

CHAPTER 16

PROVISIONAL BALLOTS

Introduction

Although some States had already incorporated various fail-safe ballots into their election codes, the passage of the Help America Vote Act (HAVA) of 2002 represents the first such Federal requirement.¹ HAVA establishes a voter's right to cast a fail-safe, or provisional, ballot in Federal elections.

Voters cast provisional ballots for a variety of reasons, and many States have created various additional applications for fail-safe ballots. For Federal elections, however, HAVA outlines the two federally required circumstances under which States must provide provisional ballots.

First, a State must make provisional ballots available to voters in the event that "the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote...."² As long as the voter signs an affirmation that he or she is registered in the jurisdiction and eligible to vote, the election official must provide the voter an opportunity to cast a provisional ballot. After Election Day, the determination about the voter's eligibility is resolved, and the provisional ballot is subsequently counted or denied based on such eligibility.

Although HAVA requires that voters attest to their eligibility to vote within a jurisdiction, it is left to the State laws to outline the meaning of "jurisdiction." In some States, a voter may cast a provisional ballot in any precinct in the State, regardless of the locality in which the individual is registered, and have that provisional ballot counted, assuming the voter meets all other eligibility requirements. These States autho-

size local election officials to count the votes on the portion of the ballot that the provisional voter would have been eligible to vote had he or she cast a ballot in the home precinct. In other States, for the provisional ballot to count, a voter must cast a provisional ballot in the precinct in which he or she is eligible to vote.

Second, HAVA requires that provisional ballots be available when, during a Federal election, a Federal or State judge extends polling place hours. All voters who cast ballots during the extended hours must cast provisional ballots that are set aside from the other provisional ballots cast during normal voting hours. This requirement allows a judge to determine, after Election Day, the validity of the order to extend polling place hours and allows election officials to easily identify the cast ballots as part of the order.

HAVA mandates that voters have the ability to check the status of their provisional ballot after it is cast. State or local election officials must establish a free access system through which a voter "will be able to ascertain...whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted"³ if the provisional ballot was cast pursuant to HAVA. Federal law also requires that voters be provided written information regarding this free access system at the time that they cast their provisional ballot, providing the provisional ballot was cast for one of the two federally mandated reasons.

States use provisional ballots in additional instances as provided by State law.⁴ The following

¹ See 42 U.S.C. § 15301 et seq.

² See 42 U.S.C. § 15482(a).

³ See 42 U.S.C. § 15482(a)(5)(B).

⁴ For more information about provisional voting at the State level, review the U.S. Election Assistance Commission's (EAC's) forthcoming State-by-State compilation of provisional voting statutes. The report will be available at the EAC Web site at www.eac.gov.

examples illustrate some State-mandated reasons for using a provisional ballot:

- ★ A voter's name does not appear on the official list of eligible voters at the polling place on Election Day during a non-Federal election.
- ★ A voter changes his or her name or moves within the county and fails to reregister before the election.
- ★ Another person challenges a voter's qualifications and the poll worker is not able to resolve the challenge.
- ★ A voter does not have proper identification.
- ★ A voter was issued an absentee ballot, chooses to vote on Election Day instead, and does not have the ballot to surrender to poll workers.
- ★ A voter is not a resident of the precinct in which he or she is attempting to vote.
- ★ A voter has been convicted of a felony and the jurisdiction has no record of a restoration of voting rights.

Because the eligibility of provisional voters must be determined before their ballots can be counted, provisional ballot totals are not included in the unofficial vote totals released on Election Day. An election official determines voter eligibility based on requirements in Federal and State election laws, including age, citizenship, residence, and identification. The provisional ballots cast by those voters deemed eligible are included in the certified election results that are released after Election Day.

Some States have developed statewide standards for processing provisional ballots. These standards direct local election officials and/or election boards to count provisional ballots in a uniform manner. Local election officials must incorporate any statewide guidelines into internal office policies and procedures for administering provisional ballots.

