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MAKING VOTES COUNT

Improving Provisional Ballots

One of the brightest spots in this year's election was the nationwide debut of the provisional ballot. In 2000, many voters were turned away if their names were not on the rolls, even if they should have been. This year, any voter whose eligibility was in doubt had the right to cast a ballot whose validity would be determined later. This was a major improvement, but provisional ballots were still less effective than they should have been because of misguided rules at the state level. Congress and the states should fix the flaws in the system.

The guarantee of provisional ballots was one of the few valuable reforms in the Help America Vote Act, which Congress passed after 2000. Hundreds of thousands of voters used these ballots this year. In Colorado, more than 50,000 were cast, of which more than three-quarters were found to be valid. In Ohio, there were more than 155,000 provisional ballots, though it remains unclear how many will be counted.

Unfortunately, Congress left decisions about which provisional ballots would be counted to the states, which adopted some bad rules. Many decided to throw out provisional ballots cast in the wrong polling place. Such a rule ignores the fact that many voters are in the wrong place because elections officials have misdirected them, or never told them where to vote. One Missouri man who tried to vote this year went to four polling places. At each one, poll workers told him he was in the wrong polling place, but they could not tell him where to go. At the fourth polling place, he cast a provisional ballot that was thrown out because he was registered at a fifth.

The reasons given for throwing out provisional ballots cast at the wrong polling place are weak. The rule is said to deter "convenience voting," people voting wherever they please. But there is no evidence this would be a huge problem, and in any case, the solution - throwing out valid votes - is worse. It is sometimes said that counting provisional ballots cast at the wrong polling place increases the risk of fraud, though there is no reason it should in a well-run election system. Congress should make clear that provisional ballots count if they are cast in any polling place in the jurisdiction, and states that have adopted the wrong-polling-place rule should rescind it.

Another problem is the lack of uniform standards nationally, and even within states, for counting provisional ballots. In 2002, a close Congressional race in Colorado ended up in court because the three

counties in the district each had different standards for which provisional ballots were valid. Rather than continuing to invite postelection litigation over whether ballots with small defects should be thrown out, Congress should adopt uniform national standards. Failing that, states should adopt a statewide standard.

On Election Day, there were scattered reports of voters being turned away without being offered a provisional ballot. In other cases, voters who should have been given regular ballots may have been required to cast provisional ballots, which have a greater chance of being disqualified. Local election officials should improve poll worker training, and recruit better poll workers, to fix this problem.

This year, the provisional ballot proved to be a valuable reform. There is still work to be done, however, before it delivers on its promise that every eligible voter who shows up on Election Day will be allowed to cast a ballot that counts.

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