

# Helping America Vote? Election Administration, Partisanship, and Provisional Voting in the 2004 Election

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## ABSTRACT

State and local election officials play an important role in implementing election laws and administrative rules. There is some suspicion that election officials may tilt rules and procedures to help a favored party, prompting recent proposals for nonpartisan election administration in the United States. We examine the impact of state and local election officials on provisional voting in the 2004 presidential election, the first national election in which provisional voting was required by federal law. We find suggestive evidence of partisanship in the selection of state rules governing the counting of provisional ballots. We also find conditional partisan effects in the casting and counting of provisional ballots. In 2004, provisional ballots were more likely to be cast and counted in heavily partisan jurisdictions administered by an election authority of the same party. Additionally, other state-level administrative features (prior experience with provisional voting, a statewide registration database, and rules for counting provisional votes cast in the wrong precinct) strongly affected provisional voting in 2004. Election administration in the United States should be subjected to more scrutiny.

## INTRODUCTION

THE UNITED STATES has undergone several changes in election laws and procedures since the contested presidential election of 2000. However, to this point, state and local governments have not changed the manner in which election officials are selected. These individuals did not completely escape notice in recent elections. In 2000, Florida's elected Secretary of State, Katherine Harris, also served as

co-chair of George W. Bush's campaign in Florida. Harris was accused by some of making administrative decisions that favored the Bush campaign (Shornstein 2001). In 2004, Ohio Secretary of State Kenneth Blackwell was similarly accused because he co-chaired President Bush's re-election campaign and made some controversial decisions regarding voting procedures for the presidential election.<sup>1</sup> Another partisan election official, former California Secretary of State Kevin Shelley (a Democrat) was

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<sup>1</sup> Blackwell ruled that only provisional ballots cast in the correct precinct would be counted. He also ruled that only voter registration applications on a certain weight of paper could be accepted (see House Judiciary Committee Democratic Staff, "Preserving Democracy: What Went Wrong in Ohio." Available at <[http://www.house.gov/judiciary\\_democrats/ohiostatusrept1505.pdf](http://www.house.gov/judiciary_democrats/ohiostatusrept1505.pdf)>). Blackwell later reversed the ruling on the weight of the paper after public criticism (see Tokaji 2005: 1227).

forced to resign after he was accused of improperly using election reform funds. A federal audit later revealed that he had mishandled approximately \$3 million (Vogel 2006). In the wake of these and other examples, there appears to be a growing movement advocating nonpartisan election administration in the United States.

Although state-level officials have garnered the most attention, local election officials do more to implement the nuts and bolts of elections, conducting such tasks as buying and maintaining voting equipment, printing ballots, hiring election workers, choosing polling places, and establishing other election procedures.<sup>2</sup> Local officials must follow state and federal laws, but they may implement those laws in different ways. Michael Lipsky (1980) describes teachers, welfare case workers, and police officers as “street-level bureaucrats,” who make critical decisions in implementing various laws. He argues that “the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out” (Lipsky 1980: xii). Similarly, local election officials might be termed the “street-level bureaucrats” of elections. Because elections are by nature “political,” the discretion inherent in running an election may affect whether some people are able to cast a vote—and partisan bias on the part of a local official could disadvantage some voters.

We examine state and local officials in the administration of provisional voting in the 2004 presidential election. Provisional voting is a new election feature in many states mandated by the Help America Vote Act of 2002 (HAVA). Allowing someone to vote provisionally takes some measure of discretion, as does the second step of actually counting the provisional ballot. If the partisanship of local election officials matters to election administration, we may see it manifested in how many provisional votes are cast and counted. On the surface, provisional voting appears to be a meaningful election reform. Over 1.9 million provisional ballots were cast in the 2004 election, and more than 1.2 million provisional ballots were counted as valid ballots.

However, provisional votes in the 2004 election were not evenly distributed across the country.

We find evidence of partisan differences in administration of provisional voting at the local level in both the frequency of provisional votes cast and those counted. For example, provisional votes were less likely to be cast and counted in strongly Democratic jurisdictions if the local election official was a Republican. Similarly, in heavily Republican jurisdictions provisional votes were less likely to be cast and accepted if the local election official was a Democrat. We also find that the frequency of provisional voting is strongly associated with other state-level administrative features, especially a state’s prior experience with provisional voting. We conclude that state and local election administration in the United States should be more closely examined.

#### HOW MIGHT STATE AND LOCAL OFFICIALS AFFECT ELECTIONS?

A growing polarization of politics in the United States and a series of close and competitive national elections in recent years have combined to produce increased controversy and litigation over election procedures (Hasen 2005). In this climate, there is an increased awareness that candidates and political parties may try to manipulate election rules and procedures for political gain (Tokaji 2005).

In light of this concern, one reform idea is to take election administration out of the hands of partisan politicians and put it in the hands of nonpartisan officials or bipartisan boards. The idea has appeared in scholarly research (Hasen 2005; Pastor 2004; Shornstein 2001), election reform task forces (Committee on Federal Election Reform 2005; Fair Election International 2004; Governor’s Select Task Force on Election Procedures, Standards and Technology 2001: 27–28), editorial pages (*San Diego Union Tribune*

<sup>2</sup> For more information on the duties that local election officials perform before and after an election, see General Accounting Office. 2001. *Elections: Perspectives on Activities and Challenges Across the Nation*.

2005), and a ballot initiative campaign in Ohio<sup>3</sup> that failed in 2005.<sup>4</sup>

Furthermore, there is evidence suggesting that a majority of Americans prefer nonpartisan election officials (Alvarez and Hall 2005). This perspective is consistent with the Progressive goal of reducing the influence of partisanship in government administration and promoting other values such as efficiency, transparency, and scientific analysis (Adrian 1959: 451). The public debate has reached the point where the National Association of Secretaries of State (an organization that includes most state election officials) felt compelled to defend the practice of partisan officials administering elections (National Association of Secretaries of State 2005).