While taking into account the statewide standards, the local election official develops policies and procedures for provisional voting. These procedures might include issuing, collecting, researching, and verifying provisional ballots. Local election officials or election boards, as outlined by State law, will make the determination of eligibility.

An election official creates internal elections office procedures for provisional ballots from form design through final certification.

IMPORTANT REMINDER ★ ★ ★

Jurisdictions are reminded to implement these voluntary practices only after reviewing State and local laws and regulations. Local election officials should contact their State election officials with questions about the legality of a specific policy or procedure in their State.

Issuing Provisional Ballots

To develop policies and procedures for administering provisional voting, an election official first creates a process for issuing provisional ballots to voters at the polls. Provisional voters need to use special forms or ballot envelopes, ballots, and sign-in sheets on Election Day. Because some States have already created these materials, a local election official should first ask his or her State about the existence of any forms. If a form is not available at the statewide level, a local election official should then create easy-to-use, easy-to-understand materials for poll workers and voters.⁵ When conducting poll worker training events, the election official might consider incorporating into the training clear guidelines on issuing provisional ballots.

tip

Produce provisional ballots and envelopes with a design and/or color that is different from a traditional ballot. A different design will clearly designate provisional ballots as separate from regular ballots.

An election official will make sure polling places comply with the Federal requirement for voting information to be visibly posted at the polling location, including information on the right to a provisional ballot for Federal contests if a voter's eligibility cannot immediately be determined at the polling place.⁶

⁵ For more information about best practices in ballot design, review the EAC's Effective Designs for the Administration of Federal Elections report with camera-ready images for election officials. The report is available at the EAC Web site at www.eac.gov.

⁶ See 42 U.S.C. § 15482(b).

Provisional Ballot Envelope

Reason for Provisional Ballot
To be completed by Precinct Official

Precinct: _____
 Election Date: ____/____/____
 Reason for Provisional Ballot (check all that apply):
 Voter did not have proper identification
 Absentee voter with no ballot to surrender
 Voter was challenged by another registered voter (attach the signed challenge to this envelope)

PROVISIONAL LABEL 1

X Precinct Election Official's Signature _____ Date _____

Affidavit of Provisional Voter
To be completed by Voter

Print Name: _____
 Address: _____
 Date of birth: ____/____/____
 Phone (optional): _____

PROVISIONAL LABEL 2

I do solemnly swear or affirm all of these things. I am a United States citizen, at least 18 years of age. I believe that I am a registered voter of this county and/or eligible to vote in this election. I have not voted and will not vote in any other precinct in this election. If my current voter registration record indicates another party affiliation or no party affiliation, I swear or affirm that I have in good faith changed my previously declared party affiliation, or declared my party affiliation, and now desire to be a member of the party indicated herein. I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

X Voter's Signature _____ Date _____

To be completed by Voter
 Complete voter registration form. Mark ballot and seal in envelope. Return completed ballot in envelope to Precinct Official.

1. You are required by law to provide your current and valid Iowa driver's license or Iowa non-operator ID number. If you do not have an Iowa driver's license or non-operator ID number, provide the last 4 digits of your Social Security Number. Valid ID Driver's License or Non-Operator ID Number: _____ Last 4 Digits of Social Security Number: _____

Check this box only if you DO NOT have a current and valid Iowa driver's license or Social Security Number.

2. Date of Birth (Month/Day/Year) Sex Male Female Daytime Phone (optional) E-mail (optional)

3. Name Last Name First Name Middle Name Suffix (Sr., Jr., etc.)
 Street Address (include apt., rd, etc., if applicable)
 City State ZIP Iowa County Where I Live

A. If mail CANNOT be delivered to the address above, provide an alternate mailing address.
 Alternate Mailing Address (include PO Box if applicable)
 City State ZIP Iowa County

B. If you DO NOT have a street address because you use a rural route address or you are homeless, describe where you live.
 Description (include township and Section Number if known)

4. Political Affiliation Parties: Non-Party Political Organizations. NOTE: If I leave this field blank, my registration will be listed as "No Party."
 Check Only ONE Box: Democratic Green Republican Libertarian No Party

5. PREVIOUS REGISTRATION (If you have ever been registered to vote before, complete this section.)
 Your Name Then _____
 Your Address Then _____
 City State ZIP County

6. Are you a citizen of the United States of America? Yes No
 Will you be 18 years of age on or before Election Day? Yes No
 If you checked NO in response to either of these questions, DO NOT complete this form.

