short term, the turnout boost caused by EDR occurs primarily through the mobilization of Republican supporters. With this finding we therefore add to an ever-growing literature questioning the conventional wisdom surrounding the partisan effects of electoral reforms.

## Election Day Registration and Voter Turnout

EDR was introduced in just a few states in the mid-1970s. That number had doubled by the early 1990s. This spawned a cottage industry of studies seeking to evaluate the effects of the program on voter turnout and the composition of the electorate. In study after study using a variety of different methodologies, scholars have come to the same basic conclusion: EDR lowers the cost of voting for many Americans and increases overall turnout.

The precise magnitude of the effect, however, has been a subject of some dispute (Brians & Grofman, 1999). Most studies have found that EDR increases turnout anywhere from three to six percentage points on average (Alvarez, Ansolabehere, & Wilson, 2002; Burden et al., 2010; Fenster, 1994; Knack 1995, 2001; Fitzgerald, 2005; Hanmer, 2009; Rhine, 1995; Wolfinger & Rosenstone, 1980).[1] Highton's (2009, p. 509) review of the literature concludes that the effect of EDR on turnout is "about five percentage

points," although some studies have uncovered effects as large as 14 points (Rhine, 1996).

EDR is theorized to improve turnout because it does away with the registration "closing date." Scholars have long noted that the "closing date" stands as perhaps the foremost legal barrier to voting (Wolfinger & Rosenstone, 1980). The closing date forces voters to take two actions: first registration before the campaign has reached its maximum intensity and then voting on a separate date at a different location. Because the closing date is believed to be the most burdensome part of the registration process, replacing it with EDR should increase turnout significantly. At least in theory, then, EDR allows voters to register and vote in "one essentially continuous act" (Wolfinger, Highton, & Mullin, 2005, p. 3; see also Burden et al., 2010; Highton, 1997; Highton & Wolfinger, 1998; Knack, 1995). Some have even gone so far as to argue that same-day registration eliminates "all barriers to voting that are associated with registration" (Mitchell & Wlezien, 1995, p. 191).

Brians and Grofman (2001) summarize the different ways in which scholars have attempted to gauge the effects of EDR on turnout, pointing out the limitations of each approach in turn. They argue that studies using cross-sectional designs likely overstate the effects of registration requirements on voter turnout because they often overlook important differences between states (Highton, 1997; Highton & Wolfinger, 1998; Squire, Wolfinger, & Glass, 1987; Wolfinger & Rosenstone, 1980). The main problem is that the first states that introduced EDR in the 1970s already had high levels of voter turnout (Hanmer, 2009; Knack, 1995), thereby suggesting that there are other factors such as state culture or campaign strategies that affect turnout rates across the states. Inevitably, these factors go unmeasured (Ansolabehere & Konisky, 2006; cf., King, 1994). Longitudinal (Brians & Grofman, 1999, 2001; Fitzgerald, 2005; Knack, 1995) or quasi-experimental designs (Fenster, 1994; King & Wambeam, 1995/1996; Knack, 2001; Knack & White, 2000) that employ state-level data alleviate many of these concerns, but have nevertheless been plagued by their own share of limitations. As Keele and Minozzi point out, such studies have been unable to establish *causal* linkages between EDR and increased levels of voter turnout, as "it can be quite difficult to separate state level fixed effects from state level treatment effects" (2010, p. 40). In short, while cross-state analyses provide breadth, they are plagued by concerns about whether the researcher has actually captured causal effects or spurious relationships.

What is more, with few exceptions previous studies have treated states as though they were internally homogenous with respect to the registration process. At one time or another, though, a number of states used a "dual system"

of voter registration whereby voter registration was only mandated in some municipalities within the state (Ansolabehere & Konisky, 2006; Hanmer, 2009; Keyssar, 2000; Knack, 2001; Burden & Neiheisel, in press). For instance, before a statewide system of voter registration was implemented in Minnesota, about one third of the state's population voted without first having to register. For many Minnesota residents, then, EDR represented a *more* restrictive system of voter registration than had existed previously (Smolka, 1977; see also Ansolabehere & Konisky, 2006).[2] Given this fact, it is little wonder that turnout in "EDR" states actually declined as a group after same day registration was put into place (Knack, 1995; Smolka, 1977). The quasi-experimental design employed here, however, neatly avoids many of the difficulties encountered in earlier studies. As we explain below, only Wisconsin municipalities that had voter registration before EDR was implemented were affected by the switch to EDR.

Attempts at estimating the impact of EDR on voter turnout since Brians and Grofman's (2001) review have employed a variety of methods to pin down causal effects in a convincing fashion. Although these studies employ more sophisticated analyses, they continue to rely on cross-state comparisons. Hanmer (2009), for instance, enlists Iowa and South Dakota as comparison states for Minnesota and Wisconsin, respectively, in estimating EDR's effects using a difference-in-difference approach (see also King & Wambeam, 1995/1996). Similarly, Keele and Minozzi (2010) take advantage of the sequential adoption of EDR in Minnesota and Wisconsin to examine the impact of EDR, using matching to pair Current Population Survey respondents from comparable urban areas in both states.

We contribute to this new wave of research by taking a different approach that exploits within-state variation. This approach has been identified as especially attractive for estimating causal relationships between law and behavior (Ansolabehere & Konisky, 2006; Nicholson-Crotty & Meier, 2002). As Keele and Minozzi (2010, p. 40) note, "The best research design would be one where the analysis is conducted within a single state." The historical setting in Wisconsin allows us to hold state-level factors constant to examine the effect of EDR on turnout and the presidential vote distribution. To the best of our knowledge Wisconsin is the only state in which EDR was introduced across localities at different times. Municipalities with more than 5,000 persons were required by statute to register voters. Municipalities under this threshold, however, were permitted to adopt registration requirements voluntarily.[3]

This natural experiment in Wisconsin neatly avoids issues regarding the measurement of EDR that plagued earlier observational studies.[4] Our design

also allows us to set aside unobserved state-level characteristics such as state culture and campaign activities that have often gone unaccounted for in previous studies, thus generating convincing estimates of causal effects.[5]

After estimating the turnout effect, we revisit another longstanding debate in the literature. Political observers of all stripes have long suspected that higher voter turnout disproportionately benefits Democratic candidates (Franklin & Grier, 1997; Knack & White, 1998, 2000; Wolfinger & Rosenstone, 1980). Much of the debate about the 1993 passage of the National Voter Registration Act—also known as the "motor voter" law—was based on the common belief that easier registration would increase turnout and the vote share for Democrats. It is not surprising that Democratic officials in EDR states overwhelmingly support the practice while GOP party leaders in the same states have often expressed a great deal of antipathy toward EDR (Franklin & Grier, 1997). As Hanmer suggests, "Party officials' feelings about EDR tend to correspond with views about participation and the perceived effect EDR has on the success of their party" (2009, p. 171; see also Knack & White, 1998). The driving logic behind this perception is fairly straightforward: it has long been noted that the social characteristics of those who are most likely to vote are many of variables that predict support for the Republican Party (see DeNardo, 1980; Hansford & Gomez, 2010). Conversely, nonvoting is often associated with a set of demographic predictors—being young, minority, unmarried, less educated, lower income, and less religious—that is also associated with Democratic supporters. Increasing voter turnout through the introduction of EDR has therefore led many to believe that EDR aids Democrats at the polls.

Surprisingly, the assumption that EDR advantages the Democratic Party has never been tested systematically. There have only been cursory examinations inferred from simple correlations (Brians & Grofman, 2001; Calvert & Gilchrist, 1993) or even more indirectly by examining the demographic characteristics of EDR voters (Alvarez et al., 2002; Brians & Grofman, 1999; Hanmer 2007).

Recently Hansford and Gomez (2010) investigated the possibility of using registration laws as instruments for voter turnout, but concluded that they are not sufficiently exogenous to electoral outcomes because most such reforms were implemented by Democratic-controlled state legislatures. This concern has been echoed by Hanmer (2009). Fortunately, our study is free of this endogeneity problem because voter registration requirements were not universal in Wisconsin prior to the introduction of statewide voter registration in 2006. We compare the Democratic vote share in communities that were affected by EDR to otherwise similar communities that could not have been

affected. Focusing on *changes* in the Democratic vote share for president from 1972 to 1976 *within state* further allows us to control for a number of unobserved factors that might influence the Democratic share of the vote, providing a clean test of the so-called "Partisan Effect Hypothesis" (Hansford & Gomez, 2010).

As circumstances would have it, the time period under examination here is fortuitous for another reason, as it allows us to control for the possible confounding influence of incumbency. A prominent finding in the literature on the electoral effects of voter turnout is that higher turnout not only helps Democratic candidates but also hurts the incumbent candidate, regardless of party (see DeNardo, 1980; Hansford & Gomez, 2010). The incumbent in both the 1972 and 1976 presidential elections was Republican, leaving, as near as is possible, a clear look at the causal effect of EDR on the Democratic share of the vote. Thus our analysis of the partisan vote is also a test of the "Anti-Incumbent Hypothesis."

Lastly, we use these data to comment on DeNardo's (1980) finding that while higher levels of turnout benefit Democrats on average, this effect is conditioned by the composition of the electorate. According to DeNardo, increases in voter turnout advantage the minority party in the electorate, owing to the number of peripheral voters who join the electorate in high turnout elections. We should therefore expect to see Republican candidates benefitting disproportionately in heavily Democratic areas of the state with the introduction of EDR.

## County-Level Analysis of Voter Turnout

We begin by estimating the effect of EDR on voter turnout at the county level. Below we explain why a county analysis is required to study turnout. We assembled the data set from a variety of sources. Our dependent variable, voter turnout, is calculated in the traditional fashion by dividing the total number of votes in the county for the highest office on the ballot by the voting age population (VAP) in the county.[6] The numerator was collected from county canvasses of election returns compiled by the Wisconsin Elections Board, while the denominator was culled from census data. Values for noncensus years were estimated using simple linear interpolation (Ansolabehere & Konisky, 2006). With the exception of county population, which was estimated at the county level for each year by the Wisconsin Department of Administration, all other control variables were pulled from the census using linear interpolation to estimate values in noncensus years.

Our key independent variable is the proportion of a county's population affected by the adoption of EDR. Although we are not the first to use such a measure (Ansolabehere & Konisky, 2006), this variable construction requires some explanation because Wisconsin elections are administered at the municipal level. Prior to 1975 some municipalities required voters to register before they could vote, while others had no such restriction.[7] Only in those municipalities that already had voter registration requirements on the books could voters have been affected by EDR. Voters living in nonregistration municipalities went to the polls on election day in November 1976 and found the process to be no different than they had experienced in past elections.

We were able to collect estimates of the total population in each municipality from the Wisconsin Department of Administration. Our treatment variable, then, is constructed by adding the total population of all the municipalities in a county that had voter registration together and dividing by the total population in the county. It represents the percentage of each county's total population that was covered under the provisions of EDR from 1972 to 1980. We limit the focus of our inquiry to the immediate effects of the change in the election law to isolate the causal effect of EDR. Our concern is that the farther we get away from the intervention—the implementation of EDR—the more tenuous our inferences regarding the effect of the law on voter turnout and other outcomes are likely to be. If nothing else, mobility across municipal and county lines means that within a few years the population treated is quite distinct from the group of potential voters actually living in a community. As a result, we sacrifice some generalizability for greater precision.

The map in Figure 1 plots our key independent variable by county in 1976—the year that EDR was implemented in the state.[8] Darker counties represent those with the most widespread coverage of EDR. Counties with no shading had no municipalities that were affected by the change in the law. Although it appears that registration was somewhat more common in the eastern part of the state, there is no obvious spatial correlation among counties for us to incorporate.

Because this operationalization overstates the extent of EDR's reach in each county, we also estimated the VAP at the municipal level by multiplying the total population in each municipality by our estimates of the proportion of those 18 and above in the surrounding county.[9] In this version, the treatment variable is constructed by adding the total estimated VAP of all the municipalities in each county that had voter registration and dividing by the VAP in the county. Below we estimate models using both versions of the EDR coverage variable. Fortunately, the two measures are nearly indistinguishable ($r = .99$), so we do not expect the results to be affected by this choice.

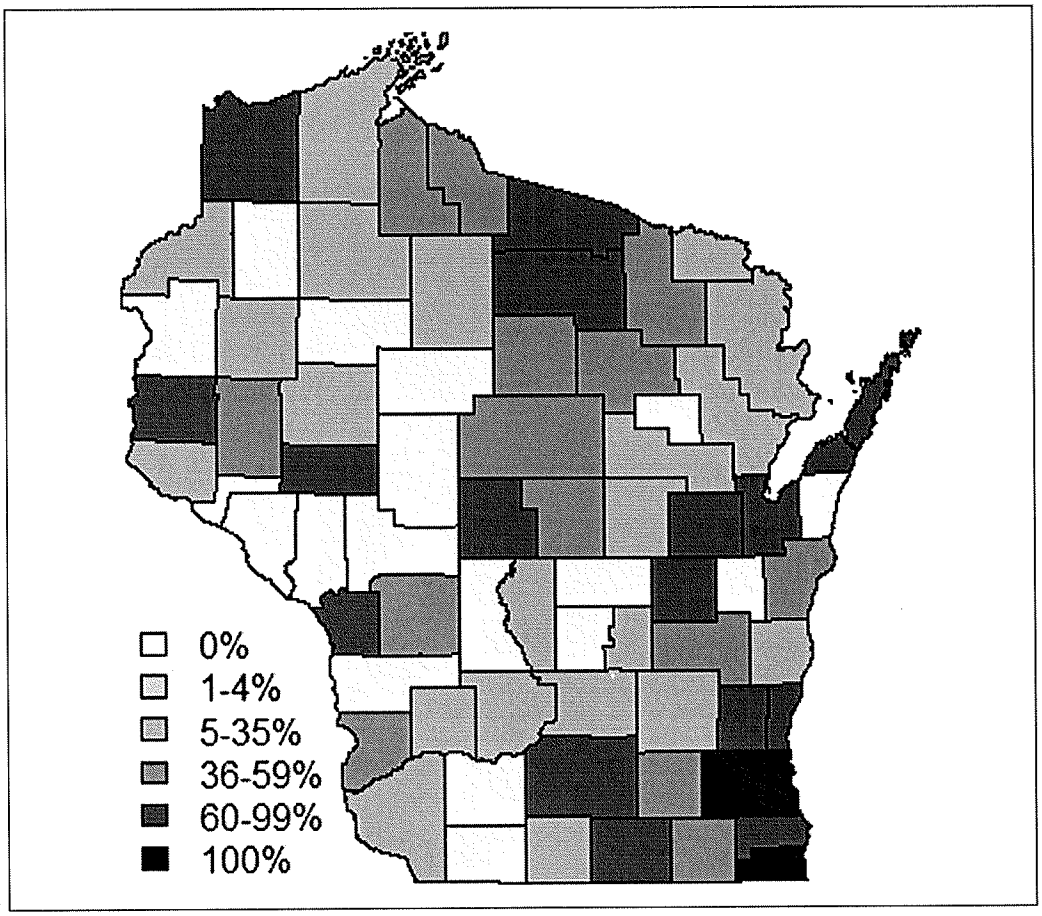


**Figure 1.** Implementation of EDR in Wisconsin (1976)

Our control variables include a common set of factors known to influence turnout. These are the proportion of the population that is African American, the proportion with a high school education, logged median family income, and logged total population. Although fixed effects will pick up most of the variation across counties, we might expect turnout to increase with education and income, and to decrease with a rise in African Americans and overall population.