The general theory supporting a change to nonpartisan election administration is that partisan election officials may make administrative decisions intended to benefit their political party, while nonpartisan officials will administer elections in a more independent and neutral fashion.<sup>5</sup> The accepted wisdom is that Democrats prefer to expand the electorate while Republicans do not, because the demographic profile of non-voters is more similar to the Democratic party's constituency.<sup>6</sup> Thus, conservatives and Republicans tend to be more interested in measures to prevent fraud (e.g., Fund 2004), which may reduce voter turnout, while liberals and Democrats tend to be more concerned about removing barriers to voting and increasing turnout (e.g., Piven and Cloward 1988). These partisan tensions were also observed with respect to poll watchers and voter registration in several battleground states shortly before the 2004 presidential election (Wallsten, Silverstein and Shogren 2004).<sup>7</sup>

However, this conventional wisdom may be wrong. Both parties want to win elections. Each party may prefer higher turnout if that means more of its own voters going to the polls, and each party may dislike higher turnout if it means more of the other party's voters going to the polls. Thus, for example, Republican officials may be more permissive with rules for casting and counting provisional ballots in a heavily Republican local jurisdiction. Similarly, if a Democratic official oversees an election jurisdiction that votes Republican, he or she may

be tempted to tighten rules for casting and counting provisional votes. This dynamic played out in the Florida recount controversy in the 2000 presidential election. The Gore campaign, in trying to find more Democratic votes, asked for a manual recount in only four heavily Democratic counties run by Democratic election commissions (Caesar and Busch 2001: 181). Similarly, the Bush campaign pushed for more permissive standards for counting overseas absentee ballots in selected heavily Republican counties (Imai and King 2004). Thus, local party competition may interact with the partisanship of the local election official in the implementation of procedures that affect voter turnout.

An alternative theory of election administration emphasizes the fact that election administration has become professionalized, with national and state associations and regular meetings of local officials in most states. Two national groups help coordinate the activities of state election officials: the National Associa-

<sup>3</sup> See <<http://moritzlaw.osu.edu/electionlaw/election2005/issue5.php>> for a brief summary of the ballot proposition (accessed 7 June 2006).

<sup>4</sup> Other groups propose a code of ethics for election officials but stop short of recommending nonpartisan or bipartisan administrators (National Conference of State Legislatures 2001). Suggested methods of selecting nonpartisan election officials vary. Some recommend appointing election officials (e.g., Hasen 2005), while others recommend that election officials be chosen in nonpartisan contests (e.g., Shornstein 2001).

<sup>5</sup> A weaker form of the theory holds that even if partisanship has little influence on the behavior of election officials, nonpartisan administration avoids the appearance of a conflict of interest, thereby maintaining public confidence in the democratic process (Hasen 2005).

<sup>6</sup> Despite conventional wisdom, there is scholarly disagreement over the hypothesis that higher turnout helps Democrats (Martinez and Gill 2005; Nagel and McNulty 1996).

<sup>7</sup> One can see this partisan disparity in the congressional passage of HAVA in 2002. In general, Democrats wanted to increase access to voting (doing things such as allowing provisional ballots for voters wrongly left off voter lists) while Republicans wanted to increase the integrity of the process (with more rigorous voter identification and registration procedures). HAVA was a compromise that included both sets of preferences (e.g. Committee on Federal Election Reform, 2005: 2). A similar pattern of partisan conflict accompanied passage and implementation of the National Voter Registration Act of 1993, the so-called "Motor voter" law (e.g., Conway 2000: 121).

tion of State Election Directors and the National Association of Secretaries of State. In addition, several organizations, such as Election Center, the National Association of County Recorders, Election Officials and Clerks, and the International Association of Clerks, Recorders, Election Officials, and Treasurers, serve a similar function for local election officials. Many local officials are members of statewide professional organizations as well. These organizations help officials share information and they foster common approaches to election administration that may cross local boundaries and party lines. Furthermore, the growing professionalization of election administration promotes norms and values, such as efficiency, fairness, and openness, that tend to mitigate against partisanship. Another mitigating factor is that election administration is influenced to some degree by state laws and regulations, which may tend to reduce discretion and create uniformity across local jurisdictions. For example, most states provide training for local election officials, and many states require it (Election Reform Information Project 2002). If election administration has become professionalized, we would not expect to see differences in how similarly situated election officials from different parties administer election rules.

### THE IMPACT OF ELECTION OFFICIALS

Despite competing theories of election administration, very little research has examined the effect of election officials on voter turnout. Several studies indicate that Progressive reforms intended to limit partisan control of elections (such as the adoption of the Australian ballot, nonpartisan local elections, and direct primary elections) succeeded in reducing the impact of partisanship in voting behavior (e.g., Adrian 1959; Rusk 1970; Schaffner, Streb and Wright 2001).

The few published studies available suggest that the party affiliation of election officials can have noticeable effects on voting and elections. For example, Stuart (2004) examines the use of centralized lists to purge felons from the voting rolls in Florida before the 2000 presidential election. Even though the felon lists contained

many errors, Stuart finds that counties with Republican election administrators purged voter rolls more aggressively than counties with Democratic election administrators. The results are consistent with partisan self-interest in that Democrats are thought to benefit (and Republicans suffer) from expanded voter rolls. Similarly, Hamilton and Ladd (1996) find evidence that Republican county election boards strategically manipulated ballot formats in North Carolina to influence straight-party voting in the 1992 election. Another study examines partisan machinations among election officials in determining the ballot title for a voter initiative to legalize assisted suicide in Oregon (Lund 1998). Finally, Hayduk (2005) argues that election procedures in New York passed by the state legislature and implemented by local election boards resulted in Republican dominance in party politics in the state in the early 1900s, whose effects are still felt today.

