

Contact: Barbara Peck
614.292.0283
peck.5@osu.edu
electionlaw.osu.edu

Ohio's Election System Remains Vulnerable

COLUMBUS, OHIO – Three years after all eyes focused on Ohio for the presidential election, a recent study identifies lingering problems in how elections are administered in the Buckeye state. Researchers at *Election Law @ Moritz* at The Ohio State University Moritz College of Law conducted a yearlong comprehensive study of the election administration systems in five key Midwestern states – Ohio, Illinois, Michigan, Wisconsin and Minnesota, focusing on how voters register, ballots are cast, and recounts are conducted. Overall, the most significant problems were found in Ohio.

“While some progress has been made since 2004, structural problems remain in how the state administers its elections,” said Steven Huefner, senior fellow at *Election Law @ Moritz*. “Having a partisan, elected secretary of state as the head election official, regardless of that person’s good intentions or knowledge of election administration, is not ideal. At times this structure has led to inconsistencies and suspicion across the state.”

In addition, the study showed the state’s voter registration database, which is required by federal law, had not yet met the goals set by Congress. Perhaps partly as a consequence, Ohioans voted with provisional ballots at a rate more than three times greater than the rates in the other states studied. Poll worker training and recruiting problems have also led to long lines, polls opening late and provisional ballots being issued inconsistently across the state. Finally, ongoing litigation in more than 20 different election administration related lawsuits is also leading to more uncertainty among local election officials.

“Our primary recommendation is for Ohio to establish greater bipartisan ownership of its statewide election system. Secondly, the state would be well-served by removing election oversight from the secretary of state’s duties,” Huefner said. “A bipartisan state election administration committee made up of knowledgeable local election administrators combined with an appointed nonpartisan leader who has stature within the state would go a long way toward improving the system and encouraging local buy-in and trust.”

Finally, the study also recommends creating special tribunals to handle election disputes, freeing the state judiciary from responsibility over these issues.

“The state judiciary really does not have sufficient independence to handle cases involving election disputes in a manner that will ensure public confidence, and also may struggle to handle cases in the expeditious manner required,” Huefner said.

Each of the five states included in the report has a unique election system, and collectively they represent the variety of systems used across the nation.

“What really stood out is that states with strong, nonpartisan oversight had significantly fewer problems,” said Dan Tokaji, associate director of *Election Law @ Moritz*. “The registration process still functions as a barrier to participation in some states. On the other hand, Minnesota and Wisconsin have great Election Day Registration systems that increase turnout while reducing the need for provisional ballots.”

The study makes several key recommendations for election systems across the country:

- 1) **Enhance registration options.** States should work to improve access to voting by relaxing barriers to voter registration. Both Minnesota and Wisconsin allow Election Day Registration and the study found no increased fraud under these systems. Other states reluctant to embrace this reform might consider Michigan’s system of affidavit voting, which protects voters whose names are not on the voter rolls even though they have attempted to register.
- 2) **Favor early voting.** States should consider in-person early voting instead of expanded absentee voting. Absentee voting is the area of election administration most vulnerable to fraud, with serious allegations occurring in Michigan and Illinois.
- 3) **Clarify provisional voting standards.** States should provide clear guidance on when provisional ballots should be cast and counted. In many states, including Ohio and Illinois, individual counties hand out and count provisional ballots using different rules, calling into question the integrity and equality of the state’s system.
- 4) **Improve poll worker programs.** Poll worker recruitment and training should be enhanced. This area was a problem in all five states studied and can lead to long lines at the polls, polling places opening late, and the mishandling of ballots and electronic voting machine memory cards.
- 5) **Reform post-election dispute processes.** The process for evaluating post-election disputes, including recounts, should be reviewed. None of the five states had a final arbiter of disputes in place that was perceived as fair and evenhanded. While disputes should be rare in a solid system, they do occur in close races, when tensions are running high. In these situations, a trustworthy

system for handling these disputes is ideal. In addition, Congress should consider giving states more time to evaluate and settle disputes in presidential elections. The current timeline of 35 days is not enough time for most disputes to work their way through a state's legal system.

The study was conducted with the financial support of The Joyce Foundation. The full analysis and recommendations are available in the book *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*. To read the book and a state-by-state breakdown of the analysis, visit www.electionlaw.osu.edu.

Election Law @ Moritz, an award-winning program of The Ohio State University Moritz College of Law, has rapidly become one of the country's premier centers of election law expertise. The program provides nonpartisan information and insight on election law and administration, and on important issues, developments and trends within the field. Through its web site (www.electionlaw.osu.edu), faculty scholarship, annual conferences, speaker series, and participation in academic and government sponsored examinations of election law, *EL@M* has become a resource to which the public, academics, and government officials turn for accurate and non-partisan information and analysis concerning election law and administration. *EL@M* has also become a resource to which the media has turned repeatedly for assistance in its attempt to educate the public on election law and administration facts, issues, and developments.

Contact: Barbara Peck
614.292.0283
peck.5@osu.edu
electionlaw.osu.edu

Summary of Ohio Findings and Recommendations

Election Law @ Moritz at The Ohio State University Moritz College of Law recently completed an in-depth analysis of the election administration systems in five key states, including Ohio. During the analysis, Ohio was found to have the most significant problems in election administration. Key findings and recommendations for Ohio include:

Findings:

- 1) The Ohio Secretary of State, the state's chief election official, is an elected partisan official who plays a very prominent role in the state's election administration system. The partisan cast of this position not only has often generated suspicion and mistrust, but also has at times detracted from the secretary's ability to provide strong, consistent guidance to local officials.
- 2) The state's voter registration database, which is required by the Help America Vote Act of 2002, does not yet meet the goals set by Congress. This has contributed to more than three times the typical number of provisional ballots being cast.
- 3) There is significant variation in the administration of elections across counties in the state, including in the use and counting of provisional ballots, the training of poll workers and election technology. These problems have led to voting lines as long as 10 hours and heavy reliance on provisional ballots.
- 4) There have been significant problems in Cuyahoga County, the most populous county in the state and home of Cleveland, related to poll worker mistakes and misconduct. In a May 2006 primary election, approximately 20 percent of voting places opened late, voting machines malfunctioned, verified paper trails were missing, and security seals were broken. Even more troubling, memory cards from the electronic voting equipment in one polling place went missing. In addition, 15,000 absentee ballots had to be hand counted, resulting in a five-day delay of results. Similar problems plagued the county in November 2006, and in early 2007 two county election officials were sentenced to prison for violating election laws.
- 5) Litigation from previous elections remains ongoing, with more than 20 suits pending against the state. These lawsuits cover a myriad of election administration issues from voter registration to provisional ballots and voting equipment allocation.

Recommendations:

1) Develop bipartisan leadership over election administration. A statewide bipartisan election administration committee made up of county election officials would help create buy-in and consistency across the state.

2) Place responsibility for state election administration with a nonpartisan statewide officer. While 31 other states also charge their secretary of state with being the head election official, this assignment has been particularly troubling in Ohio, where at times the secretary was actively campaigning while at the same time administering and interpreting election statutes. As reflected by the range and number of lawsuits concerning election administration in the state, a general feeling of distrust has arisen concerning the office's ability to administer elections.

3) Create nonpartisan tribunals to resolve election disputes. The state's regular judiciary lacks the independence and structure to handle election issues in the most neutral and expeditious manner.