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THE GROWTH OF EARLY AND NONPRECINCT PLACE BALLOTING: WHEN, WHY, AND PROSPECTS FOR THE FUTURE

PAUL GRONKE*

EVA GALANES-ROSENBAUM**

1. Introduction

Early or convenience voting—understood in this chapter to be laws, rules, and procedures whereby citizens can cast a ballot at a place and time other than at the precinct on Election Day—has grown steadily and inexorably in the United States over the past quarter century, and is increasingly being adopted worldwide.¹ It is a popular target for election reformers, who often identify higher voter turnout as an important goal and early voting as a tool for reaching that goal.

In this chapter, we provide a road map to the changing terrain of voting in the United States, focusing on the emergence of a new roadside attraction—early voting in its many guises and forms. First, we describe the early voting policy regime, detailing the legal requirements and administrative procedures associated with each balloting method. Second, we briefly review how rapidly early voting laws have been adopted, and how many Americans are taking advantage of these laws. Finally, to give the readers some sense of the how, where, and why of early voting, we review the main arguments made by proponents and opponents of early voting, and examine in detail how early voting reforms were implemented in Florida leading up to the 2004 campaign. While not intended to be statistically representative of the nation, Florida provides a number of important illustrations of the administrative challenges that face elections officials, candidates, and voters under an early voting regime.

* Professor of Political Science, Reed College; Director, Early Voting Information Center, Reed College.

** Associate Director, Early Voting Information Center, Reed College.

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II. A Typology of Early Voting Laws and Procedures

What is “early voting”? Typically, the phrase is understood to mean any mode of balloting by which voters can cast a ballot prior to Election Day, either at a local elections office, at a satellite location, at a voting center, or perhaps in the comfort of their own home. It is important to distinguish between the mode of balloting (absentee by paper; early in person by machine, etc.) and the time that the ballot was cast. Unfortunately, in most election jurisdictions, it is virtually impossible to make this distinction. An “early” absentee ballot may be cast as early as 40 days before the election in Iowa, Wyoming, and Maine; while in many jurisdictions (e.g., California), the absentee ballot could actually have been hand-delivered to the elections office on Election Day. Some states provide for as many as 45 days of early in-person voting, while others allocate just a week. It is important for the reader to keep in mind, then, that what we refer to as “early voting” captures a diverse set of voters, including those who may have made their choice in mid-September as well as a small number who cast their “early” ballots on Election Day, and are thus not voting “early” at all.²

The legal requirements for voting before Election Day vary between states, mainly between “no excuse” systems and those requiring voters to prove a “special” status (physical disability, absence on Election Day, medical condition or hospitalization, etc.). One of the major shifts that has occurred over the last few decades, particularly in the last ten years, has been the movement from “excuse required” laws to “no excuse” systems, which automatically expands the early voting system immensely.³

The following sections provide a guide to the various types of early voting systems and the legal requirements and administrative procedures associated with each. Table 1 provides an overview to this section.

A. ABSENTEE VOTING⁴

The first method by which citizens could vote before Election Day was the absentee ballot. Introduced during the Civil War, absentee voting expanded along two parallel tracks for most of its history: military and civilian. The method was first used to allow soldiers in the Civil War, who were often posted far from home, to cast ballots in their home states. Concerns about security and privacy of votes, familiar in debates about absentee voting even today, were introduced along with this voting method in the 1860s, and once the war ended, state laws allowing for absentee voting expired or were repealed. During World War I, soldiers were again posted far from home (this time overseas), and states responded by adopting absentee laws, most of which expired after 1918. By World War II, states were accustomed

Table 1: Early Voting Systems

Early Voting System	AKA	Mechanics	Where Used
Traditional Absentee		Voters have to apply for an absentee ballot, but a limited number of reasons are allowed, such as being physically unable to make it to a polling station, being in the military (domestic or overseas), living abroad, or being away at college.	Everywhere
No-Excuse Absentee	"Vote-by-mail," "Absentee voting by mail"	Voters have to apply for an absentee ballot, but no excuse is required. Voters receive the ballot as early as 45 days before the election and must return by the date of the election. In some localities, only a ballot postmarked on or before the election counts as valid. A few states allow for permanent absentee status, whereas in most states, a voter must apply for an absentee ballot at each election.	Many states and localities
Vote-by-Mail	"Postal voting"	Voters receive a ballot in the mail approximately two weeks before the election. Ballots can be returned via mail or dropped off at satellite locations or at the county elections office.	Oregon, United Kingdom (local elections), New Zealand
In-Person Early Voting	"In person absentee balloting"	Voters have the option of casting a vote early at a satellite location or at the county elections office. In most localities, the voter simply shows up; no prior notification is required. In most jurisdictions, the same voting machinery is used for early in-person and election day balloting.	Rapidly expanding list; Texas for the longest, Georgia, Tennessee, Iowa. Many states have this reform after the 2000 election

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Possible sources of confusion: In an increasing number of localities, absentee balloting can be done in person (and is often referred to as early voting) or via mail (sometimes referred to as "vote by mail"). Many localities do not distinguish between the two when reporting absentee ballot figures. In Sweden, "postal voting" is used to describe in-person voting at the post office.

to legislating absentee voting for soldiers, and responded to the declaration of war appropriately.⁵ Although it didn't make the difference, the soldier absentee vote was extremely important in the 1944 presidential election.⁶

It wasn't until the Korean War that states passed absentee legislation for soldiers that did not expire at the termination of a specific conflict. Following closely behind, the 1955 Federal Voting Assistance Act expanded absentee voting from a state-by-state question to a matter of federal importance, first for uniformed personnel overseas, then for their families, and finally for civilians overseas (see below).⁷

Thirty years passed, during which voting reform focused on other sectors of the electorate; finally, in 1986 the Uniformed and Overseas Citizens Voting Act⁸ (popularly referred to as UOCAVA) relaxed registration requirements and created a voting assistance program within the Department of Defense to aid overseas voters. Although absentee voting has continued to expand for the civilian population since 1986, the systems developed under UOCAVA for military voters have remained largely unchanged since the act's passage two decades ago, with the exception of some experimentation with Internet voting.