There are also a number of studies showing how the two major political parties in the United States have crafted election procedures to thwart independent and third-party candidates. One example is the signature requirements needed for candidates or parties to qualify for the ballot (Winger 2002). Another example involves anti-fusion laws preventing multiple-party nominations of the same candidate in most states (Ryden 1999). Nevertheless, there is limited scholarship comparing the partisanship of election officials to measurable outcomes such as the adoption of particular rules or voter turnout.

### PROVISIONAL VOTING

We test competing theories of election administration by examining the casting and counting of provisional ballots in the 2004 presidential election. Section 302 of HAVA requires states to provide provisional ballots to voters who believe they are registered but whose names do not appear on the voter list at their polling place. If the voter's eligibility is confirmed, then the provisional ballot is counted. If the voter's eligibility is not verified, then the provisional ballot is not counted. While some states offered provisional ballots before pas-

TABLE 1. PROVISIONAL VOTES CAST IN 2004 ANALYZED BY STATE PRIOR EXPERIENCE

<i>Type of state</i>	<i>Provisional ballots cast</i>	<i>Provisional ballots counted</i>	<i>Total ballots cast</i>
Previously had provisional voting (17 states plus DC)	1,368,814 (71%)	933,205 (75%)	51,631,030 (45%)
Provisional voting new in 2004 (26 states)	554,313 (29%)	312,844 (25%)	63,664,683 (55%)

*Note:* Numbers in parentheses indicate the percentage of ballots in that column.

sage of HAVA, the new federal law required most states to change voting procedures to accommodate provisional voting (Montjoy 2005). Seven states are exempt from HAVA's provisional voting requirement: North Dakota (which has no voter registration) and six states with election day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming). These states are excluded from the analyses of provisional voting that follow.<sup>8</sup>

A significant number of provisional ballots were cast in the 2004 election, the first general election held under HAVA's requirements. Over 1.92 million provisional ballots were cast, and over 1.24 million of them were counted as valid ballots. At first glance, these numbers suggest that over one million people who were likely disenfranchised in previous elections were able to vote in 2004. However, such an interpretation likely overstates the impact of the provisional voting requirement in HAVA. Provisional balloting in 2004 was much more prevalent in states with prior experience administering provisional voting (see Table 1). While a majority of total ballots were cast in states implementing provisional voting for the first time in 2004, a large majority of provisional ballots were cast and counted in states that implemented provisional voting programs before HAVA was passed. Roughly 75 percent of the valid provisional ballots counted in the 2004 election were cast in the 17 states (plus the District of Columbia) that had prior experience administering provisional voting procedures. This suggests that provisional voting may become more common in the rest of the country as those states gain experience in its administration. Nevertheless, it is likely that HAVA enfranchised over 300,000 voters who cast valid provisional ballots in states with little or no prior provisional voting program.

Implementation of provisional balloting was a source of partisan conflict in several states, particularly over the location in which provisional ballots needed to be cast. There were legal challenges in at least six states over whether to count provisional ballots cast in the wrong precinct (Tokaji 2005).<sup>9</sup> Five of the cases involved liberal or Democratic interests suing a Republican state election official. The other case involved Republican candidates suing the state board of elections (controlled by a Democratic majority). If there is evidence of partisanship in election administration, the implementation of provisional voting should offer a good chance of finding some. While some states passed legislation to codify the provisional ballot requirement in HAVA, many states left the implementation of provisional voting to state and local election officials (Tokaji 2005: 1229; *Harvard Law Review* 2006:1195).

One might observe partisanship in the administration of provisional voting at the state and local level. At the state level, we might expect Democratic election officials to promulgate more permissive rules for provisional ballots than Republican officials. At the local level, conventional wisdom suggests that more provisional ballots will be cast and counted in jurisdictions with Democratic election officials. However, we also hypothesize a conditional

<sup>8</sup> Wisconsin and Wyoming use provisional ballots, but only when a voter does not have adequate identification. Provisional voting is very rare in both states, which is why they are excluded from this analysis (see Election Reform Information Project 2005).

<sup>9</sup> The states with lawsuits over whether to count provisional ballots cast outside a voter's precinct were Colorado, Florida, Michigan, Missouri, North Carolina, and Ohio (see Tokaji 2005: fn. 195).

TABLE 2. STATE PROVISIONAL VOTING RULES BY PARTY OF STATE ELECTION AUTHORITY

	<i>Democrat</i>	<i>Republican</i>	<i>Nonpartisan</i>
Counted only if cast in the correct precinct	11 (55%)	14 (67%)	2 (67%)
Counted if cast outside correct precinct	9 (45%)	7 (33%)	1 (33%)
Totals	20	21	3

effect of partisan election administration. For example, Republicans may prefer more provisional votes in a heavily Republican jurisdiction but fewer provisional votes in a heavily Democratic jurisdiction. This suggests an interaction between the party of the election official and the level of party competition within the local jurisdiction.

### DATA AND METHODS

We analyze these hypotheses in two ways. First, we analyze state election officials and state rules governing the counting of provisional ballots. Second, we turn to local election officials and data on the casting and counting of provisional ballots in their jurisdictions. At the state level, we gathered information on the selection method and party affiliation for each state's top election official.<sup>10</sup> Thirty-five states elect their state election official, while 15 states plus the District of Columbia appoint a board or individual to administer elections. However, only five states have bipartisan or nonpartisan election administration—in the other 45 states, plus the District of Columbia, election administration is partisan (either an individual or a partisan majority on the election board).

