

Written Testimony of Sandy Steinbach
State Election Director, Iowa

Thank you very much for the opportunity to testify at this important hearing today. It is a privilege to represent the great State of Iowa. I am honored to discuss with you the many advantages of allowing voters in the United States the chance to cast a provisional ballot. Provisional balloting is one of the best ways to ensure that no voter in this country is unnecessarily or unfairly disenfranchised. Fortunately the Help America Vote Act (HAVA) now requires all states and territories in the United States to offer voters a provisional ballot instead of turning voters away unnecessarily at the polls. In Iowa, we are very proud of our well-earned and deserved reputation for clean, honest and open elections. Good election laws and best practices that afford every voter equal protection like provisional voting are a must in this country if we want to ensure that every eligible voter has the right to cast a ballot and have that ballot counted accurately.

Iowa election administrators like provisional voting. What is now known as "provisional voting" has been in use in Iowa under a variety of names since 1975. It evolved from a challenge process that existed before Iowa had required every voter to be registered. As Iowa law evolved the name has changed from "challenged ballots" to "special ballots" and now "provisional ballots." We see provisional voting as a safety net to protect voters from the inevitable mistakes of other human beings

The process for administering provisional ballots is relatively simple and easy. Anyone who comes to an Iowa polling place to vote and is not on the list or is otherwise challenged, is offered the opportunity to cast a provisional ballot. This is a comfortable, familiar procedure in Iowa polling places.

I have a true story for you. Twenty years ago one Iowa county used a precinct optical scan voting system for the first time in a major election. The county's previous voting system was lever voting machines. During the morning-after review of the results from one of the precincts, the county election administrator found discrepancies between the number of voters and the number of ballots in one precinct. Through a painful fact-finding process the election official and the precinct chairperson recognized that the discrepancy was connected to the challenged ballot process. This is what happened.

The precinct chairperson reported that a man had appeared to vote whose name was not on the election register. The precinct workers appropriately told him that he could cast what was then called a challenged ballot. They provided the man with a ballot and told him to mark the ballot in the booth. After he was finished voting, he followed the instructions that were given to all voters that day. He put the ballot into the optical scan ballot reader. He returned to the table and asked what he was supposed to do with the envelope.

When the precinct chairperson realized that there was no ballot for the challenged ballot envelope, she corrected the error by following the familiar routine. She had the voter mark another ballot to put in the challenged ballot envelope. This situation happened twice that day.

This precinct chairperson knew the challenged ballot process. She just did not quite understand how it fit into the optical scan voting process. And no, those two challenged ballots did not get counted.

All changes are disruptive in some way. Precinct officials have a way of showing us the gaps in our training methods.

Provisional voting is not a problem. It is a simple solution. It accomplishes four things that serve everyone involved in election administration well.

1. Protects a voter's right to cast a ballot.
2. The voter can mark a ballot in a way that maintains the secrecy of the ballot and allows for a review of the voter's claims.
3. The precinct officials have a simple process for coping with issues they cannot and should not try to resolve at the polling place on Election day.
4. It removes any potential conflict or controversy from the polling place.

Most of the people in Iowa who cast provisional ballots do so because they genuinely believe that they are registered to vote and eligible to cast a ballot. One common claim is that the prospective voter thought that getting a driver's license doesn't matter why the person's name isn't on the list; the process for offering a provisional ballot should always be the same. Providing a provisional ballot is always the right thing to do. Turning a voter away from the polls and denying them the right to vote is always the wrong thing to do. We keep the process simple, but we are also thorough.

Iowa's "Best Practices" on Provisional Ballots – A Five Step Process:

In Iowa, our instructions to the nearly 10,000 precinct election *officials* at nearly 2,000 polling sites emphasize that the voter decides whether to cast a provisional ballot, not the election official. Precinct officials are cautioned not to speculate about whether the ballot will count.