Running parallel to absentee developments for military voters was a series of expansions for civilian voters. The introduction of the "Australian ballot" in the late 19th century ensured voters (civilian and military alike) the protections we think of as common sense now: privacy while casting a ballot; uniform ballots containing all the names of eligible candidates and printed by election officials in the jurisdiction (not by party officials, as they often were previously). These regulations presented problems for civilian absentee balloting: If voters are supposed to be protected from coercion and fraud, how are these protections ensured when ballots are cast outside of the polling place? While these questions were answered to the extent that absentee voting laws were passed, it is important to note that the same concerns are *still present* in debates over early voting reform, nearly 100 years later.

Between the World Wars, many states introduced legislation allowing civilian voters with very specific reasons for not voting on Election Day to cast ballots early. They often attempted to create Australian-ballot-like protections by requiring voters to have witnesses, and restricted absentee voters in other ways—for example, to railroad workers only, or to others including business travelers, the bedridden, and the hospitalized. Where these laws conflicted with the provisions of the Australian ballot or other protections, the new laws were challenged and struck down. Throughout the following decades, states expanded their absentee laws to include similar rosters of qualifying excuses; 1955's Federal Voting Assistance Act added citizens living overseas, and the 1970 Voting Rights Act Amendments firmly established ideals of short residency requirements and absentee provisions for voters who had moved close to the time of an election, reflecting a trend in state election law reform in the 1960s.

When the 26th Amendment was passed the next year, extending the right to vote to citizens 18 years or older, absentee voting suddenly became much more relevant. Now that most college students were eligible to vote, millions of students who were attending college away from home had to be accommodated. Most states and local jurisdictions developed administrative procedures and regulations to deal with this new demand. Similarly, the 1975 Overseas Citizens Voting Rights Act⁹ gave citizens without legal addresses in the United States the right to vote from their residences abroad, again placing new administrative requirements on local jurisdictions to deal with absentee voters.

The present era of “nonprecinct voting reform” was inaugurated in 1978, when California became the first state to require no excuse from a voter wishing to cast an absentee ballot. By the early 1980s, Oregon and Washington had adopted similar legislation, commonly called no-excuse or liberalized absentee voting (as opposed to traditional absentee laws, which require a demonstrable reason or proof of status for voting early). As citizens farther and farther from home acquired the right to vote, many of the absentee requirements initially present in state laws—such as the witnessing of ballots by an official—had to be abandoned; by 1992, “only eight states required a notary public” to sign off on an absentee ballot.¹⁰

The preceding brief history of nonprecinct voting hints at the often vast differences in how such voting methods are actually administered—that is, how voters cast the ballot via one of these systems. Even the labels used to identify each method change meaning, depending on the state or local jurisdiction. More importantly, jurisdictions have different rules governing how registered voters go about casting a nonprecinct ballot. For example, in some states with no-excuse absentee laws, voters may choose to cast an absentee ballot in person (Maine is one such state), while most states accept them only by mail. In Washington State, a ballot need only be postmarked by Election Day; all other states require that ballots arrive by the day of the election.

Legally speaking, there are variations in such things as the number of early voting sites required to be established (per precinct or county), the required provisions for disabled voters, the ways in which ballots are processed (daily or on Election Day), and so on. Some states with voting machines conduct their early in-person polling on the same machines as their Election Day polling, whereas others use paper ballots.

B. VOTE-BY-MAIL

Vote-by-mail (VBM) is, in many practical respects, no different from absentee balloting, with one crucial difference: Voters have no choice in their mode of balloting. All voters, except a few with disabilities that necessitate an alternative balloting mode, must receive their ballot by mail.¹¹ Voters need not cast their ballots “by mail,” however—they can be hand-delivered to the county office or dropped off at

other official collection centers (in Oregon, for example, library branches are alternative drop-off points).

While Oregon is thought to be the pioneer in voting by mail, in fact California local elections were the first to go fully vote-by-mail, and two (rural) counties in the state are designated "VBM counties." Oregon became the first state to run all of its elections this way in 1998, after several test elections and use of VBM for local, county, and special elections. Washington State legalized the method as a limited option for nonpartisan special elections. After significant success and public demand, odd-year nonpartisan primary elections were added (1993), then a two-year trial period allowed any election to be conducted by mail (1994 and 1995). At the time of writing, 36 of Washington's 39 counties now run all elections by mail, with 70 percent to 83 percent of voters in the remaining two counties voting absentee (de facto VBM).¹² It is a peculiarity of VBM that only two West Coast states use it, with some other western states (California, Idaho, Arizona) seriously considering it.

Absentee voting is sometimes referred to as vote-by-mail in some jurisdictions, as most absentee votes are cast via the postal system. In most cases, the two methods are identical in administrative procedure, except that absentee voting is optional (and thus requires the voter to request an absentee ballot). Thus, in Oregon and soon in Washington, VBM is the *only* election system present, while absentee balloting coexists with other systems of balloting. While use of VBM is limited in the United States, a few other countries have implemented similar systems, usually called "postal voting," usually for local elections. Canada, Australia, and New Zealand are three examples, with some pilot tests of "all postal voting" elections in the United Kingdom.¹³

C. EARLY IN-PERSON VOTING¹⁴

The third major convenience method is early in-person voting. In this system, voters may cast ballots during an early voting period, some days or even weeks before Election Day. Many states offer early voting stations only at elections offices; others offer them at libraries, city halls, and other municipal buildings. Still others, of which Texas is the most famous, allow voters to vote at convenience stores. Larimer County, Colorado, has pioneered the use of "voting centers," super-sized balloting locations that are placed along major commute highways and act as "super-precincts."¹⁵ A few states offer absentee voting with the option to cast such ballots in person, rendering these options de facto early in-person voting.

Other than being able to cast a ballot early and the necessity of going to a less convenient polling place, the mechanics of most in-person early voting system are identical to precinct place voting. This may be why this has been one of the most popular nonprecinct place voting reforms. Election administrators already know what to do—the machines, the procedures, and the ballots are all the same.