State rules for counting provisional ballots varied in 2004. Seventeen states chose to count provisional ballots cast outside the correct precinct and twenty-seven states chose not to count provisional ballots cast at the wrong precinct. In almost every case, the top election authority in the state chose the rule for counting provisional ballots.<sup>11</sup> Under a partisan theory of election administration, we expect that states with Democratic election officials are more likely than states with Republican officials to adopt a rule allowing provisional ballots cast outside the correct precinct. The evidence is suggestive at best (see Table 2). States

with Democratic election officials were more likely to adopt the more permissive standard, allowing provisional ballots cast in the wrong precinct. However, the partisan differences among state officials in Table 2 are not statistically significant.<sup>12</sup>

Turning to the local level, in most states the local jurisdiction for election administration is the county. In a handful of states, local election administration is handled at the municipal level. In four states (Illinois, Missouri, Maryland, and Virginia), some cities have separate election administration authorities. These cities are treated as separate jurisdictions in our study. We treat Alaska as one observation because elections are administered by the Alaska state government. Adding the District of Columbia as another observation produces a total of 4,612 local election jurisdictions that cover the entire country.

To find the method of selection for local election authorities, we consulted several sources. We obtained the names, addresses, and phone numbers of all officials in charge of local elections in the United States, mostly from state of-

<sup>10</sup> We contacted state election offices and, in some cases, examined state election laws. See also Hasen (2005).

<sup>11</sup> Our source is Election Reform Information Project (2005). Colorado was a difficult case to categorize. Under rules adopted by the Secretary of State, Colorado only allowed a presidential ballot for provisional voters who appeared at the wrong precinct. In other words, those voters were not allowed to vote in any other federal, state, or local contests (*Harvard Law Review* 2006). Because the focus of our analysis is on the presidential election of 2004, we code Colorado as allowing provisional ballots cast outside the correct precinct.

<sup>12</sup> Evidence of partisanship is a bit stronger among presidential "battleground" states in 2004. Six out of seven battleground states with Republican election officials chose to disallow provisional ballots cast in the wrong precinct, while four out of six battleground states with Democratic officials chose to allow provisional ballots cast in the wrong precinct.

fices and state web sites.<sup>13</sup> Then, we called many of the local officials to determine their partisanship, but we also consulted the state election office, state laws, county and town charters, and directories of local officials. Some states impose a uniform method for selecting all local election officials (e.g., New York) and other states have a patchwork of selection methods that vary by jurisdiction (e.g., Nebraska).<sup>14</sup>

There is considerable variation in the ways local election officials are chosen (see Tables 3 and 4). Roughly two-thirds of local jurisdictions elect their election officials, and the remaining localities appoint a board or individual to administer elections. Elections tend to be administered by an *elected individual* in rural, less populated counties and towns, but densely populated urban and suburban jurisdictions tend to have *appointed individuals or boards* managing elections. Nonpartisan and bipartisan election authorities are more common at the local level than at the state level. Approximately 39% of local jurisdictions have a nonpartisan election official and another 14% have a bipartisan election board. Just under half of the local jurisdictions have a partisan official administering elections. Nonpartisan local election officials tend to be most common in New England, on the West Coast, and in some large urban centers.

TABLE 3. SELECTION METHODS FOR LOCAL ELECTION AUTHORITY

<i>Selection method</i>	<i>Share of jurisdictions</i>	<i>Voter representation</i>
Individual elected by voters	61%	45%
Elected board of elections	2%	1%
Appointed board of elections	22%	31%
Appointed individual	15%	22%

*Note:* The second column indicates the percentage of local jurisdictions using a particular selection method. The third column indicates the percentage of ballots cast in the 2004 presidential election in each type of election authority.

*Sources:* state statutes, state election offices, directories of county officers  
n = 4,612 local jurisdictions.

TABLE 4. PARTY AFFILIATION OF LOCAL ELECTION AUTHORITY

<i>Party affiliation</i>	<i>Share of jurisdictions</i>	<i>Voter representation</i>
Republican	20%	23%
Democratic	26%	24%
Other party	0.1%	0.03%
Bipartisan	14%	16%
Nonpartisan	39%	37%

*Note:* The second column indicates the percentage of local jurisdictions in a particular category. The third column indicates the percentage of ballots cast in the 2004 presidential election in each type of jurisdiction.

*Sources:* state statutes, state election offices, directories of county officers and calls to local election officials (n = 4,566 local election jurisdictions).

We also collected data on the number of provisional votes cast and counted for each local jurisdiction. This information came from state and local election authorities and was supplemented by the Election Assistance Commission's Election Day Survey, a nationwide survey administered by Election Data Services (Brace and McDonald 2005). There are 3,582 local jurisdictions in the 43 states (plus the District of Columbia) with provisional voting examined in this study. We were not able to gather reliable provisional vote data from a small number of counties or towns. Thus, the analyses below are based on provisional voting data from 3,556 local jurisdictions.

We examine both the number of provisional votes cast in each jurisdiction and the number of provisional votes that were counted as valid ballots in each jurisdiction. Although almost 2 million provisional ballots were cast in 2004, provisional votes are a small percentage of total ballots cast. Figure 1 shows the distribution of provisional vote cast in each jurisdiction as a percentage of total ballots cast in the jurisdiction. Even

<sup>13</sup> In some counties, multiple officials share responsibility for managing elections. In these situations, we coded the official with the most responsibility over election operations, particularly if that authority included provisional ballots.

<sup>14</sup> We were not able to confirm the party affiliation (or lack thereof) of every appointed individual or board self-described as nonpartisan. Thus, we suspect our data may slightly overstate the number of nonpartisan local election officials. We collected these data over a period of time ranging from October 2004 until January 2006.