1. The forms for casting a provisional ballot also include a new voter registration form. Regardless of whether the person's provisional ballot is counted, if the person was not registered to vote, we want to make sure they will be for the next election.
2. Provisional voters are given a written notice at the polls of their right to submit additional written information to the County Absentee and Special Voters precinct board for their review. Provisional voters are also informed that if the ballot is not counted, they will be notified by mail with a written explanation.

3. On election night or the following morning, Iowa's 99 county auditors begin the "case-by-case" provisional ballot review process to determine which ballots will be counted. They review each provisional voter's claim and search for the appropriate records. The secretary of state's voter registration staff also has a standard operating procedure to assist the 99 county auditors by investigating the claims of voters who thought they registered to vote at a driver's license station. Most of this process is handled by FAX machine.
4. By 9 am on Thursday after the election each county must publicly post a complete list of the number of special ballots received from each precinct in each county. By noon on Thursday the Bipartisan County Absentee and Special Voters precinct board charged with reviewing and deciding the claims can convene. They review provisional voter's registration record and the written evidence from the voters and then decide whether the person's provisional ballot can legally be counted. The deadline for this review process is the county canvass of votes, which is held on the Monday or Tuesday after the election.

In the 2002 General Election there were approximately 4 provisional ballots cast in each Iowa precinct. 73% of those ballots were counted. ¹ Without the provisional voting process, human errors could have denied over 5,000 Iowans their constitutionally guaranteed right to vote.

The best safeguard, however, is to fix registration problems before Election Day. Changes in voter registration rules required by HAVA are causing a lot of confusion and could lead to massive number of provisional ballots in November. Iowa Secretary of State Chet Culver believes strongly we need to address these problems and I am submitting for the record on his behalf a recommended approach to implementing HAVA's registration and provisional ballot measures to ensure that eligible voters are able to have their votes counted on Election Day this November.

As I state in my opening, provisional voting is an important safety net in the election process. It enhances the smooth operation of election administration at the polling places by giving the precinct workers a simple 5-step process to review each provisional ballot. The most important result is that it protects the rights of the voters. The provisional voting process in Iowa makes certain that every Iowan who comes to the polls has the chance to vote without being turned away unnecessarily at the polls. And now, it is an essential safeguard for the rights all Americans.

¹ 63 of 99 counties responded to an email survey.

Iowa Provisional Voting Laws

49.80 Examination on challenge.

1. When the status of any person as a registered voter is so challenged, the precinct election officials shall explain to the person the qualifications of an elector, and may examine the person under oath touching the person's qualifications as a voter.
2. In case of any challenges of an elector at the time the person is offering to vote in a precinct, a precinct election official may place such person under oath and question the person as, (a) where the person maintains the person's home; (b) how long the person has maintained the person's home at such place; (c) if the person maintains a home at any other location; (d) the person's age. The precinct election official may permit the challenger to participate in such questions. The challenged elector shall be allowed to present to the official such evidence and facts as the elector feels sustains the fact that the person is qualified to vote. Upon completion thereof, if the challenge is withdrawn, the elector may cast the vote in the usual manner. If the challenge is not withdrawn, section 49.81 shall apply.

Section History: Early form [C51, § 259; R60, § 494; C73, § 620; C97, § 1115; C24, 27, 31, 35, 39, § 797; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 49.80]

Amended by SF 2269, 2004

49.81 PROCEDURE FOR CHALLENGED VOTER TO CAST PROVISIONAL BALLOT.

1. A prospective voter who is prohibited under section 48A.8, subsection 4, section 49.77, subsection 4, or section 49.80 from voting except under this section shall be ~~permitted to~~ notified by the appropriate precinct election official that the voter may cast a paper provisional ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in a ~~special an~~ envelope marked "~~ballots for special precinct~~" "provisional ballots" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the postelection canvass.

2. Each person who casts a ~~special~~ provisional ballot under this section shall receive a printed statement in substantially the following form:
Your qualifications as a registered voter have been challenged for the following reasons:

- I.
- II.
- III.