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III. Trends in Nonprecinct Voting

The last three decades, beginning with California's introduction of no-excuse absentee voting in 1978, can be characterized as the "Era of Nonprecinct Voting." The clearest trend during this period is growth along two axes: adoption and turnout. Growth in both dimensions was slow in the 1980s, increased in the 1990s, and exploded in the current decade. As states adopted reforms that gave voters more choices in when and how they cast their ballots, voters turned to these new methods in greater numbers. Additional states, in turn, adopted these methods, and more citizens voted this way.

As with many topics in election administration and election reform, the 2000 election is a marker point in the development of early voting. After 2000, early voting laws really took off. By the 2006 election, the consequence of all these changes was clear: The era of early voting is here to stay. Election Day has become a quaint anachronism. Election Day has turned into a multiweek marathon of campaign contacts, absentee ballot delivery, and voter mobilization.

A. THE EVOLVING LEGAL REGIME

The early voting era began in 1978, when California—a source of many legal experiments and innovations—extended absentee voting to all eligible voters in 1978. The sister West Coast states of Oregon and Washington quickly followed suit. In 1987, Texas passed a law enabling voters to cast in-person early ballots. During the 1990s, 12 more states followed the West Coast lead by allowing no-excuse absentee voting. Meanwhile, "permanent" absentee voting was introduced in Kansas and Washington, creating a set of de facto by-mail voters. Texas was joined by eight other in-person early voting states,¹⁶ with all but two (Nevada and Tennessee) offering this in addition to no-excuse absentee voting. Finally, first by administrative mandate in 1996, then by voter referendum in 1998, Oregon became the first state to conduct all elections fully by mail.

The slow and steady growth in early voting options kicked into high gear after 2000. The 2000 presidential contest and associated legal wrangling cast a bright light on election administration in the United States. What was revealed was not very pretty. Doubts were cast about the ability of many states to track registered voters, provide secure and private methods of voting, accurately count ballots, or design proper ballots at all. This was followed in 2002 by the Help America Vote Act (HAVA), which aimed at eliminating many of the problems revealed in the 2000 election.¹⁷ While HAVA was not intended to encourage early voting, many state legislatures responded to the new political environment by passing nonprecinct voting laws. Theoretically, these laws gave voters more convenient options for casting ballots and more control over their voting process, and thus should increase turnout. In addition, early voting gave election officials more time to work out the problems

Table 2: The Development of the Early Voting Legal Regime

	Traditional Absentee Voting	No Excuse Absentee	No Excuse Absentee and Permanent Absentee Status
1980s	47 states as of January 1980	CA, OR, WA	(none)
1990s	45 states as of January 1990	AK, CA, IA, ND, VT, WA, WY	KS,* WA
2000–2006	27 states as of January 2000	AK, CA, IN, IA, ME, MD, MT, NE, ND, VT	CA, KS, MT NJ, WA

Notes: Figures collected by the authors. Numbers do not add up to 50 per decade because states reformed their election laws and may have a value in two cells. As noted in the text, the definition of "in-person early voting" varies across states.

* Kansas instituted an early voting period in 1998, during which voters could vote absentee "in person." At that time, they also instituted permanent absentee balloting.

with new voting machines and put less pressure on polling places, thus helping to improve election administration overall.

Regardless of the reason, early voting exploded after 2000. By 2006, only 15 states, mostly clustered in the northeast, retain traditional absentee voting.¹⁸ The most common electoral regime today is a combination of no-excuse absentee balloting and early in-person voting, a regime used by 19 states at the time of this writing.

B. THE GROWTH IN EARLY VOTING

Not surprisingly, as early voting became more widely available, voters responded accordingly. Reliable figures are difficult to come by, because many states still did not discriminate between nonprecinct place and precinct place voters until the 2000 election (and some still do not). Linking election return files and voter history files can be challenging. Exit polls and preelection surveys also failed to ask respondents about their early voting behavior until well into this decade, even though solid estimates are that 14 percent of the electorate voted prior to Election Day in 2000.¹⁹

The quality of data reporting has improved dramatically over the past few election cycles, and should continue to increase in quality as states move to statewide voter registration and reporting systems. The best available estimates of the rates of early voting, drawing on data from mass sample surveys and from the Election Assistance Commission's Election Day survey, are that 14 percent of voters cast their ballots prior to election day in 2000, 20 percent did in 2004, and 25 percent, or more than 25 million voters, cast nonprecinct place ballots in 2006.²⁰

These nationwide figures disguise substantial variation across the states, as we would expect given the varied legal regimes. Figure 1 shows the differing levels of

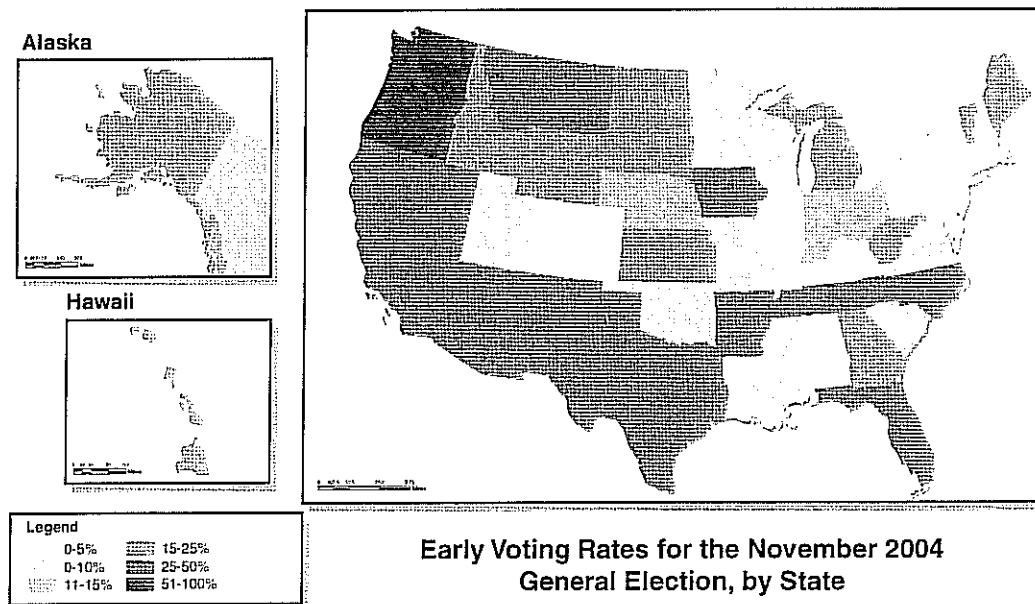
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	In Person Early Voting	No Excuse Absentee and In Person Early Voting	Voting by Mail
1980s	TX	(none)	
1990s	NV, TN, TX	AZ, CO, HI, ID, NM, OK	OR**
2000–2006	LA, NM, NC, TN, TX	AK, AZ, AR, CO, FL, GA, HI, ID, IA, NE, NM, NC, OH, OK, SD, UT, VT, WI, WY	OR