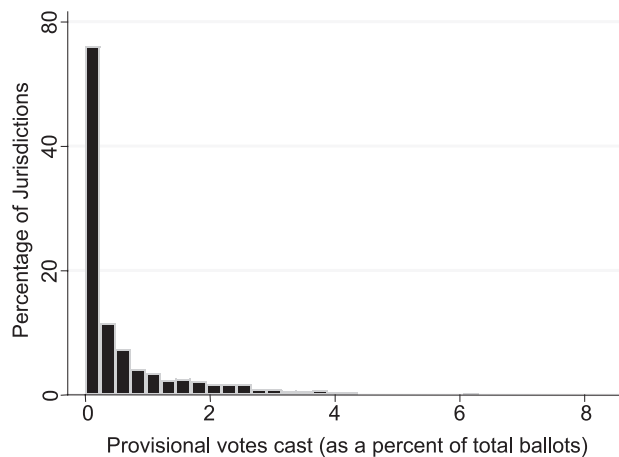


FIG. 1. Provisional ballots cast in local jurisdiction in 2004 (as a percentage of total ballots cast).

so, the frequency of provisional voting varies from one locality to the next. The distribution of provisional voting across local jurisdictions is skewed, with outliers at the high end. Provisional voting percentages range from 0% to 8.3%, with a mean of 1.7% and a standard deviation of 1.9%. We find even more variation in the counting of provisional ballots. Figure 2 summarizes the percentage of provisional ballots counted in each jurisdiction. The percentage of successful provisional ballots in each jurisdiction ranges from 0% to 100%, with a mean of 64.7% and a standard deviation of 22.3%.

## MULTIVARIATE ANALYSES

We estimate a multivariate model of provisional voting across local jurisdictions in 2004 to examine the impact of partisanship and other factors. As discussed above, we measure the party affiliation of the local election authority. Two dummy variables are created for Democratic and Republican local election officials, respectively. Bipartisan and nonpartisan authorities are excluded as the baseline for comparison. We include a measure of the jurisdiction's partisan propensity, which is the percentage of the major-party vote cast for John Kerry in the 2004 presidential election. If the conventional wisdom of partisan election administration is correct, then we should simply observe higher rates of provisional voting in jurisdictions with Democratic election officials. If a theory of conditional partisanship holds, then

we expect the frequency of provisional voting in jurisdictions administered by Democratic officials to rise as the jurisdiction's Democratic voting tendency increases. Put another way, we expect the casting and counting of provisional ballots in heavily Democratic jurisdictions to be more frequent if the local election authority is a Democrat rather than a Republican. To test for these conditional relationships, our model includes two interaction terms created by multiplying the jurisdiction partisanship measure and the respective dummy variables for Democratic and GOP local officials.

We also analyze other constraints on the discretion of local officials which include state-level rules for counting provisional votes cast in the wrong precinct (noted above). Our analysis includes a dummy variable indicating whether or not state rules will count provisional ballots cast in the wrong precinct. Previous analyses find that states which disqualified out-of-precinct provisional ballots tended to have lower rates of provisional ballots being cast and accepted (Election Reform Information Project 2005: 12; Brace and McDonald 2005: 6-3).

We also coded whether each state had established a functioning computerized voter registration database in 2004. One study indicates that provisional voting was less common in states with a registration database in 2004 (Brace and McDonald 2005). Statewide registration databases are supposed to be more accurate than conventional registration lists, minimizing duplications and omissions that may result in names being left off voter lists at

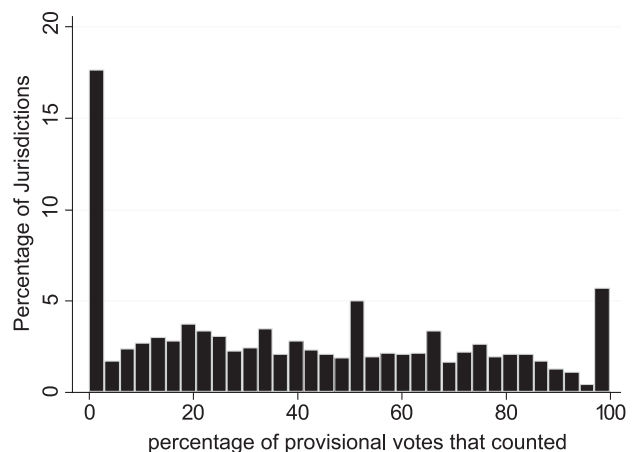


FIG. 2. Percentage of provisional votes in local jurisdictions in 2004 that were counted.



polling places. Thus, registration databases should reduce the need for provisional ballots. Only fifteen states, plus the District of Columbia, had a registration database in place for the 2004 election.

Another institutional variable to consider is whether the state (and its local jurisdictions) had experience administering provisional balloting in previous general elections. We include a dummy variable indicating whether a state had prior experience managing provisional votes. Seventeen states and the District of Columbia had instituted provisional balloting programs similar to HAVA's requirements before 2002 (Election Reform Information Project 2001). In states with prior experience, local election officials and poll workers are more likely to know that a provisional ballot is an option for voters whose registration status is in dispute. Thus, provisional voting may have been more uniformly enforced in these states. As a result, we expect the casting and counting of provisional ballots to be more frequent in states that implemented provisional voting programs before the passage of HAVA.

Our multivariate analysis also includes a dummy variable denoting local jurisdictions covered by the pre-clearance provisions of section 5 of the Voting Rights Act.<sup>15</sup> These are jurisdictions with a past history of discriminatory efforts to disenfranchise minority voters and they are required to gain approval of voting and election changes from the Department of Justice or the U.S. District Court for the District of Columbia. Because covered jurisdictions have a past history of disenfranchisement, we suspect that they may not be as enthusiastic in implementing new programs designed to enfranchise voters. Thus, we expect that fewer provisional ballots will be cast and counted in covered jurisdictions.