You must show identification before your ballot can be counted. Please bring or mail a copy of a current and valid photo identification card to the county

commissioners office or bring or mail a copy of one of the following current that show your name and address:

- a. Utility bill.
- b. Bank statement.
- c. Paycheck.
- d. Government check.
- e. Other government document.

PARAGRAPH DIVIDED. Your right to vote will be reviewed by the special precinct counting board on You have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as a registered voter. This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received before.... a.m./p.m. on at If your ballot is not counted you will receive, by mail, notification of this fact and the reason that the ballot was not counted.

3. Any elector may present written statements or documents, supporting or opposing the counting of any ~~special~~ provisional ballot, to the precinct election officials on election day, until the hour for closing the polls. Any statements or documents so presented shall be delivered to the commissioner when the election supplies are returned.

4. The individual envelopes used for each ~~paper~~ provisional ballot cast pursuant to subsection 1 shall have printed on them ~~the format of the face of the registration form under section 48A.8 and~~ the following:

I believe I am a registered voter of this ~~precinct~~ county and I am eligible to vote in this election. I registered to vote in county on or about at My name at that time was I have not moved to a different county since that time. I am a United States citizen, at least eighteen years of age.

.....
(signature of voter) (date)

The following information is to be provided by the precinct election official:

Reason for challenge:
.....

.....
 Did not present required identification form.

.....
(signature of precinct election official)

The precinct election official shall attach a completed voter registration form from each provisional voter unless the person's registration status is listed in the election register as pending.

50.22 Special precinct board to determine challenges and canvass absentee ballots.

Upon being reconvened, the special precinct election board shall review the information upon the envelopes bearing the special ballots, and all evidence submitted in support of or opposition to the right of each challenged person to vote in the election. The board may divide itself into panels of not less than three members each in order to hear and determine two or more challenges simultaneously, but each panel shall meet the requirements of section 49.12 as regards political party affiliation of the members of each panel.

The decision to count or reject each ballot shall be made upon the basis of the information given on the envelope containing the special ballot, the evidence concerning the challenge, the registration and the returned receipts of registration.

If a special ballot is rejected, the person casting the ballot shall be notified by the commissioner within ten days of the reason for the rejection, on the form prescribed by the state commissioner pursuant to section 53.25, and the envelope containing the special ballot shall be preserved unopened and disposed of in the same manner as spoiled ballots. The special ballots which are accepted shall be counted in the manner prescribed by section 53.24. The commissioner shall make public the number of special ballots rejected and not counted, at the time of the canvass of the election.

The special precinct board shall also canvass any absentee ballots which were received after the polls closed in accordance with section 53.17. If necessary, they shall reconvene again on the day of the canvass by the board of supervisors to canvass any absentee ballots which were timely received. The special precinct board shall submit their tally list to the supervisors before the conclusion of the canvass by the board.

Section History: Early form [C77, 79, 81, § 50.22]

What to do if

The voter's name is not listed in the election register.

- Make sure the voter is in the correct precinct. If the person lives in another precinct, the person must vote in the precinct where he or she lives.
- If the voter insists upon voting at this precinct, offer the voter a provisional ballot. Do not speculate about whether the ballot will count.
- Check the Poll List, if one is available. The Poll List is a list of all of the registered voters in the county.
- If no list is available, call the auditor's office. Be prepared to provide the following information:
 1. Name of the person asking to vote.
 2. Address
 3. Date of birth
 4. Social security number (or voter ID number)
 5. The date the person believes that he or she registered to vote.
 6. Did the person register to vote by mail or in person If the registration was in person, where?
 - Auditor's office
 - Driver license station (Refer to the form: VOTERS WHO BELIEVE THEY REGISTERED AT DOT.)
 - Department of Human Services agency
 - Somewhere else. Where?
- If the person is a registered voter in the county the voter may change his or her address, and vote, if the voter
 1. Completes a new voter registration application form and gives it to the precinct election official.
 2. Shows a current photo ID card showing the voter's name; or a current utility bill, bank statement, government check, paycheck or other government document showing the voter's name and address.