Notes: ** Oregon voters approved a November 1998 initiative adopting voting by mail for all elections. The state experimented with voting by mail in a special Senate election in 1995 and 1996, and special elections in 1993, 1995, and 1997.

Figure 1: Nonprecinct Place Voting Rates in 2004



early voting across the states. What is evident from this figure is that early voting is most common in the western and southwestern states, perhaps correlated with those states in which voters face both long drives to county offices and possibly long commutes in some of these cities.²¹ There are a few marked exceptions, however. Citizens of Iowa and Tennessee have long shown a tendency to vote early, even though this balloting method is not particularly common in the Midwest and South. Finally note the example of Illinois, which significantly relaxed its early voting laws

in 2005, allowing in-person early voting. In most states, 10 percent to 20 percent of the citizenry adopts early voting when it is first made available (e.g., Florida and Georgia in 2004), yet in Illinois, less than 6 percent of ballots were cast early in person.²²

In summary, citizens usually respond quite favorably to early voting reforms. On average, 10 percent to 20 percent of the ballots end up being cast early once these reforms are adopted, and the figures can climb rapidly. In some cases, such as Washington State, there seems to be no upper limit on the numbers of early voters, while in others, such as Tennessee or Texas, early voting seems to top out at 40 percent of the electorate. It is not known at present why these differences exist—this remains a topic for future research.

IV. The Politics of Early Voting Reform

Thus far, we have discussed the typology of early voting laws, where these laws have been passed, and how citizens are responding to these legal changes. But why are these laws adopted in some jurisdictions and not in others? Is there any pattern to the political and legal conditions that seem to underlie early voting reform? In the final section of this chapter, we review the political arguments used to advocate for early voting reforms and examine the Florida experience with early voting, extended to “in person” voting (and widely publicized) in 2004. Florida is not representative of early voting states, but was chosen to illustrate how and why these laws are adopted. Florida illustrates a few salient points. First, early voting reforms are usually adopted as part of a package of election reforms intended to make voting easier, more convenient, and ideally to increase turnout. Second, there is little evidence that one or the other political party is inclined to oppose early voting—there are examples of Republican and of Democratic states adopting this reform, and examples where Republicans or Democrats opposed the change.²³

A. WHY ADOPT EARLY VOTING?

The arguments made for early voting can be boiled down into four kinds of convenience: convenience for turning out, convenience for learning and deciding, convenience for campaign mobilization, and convenience for election administrators.

The first reason given for adopting early voting is that it is more convenient for the voter. Because the early voting period is usually more than one week long, these systems provide busy people or people with special needs a more leisurely way to cast a ballot.²⁴ Gimpel²⁵ and Haspel and Knotts²⁶ both point out that the accessibility of the ballot box, especially with regard to distance from one's home or workplace, can have a significant impact on whether citizens participate in elections. Those who work for an hourly wage, have long commutes, or have heavy time restraints on a November Tuesday can use early voting to participate when they have more

time—like on the weekend.²⁷ People with physical disabilities may have access issues and can use absentee or mail ballots to alleviate these problems, or vote early in-person (when time and crowd pressure is lower and better access may be available at libraries or elections offices). Those who are non-English speakers, or who cannot read well, can receive additional help when crowds are smaller and poll workers aren't as strained. Early voting is preferred by some elections officials and voting rights advocates for the same reason—they believe it will increase turnout.

Empirical research on the turnout impact of early voting has been inconclusive. There is no clear evidence that early voting *always* increases turnout, and at least one recent study suggests that it may actually depress turnout.²⁸ There is certainly no agreement on how much it might increase participation. Regardless of the empirical results, the impact on turnout is almost always cited in newspaper editorials, published speeches, and legislative debates over early voting.

Second, some argue that early voting improves the quality of democratic decision making. According to these advocates, early voting allows voters the time and leisure to reflect on their voting options.²⁹ While these Norman Rockwellian visions of a family sitting around the kitchen table debating their electoral choices are compelling, there is little empirical evidence to date that this actually occurs. From a scientific perspective, there is no logical reason that voting *earlier* than Election Day provides *more* time to evaluate the options on the ballot. This remains an open question for future research.

Early voting may also convenience campaign organizations. While the “normal” or familiar rhythm to campaigning, building excitement and publicity up to Election Day, must be altered, the prolonged “period of voting” enables campaigns to more specifically target supporters and may allow them to run more efficient campaigns overall. Instead of bombarding supporters with reminders for a week or more, campaigns can focus their attention on supporters who have not already cast a ballot by five days before Election Day, three days before, the day before. In addition, campaigns can hold rallies and other events centered on early voting. In 2004, in Florida, campaigns bused people to early voting sites after rallies and gave people who had already voted special admission to music events.