We also control for a number of local demographic measures commonly associated with voter turnout. These control variables include median household income, the percentage of a county's residents who are non-white, the percentage age 65 and over, the percentage of adults with a high school degree, and the percentage of residents who have lived in the same county for more than five years, all obtained from the Census Bureau. These variables are associated with equal protection concerns, for

they measure concentrations of groups that may be disadvantaged by registration and voting procedures. Part of the motivation for HAVA's provisional voting requirement was to provide an outlet for groups with low voter turnout rates. Thus, we expect the casting of provisional votes to be less common in local jurisdictions with large concentrations of people who are typically high turnout voters, such as the elderly, highly educated voters, high income voters, and those who have not moved. These groups presumably have experience with registration and voting in their area and should be less likely to need provisional ballots. Similarly, we expect more provisional votes to be cast in jurisdictions with large percentages of non-white citizens. When it comes to counting provisional ballots, we expect correlations with the demographic variables described above in the opposite direction. For example, if wealthy or highly educated voters cast a provisional vote, we would expect them to do it correctly. As a result, jurisdictions with higher concentrations of wealth and highly educated voters should produce higher rates of provisional votes counted as valid ballots.

Finally, we measure the size of the local electorate by calculating the natural log of total ballots cast in each jurisdiction.<sup>16</sup> We expect provisional voting to be more common in heavily populated counties and cities. Smaller jurisdictions likely have few voting precincts and less turnover in their registration lists, conditions that tend to reduce the need for provisional ballots. In contrast, heavily populated communities have many voting precincts and more rapid turnover in registration lists, increasing opportunities for omissions that can lead to provisional voting. Furthermore, large scale voter registration efforts in 2004 were targeted to

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<sup>15</sup> See <[http://www.usdoj.gov/crt/voting/sec\\_5/covered.htm](http://www.usdoj.gov/crt/voting/sec_5/covered.htm)>, accessed March 23, 2006.

<sup>16</sup> As with the other data in this study, we collected voter turnout data from state and local election officials. A handful of states did not report the number of ballots cast in local jurisdictions. In these cases, we contacted the local jurisdictions to get turnout data. Eighty local jurisdictions could not provide reliable data on the number of ballots cast. For these jurisdictions, we substitute the total number of votes for president. We obtain the same results if we use presidential votes instead of total ballots cast as our turnout measure.

ward many densely populated urban and suburban communities. The surge in registration generated in these communities may have created more of a need for provisional voting. Finally, there may be an election administration effect here too. Larger urban counties tend to have more professional election operations than smaller rural counties. Furthermore, in our contacts with local communities we found that officials in less populated jurisdictions tended to resent the mandates imposed by HAVA. Thus, the provisional voting requirement of HAVA may have been more fully enforced in heavily populated jurisdictions.

Our study examines two dependent variables: (1) the number of provisional ballots cast in each jurisdiction and (2) the number of provisional ballots counted as valid in each jurisdiction. Other studies of election administration indicate that least squares regression does not adequately capture the data-generating process for relatively small subsets of voters, such as residual votes (Kimball and Kropf 2005; Sinclair and Alvarez 2004). The same concern holds for provisional ballots. First, the number of provisional votes has a lower bound of 0, but least squares regression models do not constrain the expected value to be greater than or equal to 0. Second, counts of provisional votes have a strongly skewed distribution: most observations cluster slightly above zero with a long tail extending in the positive direction (see Figure 1).

As a result, we estimate a negative binomial regression model more appropriate where the dependent variable is a count. The negative binomial model is used when there is "overdispersion" in count data (Long 1997), meaning that there is higher than expected variation in the dependent variable. Overdispersion can occur in count data if events are clustered in particular locations or time periods. For example, a provisional vote in a particular county or town may be linked to more provisional votes in the same place (because of faulty registration lists, for example). The negative binomial regression model estimates an extra parameter (alpha) to test for overdispersion in the data.

We also modify the generic negative binomial regression model. Because the number of voters in each jurisdiction varies dramatically,

we weight each jurisdiction by the number of ballots cast, which has the effect of counting each voter equally. In other words, it prevents the results from being overly influenced by the many small localities that have relatively few voters. Finally, we estimate standard errors corrected for non-constant error variance.<sup>17</sup>

## RESULTS

The first column of Table 5 reports the negative binomial regression estimates for the number of provisional ballots cast in each local jurisdiction; the second column reports the estimates for the number of provisional ballots counted as valid votes. The alpha parameter in both models is statistically significant, indicating that there is overdispersion in both dependent variables and that our selection of the negative binomial regression model is supported.

In the first model, we find evidence of the hypothesized interaction between the election official's party affiliation and the jurisdiction's partisan leanings. Because the sign and statistical significance of regression coefficients do not necessarily indicate the presence of a meaningful interaction effect (Brambor, Clark and Golder 2006: 74), we provide a graphical illustration of the partisan effects provided by the negative binomial regression model. We hold all the other independent variables constant at their median values and then calculate the expected number of provisional votes cast as a conditional function of the party affiliation of the election authority and the partisanship of the local jurisdiction (see Figure 3).<sup>18</sup> Among

<sup>17</sup> We use the *nbreg* command in Stata version 8 to estimate the model. The corrected standard errors are specified by the "robust" option. The total number of ballots cast in a county is used to standardize the counts with the "exposure" option. This simply accounts for the fact that there are more opportunities for provisional votes in larger counties than in smaller counties. Long and Freese (2001: 241–250) describe the negative binomial model and the exposure concept. Some might prefer using ordinary least squares regression to model provisional voting rates. OLS regression analyses (available from the authors) produce similar results to the ones reported here.