We begin with the effects of EDR on turnout at the county level. Our first regression model is a fixed effects specification that includes both county and year dummies. Results from this model are displayed in the first column in Table 1. Our key predictor in the model—the percentage of the county covered by EDR—is positive and statistically significant. No other independent variables reach conventional levels of statistical significance. This is probably due

**Table 1.** The Effect of Election Day Registration (EDR) on Voter Turnout, 1972-1980: Fixed and Random Effects Models

| | Fixed effects models† | | Random effects models‡ | |
|---|---|---|---|---|
| Explanatory variable | 1 | 2 | 3 | 4 |
| Proportion of county Covered by EDR^ | 0.033** (0.011) | 0.032** (0.010) | 0.033** (0.008) | 0.033** (0.008) |
| Proportion African American | 0.476 (0.447) | 0.476 (0.445) | 0.034 (0.163) | 0.034 (0.164) |
| Proportion with a high school education | 0.199 (0.446) | 0.198 (0.446) | 0.453** (0.142) | 0.452** (0.142) |
| Median family income (logged) | −0.242 (0.145) | −0.243 (0.145) | 0.002 (0.043) | 0.002 (0.043) |
| Population (logged) | 0.0007 (0.0569) | −0.0002 (0.0569) | −0.029** (0.007) | −0.029** (0.007) |
| Constant | 2.816 (1.517) | 2.826 (1.517) | 0.800* (0.321) | 0.802* (0.320) |
| Within $R^2$ | 0.95 | 0.95 | 0.95 | 0.95 |
| Between $R^2$ | 0.10 | 0.11 | 0.40 | 0.40 |
| Overall $R^2$ | 0.81 | 0.81 | 0.89 | 0.89 |
| *N* | 360 | 360 | 360 | 360 |

Note: Standard errors are clustered by county. EDR = election day registration.
†Year and county fixed effects are not reported.
‡Year fixed effects are not reported.
^ Models 1 and 3 are based on total population; Models 2 and 4 use estimates of voting age population.
*$p < .05$. **$p < .01$.

to the year and county fixed effects picking up most of the variation, making it more remarkable that EDR shows an independent effect.[10]

The regression coefficient on our treatment variable indicates that as a county moves from no coverage of EDR to full coverage, voter turnout is predicted to increase by approximately three percentage points. This is based on a measure computed from total population figures. As shown in the second column of Table 1, rerunning the same model using an alternate operationalization of our treatment variable that employs estimates of the voting age population in the county covered by EDR rather than total population produces reassuringly similar estimates.

As an additional robustness test, we also estimated a pair of random effects models that are otherwise identical in specification to the fixed effects

models.[11] Although we have greater confidence in the estimates from our fixed effects models, for the sake of comparison we present model results using both estimators. The last two columns in Table 1 show that the coefficient on our key independent variable remains essentially unchanged even with the random effects approach, demonstrating once again that the introduction of EDR had a positive and statistically significant effect on voter turnout of approximately 3.3 percentage points.[12]

Our findings contrast slightly with those of earlier studies, most of which estimated the effect of EDR to be anywhere from three to six percentage points. Using a methodology that guards against unmeasured confounders, we find an effect at the low end of this range. The result also differs from recent investigations that match samples across state lines and have turned up little support for a causal link between the adoption of EDR and increases in voter turnout (Keele & Minozzi 2010).

## A Theory of Partisan Effects: Why EDR Is Not Motor Voter

Having established the turnout effects of EDR, we move on to test the widely held belief that EDR disproportionately aids Democratic candidates. In spite of the ubiquity of this assumption, no existing study has examined EDR's impact on the vote directly. Rather, previous estimates have been generated from observing the effects of "motor voter" reforms on party registration (Knack & White, 1998) and the Democratic share of the two-party vote (Franklin & Grier, 1997). Many existing studies have "treated EDR and motor voter as functionally equivalent" (Hanmer, 2009, p. 31).[13] That is, higher turnout should always help the Democrats regardless of how turnout was increased.

While the introduction of either EDR or motor voter will likely increase turnout, we theorize that they will have different effects on partisan election outcomes (see also Highton & Wolfinger, 2001).[14] There are two reasons for this. First, the timing of EDR and motor voter differ. Individuals who take advantage of motor voter by registering to vote when they renew their driver's license or file paperwork in another government office are likely to show up on the registration lists that the parties use in mobilizing voters, even if they lack a track record of voting in previous elections. By contrast, those who register at the polls on the day of the election are unlikely to be subject to mobilization efforts from the parties (Hanmer, 2009). Research has documented that mobilization efforts by parties, candidates, and other political actors have large impacts on turnout (Rosenstone & Hansen, 1993/2003). It

seems plausible that those who were brought to the polls without a great deal of exposure to partisan messages may behave much like the set of "peripheral" voters that DeNardo argues are "just as fickle inside the voting booth as they are about getting to it" (1980, p. 418).

Second, and more importantly, motor voter and EDR affect demographic groups differently. Political scientists and other observers have simply assumed that because the same demographic characteristics that are associated with nonvoting also predict voting for Democratic candidates, eliminating restrictions on the franchise would naturally advantage the Democrats (Alvarez et al., 2002; Franklin & Grier, 1997; Knack & White, 1998, 2000; Wolfinger & Rosenstone, 1980). But that approach assumes that the people most likely to be mobilized by a registration reform are drawn randomly from the pool of nonvoters.

People registered via motor voter are probably fairly representative of the nonvoting population, which skews them toward the Democrats. In contrast, nonvoters who are most easily persuaded to turn out to vote by EDR share more in common with those who vote Republican than they do with those who vote Democratic. A person with a higher probability of voting to begin with probably possesses many of the same demographic characteristics as regular voters—higher income, more education, more likely to be married, more likely to belong to church, and more likely to own a home—all traits that skew Republican. This is the logic in Berinsky's (2005) ironic argument that electoral reforms further exacerbate socioeconomic biases in the composition of the electorate. Although the availability of EDR was publicized to some extent, those who pay more attention to politics—a characteristic commonly associated with higher socioeconomic status—were almost certainly more aware of the change in the law than the ill-informed.

Perhaps universal turnout would help Democrats by mobilizing even the most unlikely of voters (Calvert & Gilchrist, 1993; Citrin, Schickler, & Sides, 2003; Lacy & Burden, 1999, cf. Highton & Wolfinger, 2001). But we have already shown that EDR increases turnout by only a few percentage points. The full set of nonvoters does not share the same preferences as the small portion who would turn out as a result of EDR. In mobilizing the most likely voters among the nonvoters, EDR is apt to draw Republicans disproportionately to the polls precisely because the factors that make them "near voters" also incline them toward Republican candidates.

There is already preliminary evidence that registration reforms do not always disproportionately mobilize people on the lowest rungs of the socioeconomic ladder. Rigby and Springer (2011) find that EDR does not reduce the income bias in turnout in midterm elections and does so only in

presidential elections in states where the registration bias was previously large. Alvarez and colleagues likewise acknowledge this possibility when they write that "the easing of voter registration requirements through reforms like election day registration tend to expand the size of the registered and voting populations—and not necessarily their underlying compositions" (2002, p. 11). This conclusion was even foreshadowed in Wolfinger and Rosenstone's (1980) early insight that more lenient registration laws probably would not have helped the Democrats in the 1972 presidential election, despite the "general belief" to the contrary. Here we test directly whether EDR has the expected partisan effects.

## Municipal-Level Analysis of Partisan Vote Share

In testing the partisan effect hypothesis we are able to shift the unit of analysis downward from counties and instead employ a municipal-level data set that includes observations on all 1,851 municipalities in the state.[15] Democratic vote share is available at the ward level and aggregated up to the municipal level. This variable was collected from various editions of the *Wisconsin Blue Book* series. At this level of aggregation our treatment variable is simply a dichotomous indicator for whether the municipality had voter registration in a given year.[16] The only other control available at this level is the total population of the municipality, estimated for each year by the Wisconsin Department of Administration.[17]

We estimate a difference-in-difference model to examine the change in the Democratic share of the two-party vote for president from 1972 to 1976 that can be attributed to the introduction of EDR. The results appear in Table 2. Contrary to the conventional wisdom surrounding the partisan effects of increases in voter turnout, the introduction of EDR appears to have actually *decreased* the Democratic share of the vote for president in 1976. As the first model shows, the Democratic vote share dropped by about four percentage points when EDR was imposed on municipalities that already had a system of voter registration in place.[18] Although we are not the first to suggest that increases in voter turnout are associated with gains for the GOP (Schneider, 1985), the statistical evidence provided here represents the most systematic documentation of this effect.

One methodological concern is that there might be something distinctive about the municipalities that began to register voters without being forced to do so by virtue of population size. The choice seems unrelated to demographic variables such as education, income, and education, all of which are similar between municipalities required to register and those who

**Table 2.** The Effect of EDR on the Democratic Share of the Two-Party Vote, 1972 to 1976: Difference-in-Difference Models

| Explanatory variable | Base comparison | Without voluntary registration municipalities | Without Milwaukee and surrounding area† |
|---|---|---|---|
| EDR | −0.041** | −0.064** | −0.034** |
| | (0.004) | (0.007) | (0.004) |
| Population (logged) | −0.036 | −0.059** | −0.049 |
| | (0.035) | (0.019) | (0.035) |
| Constant | 0.114** | 0.115** | 0.116** |
| | (0.002) | (0.002) | (0.002) |
| Adjusted $R^2$ | 0.042 | 0.055 | 0.026 |
| *N* | 1,864 | 1,734 | 1,775 |

Note: Entries are OLS estimates. Standard errors are clustered by municipality. All variables are measured in changes (Δ). EDR = election day registration.
†Observations from Milwaukee, Ozaukee, Racine, and Waukesha Counties are omitted in this model.
*$p < .05$. **$p < .01$.

voluntarily did so (Burden & Neiheisel, in press). Anecdotal discussions with local election clerks suggest that the decision to adopt registration in municipalities with fewer than 5,000 people was largely idiosyncratic, dependent on factors such as the personality of the clerk in charge. Our basic conclusions obtain even when omitting those municipalities that voluntarily began to register voters from the analysis. Indeed, the size of the effect increases from four percentage points to six percentage points, as shown in the second column in Table 2. Some may have concerns that this finding is being driven in large part by "White flight" from the cities to the outlying suburbs—a phenomenon that continued throughout the period of observation (see Nall, 2010). It is possible that the movement of more affluent individuals from urban centers like Milwaukee to create Republican strongholds outside the cities is at least partially responsible for the decrease in Democratic vote share that accompanied the implementation of EDR (Conant, 2006). The negative effect of EDR on the Democratic vote persists, however, even when omitting 89 municipalities from the county containing the state's largest city and the surrounding three counties, an area that roughly defines the Milwaukee statistical area. This is shown in the third column of Table 2.[19]

It does not appear that the result is merely an outpouring of idiosyncratic differences in party strategy. Although the effect might be different in the long run than in the short run, or manifest differently in midterm elections, we also found no evidence from either interviews with state election officials or our review of media coverage that the Republican Party was especially active in using EDR in Wisconsin in the 1976 presidential election. Moreover, the basic building blocks for party strategy development in Wisconsin—the political geography of the state (see Conant, 2006)—did not change appreciably enough between the two elections examined here to provide a credible explanation for our findings.

A pro-Republican effect of three to six points is not trivial. Because Jimmy Carter won Wisconsin by less than two points, if implemented in all municipalities EDR could have had a large enough effect to throw the state's electoral votes to incumbent Gerald Ford, or at the very least move the vote closer to the "margin of litigation."

The model finds no support for the anti-incumbent hypothesis. Because the incumbent president was a Republican in 1972 and 1976, the coefficient on the EDR variable should be positive if it helped the "out" party.[20] Indeed, if the expected anti-incumbent effect and the expected pro-Democratic effect both held, we might observe a net coefficient that is near zero. Instead, the effect is negative, indicating that EDR worked to the advantage of Republicans who also happened to be in office. This makes the surprising partisan effects of EDR even more convincing.

These data also allow us to test a final hypothesis regarding the partisan effects of EDR. In his study of turnout and the vote, DeNardo (1980) found that increases in turnout helped Democratic candidates on average, but that this effect was conditioned by the partisan composition of the electorate. He found higher levels of turnout in heavily Democratic areas leading to increases in the Republican share of the two-party vote. The explanation was that higher turnout brings out more peripheral voters who have weaker attachments to the dominant party. Although we do not measure turnout at the municipal level per se, we have already demonstrated that the introduction of EDR precipitated a small increase in voter turnout, so the secondary question is whether the turnout effect helps Republicans more in places where Democrats tend to do better.

Following DeNardo's reasoning, then, we should expect a negative coefficient on an interaction term involving the partisan composition of the municipality and our indicator for whether EDR was implemented in 1976. Table 3 displays estimates from a series of OLS models predicting the Democratic share of the two-party vote in 1976. As a baseline, the first column displays estimates from a "base" model that includes an indicator for

**Table 3.** The Effect of EDR on the Democratic Share of the Two-Party Vote in 1976

| Explanatory variable | Base model | With interaction | Without voluntary registration municipalities | Without Milwaukee and surrounding area† |
|---|---|---|---|---|
| EDR | −0.011* | −0.042* | −0.060** | −0.032† |
| | (0.005) | (0.019) | (0.023) | (0.019) |
| Population (logged) | −0.021** | −0.022** | −0.024** | −0.022** |
| | (0.002) | (0.002) | (0.003) | (0.002) |
| Democratic vote share (1972) | 0.799** | 0.791** | 0.789** | 0.779** |
| | (0.014) | (0.015) | (0.015) | (0.014) |
| EDR × Democratic vote share | — | 0.082† | 0.163** | 0.062 |
| | | (0.048) | (0.053) | (0.048) |
| Constant | 0.337** | 0.343** | 0.361** | 0.353** |
| | (0.016) | (0.017) | (0.020) | (0.017) |
| Adjusted $R^2$ | 0.714 | 0.714 | 0.711 | 0.713 |
| *N* | 1,864 | 1,864 | 1,734 | 1,775 |

Note: Entries are OLS estimates. Standard errors are clustered at the municipal level.
EDR = election day registration.
†Observations from Milwaukee, Ozaukee, Racine, and Waukesha Counties are omitted in this model.
†< .10. *$p$ < .05. **$p$ < .01.

whether the municipality had EDR, logged municipal population, and the Democratic share of the two-party vote in the previous presidential election.[21] Roughly consistent with the above results in Table 2 (the more convincing "difference-in-difference" model), the estimates displayed in the first column of Table 3 provide additional evidence to the effect that the introduction of EDR drove down Democratic vote share, if only slightly.

The second column in Table 3 displays estimates from a model that includes an interaction term that allows us to reexamine DeNardo's earlier findings (see also Hansford & Gomez, 2010). Although the interaction term in this model does not reach conventional levels of statistical significance ($p = .09$), the coefficient is positively signed, indicating that as the Democratic share of the two-party vote for president in 1972 (our proxy for the partisan composition of the municipality) increased, the negative effect that EDR exerted on Carter's vote share in 1976 declined.

The marginal effect of EDR on Democratic vote share in 1976 is plotted in Figure 2, along with a rug plot showing the distribution of municipalities.

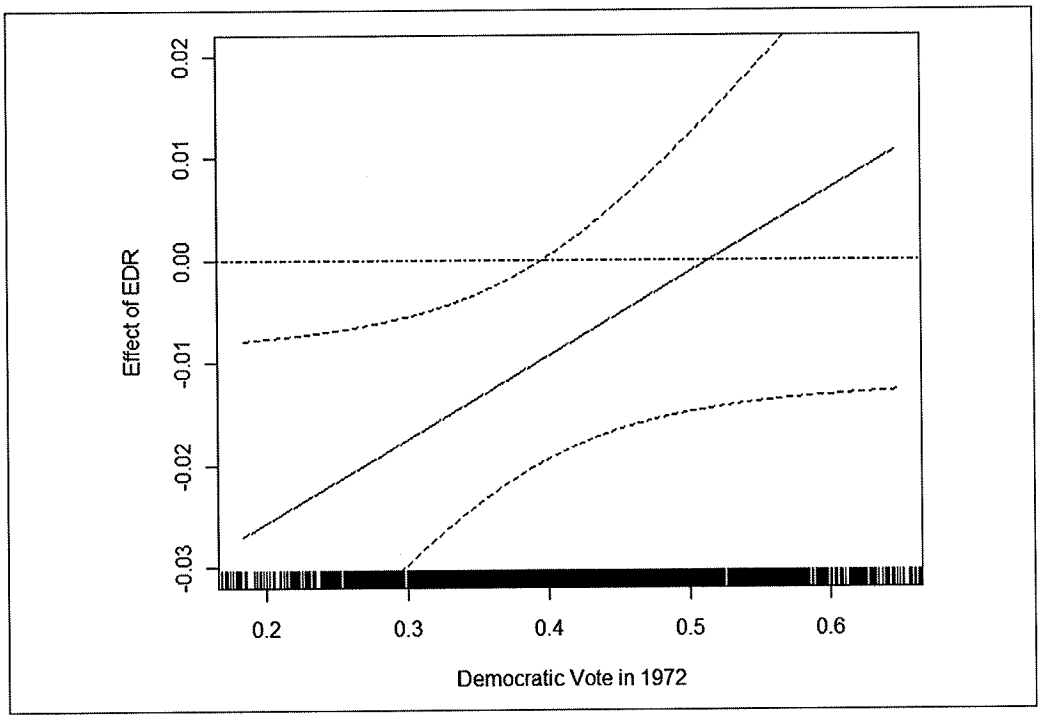


**Figure 2.** The marginal effect of EDR on Democratic vote share in 1976
The solid line represents predicted values from the second model in Table 3. Dotted lines indicate 95% confidence intervals. The rug plot reflects the density of observations in the data set.