Some have pointed out the disadvantages to campaigns, however.³⁰ First, campaigns risked overcampaigning if they did not have access to specific early voting records or if they did not have sufficient supporter lists. This would make campaigns much less efficient by wasting money and volunteer hours on people who had already voted and failing to mobilize those potential voters most in need of an external prompt to make them go to the polls.³¹ And while the effects of political advertising are in dispute, it is possible that a longer high-intensity campaign period characterized by negative rhetoric and negative advertising is off-putting to some voters. This may be true especially of individuals who do not identify with either major party.³²

Finally, early voting conveniences elections officials because early voting is less costly, it reduces the administrative burden of holding elections, and it improves procedural integrity. The National Conference of State Legislatures and the National Association of Secretaries of State both issued reports after the 2000 elections, and again after the passage of the Help America Vote Act (HAVA), that urge states to consider reforms that would allow early voting.³³ The empirical evidence to date supports election officials on procedural integrity. In-person early voting, absentee balloting, and vote-by-mail *do* result in a more accurate count.³⁴ The verdict on cost-savings is less clear. The state of Oregon claims to have saved nearly 17 percent of the costs of holding elections by adopting VBM, while in-person early voting and liberalized absentee balloting do not clearly result in a cost saving.³⁵ However, improved procedural integrity and flat or slightly positive cost savings have led to widespread recommendations in favor of all varieties of early voting. Major advocacy groups such as Common Cause and the AARP have also come out publicly in favor of relaxed absentee balloting and in-person early voting.

B. THE FLORIDA EXPERIENCE³⁶

In the final section of this chapter, we review in detail one state's experience with early voting: the state of Florida's decision to provide in-person early voting in 2004, as part of a package of voting reforms passed in response to the 2000 election. Florida is not representative of the nation nor is it representative of early voting states, but it is an exemplar case in many ways. Demographically, Florida has become more and more like the nation at large (it has a lower proportion of African Americans and a higher proportion of Latinos than other southern states, and the median income and level of home ownership is closer to the national than to regional figures). Politically, it is one of the nation's battleground states, generally falling into the Republican camp in presidential years, although less and less reliably. Most importantly, because of the intense media scrutiny that Florida has experienced since 2000, we are able to draw on detailed coverage of election law changes in Florida.

Early voting was implemented in Florida as one of the major responses to the 2000 election. By 2004, the state legislature defined "early voting as 'casting a ballot prior to election day at a location designated by the supervisor of elections'" and "passed legislation which standardizes early voting throughout the state."³⁷ The passage of this legislation, designed to fix certain problems and improve voting for Floridians overall, had several problems of its own (enumerated below).³⁸

1. Administrative Problems. In response to the chaos of the 2000 general election, Florida adopted legislation aimed at ridding the election system of its problems. Elections officials looked to early voting as a way to increase turnout while also alleviating much of the 2000 mess: Lines would be shorter, those who needed individual assistance could be attended to, there would be fewer disputes, and ambi-

guity issues with ballots and laws would be resolved or never occur at all. Beginning in 2002, county elections supervisors could choose to offer early voting, but it was not uniformly required or implemented across the state until 2004. In an editorial supporting the adoption of statewide early voting, the *Palm Beach Post* asserted that “early voting would help lessen the election-day strain on facilities and systems and would diminish the demand for absentee ballots. Elderly voters who require more time would have it. Elections officials could troubleshoot potential technical problems and fix them before the mass turnout.” Citing the 2000 “election day meltdown,” the article continues that “if Floridians have learned anything about voting since 2000 it’s that [Florida] cannot run elections on the cheap and that the more safeguards built into the system, the better.”³⁹

Unfortunately, there were problems with the new voting system. Under pressure to fix the problems from 2000 as quickly as possible, especially before the next presidential election, the Florida state legislature neglected to include voter protection provisions that would have mirrored the protections in other voting laws. According to Florida law, campaign supporters cannot solicit voters within 50 feet of the entrance to a polling place on the day of “any election”; however, Secretary of State Glenda Hood “decided that the early voting sites were exempt from the 50-foot barrier because they are in local government buildings to which the public must have access.”⁴⁰ Furthermore, although elections supervisors in each county are allowed to open additional early voting sites, the only sites they are *required* to have are the single sites at their elections offices. This meant that, potentially, some citizens would have considerably greater or less access to early voting than others, simply based on how populous their county was, or how easy it was for them to get to the elections office.

Technology failure and ballot ambiguity was a big issue in 2000, so Florida adopted many new, largely untried, electronic voting machines. Many critics predicted problems with the new technology, particularly because it had not been tested for high-volume elections like the 2004 presidential race. Also, as most counties had never offered the option of early voting prior to this election, it was difficult to predict the actual volume of voters who would take advantage of the new voting option. Moreover, volunteers who worked at polling places were disproportionately elderly, a group least comfortable with the use of technology. As a result many polling places had staffing problems.⁴¹ News reports of polling places that opened late or had machine failures were widespread.⁴² Campaigns and their Get Out the Early Vote efforts (discussed below) were an unknown quantity in this equation: How much and how successfully they embraced early voting would also affect turnout.

2. Getting Out the Early Vote. One of the most important changes that results from implementation of early voting is seen in the way the two national campaigns approached Florida. Campaigns that normally would time their efforts to peak on,

or just before, Election Day must now, with early voting, allocate resources in order draw in early voters, and then sustain this energy or even increase it as Election Day nears. For Florida, this meant two weeks of high-energy campaigning instead of just a few days.

This longer campaigning period had several potential advantages as campaigns transitioned from their traditional Get Out the Vote (GOTV) tactics to Get Out the Early Vote (GOTEV). First, if the campaign was run well and a party had sufficient access to early voting records, it had the ability to better target supporters by sending pamphlets, calling, and knocking on the doors of only those supporters who hadn't voted. By encouraging people to vote early, campaigns could "bank" votes well before Election Day,⁴³ and focus more of their money and efforts on people who hadn't yet voted, particularly on "swing" voters. In some cases, campaigns can get a good idea of whether or not they have won an election even before Election Day, based on the numbers of supporters they know have turned out for early voting.

Second, many campaigns found that early voting provided an excellent way to focus many events. Instead of general excitement-building GOTV rallies, many parties held GOTEV rallies after which attendees were transported to early voting sites. Some received "I voted early" pins that granted them free admission to concerts. Others got to meet celebrities (like Danny DeVito and Rhea Pearlman) or famous politicians at "Come vote with me" events.

While there are no solid data available on the amount of resources devoted to GOTEV efforts in Florida, they formed an important part of both Republican and Democratic Party mobilization efforts. Their increasing popularity in Florida will only increase their importance in the future.