7. READ and SIGN.
 I swear or affirm that:
 • I am the person named above. • I am a citizen of the United States.
 • I am at least 17 1/2 years old. • I live at the address listed above.
 • I am not currently judged to be "incapable to vote."
 • I do not claim the right to vote anywhere else.
 • I have not been convicted of a felony (or have received a restoration of rights).

WARNING: If you sign this form and you know that this registration can be completed for money and fined up to \$7,500 and/or jailed for up to 5 years.

X Signature _____ Date _____

Prepared by the Iowa Secretary of State's Office Revised 6/09

Statement to Person Casting a Provisional Ballot
To be completed by Precinct Official and given to Voter

Voter's Name: _____
Reason for Provisional Ballot (check all that apply):
 Voter did not have proper identification (see "What you need to provide" below)
 Absentee voter with no ballot to surrender
 Voter was challenged by another registered voter
 Reason: _____

PROVISIONAL LABEL 3

What you need to provide before your ballot will count:
 Photo ID containing your name and picture
 One of the following: Iowa driver's license, out-of-state driver's license, non-driver ID, U.S. passport, U.S. military ID, ID card issued by an employer, student ID issued by Iowa high school or college
 One of the following showing your name and current address: bank statement, paycheck, utility bill, property tax statement, residential lease, government check, or other government document.
 Deadline: _____ a.m./p.m., _____ (date)

PROVISIONAL LABEL 4

Mail or Deliver Evidence to: _____, County Auditor

If proof of ID or residence is required, your provisional ballot may be counted if you bring a copy of the identification listed above to this precinct before the polls close today or to the county auditor at the address above by the above deadline. If your ballot is not counted, you will be notified, by mail, of the reason why it was not counted.

PROVISIONAL LABEL 5

Your right to vote will be reviewed by the Special Precinct Board. 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.

X Precinct Election Official's Signature _____ Date _____

Testing Materials, Policies, and Procedures

As with any part of the voting process, a local election official might test the provisional voting forms, envelopes, and ballots for usability. The election official should attempt to conduct testing that is representative of conditions at the poll on Election Day. To test the ballot, the official might include the following steps:

1. First, replicate a sample polling place. Fill the poll worker role with veteran and novice poll workers who might be scheduled to work on Election Day. (Because these individuals will be interacting with voters on Election Day, it is imperative that they understand the materials and can use them efficiently at the polling place.)
2. Second, fill the role of voters with individuals who are not completely familiar with election administration. (To obtain more realistic results, it is best to test the usability of various policies, procedures, and materials on individuals who are less familiar with the process.)
3. After filling the testing roles, instruct the voters to interact with the poll workers as they would on Election Day. Pay special attention to how the voters are checked in at the sample polling place and the amount of time it takes to com-

plete the forms and envelopes and to cast a provisional ballot. Create easy-to-follow flowcharts about provisional voting administration for poll workers to use at voter check-in tables for the test and on Election Day.

If required by law, an election official may need to include representatives from the political parties with candidates on the ballot to observe the testing of materials. After the testing the election official can use lessons learned to revise the forms, envelopes, ballots, and procedures. To allow enough time for revisions, the official would conduct the usability testing sufficiently early in the preparation process.

Poll Worker Training

As noted previously, poll workers will administer any internal elections office policies and procedures for provisional voting on Election Day. An election official might build a module for provisional voting into his or her overall poll worker training sessions. Some jurisdictions train poll workers to direct any voters not on the registration list to the chief or assistant chief poll worker in the polling place who is trained to administer provisional ballots. This process can result in decreased line wait times on Election Day by ensuring that poll workers

efficiently administer the many requirements for provisional ballots.