The figure shows that Democratic strongholds—that is, municipalities wherein the Democratic candidate garnered more than half of the vote in the previous election—were even more heavily Democratic in 1976 thanks to the presence of EDR. Stated another way, the decrease in the Democratic share of the two-party vote wrought by the introduction of EDR is moderated by the partisan composition of the municipality, but in the opposite way that DeNardo's reasoning suggests. This result is, however, entirely consistent with the idea that easing registration requirements does not alter the underlying composition of the electorate, but merely expands it (Alvarez et al., 2002; Wolfinger & Rosenstone, 1980). On average, we contend, this means that those with Republican-leaning sensibilities are more likely to turn out to vote following the removal of restrictions on the franchise. In areas where the population has a large enough base of Democratic supporters to offset this effect, however, EDR might well benefit Democrats. This appears to be a higher hurdle for Democrats than it is for Republicans, as the effect in Figure 2 is not significantly different from zero in municipalities that voted

Democratic. Had EDR only been implemented in municipalities that strongly favor Democratic candidates, the net result might have been different. That the effect of EDR on the Democratic share of the two-party vote varies depending on the partisan composition of the municipality complicates our theoretical story to an extent, but nevertheless reinforces our core point that increases in turnout attributable to the introduction of EDR do not change the makeup of the voting population.

As an additional robustness check we reestimated our interactive model after dropping the municipalities that voluntarily adopted voter registration requirements from the data set. Estimates from this model are shown in the third column of Table 3. As with the base and interactive models described above, the main effect of EDR on the Democratic share of the two-party vote for president in 1976 is negative. The interaction term involving the partisan composition of the municipality and our indicator for whether EDR had been introduced in the municipality is positive and, this time, statistically significant at conventional levels.[22] Once again, our results contradict the findings of those who have argued that the influx of peripheral voters with weaker partisan attachments drives down the vote share for Democrats in Democratic strongholds. That finding might hold when changes in voter turnout are due to factors such as campaign mobilization, the weather, or other election laws. The evidence that we present here, though, suggests that the increase in voter turnout that accompanied the introduction of EDR did not follow the same pattern found in previous studies. Rather, EDR seems to have precisely the opposite effect, driving down the Democratic share of the two-party vote for president on average, but to a lesser extent in heavily Democratic municipalities.[23]

This result is sensible given our theory of how registration reforms affect potential voters. First, we contend that higher socioeconomic status individuals are more likely to take advantage of EDR and that those same individuals are more prone to vote Republican. Second, in highly Republican communities, this relationship will be enhanced as each new voter is more likely to be Republican as well. This produces the ironic conclusion that Democrats might only benefit from EDR in jurisdictions where they are already winning rather than in communities where they hope to overcome a deficit.

It is only fair to address some of the lingering concerns that readers may have about generalizability. The analysis is based on observations from a particular state in a particular era. It is possible that the findings would differ if the data were more recent or if the state analyzed had more demographic diversity or more centralized election administration. How might this affect

the results? Contemporary society displays more geographic mobility and that might well enhance the turnout effects of EDR because it serves recent movers especially well. It is unclear how changing the racial and ethnic diversity on its own would affect the results although factors such as inequality that tend to coexist with diversity might modify the effects of higher turnout. Wisconsin has long been a high turnout state; in a state with a lower level of participation the turnout effects of EDR could well be stronger because the pool of peripheral voters is larger. At the same time, having more nonvoters could mean that a larger share of them have Democratic leanings. Clearly the partisan context and preexisting turnout levels could interact to produce a range of results. Finally, most other states have more centralized election administration than does Wisconsin and handle election day registration in different ways. Those rules and structures are likely to condition the effects. One need not believe that more accommodating voter registration laws always benefit Republicans to appreciate the finding that this counterintuitive relationship has in fact appeared in at least some elections.

Although our analysis is bound in part by geography and time, we tolerate them as part of a trade-off between causal leverage and generalizability. Laboratory experiments, field experiments, and natural experiments like the one that we identify here are ideally suited to identifying causal mechanisms and help to move us beyond inferring causality from correlational research—something that many previous studies of election administration have been forced to do. As we have stated above, we believe that the Wisconsin case is the only one in which we are able to observe the effects of EDR in isolation, divorced from secular trends and other confounding influences at the state level.

## Discussion and Conclusion

This article contributes to our understanding of election laws on turnout and election outcomes both theoretically and empirically. Theoretically, we have reasoned that EDR will produce modest positive effects on turnout because it eliminates the registration closing date, a significant hindrance for marginal voters. In contrast with conventional wisdom, we have argued that EDR will not necessarily help Democrats. Unlike reforms such as motor voter, EDR is most likely to mobilize nonvoters who resemble voters demographically, and this often tilts them toward the Republicans. Because the parties rely on registration lists in organizing their efforts to mobilize voters, those who take advantage of EDR are far less likely to be exposed to partisan messages prior

to heading to the polls. Not all reforms making it easier to vote will affect the parties' fortunes to the same degree, and not even in the same direction.

Empirically, we have drawn on a natural experiment to provide an estimate of EDR's causal effect on turnout and the parties' vote shares. Most studies have found that EDR increases voter turnout anywhere from three to six percentage points with more recent work arguing for no effect. While we have shown that EDR did increase voter turnout on its introduction in Wisconsin, the size of the effect is quite modest when compared to most existing estimates. What is more, if Hanmer (2009) is correct in his observation that EDR produced the largest gains in voter turnout in states like Minnesota and Wisconsin where demand for participation is thought to be high, the prospect that the adoption of EDR in additional states will increase voter turnout, as a number of current proposals contend, seems unlikely. At the same time, a highly participatory state such as Wisconsin may be a difficult setting in which to increase turnout further, suggesting that EDR's turnout effects could be larger in states with lower levels of turnout.

We also found that the introduction of EDR actually decreased the Democratic share of the two-party vote for president by several percentage points. Although we are unable to test all of the various mechanisms that lead EDR to bring out more Republican voters, it seems clear that the introduction of EDR in Wisconsin reduced the Democratic share of the vote for president, at least in the short term. A growing number of scholars have begun to note that electoral reforms can have "perverse" consequences (Berinsky, 2005). We echo such conclusions in this study, and submit that those who push for the adoption of EDR and other electoral reforms with hopes of increasing participation among likely Democratic supporters may be surprised at the true effects of such policies as they are put into practice.

A number of policies and political machinations have been thought to advantage one party at the expense of the other. Systematic study has often turned these beliefs on their head. Partisan gerrymanders, for instance, apparently do not always have the desired effects (Niemi & Abramowitz, 1994; Swain, Borrelli, & Reed, 1998). Nevertheless, partisan officials rarely pass at the chance to redraw electoral districts in accordance with their beliefs about how certain arrangements might advantage their side. Neither does the recent *Citizens United* decision appear to have had the predicted reverberations throughout the business community (Werner, 2011). Since the inception of individual voter registration requirements in the late 19th century, the parties have continually sparred over access to the franchise (Hayduk, 2005; Keyssar, 2000). As we have shown, however, such energies may not work to the desired ends of party strategists.

# Appendix

The Effect of Election Day Registration on Democratic Vote Share, 1972-1980: Fixed Effects Models

| | Presidential only | | Presidential and midterm | |
|---|---|---|---|---|
| Explanatory variable | 1 | 2 | 3 | 4 |
| Proportion of county covered by EDR[a] | −0.048*** | −0.048*** | −0.066*** | −0.066*** |
| | (0.013) | (0.013) | (0.016) | (0.016) |
| Proportion African American | 0.672 | 0.671 | 0.695 | 0.685 |
| | (0.425) | (0.425) | (0.421) | (0.419) |
| Proportion with a high school education | 0.130 | 0.129 | −0.242 | −0.240 |
| | (0.257) | (0.257) | (0.309) | (0.309) |
| Median family income (logged) | −0.086 | −0.086 | −0.090 | −0.090 |
| | (0.079) | (0.079) | (0.106) | (0.106) |
| Population (logged) | −0.011 | −0.011 | −0.083 | −0.081 |
| | (0.064) | (0.064) | (0.071) | (0.071) |
| Constant | 1.287 | 1.283 | 2.170 | 2.150 |
| | (0.998) | (0.997) | (1.121) | (1.121) |
| Within $R^2$ | 0.80 | 0.80 | 0.58 | 0.58 |
| Between $R^2$ | 0.05 | 0.05 | 0.03 | 0.03 |
| Overall $R^2$ | 0.25 | 0.25 | 0.09 | 0.09 |
| *N* | 216 | 216 | 360 | 360 |

**$p < .05$. ***$p < .01$.
Note: Standard errors are clustered by county. Year and county fixed effects are not reported. EDR = election day registration.
a. Models 1 and 3 are based on total population; Models 2 and 4 use estimates of voting age population.

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## Notes

1. Interestingly, Smolka's (1977) original case study of the effects of EDR on turnout in Minnesota and Wisconsin estimated that the introduction of EDR had an impact on turnout of no more than two percentage points. King and Wambeam's (1995/1996) later study found a much larger seven percentage point increase in statewide voter turnout in Wisconsin as a result of EDR, but no corresponding increase in Minnesota or Maine.
2. Even after the adoption of a statewide system of voter registration in Minnesota, individual counties containing no city greater than 10,000 persons were permitted to be exempted from the statewide registration system by resolution of the county board. Prior to 1976 only one county (Pope County) exercised this option. After the 1976 presidential election Itasca County also chose to do so (Smolka, 1977).
3. It is unknown whether any of these voluntary adopters introduced EDR in 1976 not having used any form of voter registration beforehand. The Wisconsin State Elections Board was only required by statute to publish a list of municipalities that registered voters from 1976 to 1980. Only seven municipalities voluntarily adopted registration between 1976 and 1980. See Smolka (1977) or Huefner, Tokaji, and Foley (2007) for more details on the history of voter registration requirements in Wisconsin.
4. Wisconsin also began permitting residents to register by mail at this time, so our estimates are perhaps best interpreted as the joint effect of EDR and mail registration. Even though ostensibly easier than registering at a government office, mail registration still entails that "one must figure out how to obtain a card, fill it out, and then return it before the deadline"—all factors that make registration by mail a great deal more costly than simply registering at the polls (Hanmer, 2009, p. 137). Accordingly, Smolka (1977) argues that mail registration on its own has no effect on voter turnout. We are therefore confident that the effect that we identify is primarily attributable to the availability of same day registration.
5. As a number of observers have noted, it is still possible that there may be considerable variation in political culture across the different geographic regions of the state. For what it is worth, however, the dominant culture in Wisconsin is thought to be the moralistic political culture described by Elazar and others although "the individualistic culture also has strong roots in the state" (Conant, 2006, p. 18).

Nowhere has it been documented that these two traditions are associated with distinct areas of the state.

6. Although a measure of voting eligible population (VEP) that takes into account the number of persons in the county who are ineligible to vote would be preferable (McDonald & Popkin, 2001), all of the components involved in estimating the VEP simply are not available at the county level over the time period under consideration. Fortunately, the divergence between VAP and VEP should not vary much over the short time period we examine.
7. The list of municipalities in Wisconsin with voter registration was collected from various editions of the Election and Campaign Manual published by the state elections board (Wisconsin State Elections Board, 1979, 1980).
8. As suggested earlier, a map produced using data from the last year in our data set (1980) looks almost identical to the map displayed in Figure 1 because only seven municipalities introduced voter registration requirements in the intervening period.
9. This is the Wisconsin Department of Administration's preferred methodology for producing such estimates.
10. The inclusion of indicators for whether there was a gubernatorial or senatorial race on the ballot does not change our basic results. The coefficient on our key independent variable remains statistically significant, and is of the same magnitude.
11. Although there are advantages to the random effects estimator, as it is thought to be more efficient than the fixed effects estimator in many situations, its use requires additional assumptions that are rarely satisfied in practice. In deciding between the fixed effects and random effects estimator it is therefore common to conduct a Hausman test. The standard Hausman test, however, often leads to invalid inferences in panel data sets, such as the one we employ in this study, where there is cause to suspect that the errors are not identically and independently distributed (Hoechle, 2007). It is for this reason that we turn to a robust version of the Hausman test described by Wooldridge (2002). This test provides evidence against the random effects approach. A robust version of the Hausman test with Driscoll and Kraay standard errors implemented using the—xtscc—program in Stata (Hoechle, 2007) likewise favors the use of the fixed effects estimator. A similar result is obtained using—xtoverid— (Schaffer & Stillman, 2006). Interestingly, the standard Hausman test would have led us to conclude that the use of the random effects estimator was justified.
12. A difference-in-difference model likewise suggests that EDR increased voter turnout in 1976, if only slightly. The coefficient on the treatment variable is not significant ($p = .131$) although with only 72 cases in the differenced county-level data set there is obviously a great deal of concern about statistical power. As an

additional robustness check, we weighted the data by population. Doing so did not change our results. These models are available upon request.

13. As with the EDR bill introduced in 2009, the National Voter Registration Act of 1993, which authorized "motor voter," was cosponsored by 111 members of Congress, all of them Democrats. Similarly, Hanmer (2009) notes that only a single Republican stepped forward to cosponsor the bill that included the provision to allow EDR. All of the votes for passage were from Democrats—not one Republican in the legislature voted for the bill.
14. To be sure, not all observers agree that motor voter increased voter turnout (Brown & Wedeking, 2006; Martinez & Hill, 1999).
15. The data set actually includes 1,864 observations because some municipalities are split by county boundaries and county clerks are responsible for reporting final election results.
16. Although we would have liked to use municipalities as our unit of analysis throughout, we are unable to do so for several reasons. For one, the Wisconsin Blue Book, our source for the vote totals, does not list returns for all of the candidates running for president in the state. Therefore, the numerator used in the turnout calculation would provide an incomplete accounting of the number of individuals who went to the polls on Election Day. Turnout might be systematically understated in areas that disproportionately favored third-party candidates. We are, however, able to calculate the Democratic share of the two-party vote at this level of aggregation. Moreover, few variables are available at the municipal level over time. For comparability with the turnout analysis, we also estimated the models below at the county level and found similar results. See the appendix for more details.
17. We include population in the models as this is the chief difference between municipalities with voter registration requirements and those without any such requirements. Controlling for the potential confounding effect of population is essential. Additional controls are simply unavailable at this unit of aggregation during this time period. We are confident, however, that our estimates of the effect of EDR on the Democratic share of the two-party vote are unbiased. The difference-in-differences estimator assumes that any omitted variables are time invariant (Angrist & Pischke, 2009). Given the short time frame examined here (4 years), we believe that it is unlikely that any of the commonly included control variables, such as age, education, sex, and income, changed enough in the aggregate to have affected our estimates. We were able to gather measures of sex and age for a limited sample of municipalities. Including these control variables, even in the smaller sample in which they are available, does not alter the key result. These models are available on request.

