## **ELECTION ANALYSIS**

Under Adverse Conditions in 2004

## **ELECTION OFFICIALS PERFORM WELL**

by Richard G. Smolka

The U.S. presidential election of 2004 was the most scrutinized in the nation's history. Political parties deployed thousands of attorneys, nonpartisan groups sent a multitude of poll watchers and the media assigned large numbers of reporters to focus on election procedures. The resulting reports, lawsuits and inquiries identified numerous administrative errors, suggesting to some that election officials in the United States are incompetent. Despite this, a strong case can be made that the election was, in fact, administered fairly, legally

and efficiently and that election officials, for the most part, did an excellent job given the difficult circumstances they faced.

With more than 120 million voters casting ballots marked with substantially more than one *billion* individual votes for candidates and issues, the 2004 elections were extremely complicated. The introduction of new electoral requirements generated by the federal Help America Vote Act (HAVA) of 2002 made

officials' work even more daunting. Voters simultaneously elected a president, a vice president, 34 Senators, 435 members of the House of Representatives and thousands of state and local officials. They also decided thousands of bond issues and other questions on state and local ballots. Moreover, this election saw the introduction of new federal and state election laws, new procedures, new technology and new voting machines in many jurisdictions. Even with this complex situation, only a few election outcomes remained unresolved a day or two following November 2, a significant accomplishment on the part of election officials.

Much went right in 2004 for two good reasons. First, HAVA authorized funds for state and local governments to improve electoral procedures, a first in U.S. history. Among other things, these funds helped vastly improve poll worker training. HAVA money also contributed to the purchase of voting machines that people with visual limitations could use to vote without assistance, and helped make polling places accessible to people with disabilities. In addition, HAVA mandated that states establish a complaint procedure to adjudicate problems.

The second reason for the success of the recent elections was the important contribution by the bipartisan election boards in Ohio. The value of this type of system was highlighted when it became clear that the outcome of the presidential election depended on this state. Each four-member county board of elections in Ohio has a chair from one party and a vice chair from the other. Each county also has a full-time director of elections, who is a member of the opposite party than that of the chair, and a deputy director of the party opposite that of the vice chair. Both major political

parties are aware of every administrative decision and share in every decision.

Thus, when Democratic presidential candidate John Kerry sought information on Election Day about Ohio's election procedures, anomalies and results, he had access to Democratic officials in each county who were themselves, in part, responsible for election procedures and the vote count. Kerry conceded the election

**ALAMANCE COUNTY** Provisional Pollbook No. PROVISIONAL BALLOT ENVELOPE Precinct. THE VOTER MUST COMPLETE THIS FORM AND THE ATTACHED VOTER REGISTRATION/UPDATE FORM PRIOR TO VOTING. ALL PROVISIONAL BALLOT ENVELOPES MUST BE SEQUENTIALLY NUMBERED. \_ do hereby affirm that: I am currently registered to vote in the above mentioned countly in North Carolina, and that I have not moved out of the countly since the date of ny original registration. I have not voted in this election in:

precinct where I am currently registered and hereby request that I be permitted to vote in this election in ny new precind. 2(B). on or about the day of 1 completed and mailed to the Board of Elections in the above mentioned county, a voter registration application, and that I should be entitled to vote today. 3 I have previously registered to vote in the above mentioned county in North Carolina; that I have not resided outside the above mentioned county since completing that registration; that I have not registered to vote in any other county or state since completing that voter registration; and that I 4. to the best of my knowledge, information and belief, my current residence is within the following voting district(s) and that I should be entitled to vote in that district's election today ☐ 5. (other reason)\_ Signature of Voter **VOTER SEALS BALLOT IN ENVELOPE** DO NOT PLACE BALLOTS IN TABULATOR Precinct (verified in street book) Ballot Style Issued

Provisional ballot envelope from Alamance County, North Carolina the vote count. Kerry

with confidence that the information he obtained was complete, accurate and would not change the results. Although nonpartisan election administration finds excellent models in nations such as Canada and Australia (and most U.S. election administrators attempt to conduct themselves in a nonpartisan manner), Ohio's bipartisan model served the nation well in 2004.

Though much went right in 2004, there were also problems. Excluding those related to voting equipment, major administrative problems fell into three categories: (1) inconsistent solicitation and processing of voter registration forms; (2) confusion about provisional ballots; and (3) the effects of a lengthened election calendar.