3. Queuing Up to Vote Early. Unfortunately, the optimism that accompanied the state's adoption of early voting evaporated within the first few hours of actual balloting. Reports of an elected official receiving only half of a ballot when she asked for a paper copy instead of using the touch-screen machines came in around 10 AM. Subsequent hours and days yielded reports of harassment and intimidation, very long waits, people leaving discouraged.⁴⁴ One of the most high-profile reports of early voting problems in Florida came from Palm Beach County, where "One worker wearing her identification badge around her neck was throttled by an irate person 'who tried to choke her with it.'"⁴⁵ By the time Election Day rolled around, the media circus surrounding early voting made it seem like a complete failure.

Concerns about the lack of the 50-foot nonsolicitation zone in the legislation proved prudent, as many voters reported campaign supporters harassing, intimidating, or simply annoying them. Poll workers themselves complained to elections

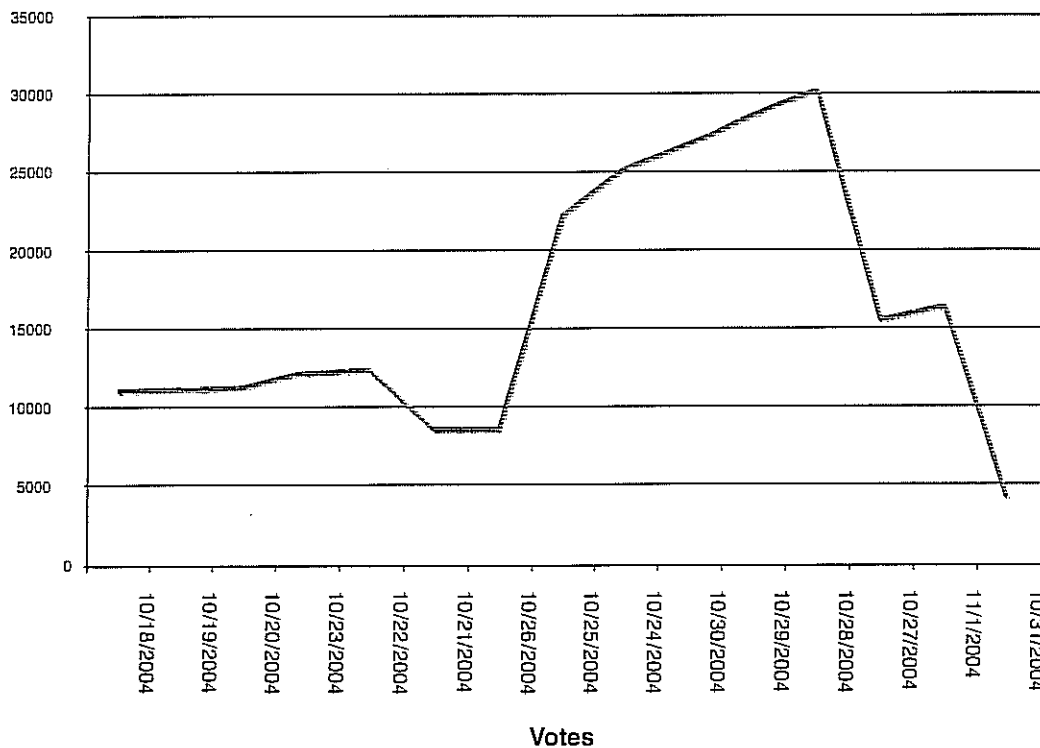
supervisors about campaigners from both major parties, and some quit because of the stress this caused. As Kam and Keller reported, "The early voting problems reveal yet another facet lawmakers failed to consider in their sweeping election reform package passed in the wake of the 2000 fiasco—the establishment of early voting sites without the same protections given to precinct locales on Election Day."⁴⁶ In some counties, early voting was nearly shut down: Early voting required considerably more staffing than traditional precinct voting.

One oft-cited problem was the number of sites available to voters. Generally, too few machines led to long lines and extended waits. More specifically, however, there was heavy criticism from many interest groups and minority communities about the lack of early voting sites in areas where black, Latino, and low-income residents could vote. When William E. Scheu replaced John Stafford as Duval County election supervisor, he quickly added sites at four regional libraries in Jacksonville, "including one on the city's northwest side, a predominantly black area" in response to the outcry. This and other areas in urban Florida had a history of elections issues and minority groups from 2000, when "27,000 ballots were mis-marked and thrown out because of misleading instructions."⁴⁷

Even at sites with an adequate total number of machines, long waits ensued because of technological limits. In Miami-Dade County, for instance, 20 sites were open for early voting. County residents were allowed to vote at any of the 20 sites. However, because machines lacked enough memory to store all the ballot forms needed to address each of the different local issues, only half of the machines at any one site could be used for ballots appropriate for local residents. The remaining machines, which largely went unused, were dedicated to ballots other than those facing the local community. As a result local residents faced long waits while about half the machines in each polling place went unused. Moreover, the publicity given to the long waits seemed to spur people to vote early for fear of an impending Election Day disaster. As shown in Figure 2, excepting the weekend dates of October 23–24 and 30–31 as well as November 1 when only two early voting sites were open, early voting increased throughout the period.

In summary, Florida encountered many difficulties in implementing early voting reforms in 2004. Some of the problems, such as long early voting lines, were also evident in other states (e.g., Georgia). Florida election officials, along with many across the nation, anticipated neither the level of interest in voting early nor the mobilization efforts targeted at this mode of balloting. Finally, elections officials took great care to avoid the problems associated with the 2000 contest, but in their efforts to make sure all ballots were counted accurately, they may have ironically dissuaded many from voting altogether. The tension between convenience, integrity, and accuracy is one that election officials continue to contend with.

Figure 2: Early Votes in Florida, by Date



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V. Conclusion

As a consequence of the controversies surrounding the 2000 election, major innovations in voter registration and election administration are well under way. Early voting, however, is a much more important change in elections administration that has been occurring for at least a decade, with little fanfare or critical examination. There are increasing calls for adopting early voting nationwide. Two pieces of legislation currently under consideration in Congress, the Ballot Integrity Act of 2007 (S. 1487) and the Voter Confidence and Increased Accessibility Act (H.R. 811, also known as the Holt Bill), would mandate no-excuse absentee balloting for all federal elections.