18. In an alternative specification we estimated a differences-in-differences model that included a dummy variable for whether a municipality had voter registration, a time dummy that switches on for observations obtained after the implementation of EDR, and an interaction term that multiplies the two, plus a control for population. The estimated effect of EDR on Democratic vote share was a nearly identical four percentage point decline.
19. We must acknowledge that municipalities were not randomly assigned to treatment and control groups. Therefore, as an additional robustness check we examined the effect of EDR's implementation on the Democratic share of the two-party vote in the regression discontinuity (RD) framework (see Lee & Lemieux, 2010). With this approach one looks for near-experimental leverage in the neighborhood of a threshold or boundary. The assumption is that, after accounting for a conditioning variable, the treatment is essentially randomized around the discontinuity. In our case, the registration requirement for municipalities with more than 5,000 people serves as a discontinuity. Due to the presence of some municipalities with fewer than 5,000 persons that voluntarily adopted voter registration requirements, treatment status is not deterministically related to the threshold. As an example of a "fuzzy" RD design, then, we use the population cutoff as an instrument for treatment status and use two-stage least squares (2SLS) to estimate the effect of EDR on the Democratic vote (see Angrist & Pischke, 2009). In addition to a dummy variable for whether a municipality was above the population threshold, the model includes logged population (the "forcing" variable). Using this approach we find that the introduction of EDR decreased the Democratic share of the two-party vote by more than nine percentage points ($p < .01$). Full model results are available on request.
20. There was not a gubernatorial election in Wisconsin in 1972 or 1976. In 1976 there was a U.S. Senate race featuring a Democratic incumbent, William Proxmire, who easily won reelection.
21. One might prefer an alternative to vote share as a measure of the partisanship of constituents. Although such a measure is widely used, the votes cast for a party are not a perfect reflection of affiliation with the party. Party registration is one alternative, but Wisconsin does not have partisan registration. Future work might consider an approach such as the estimation strategy offered by Levendusky, Pope, and Jackman (2008).
22. The results displayed in Tables 2 and 3 are essentially unchanged even when taking into account any potential nonlinearities in the data. Specifically, we estimated semiparametric versions of each model using generalized additive models (GAMs). Although a semiparametric approach offers a slightly better

fit to the data, the substantive conclusions drawn from the models are exactly the same.

23. This result appears to be somewhat driven by Milwaukee and the surrounding area. After omitting observations from these counties from the data set the interaction term is no longer significant, even though the main effect of EDR remains negative (see the fourth column in Table 3). This finding may be consistent with a story about changing population patterns, facilitated by the development of the interstate highway system (see Nall, 2010), playing some role in shaping the observed constellation of results.

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## Bios

**Jacob R. Neiheisel** is a PhD candidate in political science at the University of Wisconsin-Madison. His research interests include political parties, election administration, religion and politics, and political communication.

**Barry C. Burden** is professor of political science at the University of Wisconsin-Madison. His research focuses on election administration, political behavior, and representation.

PROJECT VOTE

FACTSHEET

# SAME DAY REGISTRATION

## SAME DAY REGISTRATION: *WHAT IS IT? WHERE IS IT AVAILABLE?*

Same Day Registration (SDR) allows eligible voters to register to vote and cast their ballots on the same day. Depending on the state, this one-stop process for registering and voting may be offered on Election Day, during the early voting period, or both. Eligible voters can also use Same Day Registration to correct an outdated voter registration record and cast a ballot that will be counted. Pioneered by Maine, Minnesota, and Wisconsin in the early-to-mid-1970s, fifteen states (California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming) and the District of Columbia have now enacted the reform. (North Carolina repealed its SDR system in 2013)

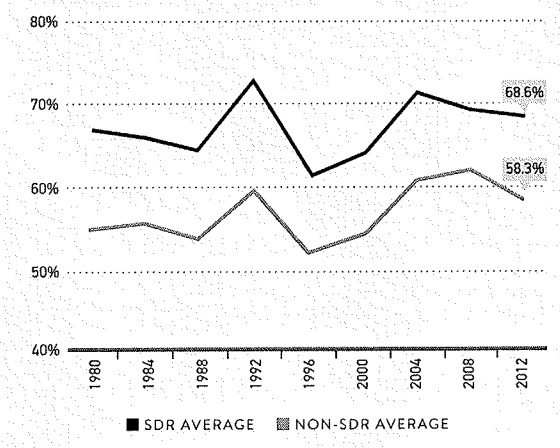
## THE BENEFITS OF SAME DAY REGISTRATION

- INCREASES VOTER TURNOUT. States that allow Same Day Registration consistently lead the nation in voter participation. Four of the top five states for voter turnout in the 2012 presidential election all offered Same Day Registration. Average voter turnout was over 10 percentage points higher in SDR states than in other states.[1]

- ELIMINATES ARBITRARY DEADLINES THAT CUT OFF REGISTRATION WHEN VOTERS ARE MOST INTERESTED. Many citizens become most interested and engaged with elections in the last few weeks before Election Day, when candidate debates and campaigns reach their peak. But registration deadlines may already have passed at that point. Many states unnecessarily close voter registration 25 to 30 days before an election.

- REMEDIES INACCURATE VOTER ROLLS. Many previously-registered voters lose their eligibility merely because they have moved. Others are never added to the voter rolls because of bureaucratic errors. Failure to discover these problems prior to Election Day, when registration deadlines have passed, results in eligible citizens losing their vote. With Same Day Registration, these voters can simply update registration records or register anew at the polling place and vote a ballot that will be counted.

**Turnout Rates in SDR vs. Non-SDR States, 1980–2012, Presidential Election Years**




SOURCE: *U.S. Elections Project, http://elections.gmu.edu/Turnout%201980-2012.xls*

| STATE | VOTERS USING SDR | SDR USAGE (% OF VOTERS) |
|---|---|---|
| Idaho | 117,861 | 17.69% |
| Iowa | 66,289 | 4.17% |
| Maine | 58,474 | 8.07% |
| Minnesota | 527,867 | 17.89% |
| Montana | 8,053 | 1.64% |
| New Hampshire | 99,299 | 13.81% |
| North Carolina | 249,922 | 5.61% |
| Wisconsin | 337,880 | 10.95% |
| Wyoming* | 28,017 | 11.18% |
| Washington, DC | 34,646 | 11.77% |
| TOTAL | **1,528,300** | **10.04%** |

SOURCE: *As reported by state elections officials. Data on file with Dēmos.*
* Preliminary 2012 data; further review pending

- ASSISTS GEOGRAPHICALLY MOBILE, LOWER-INCOME CITIZENS, YOUNG VOTERS AND VOTERS OF COLOR. Keeping voter registration records current is a big challenge under current systems, which place the onus of updating records on the individual. Census data show that over 36 million people in America moved between 2011 and 2012, and nearly half of those moving had low-incomes.[2] Young adults of all income levels also move more frequently—for school, for jobs, for family. Same Day Registration offers those who have recently

moved but failed to update registration records another opportunity to register and vote. Research indicates that allowing young people to register to vote on Election Day could increase youth turnout in presidential elections by as much as 14 percentage points.[3]

Experts predict that Same Day Registration can be particularly effective in increasing voter participation among voters of color.[4] That prediction was borne out in North Carolina in the brief time SDR was in effect. Though they represented 20 percent of the voting-age population, African Americans comprised 36 percent of those who used SDR to vote in the 2008 presidential election in North Carolina, the first such election when SDR was available there.[5] SDR usage among African Americans rose to 41 percent in 2012.

- GREATLY REDUCES THE NEED FOR PROVISIONAL BALLOTING. Provisional ballots are offered to citizens who believe they are registered but whose names do not appear on voter rolls. But more than one in four such ballots cast in the 2008 presidential election were subsequently rejected.[6] Allowing eligible voters to register and vote on the same day greatly reduces the need for provisional ballots, helping to assure voters that their ballots will be counted, and saving elections officials the time and expense of processing many provisional votes.

  After SDR was adopted in Iowa, provisional ballots dropped from 15,000 in the 2004 presidential election to less than 5,000 in 2008 – a 67 percent decline. North Carolina saw 23,000 fewer provisional ballots after it adopted SDR in 2008.

## A COST-EFFECTIVE MEANS TO INCREASE VOTER PARTICIPATION WHILE MAINTAINING THE INTEGRITY OF THE VOTE

- IOWA AND NORTH CAROLINA REPORTED MINIMAL-COSTS TO INTRODUCE SDR IN THE 2008 PRESIDENTIAL ELECTION. The 2008 presidential election was the first such contest when Same Day Registration was offered in Iowa and North Carolina. The state of Iowa spent less than $40,000 to introduce SDR for its 99 counties. County expenses were also minimal. North Carolina's counties cited some additional staffing needs at voting sites as the most notable expense associated with Same Day Registration.[7]

- SDR COSTS ARE MINIMAL IN LONG-STANDING SDR STATES. Most respondents to a survey of local election officials in Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming, described the incremental cost of SDR as "minimal."[8]

- ELECTIONS ADMINISTRATORS AGREE THAT SDR DOES NOT COMPROMISE THE INTEGRITY OF THE VOTE. The great majority of local elections officials in SDR states who participated in two Dēmos surveys reported that current fraud-prevention measures suffice to ensure the integrity of elections. SDR states impose heavy penalties for voter fraud; voters are required to show proof of residency; and voters must sign an oath attesting to their identity and citizenship. And unlike registration by mail, SDR requires eligible voters to attest to their identity face-to-face before an elections official. Election audits, with strict penalties for violations, add an additional level of verification.[9]

## ENDNOTES

1. The voter turnout figures used throughout this document were derived from the number of votes cast for the highest office and the voting-eligible population (VEP), as reported by the United States Election Project, http://elections.gmu.edu/Turnout%201980-2012.xls. The VEP is constructed by adjusting the voting-age population for non-citizens and ineligible felons, depending on state law.
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PROJECT VOTE
ESTELLE H. ROGERS, ESQ.
LEGISLATIVE DIRECTOR
EROGERS@PROJECTVOTE.ORG
P: (202) 546-4173, EXT. 310

# The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections

Barry C. Burden
David T. Canon
Kenneth R. Mayer
Donald P. Moynihan

University of Wisconsin-Madison

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## Abstract

Election reforms are often designed with the goal of increasing voter turnout, and are implemented even when resisted by election administrators who may have other priorities. Advocates, journalists, and politicians frequently support particular election laws because they are believed to expand the share of the electorate that participates. Here we challenge the common view that any change making it easier to vote will increase turnout. We show that while some practices increase turnout, others have little effect, and the most popular single approach – early voting – actually decreases turnout. In addition, previous research has not fully considered the costs of reform, the effects of different types of reforms, and willingness of election officials to implement them. Our findings suggest that certain combinations of reforms can significantly increase turnout, but that these reforms create an administrative burden that will result in opposition from election officials.

## Introduction

Election reforms are often designed around the goal of making voting more convenient for citizens, and increasing voter turnout. Adding greater convenience to the voting process is a worthwhile outcome in itself. But even as new laws generally achieve this goal, they have had quite varied effects on turnout. This report focuses on the turnout effects of election law reforms. Advocates, journalists, and politicians frequently argue in favor of particular election laws out of a belief that they make voting more convenient and will expand the share of the electorate that participates. Here we challenge the common assumption that reforms making it easier to vote will increase turnout. Using data from the 2008 presidential election we show that while some practices increase turnout, others have little effect, and the most popular single approach – early voting – actually *decreases* turnout. In addition, previous research has not devoted sufficient attention to the costs of reform and willingness of election officials to implement them. Our findings suggest that certain combinations of reforms can increase turnout, but at the expense of significant administrative burdens that will engender opposition from election officials.

This report examines the combination of two specific voting practices – non-precinct place early voting (NPPEV) and election day registration (EDR) – with the goal of understanding how these rules affect voter turnout, and how the rules are implemented by local election officials. The 2008 presidential election was the first in which this combination occurred in enough states to permit detailed analysis.

We ask two sets of questions. First, how do various combinations of NPPEV and EDR affect voter turnout? Second, how do local election officials view the administrative consequences and burdens of NPPEV? To answer the first question, we analyze county-level election data and the Current Population Survey, combined with state-level data on electoral practices. For the second, we conducted surveys and interviews with municipal clerks in Wisconsin, the local officials responsible conducting elections.

In part I, we provide background and discuss prior research. We argue that NPPEV must be disaggregated to distinguish absentee and early voting from same day registration (SDR) and that distinct combinations of EDR, SDR, and early voting need to be assessed. We also consider the interactions between the various rules. In part II, we show our empirical results, looking at the impact of reform on both aggregate turnout levels and on the probability that an individual votes. Our analysis demonstrates that reforms that include EDR increase turnout, and that early voting by itself actually lowers turnout. Early voting may increase turnout only when it is combined with EDR (or SDR). In part III, we present the results of our clerk survey and interviews showing that there is strong resistance to early voting. This resistance is philosophical, reflecting clerks' beliefs about the importance of election day as a civic ritual. Their resistance is not merely a reflection of insufficient resources. We conclude by discussing the broader implications of this research for future innovations and reforms in election administration.

## I. Previous Research

Policymakers across the country have long been interested in reorganizing the voting process to foster higher turnout. One of the most common options is allowing individuals to register on the same day they vote.[1] In theory, this will increase turnout by eliminating the need for individuals to take two separate actions – registering days or weeks prior to voting, and then casting the ballot at a later date – to exercise their franchise. As Wolfinger and Rosenstone (1980, 61) summarized thirty years ago, "[r]egistration is usually more difficult than voting, often involving more obscure information and a longer journey at a less convenient time, to complete a more complicated procedure. Moreover, it must usually be done before interest in the campaign has reached its peak." Indeed, a long stream of research shows that the registration closing date is the most consequential aspect of registration, in part because it disenfranchises recent movers (Squire, Wolfinger, and Glass 1987; Timpone 1998), and requires voters to take initial action as much as a month before election day.[2]

Election day registration permits people who wish to vote on election day, but who have not yet registered, to complete both steps in "one essentially continuous act" (Wolfinger, Highton, and Mullin 2005, 3). EDR thus appears to alleviate the barriers highlighted by Wolfinger and Rosenstone: it collapses two steps into one and permits voters to register at the last moment when interest is highest.[3] Using the modified definition we employ below, 12 states had EDR in 2008.[4]

Research consistently shows that EDR boosts turnout. A sizeable number of voters take advantage of EDR when it is available: in 2008, 15.6% of voters in Minnesota, 16.5% in Wyoming, 13.5 % in Idaho, and 11.4% in Wisconsin registered to vote on election day (EAC 2009, Table 5). And this is not merely correlation. Careful analyses of the causal effects of EDR produce estimates that range from three to seven percentage points (Brians and Grofman 2001; Fenster 1994; Hanmer 2009; Knack 2001; Leighley and Nagler 2009). Highton (2009, 509) summarizes the impact of EDR on voter turnout as "about five percentage points."

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[1] This normally refers to registering on election day itself. We state the practice in more general terms to include rules that allow voters to submit ballots prior to election day, but register at the same time that that they vote. As we note below, SDR is a variant of EDR that applies to early voting.

[2] See recent reviews by Highton (2004) and Hershey (2009) for further discussion of the importance of closing dates.

[3] The EDR reform spread in three waves. See Hanmer's (2009) comprehensive analysis of EDR for a review of the history and reasons for adoption.

[4] The states commonly considered as having EDR are Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming. After carefully reading state statutes and consulting with state election officials, we modified this list for our analysis. In 2008 we include the usual suspects along with North Dakota (although it technically has no registration). We exclude North Carolina, because while it has same day registration and early voting, there is no registration permitted on election day itself. But we also include Alaska, Connecticut, and Rhode Island because they permitted election day registrants to vote for President. Breaking with the common practice, we suggest that these states should be treated as EDR states in a presidential election year. EDR states may still have closing dates for traditional registration, but nonetheless permit last-minute registrations on election day itself.

A second innovation is permitting voting outside of the normal election day polling place. Non-precinct-place and early voting (NPPEV) encompasses a variety of practices, including absentee voting, voting-by-mail, and in-person early voting. In 2008, 30% of all votes were cast via these methods, up from 20% in 2004 and 7% in 1992. In 2008, 21 states allowed early voting, either by mail or in person.[5] Early voting may have been the most touted reform in the 2008 elections; long-time voting scholar John Fortier pointed to the practice in arguing that "United States is in the midst of a revolution in voting" (Fortier 2006, 1).

NPPEV takes on a variety of forms across the states (Fortier 2006; Gronke et al. 2008). On a spectrum from most restrictive to least restrictive, these include traditional absentee voting, no-excuse absentee, permanent absentee, in-person early voting, and voting by mail. There is additional variation in where people vote: in-person early voting may take place either at central election offices or at voting centers in locations such as shopping malls.