Although election reformers often focus on the maintenance of a statewide voter registration list, the problems with voter registration are more basic. Local voter registrars have no control over people who solicit or distribute voter registration applications, whether they are government employees in motor vehicle agencies, political parties, interest groups or individual volunteers.

Secondly, the registrar (who is responsible for determining voter eligibility and the proper precinct for a given voter) is unaware a registration form is coming until it arrives in the election office. Often submitted in bulk, registration forms are unloaded on the registrars at deadline, and they must then attempt to process appropriately those that are not completed properly (perhaps due to poor instructions, negligence or even fraud). In some cases, problems arose because forms never arrived; some volunteers solicited registration applications and then failed to deliver them, disenfranchising potential voters who believed they were registered. In other cases, political organizations paid workers by the number of registrations they obtained, and workers simply filled in names and addresses from telephone books or used celebrity names with fictitious addresses. As a result of incidents like these, many registrars were unable to compile complete and accurate registration lists by Election Day. Congress sought to improve this situation, and protect voters' rights, by mandating provisional voting.

No election law was more confusing to the public or to state, local and precinct officials (or was the basis of more lawsuits) than the law concerning provisional voting. Voters who believed they had registered were permitted to cast provisional ballots that could be counted if the voters' registrations were confirmed. Many voters were only able to vote because of provisional voting. However, HAVA left it to the states to determine when provisional votes are counted. As a result, the application of provisional voting procedures varied among and within states. The U.S. Election Assistance Commission is currently gathering information on provisional voting and will offer guidance on this topic later in the year. As HAVA is currently written, uniform application of provisional voting among the states is not required. Uniform application within each state, however, is necessary.

State laws attempting to make voting more convenient by extending the registration and/or voting period also contributed to election problems. In the late twentieth century, there was a long-term trend towards allowing voters to register closer in time to Election Day. Currently, 30 days is the longest period any state requires, and six states allow Election-Day registration, the shortest period. In 2004, voting began on September 13, when North Carolina began mailing absentee ballots. Many states began the same process five days later. Each year more states permit early voting in person at designated locations in the county up to three weeks prior to the election. Counting both early voting and absentee ballots, as many as 20 percent of all votes are cast before Election Day. In many counties, this percentage is well over 50 percent, and in Oregon, which conducts an all-mail election, it is 100 percent.

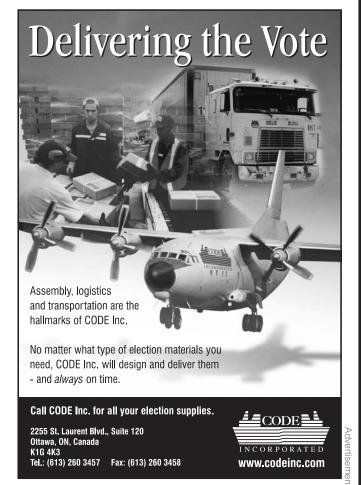
However, during this lengthy period of voting (50 days in 2004), ballots and election rules are subject to change. For example, courts ruled that presidential candidate Ralph Nader be put on the ballot in some states and taken off in others after absentee ballots were mailed. Some state and local candidates were similarly affected. Late lawsuits also challenged election procedures, ranging from the interpretation of federal law to relatively trivial administrative

regulations. The combined effect of these two trends is that voting may begin before the names of all candidates on the ballot are decided and before the complete list of eligible voters is compiled and election procedures are finalized.

Each late decision ordering a change had major negative administrative consequences and often imposed costly solutions on local jurisdictions. Whenever changes are made after voting has begun, whether these changes are by judicial fiat or by administrative response to a situation, ballots cast under one set of circumstances must be segregated from those cast under other circumstances, and the differences must somehow be accommodated.

The number of administrative problems with elections would be drastically reduced with a clearly defined provisional ballot law and procedure in each state, with individuals who solicit voter registration applications held accountable for their actions, and with judicial and legislative acceptance of the idea that ballots and election procedures should not be subject to change after voting has begun. These steps would go a long way towards making U.S. elections the most effective they can be.

Richard G. Smolka is Professor Emeritus at American University and the Editor of Election Administration Reports.



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