A local election official knows that poll workers need access to simple, easy-to-use tools to help answer voters' questions on Election Day. When a voter's name cannot be located on the registration list, a poll worker should know to treat that individual as a potential provisional voter. Although it is always preferable for an eligible voter to cast a regular ballot that will not need further validation after he or she leaves the polls, poll workers must provide provisional ballots consistently and without hassle, when appropriate.

An election official might also consider teaching poll workers to determine whether the voter is in the correct polling place. Poll workers should make every effort to direct a voter to the correct polling place, especially in jurisdictions that count only those provisional ballots cast in the proper precinct. The election official can require poll workers to post a map of all polling places in the jurisdiction at the polling place entrance. For jurisdictions that provide information in multiple languages, the map should be available in the alternative languages. In addition, the election official may require Election Day greeters to explain the map to voters as they enter the polling place. This proactive approach may help voters determine if they are in the correct polling place.

tip

Consider posting a jurisdictionwide map of all polling places with a shaded portion indicating which voters are eligible to vote in the polling place. Include the tag line, "If you live in this area, you VOTE HERE."

Many election officials have noted that county-wide paper street indexes can be confusing and difficult for poll workers to interpret on Election Day. One alternative to using the indexes is using laptop computers or electronic poll books to locate the correct polling place for a voter who is in the incorrect polling place. Another option is to have the elections office operate a telephone call center at the central elections office for poll workers to call for prompt assistance in determining a voter's proper precinct.

After poll workers have attempted to help a voter cast a traditional ballot, it is important that they know that, if the voter's name is not on the list, they must issue the voter a provisional ballot in Federal elections. In such cases, poll workers must also provide the voter with written information about the federally mandated free access system through which the voter can determine if his or her provisional ballot was counted and the reasoning behind the decision.

tip

Consider training and assigning specific poll workers to administer provisional ballots on Election Day.

Election Day Administration

An election official might develop a special check-in process for provisional voters on Election Day. If poll workers are unable to locate a voter in the registry, or other conditions for provisional voting are met, poll workers could direct provisional voters to a separate check-in table where poll workers provide them with instructions and information on provisional voting. Because these voters will take longer to check in than traditional voters will, a separate table allows the regular check-in line to flow normally for traditional voters while ensuring that provisional voters are processed efficiently.

An election official should train poll workers assigned to the provisional voting check-in table to understand the importance of thoroughly completing all necessary forms and ballot envelopes. An error in the form or envelope can invalidate the voter's provisional ballot before it is ever opened for processing. The election official can include in any poll worker training a reminder that poll workers review all provisional voters' paperwork for completeness and accuracy and that they follow procedures exactly as prescribed by law.

Voters can cast provisional votes by paper ballots or on direct recording electronic voting machines as allowed by law. If the jurisdiction is using paper provisional ballots, poll workers might instruct voters to place their provisional ballots into the completed ballot envelopes. Voters cast the ballots by placing them into a separate, secured ballot box. If the provisional ballots are being used due to a court-ordered extension of polling place hours, poll

workers will keep these provisional ballots separate from the provisional ballots cast for other reasons.

Voters can also cast provisional ballots on electronic voting machines. For these situations, an election official should train poll workers generally about operating the voting machines for provisional balloting and specifically about how to record the provisional ballot number on the electronic voting machine screen. Poll workers can instruct provisional voters using electronic voting machines to complete all necessary paperwork and return it to the poll worker before casting their provisional ballots.

tip

If resources allow, consider designating one voting machine for provisional voters.

After voters cast provisional ballots for a Federal contest—regardless of the voting method—poll workers must provide these voters with written information about the free access system for determining whether their ballots were counted. Some States use toll-free hotlines or links from their chief election official’s Web site to provide voters with such information. An election official will prepare a one-page handout for provisional voters about the provisional voting process, which explains how, when, and where the voter can access the information about his or her provisional ballot.