In contrast to the positive findings about EDR, most studies of NPPEV have found that it has no effect on voter turnout. For example, in a study of national elections from 1980-2004, Gronke et al. (2007) found that the availability of early voting does not influence turnout. Aside from the special case of voting by mail in presidential elections, none of the early or absentee voting laws they study affected turnout in either presidential or midterm elections.[6] Several other studies have shown that none of the forms of NPPEV – other than perhaps Oregon's unique vote-by-mail system – improves turnout (Fitzgerald 2005; Giammo and Brox Forthcoming; Gans 2008; Gronke et al. 2008; Oliver 1996; Primo, Jacobsmeier, and Milyo 2007; Scheele et al. 2008; cf. Wolfinger, Highton, and Mullin 2005).[7]

We argue that one aspect of NPPEV – same day registration (SDR) – is underappreciated. SDR combines EDR and NPPEV by permitting people to both register and vote in a single act prior to election day. It reduces the potential inconvenience of having to vote on a specific election day, eliminates the registration closing date, and permits "one-stop shopping." As we define it, a dozen states permitted some form of SDR in 2008, permitting voters to register and vote as far in advance as one month prior to the election, up to voting on the day before. While popular wisdom suggests that the 8% increase in turnout in North Carolina between 2004 and 2008 was partly as a result

[5] Michael MacDonald, "(Nearly) Final 2008 Early Voting Statistics," updated January 11, 2009, <http://elections.gmu.edu/Early_Voting_2008_Final.html>. Also see Paul Gronke's Early Voting Information Center at <http://www.earlyvoting.net/blog/>.

[6] Previous research also shows a positive effect of vote-by-mail (Magleby, 1987; Southwell and Burchett, 2000; Karp and Banducci, 2000), but these studies have largely been confined to Oregon and Washington. Kousser and Mullin (2007) find that a shift to vote-by-mail in California would result in a three-point drop in turnout. We do not study vote-by-mail directly but effectively account for it with state fixed effects.

[7] Stein and Vonnahme (2008) find a small positive effect of non-precinct voting centers on turnout among younger, infrequent voters and those who have not yet developed the voting habit.

of the close race there, and on greater minority turnout, the state also introduced SDR for the first time in 2008 (McDonald 2008).[8]

Nevertheless, despite its widespread use, we know of no studies that have analyzed SDR's specific direct effects on turnout. Indeed, one of our messages is to urge researchers to carefully distinguish EDR, SDR, and early voting. As we document below, it is possible for a state to have one, two, or all three of these features, in various permutations. By ignoring these different combinations, previous work may have mistakenly attributed the effects of any single practice to one of the others that exist simultaneously.

## Election Laws and Turnout Mechanisms

Both EDR and early voting are designed to increase turnout by lowering the costs of voting. But upon further probing, we find that the mechanisms are quite different. EDR lowers costs by providing "one-stop shopping," eliminating one bureaucratic step in the voting process and providing voting opportunities to individuals who become interested late in the campaign. Early voting, in contrast, lowers costs by allowing balloting over an extended period rather than making the election a one-day event. SDR effectively combines these options by permitting "one-stop shopping" to occur before election day.

While any discussion of turnout must focus on the costs of voting, an exclusive focus on these costs may miss the importance of mobilization in encouraging potential voters to become actual voters.[9] We expect EDR to be a particularly effective mechanism for raising turnout because it permits those who come late to the campaign to still become participants, even those who become engaged only in the days just before an election. In contrast, we expect early voting to matter less, because it may simply provide an outlet for those already likely to vote (and attentive enough to know that alternative voting processes even exist). The effects of SDR and one-stop shopping, we think, depend on the length and timing of the early voting window. On this point we agree with Highton, who argued:

> People who are most interested in politics are very likely to make sure they are registered. Only rarely will they fail to register by the waning weeks of a national campaign. As a result, closing dates influence the turnout of these highly

[8] McDonald (2008) suggests that while the close race argument appears persuasive, the "Obama effect" on minorities does not apply to North Carolina. He points out that this effect can really only be seen in non-battleground states. In states such as North Carolina the increase in African Americans was offset by the increases in whites.

[9] A literal analysis of costs, for example, would show that voting is never a rational act, because the costs of voting – not only the practical costs of traveling to the voting location, waiting in line, and casting a vote, but also the opportunity costs of becoming informed enough about the issues and candidates to have preferences – are far greater than any possible concrete benefits such as determining the election outcome See, for example, the majority opinion in *Crawford vs. Marion County Election Board* (2007), and Gelman, Edlin, Kaplan (2007), and Gelman; Silver and Edlin (Forthcoming). At the same time, intangible benefits of voting might include positive social interaction at the polling place or avoiding embarrassment for not voting (Gerber, Green, and Larimer 2008).

> motivated people very little. Those least interested in politics are also unlikely to be influenced by closing dates. These citizens have virtually no motivation to vote; their voting benefits are nearly zero. They pay little, if any, attention to political campaigns and are therefore unlikely to be activated by them. Late closing dates, or even election day registration will not bring these people to register and vote. Between these extremes are individuals who take some interest in politics, and who may be spurred to register and vote by the increased campaign interest that attends the approach of election day. A late closing date allows for this possibility. If the deadline for registration is well before election day, however, it is unlikely that campaign interest will be translated into turnout. For this group of people, registration closing dates ought to matter more (2004, 509).

This view comports with Berinsky's (2005) distinction between reforms that *stimulate* new voters and those that merely *retain* existing voters. He contends that most voting reforms are better at retention than they are at stimulation.

We refine this argument by identifying the key differences between EDR and early voting. In particular, we expect early voting to enhance retention, and EDR to enhance stimulation.

A few studies have found tentative evidence that early voting actually *lowers* turnout.[10] This is certainly counterintuitive, as it is hard to see how making voting more convenient will result in fewer voters (though we ultimately conclude that this is precisely what happens). One explanation for the apparent depressive effect of early voting is that it robs election day of the stimulating effect it would otherwise have on nonvoters. Early voting dilutes the concentrated activities of election day itself that would likely stimulate turnout, an effect not counterbalanced by the increased convenience of voting prior to the election (which, as we have noted, may only provide an alternative outlet for votes who would have voted in any case). Fortier (2006) suggests as much when he speculates that a loss of the "civic day of election" could lower turnout. At least one empirical study shows that election day social activities increase turnout (Addonizio, Green, and Glaser 2007). Traditional election day can be as much a social event as a political one. For at least some voters, it is the stimulation of the day's news, observation of activities at polling places, and conversations with friends and neighbors that gets them to the polls. When these activities are diluted, so is the stimulating effect.

## Towards a Combination Model

We argue that it is crucial to isolate the independent effects of EDR, SDR, and early voting and to consider their various combinations. Because there is variation in how states design and implement each practice, there is also variation in whether states truly fall into one of the three categories we study. Studies of early voting have been careful to distinguish various forms of early, absentee, and mail balloting, but have ignored whether these features coincide with SDR. Any study of "one-stop shopping" and early voting

[10] Smith and Comer (2005) find negative effects, but others (Gronke et al. 2008; Leighley and Nagler 2009; Tolbert et al. 2008) find negative effects only in particular specifications.

must consider direct effects, combinations of two features, and a three-way confluence when all options are available. These can be thought of interaction terms or different configurations of election laws. To this point the literature on election reform has largely ignored these combinations.

For example, one explanation for the relative failure of early voting policies to increase turnout is that it is the inconvenience of registration, rather than the difficulty of voting itself, that deters most citizens from participating (Erikson 1981). Early voting might make the act of voting more convenient, but without allowing registration and voting in a single step, it still requires an individual to register in advance, often several weeks before the vote is actually cast. In the absence of SDR, a person who encounters an early voting center in a shopping center or who visits an administrative building in the days preceding an election may not stop to vote because doing so demands not only an interest in voting prior to election day, but also advance registration. Early voting will not help a voter who failed to register before the closing date. In contrast, early voting with "one-stop shopping" may facilitate voting by citizens who would not have been traditional election day voters.

Before we categorize state election reforms, we need to offer some operational definitions. These classifications often rely on technical interpretations of election law and practices that, in some cases, differ from the conventional wisdom about how states run their elections.

First, EDR permits eligible voters to both register and vote on election day. Studies of EDR have generally identified nine states with the practice.[11] After carefully reading state statutes and consulting with state election officials, we modify this classification. In 2008 we include the usual suspects along with North Dakota (although it technically has no registration). We exclude North Carolina, because while it has same day registration and early voting, there is no registration permitted on election day itself. But we also include Alaska, Connecticut, and Rhode Island, all of which permitted election day registrants to vote for President. Breaking with the common practice, we suggest that these later two states should be treated as EDR states in a presidential election year. EDR states may still have closing dates for traditional registration, but nonetheless permit last-minute registrations on election day itself.

Second, our criterion for defining SDR is that the practice must be widely available to eligible voters without significant administrative barriers. We thus excluded states that allowed some form of "one-stop shopping" only to limited portions of the population. For example, Colorado permits SDR only for a small set of "emergency" registrants who moved across county lines after the closing date. Nationally, 17 states reported that 3.6 million same day registration applications were filed; of those, only 963,144 new voters

[11] The states commonly considered as having EDR are Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming. As noted earlier, we modified this list for our analysis.

were added to the registration rolls.[12] States also vary in how long the SDR window is, and when the closing date occurs.

Finally, early voting allows registrants to cast ballots without excuse before election day. Early voting does not by itself provide a registration mechanism; that would be captured by SDR. We do not distinguish between states that actually count the ballots ahead of the election, and states that merely accept the ballot for election-day tallying because the distinction is typically invisible to voters and because other research finds equivalent effects for both absentee and early voting (Leighley and Nagler 2009). For this analysis we include in-person early voting and in-person no-excuse absentee ballots, but exclude states that require voters to have an excuse to vote before traditional election day.[13]

Figure 1 is a Venn diagram that illustrates our coding for the 2008 election and shows the different combinations of voting rules. In practice, it is clear states have been experimenting with combinations of EDR, SDR, and early voting. There are 13 states that have none of the three practices (and which are excluded from the diagram). The most common approach, used by 18 states, is to allow early voting by itself, for voters who are already registered.[14]

Compared to states with none of these reforms, there are seven possible configurations of EDR, SDR, and early voting: (1) EDR alone, (2) SDR alone, (3) early voting alone, (4) EDR and SDR, (5) EDR and early voting, (6) SDR and early voting, (7) or all three. There are no states with just SDR, and none with the two-way combination of SDR and EDR. As a result, there are effectively five combinations relative to the baseline states that have none. In retrospect, this is obvious: "one-stop shopping" before election day is not possible if a state does not also allow early voting.

No previous study has investigated the potentially positive relationship between EDR and NPPEV because until recently no state had extensive use of both. The 2008 cycle was the first presidential election in which states that permitted EDR also had high rates of early voting.[15] In the next section we investigate the effects of these different combinations using several data sources and methods to identify the precise effects of each configuration of election features.

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[12] The EAC collected data on SDRs for the first time in 2008; the EAC defines SDR as "registering to vote on the same day in which a vote may be cast" (EAC 2009).

[13] Codings are drawn from the National Conference of State Legislature's listing at <http://www.ncsl.org/LegislaturesElections/ElectionsCampaigns/AbsenteeandEarlyVoting/tabid/16604/Default.aspx> accessed in July 2009.

[14] We treat Oregon and Washington separately because of those states' heavy use of vote-by-mail.

[15] In 2004 no state with EDR had over 30% of its votes cast early. By 2008 several EDR states were near or above that mark.

## II. Empirical Results

### Data and Methods

We use a variety of multivariate statistical techniques to determine how EDR, SDR, and early voting affect voter turnout. First, we analyze county-level turnout from the November 2008 presidential election. In this model we include county-level variables and also state fixed effects to ensure that unmeasured state-level characteristics such as state culture are not producing spurious findings. Second, we make use of the Current Population Survey's (CPS) November 2008 Voting and Registration Supplement to conduct an individual-level analysis. The large sample size permits careful comparisons among the states in each part of the Figure 1 and inclusion of wide range of individual-level control variables.

We believe our models improve upon earlier work by explicitly considering how the combinations of EDR, SDR, and early voting affect turnout. We are able to determine, for example, whether EDR's positive effects on turnout depend on the presence of early voting or are undermined by it.

Finally, we consider the question of what voting reform looks like from the perspective of election administrators. Reforms will only work if election officials are willing and able to implement them. In many states it is local election officials, not state leaders, who transform statutes into actual practices. To gain insight into how local election officials assess new voting reforms, we surveyed election clerks in Wisconsin. Wisconsin is an attractive state to study for several reasons. It has a long history of EDR but low levels of early voting (in the form of no-excuse absentee).[16] It also has extremely decentralized election administration, with 1,923 local election officials (roughly one-fifth of the total number of all election officials nationwide).[17] They represent a wide range of communities, ranging from a handful of residents and little racial or ethnic diversity to a heterogeneous voting age population of roughly 400,000 in Milwaukee. The large number of officials and diversity of their jurisdictions form an extraordinarily useful data source for assessing the administrative consequences of reform. In addition, the Wisconsin Government Accountability Board, the state's central election authority is currently considering proposals for true early voting.[18] Thus, the results of our study are timely as the legislature considers changing state law to encourage NPPEV.

We asked local election administrators for their opinion on early voting reform. In particular, our goals were to (a) understand how they approached election administration, (b) measure their attitudes toward NPPEV, and (c) determine how their views of EDR

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[16] State officials are considering a move to early voting. The state election agency, the Government Accountability Board, has developed three early voting proposals. Feedback is being gathered from the public, clerks, and other interested parties. See the materials available at <http://elections.state.wi.us/section.asp?linkid=1583&locid=47>.

[17] This encompasses the 1,851 municipal clerks and 72 county clerks in place for the 2008 elections.

[18] See the GAB's study materials and proposals at <http://elections.state.wi.us/section.asp?linkid=1583&locid=47>.

might affect their views toward NPPEV. The response rate for the survey was excellent, with 72% of municipal clerks participating (1,386 of 1,851). We also interviewed 85 of these officials in person to gather qualitative feedback and allow clerks to speak on their own terms.

## County Level Regression Analysis

We begin with aggregate analysis of turnout at the county level. The dependent variable is turnout in the November 2008 presidential elections as a percentage of the voting age population.[19] The key explanatory variables are dichotomous indicators for each of the five possible election practices in Figure 1. The signs and significance levels of these coefficients will show the effect of each distinct combination on voter turnout. To avoid spurious findings, we include an array of control variables, and estimate multiple specifications to increase confidence in the robustness of the findings. We also adjust the standard errors to account for clustering of counties by state (Primo, Jaocbsmeier, and Milyo 2007).

The control variables include state election laws, county demographic measures, and a measure of the competitiveness of the presidential campaign in each state. State election law variables include a measure of the closing date for voter registration, a dummy for whether votes are required to show any form of identification (photo or not) at the polls, and a dummy indicating whether ex-felons are barred from voting.[20] To the degree that these laws matter once our new variables are included, we expect all three to have negative effects as early closing dates, ID requirements, and felon disenfranchisement lower turnout. Demographic variables include the percent black, median income, percentage of the county with bachelor degrees, percentage 65 or older, population, and population density. Our measure of campaign intensity is the absolute value of difference between the final pollster.com survey estimates for McCain and Obama. The effect should be negative because a larger gap between the candidates ought to be reflected in lower turnout. We also include dummy variables for Oregon and Washington, whose reliance on mail-in surveys falls outside the three primary types of election laws we examine here.

Our simplest specification is model I in Table 1. Model II modifies this slightly by weighting the counties by population to minimize heteroskedasticity in the error terms. The models indicate that EDR alone or in combination with other laws has positive effects. EDR by itself has an effect of between six and seven points, just a bit larger than

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[19] The Voting Age Population (VAP) is an imperfect measure of the Voting Eligible Population (VEP), as Michael McDonald has demonstrated (e.g., McDonald and Popkin 2001). Unfortunately, VEP estimates are not available at the county level. To verify that this does not jeopardize our results, we calculated the gap between the VEP and VAP turnout measures on McDonald's web site and correlated it with the presence of EDR, SDR, and early voting at the state level. None of the correlations was statistically significant at $p < .05$, indicating that any disparity between the VAP measure and actual voter turnout is unlikely to produce spurious results for the key variables of interest.

[20] There area a variety of felon disenfranchisement and voter identification laws that cannot be fully explored here. Our dichotomous indicators are intended to capture the most basic differences between states that have provisions of these type and those that do not.

the typical estimate in the literature. In contrast, early voting on its own has a negative effect that ranges between 3.5 points to 5.6 points, and the combination of SDR and early voting has no effect. As expected, turnout is higher in counties with more African-Americans, higher incomes, more college graduates, smaller and less dense populations, and where the McCain-Obama campaign was close. We find no effects of voter ID or felon disenfranchisement laws.