<sup>18</sup> We use Clarify software created by King, Tomz, and Wittenberg (2000) to compute the expected number of provisional ballots in Figures 3 and 4.

TABLE 5. MULTIVARIATE ANALYSES OF PROVISIONAL VOTING IN THE 2004 ELECTION

<i>Explanatory variable</i>	(1) <i>Ballots cast</i> Coefficient (std. error)	(2) <i>Ballots counted</i> Coefficient (std. error)
State procedures for provisional voting before HAVA	.93*** (.09)	.34*** (.05)
State counts provisional ballots cast in wrong precinct	.07 (.09)	.15** (.06)
Statewide registration database in place in 2004	-.84*** (.14)	.08 (.08)
Jurisdiction covered under VRA pre-clearance	-.13 (.16)	-.37*** (.09)
Democratic local election authority	-.87** (.27)	-.47** (.15)
Republican local election authority	.05 (.24)	-.12 (.15)
Jurisdiction partisanship (Kerry percent of 2-party vote)	.004 (.004)	-.004 (.002)
Democratic local authority × Jurisdiction partisanship	.009 (.006)	.008** (.003)
Republican local authority × Jurisdiction partisanship	-.012* (.005)	.001 (.003)
Non-white percentage of local jurisdiction	.006 (.005)	-.004 (.002)
Percent 65 or older	-.081*** (.015)	-.029*** (.008)
Percent with a high school degree	.022** (.008)	.007 (.005)
Median income (thousands)	-.018*** (.004)	-.003 (.003)
Residential stability	.010 (.007)	.015*** (.003)
Total ballots cast (natural log)	.16** (.05)	.02 (.02)
Constant	-7.41*** (.91)	-2.03 (.57)
Number of cases	3556	2880
Alpha	1.08***	.30***
Model Chi-square	1226.8***	305.5***

The dependent variables are: (1) the number of provisional ballots cast and (2) the number of provisional ballots counted. Cell entries are negative binomial regression coefficients with robust standard errors in parentheses. Observations (local jurisdictions) are weighted by the number of ballots cast in the 2004 election.

\*\*\*p < .001, \*\*p < .01, \*p < .1, two tailed

jurisdictions with Democratic election officials, the expected number of provisional votes cast increases as the Democratic propensity of the jurisdiction increases. In contrast, among jurisdictions with Republican officials, the expected number of provisional votes falls as the Democratic share of the local vote rises. Put differently, a higher number of provisional votes are cast in a heavily Democratic jurisdiction if the local election authority is a Democrat rather than a Republican. Similarly, a higher number of provisional votes are expected to be cast in a heavily Republican locality if the local elec-

tion authority is a Republican rather than a Democrat.

We find a similar conditional effect of partisanship on the counting of provisional ballots (the second model in Table 5). When holding other factors constant at median values, Figure 4 illustrates the nuanced impact of partisanship on the expected number of provisional votes counted as valid ballots in 2004. Among jurisdictions with a Democratic election authority, the expected number of counted provisional ballots increases as Democratic vote share in the locality increases. Among jurisdictions with

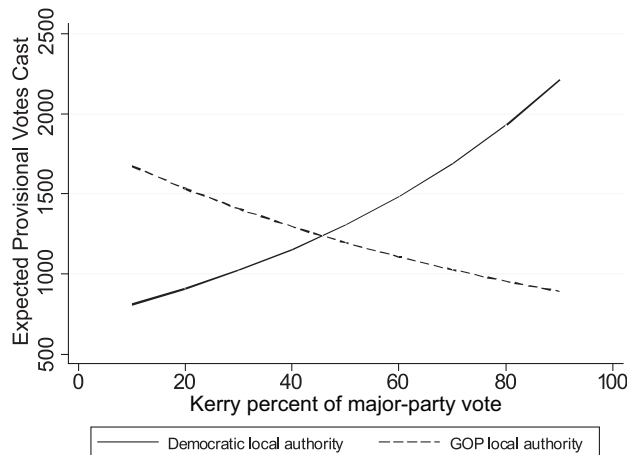


FIG. 3. Expected provisional votes cast by partisanship of local jurisdiction.

a Republican election authority, the expected number of counted provisional ballots drops as the Democratic propensity of the jurisdiction rises. Meanwhile, the regression coefficients for jurisdiction partisanship in Table 5 indicate that mass partisanship of the local electorate has no statistically significant effect on the casting or counting of provisional ballots in places with a bipartisan or nonpartisan election authority.

The results in Table 5 also indicate that administrative features at the state level strongly affected provisional voting in 2004.<sup>19</sup> As suggested by the bivariate results in Table 1, provisional balloting was more common in states that instituted provisional voting procedures

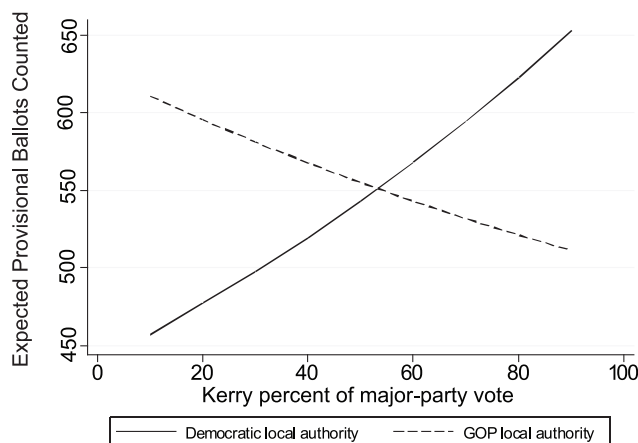


FIG. 4. Expected provisional votes counted by partisanship of local jurisdiction.

before HAVA was passed and thus had enforced provisional voting in at least one general election prior to the 2004 election. The results in the first model indicate that while holding other factors constant, the expected number of provisional ballots cast was 154% higher in states with prior experience administering provisional voting programs. The second model indicates that the number of counted provisional ballots was 41% higher in states that implemented provisional voting before 2004. Past experience with provisional voting was the strongest factor influencing provisional balloting in 2004.