Early voting systems have already become or are well on their way to becoming the dominant mode by which Americans cast their ballot, and they are increasingly being adopted in other democratic nations. As a consequence of these changes, voting in America is becoming an individualized rather than a community act. Early voting may undermine the role of elections as "civic events" that bring together a community in political dialogue and participation. By individualizing voting, early voting could *dissuade* participation by newly naturalized citizens and those from traditionally disempowered communities. Finally, it is clear that voters who opt to

vote early cannot draw on all the information provided by campaigns and the news media. There seems little question, then, that “[e]lection day in the United States is rapidly turning into an anachronism . . . waiting in line to cast our ballots will become the quaint notion of a bygone era.”⁴⁸ Early voting and extended “election weeks” are here to stay.

This chapter provides the interested reader with a road map to this new form of balloting in the United States, focusing more on explaining the details of the process than on examining the potential consequences. Surprisingly little empirical research has examined the consequences of early voting reforms for how our elections are administered, how campaigns are being conducted, and finally, how citizens learn about elections and make their choices. Those questions remain on the agenda for future scholars, activists, and citizens.

Notes

1. Forty-six percent of the democratic nations listed in the EPIC Project database (<http://www.aceproject.org>) allow electors to cast ballots before the designated national election day. Of these nations, 34 percent allow early voting for everyone, while the remaining 66 percent limit early voting to electors who are unable, for a variety of reasons (e.g., in hospitals, living abroad, serving in the military), to cast a ballot at the local polling place.

2. Some have come to use the term “convenience” or “nonprecinct place” voting rather than “early voting” in order to differentiate between ballots cast prior to Election Day and those ballots that were not cast at the precinct (which may not have been cast prior to Election Day). In all but one state, absentee ballots must arrive at the election office prior to the day of the election (Washington State allows ballots to be postmarked on Election Day). In most states, early voting closes on the Friday or Saturday prior to Election Day. States that do not fall under Friday/Saturday deadlines are Alaska, Colorado, Hawaii, Idaho, Iowa, Maine, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Vermont (election day deadline—an odd deadline for “early” voting); and Arkansas, Indiana, Kansas, Ohio, and Wisconsin (the day before the election). Two states have early voting deadlines earlier than four days before the election: Louisiana (6 days) and Tennessee (5 days). The best illustration of the difference comes from the state of Oregon, one of the few that records the date that a ballot was processed (opened, but not counted). In recent years, between one-sixth and one-fourth of ballots were delivered to county offices on Election Day (e.g., 2004 Presidential: 16 percent; 2006 Primary: 29 percent (Oregon Secretary of State Elections Division, Ballot Return History, http://www.sos.state.or.us/elections/ballot_return_history.pdf)). However, Oregon is unusual in that it does not maintain polling places.

3. Two pieces of legislation currently under consideration in Congress, the Ballot Integrity Act of 2007 (S. 1487) and the Voter Confidence and Increased Accessibility Act (H.R. 811, also known as the Holt Bill) would mandate no-excuse absentee balloting for all federal elections.

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4. See JOHN C. FORTIER, ABSENTEE AND EARLY VOTING: TRENDS, PROMISES, AND PERILS (2006) for a comprehensive review of absentee balloting. We rely heavily on Fortier's insights in this section.

5. The Soldier Voting Act of 1942 (P.L. 712-561) mandated absentee balloting for armed services personnel during wartime. Interestingly, the law was amended prior to the 1944 election to make such procedures recommended, not mandated. KEVIN J. COLEMAN, THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT: BACKGROUND AND ISSUES (2007).

Should n. 5 be "Soldiers Vote Act (Armed Forces Absentee Voting Act), ch. 561 56 Stat. 753 (50 U.S.C. §§ 301 et seq.) (repealed 1955)."

6. FORTIER, *supra* note 4.

7. Federal Voting Assistance Act of 1955, ch. 656, 69 Stat. 585 (42 U.S.C. §§ 1973cc et seq.).

8. 42 U.S.C. § 1973 ff.

9. Overseas Citizens Voting Rights Act of 1975, 42 U.S.C. §§ 1973dd et seq.

10. FORTIER, *supra* note 4, at 13.

11. In both Oregon and Washington (which at the time of this writing was nearly 100 percent voting by mail), disabled voters may cast their ballots at local jurisdictions using digital recording electronic voting machines (DREs). In Oregon, sight-impaired voters may also receive a unique Web-based ballot, which is then read and filled out using specially equipped computers. The ballot is then printed out and mailed like any other ballot. This Web-based ballot delivery system is also used in some counties for UOCAVA voters.

12. Two more counties—King and Kittias—are planning to change in 2008, with Pierce County the last holdout.

13. Matt Qvortrup, *First Past the Postman: Voting by Mail in Comparative Perspective*, 76 (3) POL. Q. 414-19 (2005); ELECTORAL COMM'N, DELIVERING DEMOCRACY? THE FUTURE OF POSTAL VOTING (T.U.K.E. Comm'n ed., 2004).

14. See Martha Kropf, *Should the Missouri Legislature Consider Early/Advance Voting?* MO. LEGIS. ACAD. (Report No. 5-2006), and Robert M. Stein, *Introduction: Early Voting*, 62 (1) PUB. OPINION Q. 57-69 (1998), for an extended discussion of early voting systems.

15. Information on Larimer County, Colorado's experiment with vote centers can be found at http://www.co.larimer.co.us/elections/vote_centers.cfm. The turnout impact of these centers has been studied by Robert M. Stein and reported in Robert M. Stein, Jan Leighley & Christopher Owens, *Voting, Early Voting and the Determinants of Vote Choice: Is Timing Everything?* (paper presented at the annual meeting of the Midwest Political Science Association (Chicago, Apr. 15, 2004)).

16. Arizona, Colorado, Hawaii, Idaho, New Mexico, Nevada, Oklahoma, and Tennessee.

17. Help America Vote Act of 2002, Pub. L. No. 107-252 (2002), 42 U.S.C. §§ 15301 et seq.

18. The most up-to-date listing of absentee and early voting laws is at Electionline.org, Pre-Election Day and Absentee Voting by Mail Rules, <http://www.electionline.org/Default.aspx?tabid=474>.