The results of these county regression models suggest that voter turnout is indeed sharply influenced by state laws concerning registration and early voting. These findings are relatively robust across different specifications. Overall our two key results from the county data are that (1) early voting by itself has a negative effect and (2) EDR by itself has a positive effect. Combining early voting with SDR appears to have little effect while combining EDR with early voting results does result in a significant and positive outcome. States that have all three approaches have a significant and sizeable increase in turnout. Indeed, any combination that includes EDR increases turnout. Cumulatively, the results suggest that creating the opportunity for voters to "one-stop shop" offers a way to turn the negative of early voting into a net positive.

Figure 2 displays the key results graphically. The dots represent the five coefficient estimates for the weighted and unweighted models. Horizontal lines running through the dots show 95% confidence intervals. The divergent effects of EDR and early voting are clear.

One reason the SDR effects are insignificant may be that the models ignore the substantial variation in how SDR is implemented across the states. Particularly important is the length of time in which "one-stop shopping" is available. In 2008 this window ranged from just one day in New Mexico to over 40 days in three states. We can test whether this variation is correlated with turnout. To investigate this possibility we reestimate model II on states that have SDR. We include a new key variable: the length of time the SDR window is open. The results in Table 2 show that each additional day when voters can avail of "one-stop shopping" results in a 0.29 percentage point increase in turnout. Increasing the window length by 12 days (the standard deviation of the variable) thus increases turnout by 3.5 points. The control variables largely operate as expected. The window finding reinforces our expectation that it is not just important that states offer the ability to both register and vote early, but also demonstrates that it matters how these are implemented. Two states could both have SDR "on the books," but the state that offers it with a longer window will see a greater positive effect.

## Individual Level Regression Analysis

We now turn to estimating turnout effects at the individual level. Here we are interested in the covariates that make individuals more (or less) likely to cast a ballot. Most turnout analysis takes a standard form, using logit or probit regression with the vote (or reported vote) as the dependent variable, and a right-hand side consisting of various demographic and systemic independent variables that purport to capture the important causal factors.

Because our report includes both models of aggregate and individual turnout, we avoid the ecological fallacy (the assumption that the same factors that shape *aggregate* turnout, have a similar effect on *individual* outcomes, as measured by the estimated probability that an individual will vote).[21] Our dual-track analysis is an effort to gain leverage on both elements of the modeling problem.

Our individual-level analysis uses the 2008 Voting and Registration Supplement File of the CPS. The CPS, a common data set in voting analysis, is a large-scale sample survey of the noninstitutionalized population normally used to collect labor force data. In November of election years, surveyors administer a short set of voting and registration items to a sample of about 130,000 people. Most questions have between 60,000 and 90,000 valid observations.

The voting item asks whether people voted in the 2008 presidential election, and has several response categories: respondents can answer "yes," "no," "don't know," refuse to answer, or have no response recorded. Following the common practice, we measure turnout by dividing the number of "yes" responses by the total number of individuals asked the question, counting as non voters those who refused to answer, did not know, or did not respond. Since the voting items are only asked of individuals 18 years or older, this gives us an estimate of turnout as a percentage of the voting age population.[22] Using this method, 64.9% of respondents in the CPS reported voting in 2008 ($n$ = 92,360).[23]

We use a larger number of independent variables than most other models of turnout. Alvarez, Bailey, and Katz (2008, 8-9) describe the "canonical model of voter turnout using CPS data" as using age, residence in a Southern state, education, income, squared values of age and education, and non-White as independent variables (see Wolfinger and Rosenstone 1980). However, the CPS includes a wide range of other data that seem plausible and theoretically justifiable turnout covariates: questions provide information on length of residence, gender, marital status, multi-category racial identity, whether a

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[21] The effects need not match across the two levels of analysis. For example, a variable that significantly increases the likelihood of voting by a small amount could affect aggregate turnout even more strongly as these small individual probabilities cumulate. Kramer (1975) demonstrated that individual and aggregate effects can even run in opposite directions.

[22] At the same time, the CPS excludes the institutionalized population, estimated at about four million in 2000. In other calculations of the voting age population, these individuals are counted.

[23] This is significantly higher than the actual turnout as a percentage of voting age population, estimated at 56.8% (McDonald 2009). This difference occurs for a variety of reasons. Part of the discrepancy is attributed to sampling bias (Burden 2000). Much of it is due to the desire to give socially desirable answers whereby some nonvoters falsely report that they did vote (Gerber, Green, and Larimer 2008). Some of these voters may *think* that they voted, possibly confusing the most recent election with earlier contests. Many studies have concluded that overreporting is most common among people otherwise most likely to vote; there is also evidence, however, that overreporting is also more likely among African Americans (Bernstein, Chadha, and Montjoy 2001). Highton (2005) found that the correlates of turnout were about the same among self-reported and proxy-reported turnout, despite the fact that self-reporters are more likely to overreport their own voting, suggesting that overreporting may not be a significant problem for inference. Unfortunately, there is no easy way to correct for overreporting or estimate the effect it might have on the inferences drawn from empirical models. Katz and Katz (2009) have developed one method, but it requires external information about the probabilities of misreporting.

respondent is a naturalized or natural born citizen, and if naturalized the year of entry into the U.S, and whether a respondent's voting status is self-reported or reported by proxy.[24] Given our interest in estimating the effects of different voting and registration systems, it makes sense to include this additional information about respondents. As in the aggregate model, we include variables describing the five possible combinations of early voting, SDR, and EDR.

The basic individual turnout model is reported in Table 3. The results are roughly consistent with the aggregate county-level model. EDR has a significant positive effect on the individual likelihood of voting, while early voting has a significant negative effect. The combination of EDR, SDR and early voting (which offers the maximum of voter convenience) has a small positive effect. Most of the control variables show expected effects. For example, voting is more likely among the highly educated, African-Americans, the married, higher income earners, and those in swing states. Although our primary interest is in the combinations of election laws and not these covariates, it is reassuring that most of them affect voter turnout in a fashion that fits with existing research. The key coefficient effects are plotted in Figure 3. Again, the divergent effects of EDR and early voting are evident. EDR alone raises the individual likelihood of voting by about three points whereas early voting lowers it by about four points.

The individual model produces one result that differs sharply from the aggregate results. At the aggregate level, the EDR and early voting combination significantly increases turnout while it has a significant negative effect on the likelihood of an individual voting. The most likely cause is the small subsample size of this category: in our classification, only Alaska and Idaho combine early voting with EDR, and Alaska is excluded from the aggregate analysis as it does not have county-level jurisdictions. As such, we are cautious about making inferences with so little data.

## Robustness Checks

There are several ways in which the results here may be checked for robustness. One way in which we are already reassured is the consistency of findings between the aggregate and individual models, despite the fact that logic does not dictate that they be the same.

Matching techniques offer another way of testing the relationships we study. Matching permits sharper comparisons of treatment and control groups, in a manner that makes efficient use of the data and is less sensitive to specification error (Ho et al, 2007). In this case, the various voting administration practices are analogous to a "treatment" effect applied to counties (and individuals, below): for example, a county in a state with EDR experiences a treatment distinct from a county in a state without EDR (which we can consider as analogous to a control group). Matching in this case, roughly speaking,

[24] This latter information is an unusual feature of the CPS survey: respondents can self-report their vote, or have their vote status given by another member of the household (by proxy). Previous research has found that reported turnout among "self reporters" is consistently higher than reported turnout among proxy reporters, by about four percentage points (Highton 2005).

creates two balanced groups, one consisting of "treated" observations, the other of "control" observations.

There are three steps to the matching method. First, we separate the data into treatment and control groups for each of the five categories of voting and registration system types. In each case, the "treated" group consists of individuals in a state with EDR, early voting, or the different combinations of EDR, SDR, and early voting. For each treated group, we construct a control consisting of respondents in states that have none of the practices in the treatment group. The early voting/EDR group, for example, is matched with a control group of counties in states that do not have early voting, EDR, or the combination. Similarly, counties in early voting states are matched with counties in states without early voting. In this way, we are able to test for the specific effect of each individual practice, or combination of practices. Second, we use a propensity score matching process (Ho et al. 2009) to balance the treatment and control groups, insuring that each group is comprised of individuals with similar demographic characteristics.[25] Finally, we used the resulting pre-processed and balanced data set in a logistic regression model equivalent to the basic individual level model of voter turnout.

The result of the matched analyses produces almost identical results to the standard county and individual level analyses. We do not report the cumbersome matched models here, but not that the general findings about EDR and early voting hold with remarkable consistency.[26]

Finally, it is notable that the negative effects of early voting on turnout are evident whether using traditional multivariate regression methods or using matching techniques, or aggregate versus individual level data. In fact, the connection between early voting and overall turnout is sufficiently strong that it is even appears in the raw data. In Figure 4, we present a scatter plot of early voting and total turnout by state.[27] The figure clearly shows that overall turnout is lower in states that permit early voting. This relationship holds whether we include all states (the dotted regression line) or we omit the vote-by-mail states of Oregon and Washington (the solid regression line).

We thus have several different approaches that produce a consistent result: early voting has a strong negative effect on turnout. If the motivation for election reform is increasing turnout, states should not look to early voting, especially on its own. EDR, in contrast, provides a substantial boost in turnout. In all three, the tripartite combination of EDR, SDR and early voting also increases turnout. Of course, turnout is not the only

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[25] We used the "MatchIT" module written for the R statistical package (Ho, et al. 2009), using nearest-neighbor propensity score matching with replacement. We balanced on a subset of demographic variables, including education, income, sex, age categories, and political competitiveness. The efficiency of the matching process increases with better balance on these covariates between the treatment and control groups. The crucial element of preprocessing is that matching may not be conditioned on the treatment variables used in any subsequent analysis.

[26] These full results are available from the authors upon request.

[27] Early voting percentages are taking from the CPS while total turnout is taken from Michael McDonald's data available at <http://elections.gmu.edu>. Using other sources for these data does not alter the fundamental relationship.

consideration when states consider changes to election practices. In particular, implementation of new laws requires consideration of both the costs and the ability and willingness of local election officials to comply.

## III. Balancing Benefits with Costs: The Administrative Perspective

Election laws such as EDR, SDR, and early voting are a patchwork of different systems and combinations of systems across the states. Some states have them and others do not, and among those that do the implementation varies. We have already seen that variation in the length of the SDR window has a sharp effect on turnout. Whether a state adopts one of these practices is probably endogenous to some degree in that it may reflect or codify existing processes or norms. For example, EDR was first adopted in states that already exhibited high levels of voter participation (Hanmer 2009). Adoption can be endogenous in another way: state lawmakers might anticipate the degree to which local election officials are willing and able to implement innovations that they pass into law. Some state legislatures have been reluctant to adopt EDR, for example, because county and municipal officials expressed concern about that administrative burdens and security risks it would entail.

To accompany our analysis of the effects of various registration and voting policies in the states, we investigate in more depth how local election officials in one state have reacted to proposals for new reforms. As in other states, absentee voting has become increasingly popular in Wisconsin, rising from a mere 6% of the total vote in 2000 to 21% in 2008.[28] The majority of these absentee ballots were cast in-person in a municipal clerk's office. For many voters, this is effectively early voting. Because Wisconsinites may also register at the clerk's office, this combination allows for "one-stop shopping" before the election. But for clerks there are significant administrative differences between absentee votes, which are delivered to polling places and counted on election day, and early votes, which might need to be counted immediately after voters complete their ballots and could require additional expense for new voting equipment.

Little research has attempted to ascertain the preferences of election administration officials on the different approaches to voting we study here, and the possible costs and benefits of employing a combination of approaches, or even whether election officials see these reforms as competing or complementary. These views are important because such officials are the ones who must implement these approaches, are influential stakeholders in state election policy, and are likely to be best-placed to estimate the administrative costs that will be incurred to facilitate voter convenience. Adoption of policies should consider both direct effects and interactions. Early voting on its own might face financial and administrative hurdles that are too severe to overcome in a decentralized state such as Wisconsin, but combining it with EDR might provide a synergy that compensates for these challenges.

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[28] See the Wisconsin Government Accountability Board's report, "An Examination of Early Voting in Wisconsin," at <http://elections.state.wi.us/docview.asp?docid=16760&locid=47>.

There is reason to believe that the administrative costs associated with early voting may be lower in states that permit SDR because election duties would be distributed over a longer period of time. The current practice in Wisconsin requires that EDR applications are hand-entered by staff on election day. With 400,000 to process for the 2004 presidential election (83,000 in Milwaukee County alone), this creates a tremendous administrative burden that often requires hiring additional staff just for this purpose. If SDRs could be submitted and processed during an extended early voting period, the additional staff resources required to support early voting might be offset by the administrative savings of receiving far fewer SDRs on election day itself, which would also increase the efficiency of the process for voters (lines would almost certainly be shorter if the process was combined with early voting). This would allow clerks, poll workers, and election board staff to focus on other tasks on election day. Because no state has combined SDR, significant levels of early voting, and EDR before 2008, these tradeoffs have yet to be examined. Wisconsin might well serve as a "difficult case" test for finding opposition to early voting. While clerks in many states without EDR may resist the adoption of early voting because of the time and resources needed to prepare earlier, hire poll workers for many days of work, clerks in EDR states may be more likely to support early voting with SDR by dispersing those duties over days or weeks. Thus, if Wisconsin clerks are opposed to adding early voting and SDR, it is unlikely that clerks in states without EDR would be supportive.

Previous literature has provided the basis for expecting both positive and negative responses from election administrators about the potential for combining SDR, EDR and early voting. Gronke (2008, 43) and co-authors write, "Convenience voting reduces the need to staff polling places on election days, provides more time to process ballots, and may give election administrators more time to respond to voter problems (such as an invalid or incorrect registration)." For these reasons, election officials might be expected to support some early voting reforms. At the same time, administrators are not likely to support the expansion of early voting if they see this as a burden. In a different context, Moynihan (2003) argues that there is often zero-sum battle between administrators and the public when it comes to citizen participation. Administrators are more sensitive to administrative burdens than to public benefits when considering new forms of participation. If administrators cannot see a benefit for themselves in presenting new opportunities to participate, they will be reluctant to offer them. Extending this argument to the electoral context, local election officials may see changes that offer greater convenience to voters in terms of costs. Moynihan and Silva (2008) suggest a related reason for expecting resistance to voter convenience: simple status quo bias. Election officials build up a capacity to operate a certain technology over time. Switching to a new approach creates transition costs that might be viewed as increasing long-term workload. The existence of a status quo bias has been found to explain election official attitudes toward voting technologies, as well as their perception of efforts to change the election system, in the form of the Help American Vote Act (HAVA) (Moynihan and Silva 2008). Proposals for NPPEV, SDR or EDR promise to further disrupt the status quo.

To determine the attitudes of election officials to changes in the *status quo*, we administered a comprehensive survey of all 1,850 municipal clerks and 72 county clerks in Wisconsin and achieved a 72% response rate. We also conducted personal interviews with 100 select municipal and county clerks. For the in-person interviews, we developed a semi-structured interview protocol. The material for this protocol came from the themes in the survey, discussions with clerks at GAB meetings, and an open-ended comments section as the end of the survey. A sampling procedure assured representation of the state's 15 largest municipalities and then randomly select the remaining 85 in a manner that mimics the distribution of the state's voting age population.

The two questions we will focus on here are those asking about the administrative burden of EDR and early voting. Clerks generally associated voter convenience with higher administrative burdens. Clerks were asked to agree or disagree (on a seven point scale) with the statement that "Election day registrations increases the administrative burden on election officials like me." Nearly 55% of clerks were above the neutral position in agreeing with the statement and 25% strongly agreed. Only 30% disagreed. An even larger proportion, nearly 85%, said that "early voting would make my job more difficult" and only 5% thought it would make their job easier when prompted with a two-sided question about the change in administrative burdens that would come if Wisconsin were to adopt early voting. In contrast, 67% thought that in-person absentee voting makes their job more difficult, while only 3% thought it made their job easier.

Despite the view that EDR increased administrative burdens, the survey revealed that clerks were quite supportive of the practice. Nearly 60% of clerks agreed that "the benefits of election day registration outweigh the costs," while only 20% disagreed. The interviews and open-ended survey responses provide some illuminating examples of how clerks think about voting procedures. One clerk said,

> I don't think there is any question that it [the state's status as the second highest in the nation in terms of voter turnout] is attributable to the fact that the state offers election day registration.