In addition, we find evidence that voter registration databases helped reduce confusion over a voter's registration status and thus reduced the need for provisional ballots. Controlling for other factors, the frequency of provisional voting was 57% lower in states with a functioning statewide voter registration database. These two administrative effects provide a mixed forecast for provisional voting in future elections. As more states gain experience with provisional voting, we can expect an increase in the casting of provisional ballots. At the same time, however, we can expect the installation of statewide registration databases in the next few years to reduce the need for provisional voting.

The other two administrative features we examine (the rule for counting provisional ballots cast in the wrong precinct and covered jurisdictions under the Voting Rights Act) had statistically significant effects on the counting of provisional ballots but not on the overall number of provisional ballots cast. Controlling for other factors, the expected number of counted

<sup>19</sup> Instead of directly measuring state administrative features, some may prefer a fixed effects model with dummy variables for each state to account for unmeasured state differences in election laws, political culture, and administration of provisional voting. When we estimate a model with state dummy variables, we find similar partisan effects: provisional ballots in heavily Republican jurisdictions are more likely to be cast and counted if the local election official is a Republican rather than a Democrat, and vice versa, although the effect for Republican officials is flatter than shown in Figures 3 and 4. These results are available from the authors.

provisional ballots was 16% higher in states with rules allowing provisional votes cast in the wrong precinct. As noted above, there were partisan legal battles in several states over the "wrong precinct" rule for provisional voting, and we find evidence that the rule mattered.

Holding other factors constant, the expected number of counted provisional ballots was 31% lower in jurisdictions covered by the pre-clearance provisions of the Voting Rights Act. Because the covered jurisdictions have a larger non-white population than the national average and a prior history of voting discrimination, these results may raise concerns about racial disparities in provisional voting. Nevertheless, we find that race is not statistically associated with the casting or counting of provisional ballots in 2004.<sup>20</sup>

When focusing on demographic correlates of provisional voting, we find some mixed results. As expected, provisional voting in 2004 was less common in jurisdictions with greater concentrations of elderly and wealthy voters. Holding other factors constant, a one standard deviation increase in the percentage of elderly voters reduced the expected number of provisional votes cast by 27%; a one standard deviation increase in income reduced the expected number of provisional votes by 20%. However, contrary to expectations, provisional voting was more common in more educated jurisdictions. We find little effect of demographic variables on the counting of provisional ballots. Though residential stability was unrelated to the overall casting of provisional ballots, we find that provisional ballots were more likely to count in places with more stable populations, as expected.

Finally, we find that the frequency of provisional voting is substantially higher in heavily populated jurisdictions. Holding other factors constant, the results in the first model of Table 5 indicate that a standard deviation increase in the natural log of total ballots cast increases the expected number of provisional ballots by 30%. Thus, a jurisdiction's size (in voters) is one of the strongest predictors of provisional balloting in 2004. This is consistent with other studies which suggest that election administration is vastly different in small versus large jurisdictions. For example, Stewart (2006: 167) finds

substantially higher residual vote rates in small jurisdictions in the 2004 presidential election.

## CONCLUSION

State and local election officials have some discretion in managing elections within their jurisdictions. With respect to provisional voting in the 2004 election, we find evidence of such discretion. First, we find variation in the selection of state rules for counting provisional ballots cast in the wrong precinct. For some observers, the partisan legal disputes over provisional voting rules in some states may be enough evidence of attempted partisan influence over provisional voting in the 2004 election. However, we find that Democratic officials at the state level were only slightly more likely than Republican officials to institute more permissive provisional vote counting standards.

Second, the casting and counting of provisional ballots varies substantially across local jurisdictions. Third, we find an interaction between the partisan leanings of the mass electorate and the party affiliation of the local election authority in the frequency of provisional voting. In heavily Republican jurisdictions, more provisional ballots were likely to be cast and counted under a Republican election official than a Democratic election official. Similarly, provisional ballots were more likely to be cast and counted in heavily Democratic jurisdictions if the local election authority was a Democrat. The results are consistent with a theory that election officials may work at the margins to influence voter turnout in ways that benefit their political party.

In the first national election after the passage of HAVA, there were more than 1.9 million provisional ballots cast, and more than 1.2 million of them were counted as valid ballots. However, we find that a number of statewide administrative features greatly influenced the casting and counting of provisional ballots in

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<sup>20</sup> When the Voting Rights Act variable is removed from the model, then race has a negative and statistically significant effect on the counting of provisional ballots.

2004. A large majority of provisional ballots were cast in the seventeen states (plus the District of Columbia) that had prior experience administering a provisional voting program. Furthermore, provisional ballots were more likely to be counted in states that allowed provisional ballots cast in the wrong precinct. Finally, provisional voting was less common in states with a computerized voter registration database. Because state election officials have influence over these administrative features, they may also have influence over the frequency of provisional voting in their state.

We want to be cautious in generalizing from these results, as they are based on one election administration feature in one election. As states gain experience with provisional voting and as registration databases come online, local election officials may have less discretion over provisional voting in future elections. In any case, we believe that provisional voting procedures, as well as the influence of election officials, deserve closer scrutiny. The decentralized nature of elections in the United States should facilitate such research. If future studies also find partisan effects of election administration on the right to vote, then it will be difficult to defend continued partisan administration of elections.

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