Collecting Provisional Ballots

For an election official, the next step in developing internal policies and procedures for provisional voting is to standardize the collection of completed provisional ballots from the polling places on Election Day. The election official might include the following steps in the process:

- ★ Collect the provisional ballots or electronic memory cards at the polling places.
- ★ Transport the provisional ballots or electronic memory cards to the central election office.
- ★ Store the provisional ballots or electronic memory cards during the canvass and retain them pursuant to Federal and State law.

The tabulation of provisional ballots will not occur on Election Day and, thus, will not show up in the unofficial results released to the public on election night. Many States, however, require

that elections offices publicize the number of provisional ballots cast on Election Day. This release of information is especially important in close races when the number of uncounted provisional ballots exceeds the margin of victory reflected in the unofficial results.

An election official will collect and account for provisional ballots separately from traditional ballots because their validity needs to be confirmed by verifying the voter’s eligibility before being counted. On Election Day, poll workers must account for all traditional and provisional ballots cast in the precinct. At the provisional ballot table, poll workers should reconcile the number of provisional voters’ signatures with the number of provisional ballots issued minus any spoiled ballots (for both paper and digital recording electronic voting machine provisional ballots). Poll workers assigned to the provisional ballot table should complete a transmittal sheet, which includes the provisional ballot reconciliation. The poll workers will then return the document, along with all other supplies and materials, to the central election office.

An election official knows that detailed audit trails, especially regarding provisional ballots, are critical. The official should ensure that the documented chain of custody accurately reflects that poll workers have returned all provisional ballots or electronic memory cards to the central election office and that elections office staff have stored them in a secure environment until a decision has been made about their eligibility. Even after a provisional ballot’s validity is determined, an election official is required to keep all provisional ballots for 22 months following a Federal election.⁷

Counting Provisional Ballots

For an election official, the final aspect of provisional voting policies and procedures is to develop an efficient process for determining the validity of provisional ballots so that the votes are included in the certified election results. The election official can review State laws to ensure that the process for resolving provisional ballots is completed within the allotted timeframe and in keeping with all other legal requirements.

⁷ See 42 U.S.C. § 1974.

An election official should be transparent with all aspects of provisional ballot verification and counting. This transparency includes proactive information sharing with the public about the administrative complaint procedures available to those voters who believe that their provisional ballots were denied inappropriately. The public must be informed of the timelines for counting provisional ballots, including any period of time during which provisional voters can present additional identification to validate their ballots.

An election official might consider following a few steps in counting provisional ballots: (1) determine voter eligibility, (2) document reasons for rejections, and (3) aggregate eligible votes. In jurisdictions that use electronic voting machines for provisional voting and counting, the aggregation of valid provisional votes requires only reviewing the report produced by the voting machine. In paper provisional ballot jurisdictions, the election official can count paper pro-

visional ballots using the same policies and procedures for counting any paper ballots.

Before moving the provisional ballots to an area set aside for counting, an election official might consider performing a precinct-by-precinct audit of the provisional ballots cast. It is essential that the number of sealed provisional ballots from each polling place balances with the number of voters who cast a provisional ballot. Each provisional ballot envelope should include identifying information about the polling place and precinct in which it was cast. The election official could resolve any discrepancies before moving the ballots to the verification area.