Other clerks were more specific about the tradeoffs:

> I think it's [EDR] a good thing for the voters because they don't have to plan ahead. And it probably does increase the number of people voting, coming out to vote. On the administrative side, it's difficult to manage hundreds and hundreds of registrations very close to an election day. Yeah it is a little time consuming, but it's all for a good cause, I understand that.

One was critical of fellow clerks who may not see positive benefits of EDR:

> They can't see out of their roles as administrators into a philosophical democracy role. They see it very black and white. So if you ask them 'should we do away with election day registration?' they'll say 'yes,' because they think about how much easier it would make their jobs.

However, some clerks were critical of the practice. One noted the increased administrative burden caused by voters who wait until the last minute to register:

> I believe EDR just adds so much stress to the election workers. Because even though people have known for four years that there's going to be another presidential election, if you give people to the last minute, they'll take to the last minute. And even if it was 60 days, they would wait until 5 o'clock on the 60th day.

With early voting, the responses were much more negative. While some clerks thought that early voting would be a manageable burden and even increase turnout, the following comments were much more typical:

> Early voting could be a nightmare to find enough poll workers to handle the additional days/hours that would be required. There must be a lot of coordination of every aspect of the election process to handle early voting.

And another emphasized the competing demands on a clerk's time.

> Early voting would be a hardship for the numerous part-time clerks that do not maintain regular office hours and work additional jobs. We neither have the manpower, resources, or security needed to do the job over multiple days/weeks.

Clerks in small municipalities are more likely to make the case that the burdens of early voting (in terms of costs, time, and personnel) are too onerous. These comments are often framed in the context of the growing burden that elections have created for administrators since the passage of HAVA. They often point out that election administration is only one of their duties, but that it takes up too much of their time and would take up even more with alternative forms of voting. Some clerks suggest that if this pattern continues, and in particular if there are additional requirements such as early voting, it will make it increasingly hard to find people to fill the clerk position. A few clerks were broad-ranging in their criticisms of EDR and in-person-absentee voting, such as the following emphatic response to an open-ended survey question:

> Election Day registration should be STOPPED. There is no way to verify completely or through HAVA that this person is legal, felon, etc. Letting people vote absentee for no reason should be STOPPED!!!! It was originally meant for people who were disabled, etc. Go back to that!!!! Letting people come in for no reason was a nightmare for the municipalities up to the day of election. There was no way to have time to process the absentee apps, including registrations, before the day of election. That was ridiculous.

Others were specifically concerned about the potential administrative burden of early voting:

> Early voting could be a nightmare to find enough poll workers to handle the additional days/hours that would be required. There must be a lot of coordination of every aspect of the election process to handle early voting.

A small-town clerk made a similar observation:

> Early voting would be a hardship for the numerous part-time clerks that do not maintain regular office hours and work additional jobs. We neither have the manpower, resources, or security needed to do the job over multiple days/weeks.

Finally, quite a few clerks blame voters rather than the practice itself for the increased administrative burden:

> I do not feel that early election, promoting absentee voting will increase voter turnout. If folks do not vote when the scheduled voting is set up they are not interested or perhaps they should not be voting. If a person is not responsible enough to be prepared and have the knowledge to know when or how or who to ask about the voting process how can they possibly have the knowledge to make a responsible decision to vote?

Another echoed that:

> Election Day Registration is being abused by people who have begun to presume that it is their right. I think there should be a provision to allow for only certain limited EDR. There is no reason that the vast majority of the voters can not register at least 30 days prior to the election. I believe that voting is both a privilege and a right and more people need to act responsibly and try to be better prepared. There is enough information available that people can easily find out where to register and what proof of residency they need to bring with them.

One clerk was blunt about "lazy" voters:

> It only takes 5 minutes every four years to walk into an election booth and cast a ballot so why do we have to make so many accommodations to make it easier? We have become very lazy if we can't do this once every 4 years! As far as absentee voting, I also believe that Wisconsin should make a person need a reason not to be able to vote in person on election day. Again, we are letting people take the lazy way out. The paperwork alone makes this type of voting a nightmare and I don't think these votes are as confidential since most people are using the machines now to vote, leaving their ballots the only ones in the ballot boxes.

This clerk expressed skepticism that early voting would increase turnout because of the type of voter who would be likely to take advantage of the practice:

> I do not feel that early election, promoting absentee voting will increase voter turnout. If folks do not vote when the scheduled voting is set up they are not interested or perhaps they should not be voting. If a person is not responsible enough to be prepared and have the knowledge to know when or how or who to ask about the voting process how can they possibly have the knowledge to make a responsible decision to vote?

Finally, another clerk spoke for many of colleagues in small communities, contending that:

> Absentee voting should only be allowed for those unable to come to the polls because of age or disability, or if they are gone the day of election or during election hours. Too many voted absentee because they did not want to stand in line at the last November election. This is your right. The elderly did not complain, only the younger ones.

One conclusion that could be drawn from the clerk interviews is that opposition to early voting is partly a resource problem. One clerk made this explicit:

> My community is basically 2,000 in population, but I do NOT have a government office - everything is done out of my home. I would LOVE to have Early Voting, but I do not

> see how I can do this. The security at the Hall would be very minimal and as it is now; in-person absentee voting is done in my home (which is horrific for presidential and big General Elections). People expect me to be available 24 hours a day for their convenience to vote. Early Voting then might require me to be available at my house 24/7. I currently pre-test and public test at the Hall and use all of the security measures for the equipment. If we went to Early Voting, I would have to drag the equipment back and forth between all of these events - a greater chance for equipment failure, security failure, etc. If there were funds available for an office, I would totally support Early Voting.

If clerks had more poll workers and more paid staff or even an office, then the concern that early voting would lead to a greater administrative burden might not be as strong. However, the survey reveals that large majorities of clerks still would not support early voting even with an increases in paid staff, funds to pay poll workers, security protections, office space, and funds for voter education. As shown in Table 4, only about a fifth of clerks said that increases in these resources would increase their support for early voting (and about another fifth said it would make them "somewhat more likely to support early voting"). For many clerks opposition to NPPEV is philosophical and not merely a matter of resource constraints.

Opposition to EDR, SDR, and early voting is sometimes based on concern about ballot security and voter fraud. Some clerks echoed this concern:

> Election Day Registration creates such a large post election burden. If WI wants to make changes to elections in WI this should be eliminated. By doing so I think it could reduce voter fraud and potential errors by poll workers. The day before the election should be the last day to register in the clerk's office.

Another said:

> I do NOT agree with Election Day Registration because there is no way to catch voter fraud until weeks AFTER the fact. I also think registration requirements are too lax. Photo ID should always be required. The current rules were fine when we were not such a mobile society. Today a person could easily vote in multiple places just by traveling by car, let alone air travel. A responsible citizen can and should register at least 2 weeks prior to the election. It should be a requirement, along with photo ID and proof of address.

However, most clerks did not see ballot security as a serious issue for EDR or in-person absentee voting. Clerks were asked to agree or disagree (on a seven-point scale) whether "Election Day Registration makes it more difficult to protect the security of the voting process." Only 26% agreed (11% strongly agreeing), while 60% disagreed (21% strongly disagreeing). Clerks were even more confident that in-person absentee voting did not undermine the security of the voting process, with 73% disagreeing (and 29% strongly disagreeing) and 14% agreeing (and 5% strongly agreeing).

One final observation is that clerks who are less likely to see EDR and early voting as an administrative burden are more likely to think that those practices increase turnout. Overall, 65% of clerks believe (as the empirical evidence shows) that EDR increases

turnout, while 20% think it decreases turnout and the rest are unsure. Of those who strongly disagree that EDR is an administrative burden, 81% think that EDR increases turnout compared to 51% of those who strongly agree that it is a burden. The differences are even more dramatic for early voting, where only 23% of clerks think it will increase turnout and 48% think turnout would fall if early voting were implemented. Of the relatively small group who thought that early voting would make their job easier by spreading out the administrative burden, 89% thought it would increase turnout compared to only 16% of those who thought it would make their job more difficult.

To explain the patterns in the clerks' views of their administrative burdens, we specified two multivariate models: an ordinal logistic regression model in which the dependent variable is the seven-level disagree/agree question about EDR, and a logit model in which the dependent variable is whether or not the clerk thinks that early voting will make his or her job more difficult. We included controls for the percentage of high school graduates, the percentage of African Americans, and the per capita income of the municipality. We also included the number of votes cast in the municipality to control for the actual burden on the clerk. The variables that are of more substantive interest are related to the clerk's job, their perceptions of their jobs, and their level of experience.

Table 5 reports the estimates of the model explaining clerks' attitudes about the administrative costs imposed by EDR. The percentage of a clerk's job that is related to election activities is positively related to perceived burden. More experienced clerks (as measured by the number of presidential elections in which they have worked) are also more likely to complain, as are full-time clerks relative to part-time clerks. These findings may suggest that the more specialized and experienced clerks, who are likely to have a more in-depth knowledge of the burden created by alternative forms of voting, are more likely to see EDR as a burden. The findings also suggest that elected officials are less likely than appointed officials to believe that popular voting alternatives that increase voter convenience represent an administrative a burden. In addition, the results show that clerks who view EDR as a right are significantly less likely to see it as a burden.

The key variable examines the combination of NPPEV and EDR. Given that Wisconsin does not have true early voting, we attempted to assess the tradeoffs by asking the clerks about an expansion of in-person-absentee voting. Specifically we asked,

> "Some people think that more in-person absentee voting would make it easier to process EDRs by spreading them out over a longer voting period. Other things it would only make processing them more difficult. How about you – do you think more in-person-absentee voting would make it easier to process EDRs, more difficult to process EDRs, or would there be no change?"

Overall, clerks were three times as likely to think it would make it harder to process EDRs (36% to 12%). Clerks who thought more in-person-absentees would make it more difficult to process EDRs also were much more likely to see EDRs as an administrative burden.

We also asked the clerks whether they thought a "bill to allow for early voting in Wisconsin" would make their job more difficult. As reported above, a large majority of clerks thought that it would. In seeking to explain the variation in attitudes across clerks, we included all of the same explanatory variables as in the model reported in Table 5 with one modification: we replaced the clerk's view of whether or not EDR is a right with their opinion about whether "most voters should be required to vote at a polling place on election day." This view was held by a plurality of clerks (45.3%), while 32.2% preferred that absentee voting should be allowed for "any voter who wants to use it," if cost were not an issue (the other 22% did not have a strong opinion either way). Table 6 provides the results. As with the variable asking whether EDR is a right, perceptions concerning the sanctity of election day was highly significant. Unlike the previous model, the control variables for percent African-American and the percent of high school graduates in the municipality are not significant. Whether the clerk is appointed or elected or has experience in presidential elections are also unrelated to perceptions of early voting. However, full-time clerks and those who devote more time to election-related matters are less likely to see early voting as making their jobs more difficult. As in the previous model, the central variable of interest, the combination of in-person-absentee voting and EDRs is highly significant.

## IV. Conclusion

We have argued that election reforms should not be considered in isolation, as is standard practice in the multivariate models estimated by researchers but also in the arguments made by advocates and policy makers. If reformers do want to improve turnout, the only consistent way to achieve this is to permit EDR. SDR itself can raise turnout if the window for registration and voting is sufficiently long. It appears that early voting on its own robs election day of its stimulating effects on marginal voters unless EDR provides a vehicle for their mobilization at the last moment. The most common practice in the states is to offer early voting in isolation. If the goal is higher turnout, our findings show that it should be supplemented with SDR or, even better, EDR. It is only by being combined with "one-stop shopping" that early voting yields positive effects. An important caveat is that our analysis focused only on the 2008 election. As with analysis anchored in a specific time, generalizations must be made with caution. That said, 2008 is the first election when the current combination array of election laws is in place, and offers the best basis upon which to guide policy for the future. We have applied a variety of methodological approaches that suggests the same basic results, and so we have high confidence in the validity of the findings for the 2008 presidential election.

At the same time, policymakers should be aware that convenience for voters imposes significant burdens on the election officials charged with administering new approaches, especially in smaller towns that have limited resources. Our study of Wisconsin election officials found strong opposition to the additional administrative responsibilities resulting from efforts to enhance voter convenience. Such reforms are not costless, and may even be counterproductive, if the effect is to encumber election officials while producing little real benefit to the electorate.