19. Press Release, Annenberg Public Policy Center, *Early Voting Reaches Record Levels in 2004*, National Annenberg Election Survey Show (Mar. 24, 2005); Paul Gronke, Eva Galanes-Rosenbaum & Peter Miller, *Early Voting and Turnout*, 40(4) PS: POL. SCI. & POL. (2007).

20. Gronke, Galanes-Rosenbaum & Miller, *supra* note 19.

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21. Paul Gronke, Early Voting Reforms and American Elections (paper presented at the annual meeting of the American Political Science Association (Chicago, Sept. 2-5, 2004)) (longer commutes are positively associated with the likelihood of casting an early ballot).

22. U.S. Election Assistance Commission, *2006 Election Day Survey* (2007).

23. Stein, Leighley & Owens, *supra* note 15 (reporting that their studies show no evidence of a partisan advantage to early voting).

24. See, e.g., David B. Magleby, *Participation in Mail Ballot Elections*, 40(1) W. POL. Q. 79-91 (1987); Priscilla L. Southwell & Justin I. Burchett, *The Effect of All-Mail Elections on Voter Turnout*, 28(1) AM. POL. Q. 72-9 (2000); Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, WILLAMETTE L.R. (1998); Susan Davis, *Voting by Mail Could Improve American Democracy*, ROLL CALL, June 22, 2005.

25. James G. Gimpel, Joshua J. Dyck & Daron R. Shaw, *Location, Knowledge and Time Pressures in the Spatial Structure of Convenience Voting*, 25(1) ELECTORAL STUD. 35-58 (2006).

26. Moshe Haspel & H. Gibbs Knotts, *Location, Location, Location: Precinct Placement and the Costs of Voting*, 67(2) J. POL. (2005).

27. For example, the AFL-CIO, at a recent convention, considered a proposal to support the extension of Oregon's vote-by-mail election system into other states. One of the primary reasons given was that by-mail voting was more convenient for shift workers. See Oregon AFL-CIO, Resolution 34: Support and Expand Oregon's Vote-by-mail Elections in Other States (resolution proposed at the 2005 convention of the AFL-CIO), available at <http://aflcio.org/aboutus/thisistheafclcio/convention/2005/resolutions.cfm>.

28. James T. Smith & John Comer, *Consequential Reform or Innocuous Tinkering? Another Look at Efforts to Increase Turnout in American Elections* (paper presented at the annual meeting of the Midwest Political Science Association (Chicago, 2005)).

29. See, e.g., Paul Gronke et al., *Early Voting in Florida, 2004* (paper prepared for the annual meeting of the American Political Science Association (Washington D.C., Sept. 1, 2005)); Oregon Secretary of State's Office, <http://www.sos.state.or.us>.

30. Gronke, *supra* note 21.

31. STEVEN ROSENSTONE & JOHN MARK HANSEN, *MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA* (1993).

32. STEPHEN ANSOLABEHRE & SHANTO IYENGAR, *GOING NEGATIVE: HOW POLITICAL ADVERTISEMENTS SHRINK AND POLARIZE THE ELECTORATE* (1995).

33. NAT'L CONF. STATE LEGISLATURES, *VOTING IN AMERICA: FINAL REPORT OF THE NCSL ELECTIONS REFORM TASK FORCE* (2001); NAT'L ASSOC. SECRETARIES OF STATE, *NEW MILLENNIUM BEST PRACTICES SURVEY* (2003); NAT'L ASSOC. SECRETARIES OF STATE, *ELECTION REFORM: STATE BY STATE BEST PRACTICES* (2001); Bill Bradbury, *Vote by Mail: The Real Winner in Democracy*, WASH. POST, Jan. 1, 2005, at 23.

34. R. Michael Alvarez, Thad Hall & Betsy Sinclair, *Whose Absentee Votes Are Counted: The Variety and Use of Absentee Ballots in California*, ELECTORAL STUD. (forthcoming); Michael J. Hanmer & Michael W. Traugott, *The Impact of Voting by Mail on Voter Behavior*, AM. POL. RES. (2004); Michael W. Traugott, *Why Electoral Reform Has Failed: If You Build It, Will They Come?*, in *RETHINKING THE VOTE: THE POLITICS AND PROSPECTS OF AMERICAN ELECTION REFORM* (A. Crigler, M. Just & E. McCaffery eds., 2004).

35. John Mark Hansen, in *TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS: REPORT OF THE NATIONAL COMMISSION ON ELECTION REFORM* (2001).

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37. Division of Elections, Florida Department of State, Early Voting, <http://election.dos.state.fl.us/earlyvoting.shtml>.

38. *Casting Your Ballot*, FLA. TODAY, Mar. 17, 2005. However, despite the initial bumps in the road, Florida continued early voting in 2006, even contemplating the adoption of "super-precincts" to make early voting even more convenient.

39. *Voting Early and Uniformly*, PALM BEACH POST, Jan. 27, 2004.

40. Dara Kam & Larry Keller, *Early Vote Sites Report Intimidation*, PALM BEACH POST, Oct. 25, 2004.

41. David Paul Kuhn, *More Florida Ballot Woes On Tap?*, CBS NEWS, July 20, 2004, available at <http://www.cbsnews.com/stories/2004/07/20/politics/main630728.shtml>.

42. In the 2002 September primary election, Rep. Carrie Meek, a ten-year congressional veteran, was turned away from the polls when election workers were unable to verify her identity when attempting to vote early.

43. Ray Suarez, "Florida Again," *Lehrer News Hour* (PBS television broadcast, 2004).

44. Ray Suarez, "Voting Early," *Lehrer News Hour* (PBS television broadcast, 2004);

Ron Word, *New Duval Elections Supervisor Quickly Adds Early Voting Sites*, ASSOCIATED PRESS (, 2004)

45. Kam & Keller, *supra* note 40.

46. *Id.*

47. Word, *New Duval Elections Supervisor Quickly Adds Early Voting Sites*, *supra* note

48. Gronke, *supra* note 21.

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