Some States have established laws or administrative regulations about how local election officials should determine the validity of provisional ballots. A local election official might develop a matrix to document all the rules and regulations for counting and rejecting provisional ballots. The matrix would cite each controlling State statute or

THE KANSAS ELECTION STANDARDS MATRIX

Counting Provisional Ballot				
#	Situation	Should Ballot Count?	Legal Authority	Comments
A	Voter Registration			
1	Voter registered in office before books closed and advance voted at the same time.	YES	25-1122 25-2311	If voter's notice of disposition was not returned by mail before canvass day.
2	Voter registered in office before books closed and advance voted at the same time. The voter's notice of disposition was returned as undeliverable.	Laws are unclear. Consult county attorney or counselor.	25-1122 25-2302 25-2311	KSA 25-2302 indicates that the ballot should not count because a person must be registered before voting. KSA 25-2316(c)(e) indicates that the ballot should count because the person to whom a confirmation notice is sent (after the notice of disposition is returned undeliverable) is a registered voter when the election officer adds his/her name to the registration list.
3	Voter registered at CEO office after books closed or at the polling place on election day and voted at the same time.	NO	25-2311(a)(6) 25-2311(e)	Law requires that a voter must register by the 15th day before election.
4	Registered voter had different name than on poll book due to marriage, divorce or legal proceeding and completed a new voter registration application.	YES	25-2316(c)(a)	
5	Registered voter had different name than on poll book and did not complete a new voter registration application.	NO	25-2316(c)(a)	

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THE KANSAS ELECTION STANDARDS MATRIX

#	Situation	Should Ballot Count?	Legal Authority	Comments
6	Voter was registered but voted in wrong precinct, but within the county, due to CEO error, board worker error, voter error, or insistence by voter.	YES (partial ballot)	25-3002(b)(3)	Law requires counting of partial provisional ballots—count races and questions that are identical when comparing provisional ballot to correct ballot for voter's precinct.
7	Voter was not registered. NO	25-215 25-2302	Kansas laws require registration before voting.	
8	Voter claimed to have registered at DMV, post office, state fair or NVRA registration outpost and CEO had no registration.	NO	25-215 25-2302 25-2421a	Unless CEO verifies DMV or CEO error.
B	Voter Moves			
	Moves Within County			
1	Registered voter moved within county within 30 days of election. Voted at former precinct.	YES	KS Const. Art. 5 Sec. 1; 25-3702	KS Constitution allows this so ballot not required to be provisional. Voter must complete Form FP1 before voting.
2	Registered voter moved within county within 30 days of election. Voted at either new precinct or central location.	YES	25-2353 25-409	Must complete new registration card before voting provisional ballot.
3	Registered voter moved anywhere in county and voted at new precinct.	YES	25-2316c(b)	Voter must complete a new voter registration application.
4	Registered voter moved within county at any time before election. Voted at either new precinct or central location.	YES	25-2353 25-409	Must complete new registration card before voting provisional ballot. No time limit on date of move.
5	Registered voter moved within the county at any time and completed a new voter registration card.	YES 25-2353	If voted at new precinct or central location.	
6	Registered voter moved within county within 30 days before election. Voted ballot at wrong precinct.	YES (partial ballot)	25-3702 25-3002(b)(3)	Entire ballot valid if voted at former precinct. Partial ballot valid if voted ballot at precinct where not registered.
7	Registered voter moved within county more than 30 days before election. Voted at former precinct.	YES (partial ballot)	25-3702 25-3002(b)(3)	Partial ballot valid if voted ballot at precinct where not currently registered.
8	Registered voter moved within the county but refused to fill out a new voter registration card before voting.	YES (partial ballot)	25-409(a) 25-3002(b)(3)	Law requires counting of partial provisional ballots—count races and questions that are identical when comparing provisional ballot to correct ballot for voter's precinct.
	Moves Out Of County, Within State			
9	Registered voter moved anywhere in state within 30 days of election. Voted at former precinct.	YES	Kan. Const. Art. 5 Sec. 1 25-3702	KS Constitution allows this, so ballot not required to be provisional. Voter must complete Form FP1 before voting.
10	Registered voter moved out of county but within state within 30 days before election. Voted in new precinct without re-registering.	NO	Kansas Constitution Article 5, 25-3702 25-2316c(b)	Fail safe (provisional) voting only covers in-county moves. Former precinct voting only allows voting in precinct of former residence.