**Figure 1: Combinations of EDR, SDR, and Early Voting in 2008**

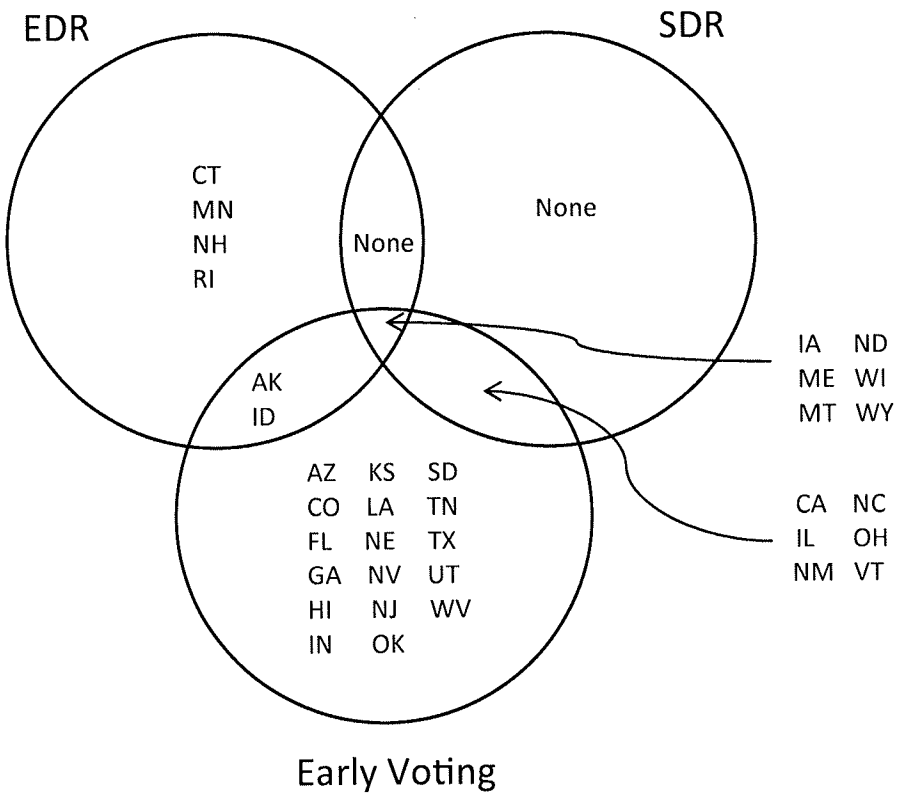
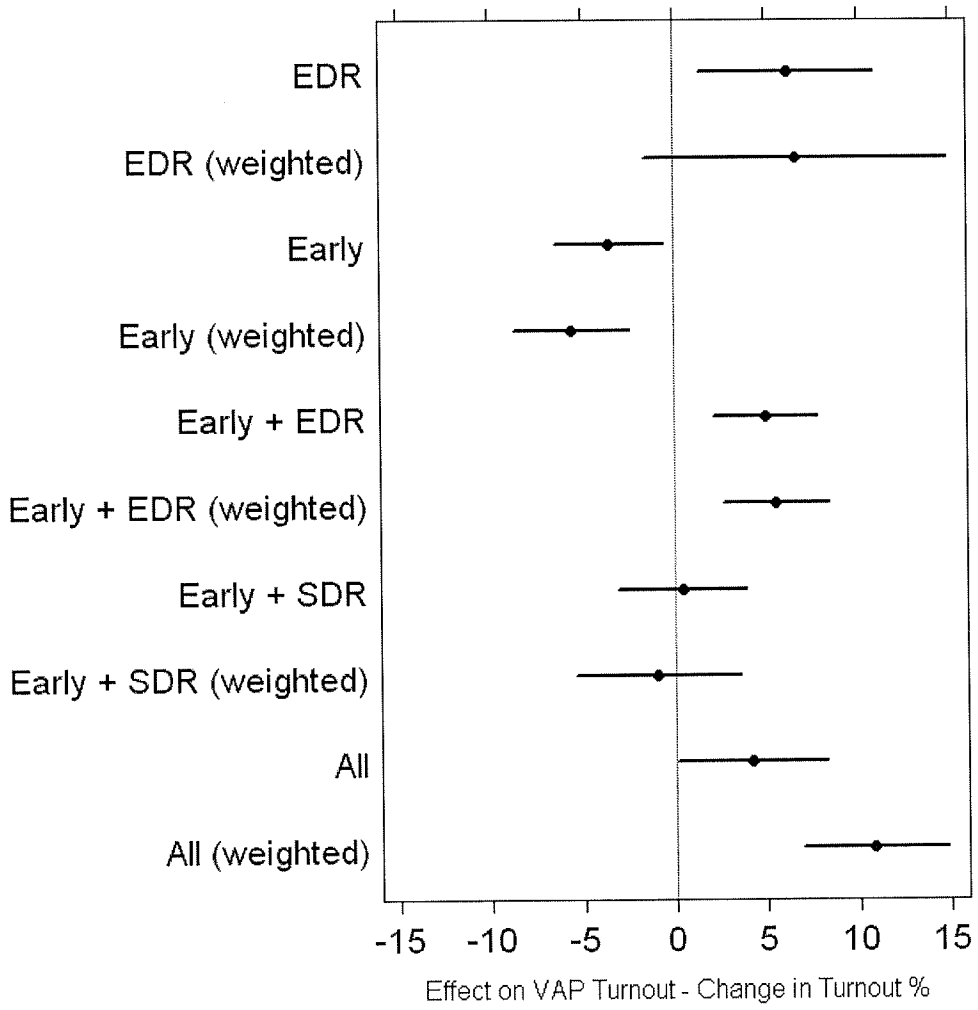
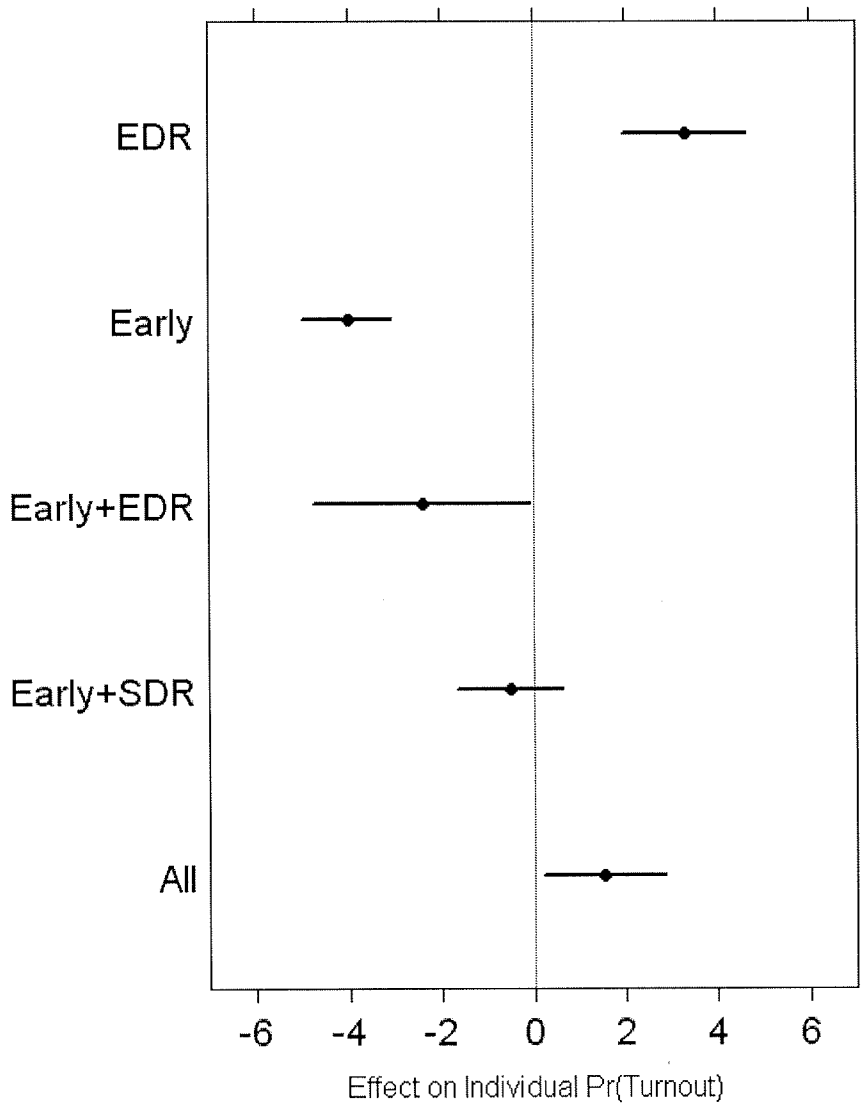


**Figure 2: Effects on Aggregate Turnout**



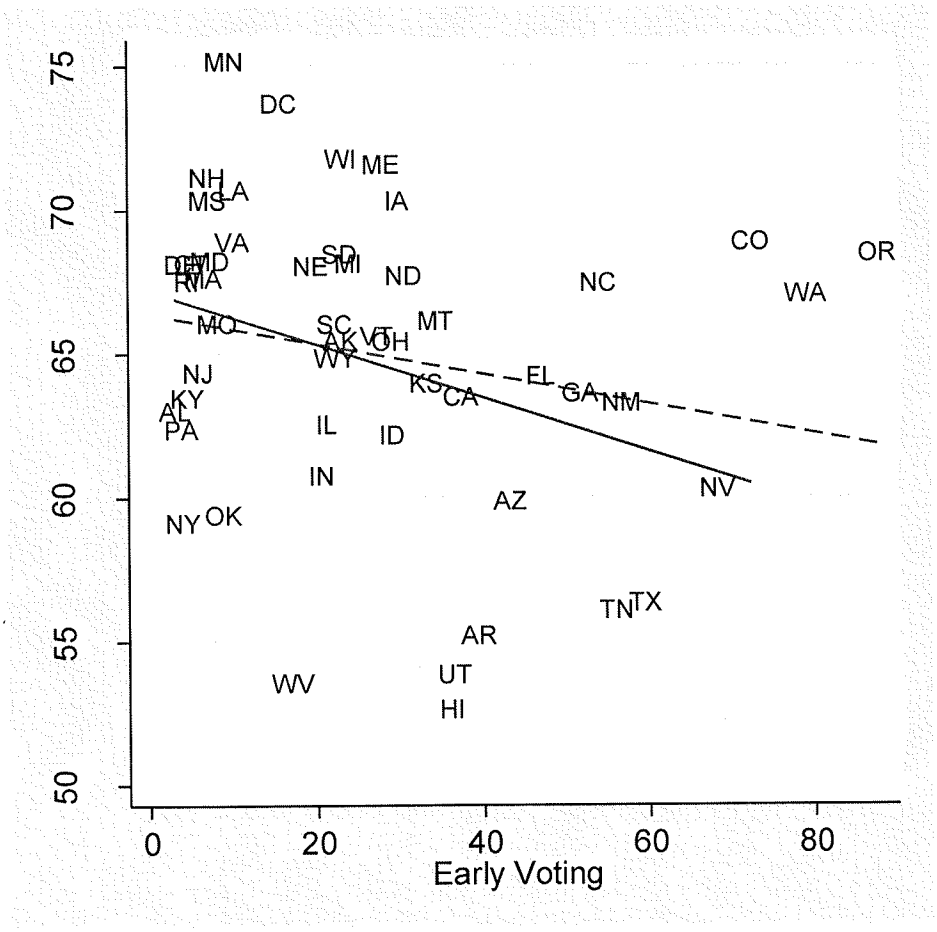

*Notes:* Dots are effect point estimates and lines represent the 95% confidence intervals. Data are based on results in Table 1.

**Figure 3: Effects on Individual Turnout**




*Notes:* Dots are effect point estimates and lines represent the 95% confidence intervals. Data are based on results in Table 3.

## Figure 4: Early Voting and Turnout in the States




*Note:* Dotted regression line represents all states. Solid regression line omits OR and WA.

**Table 1: Regression Estimates of EDR, SDR, & Early Voting Effects on County Turnout**

| | I | II |
|---|---|---|
| EDR | 6.19** | 6.67* |
| | (2.42) | (4.20) |
| EDR + Early Voting | 4.95**** | 5.54**** |
| | (1.46) | (1.47) |
| EDR + SDR + Early Voting | 4.16** | 10.86**** |
| | (2.07) | (2.03) |
| Early Voting + SDR | .42 | -.96 |
| | (1.79) | (2.29) |
| Early Voting | -3.51** | -5.58**** |
| | (1.52) | (1.61) |
| Closing Date | -.10 | .07 |
| | (.10) | (.13) |
| ID Requirement | .78 | .05 |
| | (1.32) | (1.63) |
| Ex-Felons Barred | .09 | 1.19 |
| | (1.32) | (1.67) |
| Percent Black | .12*** | .12*** |
| | (.04) | (.04) |
| Median Income | .0003**** | .0002*** |
| | (.00005) | (.0001) |
| Percent College Graduates | .32**** | .30**** |
| | (.07) | (.07) |
| Percent 65 or Older | .86**** | .68**** |
| | (.09) | (.18) |
| Population (in 100,000s) | -.39**** | -.14*** |
| | (.08) | (.05) |
| Population Density | -.0004*** | -.0003**** |
| | (.0002) | (.00004) |
| Campaign Competitiveness | -.09 | -.25*** |
| | (.07) | (.07) |
| Oregon | 3.03** | 4.68**** |
| | (1.13) | (1.16) |
| Washington | .10 | 5.67** |
| | (2.17) | (2.14) |
| Constant | 32.22**** | 36.00**** |
| | (4.03) | (4.50) |
| $R^2$ | .417 | .585 |
| Weighted by Population | No | Yes |

*Notes:* $N = 3109$. ****$p < .001$ ***$p < .01$,**$p < .05$, *$p < .10$, one-tailed test. Cell entries are OLS regression estimates with standard errors in parentheses. Robust standard errors clustered at the state level.

## Table 2: Effect of SDR Window Length on County Turnout

| | |
|---|---|
| Length of Window (in Days) | .29*** |
| | (.03) |
| Closing Date | .03 |
| | (04) |
| ID Requirement | .77 |
| | (.88) |
| Percent Black | .05* |
| | (.03) |
| Median Income | .0002* |
| | (.0001) |
| Percent with BA | .32*** |
| | (.05) |
| Percent 65 or Older | .67*** |
| | (.07) |
| Population (in 100,000s) | -.14** |
| | (.05) |
| Population Density | -.0003 |
| | (.0002) |
| Campaign Competitiveness | -.06** |
| | (.04) |
| Constant | 34.05*** |
| | (2.88) |
| $R^2$ | .464 |

*Notes:* $N = 713$. ***$p < .001$ **$p < .01$,*$p < .05$, one-tailed test.
Cell entries are OLS regression estimates with standard errors in parentheses.
Analysis is limited to states with same day registration.
Robust standard errors clustered at the state level.
Dummies for individual states not reported.
Ex-felon disenfranchisement variable omitted because it does not vary in SDR states.

## Table 3: Logit Estimates of EDR, SDR, & Early Voting Effects on Individual Turnout

| | |
|---|---|
| EDR | .170*** |
| | (.037) |
| EDR + Early Voting | -.117* |
| | (.057) |
| EDR + SDR + Early Voting | .077* |
| | (.035) |
| SDR + Early Voting | -.029 |
| | (.029) |
| Early Voting | -.198*** |
| | (.024) |
| Education | .601*** |
| | (.010) |
| African-American | .735*** |
| | (.032) |
| Hispanic | -.057 |
| | (.033) |
| Self-Reported Vote | .828*** |
| | (.019) |
| Naturalized Citizen | -1.05*** |
| | (.102) |
| Naturalized 10+ years | .469*** |
| | (.108) |
| 30-day Registration close | -.116*** |
| | (.021) |
| Married | .425*** |
| | (.020) |
| Residence 1 Year | .269*** |
| | (.026) |
| Income | .081*** |
| | (.003) |
| Gender | .148*** |
| | (.018) |
| Age | .025*** |
| | (.001) |
| Age 18-24 | .421*** |
| | (.033) |
| Age over 75 | -.116** |
| | (.042) |
| South | -.039 |
| | (.025) |
| Campaign Competitiveness | -.005*** |
| | (.001) |
| Oregon | .165* |
| | (.077) |
| Washington | -.045 |
| | (.069) |
| Constant | -3.85 |
| | (.068) |
| Pseudo-$R^2$ | .145 |
| Pct. Correct Predicted (null) | 73.4% (68.8%) |
| N | 74,327 |

*Notes:* ***$p < .001$ **$p < .01$,*$p < .05$, one-tailed test.
Cell entries are logit regression estimates with standard errors in parentheses

## Table 4: Resources and Clerk Support for Early Voting

| | No more likely to support early voting | Somewhat more likely to support early voting | More likely to support early voting |
|---|---|---|---|
| Increase in paid staff (n=1,369) | 61.1% | 18.4% | 20.5% |
| Increase in funds to pay poll workers (n=1,370) | 57.2% | 21.5% | 20.4% |
| Increase in security protections (n=1,365) | 65.6% | 14.1% | 20.4% |
| Increase in office space (n=1,367) | 70.6% | 13.0% | 16.4% |
| Increase in funds for voter education (n=1,366) | 62.6% | 15.2% | 22.2% |

Table entries are responses to the question, "How much would increases in each of the following resources affect the likelihood that you would support Early Voting?"

**Table 5: Factors Affecting the Perceived Administrative Burden of EDR**

| | |
|---|---|
| In-Person Absentee Voting Makes It Harder to Process EDRs | .288*** |
| | (.007) |
| Per Capita Income | -.000018** |
| | (.000007) |
| Number of Presidential Votes Cast in Municipality | .000039** |
| | (.000016) |
| Percent African-American | .047* |
| | (.027) |
| Percent High School Graduates | .015* |
| | (.006) |
| Percent of Clerk's Job Spent on Elections | .004* |
| | (.002) |
| EDR is a Right | -.19*** |
| | (.020) |
| Number of Presidential Elections Worked as a Clerk | .035** |
| | (.015) |
| Appointed Clerk | .181* |
| | (.089) |
| Full Time Clerk | .241** |
| | (.097) |
| Pseudo-$R^2$ | .198 |
| Log Likelihood | 4450.7 |
| Number of Cases | 1,253 |

*Notes:* ***$p < .001$ **$p < .01$,*$p < .05$, one-tailed test.
Dependent variable is a seven-level variable ranging from "strongly disagree" to "strongly agree" that EDR increases the administrative burden on clerks. Six threshold estimates are not reported.

## Table 6: Early Voting and Perceived Difficulty of Clerk's Job

| | |
|---|---|
| In-Person Absentee Voting Makes It Harder to Process EDRs | 1.240*** |
| | (.228) |
| Most Voters Should Be Required to Vote on Election Day | .985*** |
| | (.193) |
| Per Capita Income | -.000027* |
| | (.00001) |
| Number of Presidential Votes Cast in Municipality | -.00005** |
| | (.00002) |
| Percent African-American | .039 |
| | (.054) |
| Percent High School Graduates | -.003 |
| | (.016) |
| Percent of Clerk's Job Spent on Elections | -.011** |
| | (.005) |
| Number of Presidential Elections Worked as a Clerk | .005 |
| | (.038) |
| Appointed Clerk | -.244 |
| | (.222) |
| Full Time Clerk | -.485* |
| | (.226) |
| Constant | 2.477* |
| | (1.185) |
| Pseudo-$R^2$ | .173 |
| Log Likelihood | 951.4 |
| Number of Cases | 1,252 |

*Notes:* ***$p < .001$ **$p < .01$, *$p < .05$, one-tailed test.
Cell entries are logit estimates with standard errors in parentheses.
Dependent variable equals 1 if clerk believes that early voting would "make my job more difficult."

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12435

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CHELSEA COLLABORATIVE, MASSVOTE, AND RAFAEL SANCHEZ,

v.

WILLIAM F. GALVIN, AS SECRETARY OF THE COMMONWEALTH

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ON APPEAL FROM JUDGMENT OF THE
SUPERIOR COURT FOR SUFFOLK COUNTY
CIVIL ACTION NO. 2013-P-0047

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# *AMICUS* BRIEF FOR *AMICI CURIAE* DĒMOS, ROCK THE VOTE, SERVICE EMPLOYEES INTERATIONAL UNION MASSACHUSETTS STATE COUNCIL, AND MASSACHUSETTS COMMUNITY ACTION NETWORK IN SUPPORT OF APPELLEE AND AFFIRMANCE