See: Challenged voters & provisional ballots

- If the question is not resolved, the voter may cast a special ballot. See **How to Issue a Provisional Ballot.**

Continued on next page.

The voter's name is not listed in the election register.

Exception to registration requirement for recent military discharge.

- Any person who was discharged from military service within 30 days before election day may vote a regular ballot.

The voter must

show discharge papers to the precinct officials and fill out a voter registration form.

The precinct official must

Return the discharge papers to the voter;
Keep the registration form and take it to the auditor with the supplies after the election.

Challenged voters & provisional ballots

Challenges to voter qualifications

The precinct officials, pollwatchers, or any voter in the polling place may challenge any person they believe is not qualified to vote. People who have been challenged have the right to cast a provisional ballot.

Provisional ballots

Any person who appears not to be qualified to vote has the right to cast a provisional ballot. If you are unable to verify the qualifications of anyone who wishes to vote in your precinct, or if any voter is challenged by a pollwatcher, or anyone else, you must offer the voter in question the opportunity to cast a provisional ballot.

Questions you may ask the challenged voter

The precinct officials and the challenger may ask the challenged voter questions to determine the voter's qualifications. The voter may be asked --

- ❑ Where the person maintains his/her home.
- ❑ How long the person has maintained a home at that address.
- ❑ If the person maintains a home at any other location.
- ❑ The person's age.

If the challenge is not withdrawn after these questions have been asked, the voter has the right to cast a provisional ballot.

Voter decides

The voter decides whether to cast a provisional ballot, not the precinct official. The provisional ballot provides a method for protecting the challenged person's right to vote, and for examining the voter's qualifications after election day. The precinct officials should not speculate about the likelihood of any provisional ballot being counted.

How to issue a provisional ballot

1. The voter fills out the "Envelope for Special Ballot." Including,
 - a. the voter registration form and
 - b. the Statement of Challenged Voter on the right-hand side of the envelope.
2. There are two places for the voter to sign:
 - a. the registration form and
 - b. the Statement of Challenged Voter on the envelope.
3. Give the voter a ballot and instruct the voter to
 - a. mark the ballot in a voting booth,
 - b. seal it in the envelope, and
 - c. return the envelope to you.
4. Show the voter to a voting booth.
5. While the voter is marking the ballot, fill out a "Statement to Person Casting a Provisional Ballot".
 - a. List the reason the voter is being challenged. Common reasons include
 - i. Name not in election register
 - ii. Voter does not live in this precinct
 - b. Put the date and time of the special precinct counting board meeting on the form. The county auditor's office can tell you when this is.
 - c. The voter may submit written evidence until the time the special precinct counting board meets.
6. When the voter returns the envelope to you, make sure that:
 - a. The envelope is sealed. If the envelope is not sealed, ask the voter to seal it.
 - b. The registration form includes the following information:
 - i. Name
 - ii. Address, and city
 - iii. Birth date (month, day and year) and sex
 - iv. Signature of the voter
 - c. The statement on the right side of the envelope, next to the registration form is completed, signed and dated.
7. **Give the voter the Statement to Person Casting a Provisional Ballot.**
 - ⊙ Do not keep it or enclose it in the envelope.
8. Put the envelope containing the special ballot in the large envelope provided for the return of the special ballots.

**STATE OF IOWA
STATEMENT TO PERSON CASTING A PROVISIONAL BALLOT**

Your qualifications as a registered voter have been challenged for the following reason(s):

1. _____
2. _____
3. _____

You must show identification before your ballot can be counted. Please bring

or mail a copy of a current and valid photo identification card to the county commissioners office or bring or mail a copy of one of the following current documents that show your name and address:

- a. Utility bill.
- b. Bank statement.
- c. Paycheck.
- d. Government check.
- e. Other government document

Your right to vote will be reviewed by the special precinct counting board on _____. You have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as a registered voter.

This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received before noon on _____ at _____. If your ballot is not counted you will receive notification of this fact.