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THE KANSAS ELECTION STANDARDS MATRIX

#	Situation	Should Ballot Count?	Legal Authority	Comments
11	Registered voter moved out of county but within state more than 30 days before election.	NO	25-3702	Not protected by law. Needed to re-register at new address.
C	Advance Voting			
1	Registered voter requested advance ballot, did not receive ballot and voted at polls.	YES	25-2908c	If CEO verifies that voter did not cast multiple ballots.
2	Registered voter voted in advance, then voted at the polling place.	NO	25-2416(b) Election crime.	
3	Registered voter returned advance ballot in unsigned envelope.	NO	25-1124(a) 25-1136(b) 25-3002(f)	
4	Voter signed another voter's envelope.	NO	25-1120 25-1124	Law requires voter to sign statement on voter's own envelope unless another person signs for voter at voter's direction due to disability.
5	Two voters voted in advance. Ballot envelopes switched, signed by the wrong voter in same household. Both are eligible voters and signatures match.	NO	25-1120	
6	Voter submitted an advance voting ballot with ballot envelope not sealed.	YES	Technical irregularity unless CEO finds evidence of tampering.	
7	Voter applied for an advance voting ballot after deadline for application.	NO	25-1119 25-2302 25-2311(a)	Kansas laws set application deadlines to allow time for transmission of ballots and conclusion of advance voting before election.
8	Voter used power of attorney to obtain advance voting ballot and used attorney to vote.	NO	AG letter to SOS, Sept. 16, 1997	Power of attorney has no effect in voting. Laws provide for assisted voting if affidavit of assistance is filed.
9	Voter casts advance ballot, then dies. Election board makes ballot provisional pursuant to KSA 25-1136(c).	NO	25-1136(c) AG Opinion 2002-15	If ballot should count, then the directive to make it provisional is "vain, idle, or futile." There is a presumption that the legislature does not "enact useless or meaningless legislation."
D	Other			
1	Registered voter's name was found by CEO elsewhere in poll book.	YES	25-2908(b)	NVRA fail safe voting
2	Voter needed assistance – should not have been challenged.	YES	25-2909	No voter error
3	Voter voted provisional ballot, only one board worker signed envelope.	YES	25-702 25-716 25-3002(b)	Technical irregularity. No voter error.

THE KANSAS ELECTION STANDARDS MATRIX

4	In primary election, registered voter requested and received a different party's ballot than the one registered for.	NO	25-3301(d) 25-3304(b)	If voter received ballot of party other than party of affiliation, ballot does not count. Unaffiliated voter may affiliate with a party and vote, or, depending on rules
#	Situation	Should Ballot Count?	Legal Authority	Comments
5	Registered voter dies after casting ballot and ballot was not provisional.	YES	AG Opinion 2002-15	Non-provisional ballots are commingled with others are thus irretrievable and impossible to not count.
6	Registered voter returned a ballot after polls closed.	NO	25-106 25-1132 (advance)	
7	Voter accidentally presses "Submit vote" on DRE before he/she is finished. Voter completes provisional ballot.	NO	25-2908(c)(5)	Voter cannot vote twice. If ballot cast on DRE cannot be retrieved, it has been cast and included with the other votes, regardless of how many races voter had completed
E	Federal Services Voting			
1	Federal services voter who was absent applied for ballot by noon the day before election day by completing a standard FPCA (Form 76).	YES	25-1215 25-1216(b)	If the application was made on FPCA, voter cannot vote on local questions or precinct committee positions. May vote by fax. Not required to be registered.
2	Registered voter (non military) moved out of state but in the U.S. at any time before election. (See Presidential Situations for exception.)	NO		Not protected by law. Voter should check with new state for laws.
3	U.S. citizen eligible to vote in the election district moved out of U.S. and applied by noon the day before election day by completing a standard FPCA (Form 76).	YES	25-2314 25-1216(b)	If the application was made on FPCA, voter cannot vote on local questions or precinct committee positions. May vote by fax. Not required to be registered.
F	Presidential Situations			
1	New voter moved to KS within 45 days before election. Filed form PN by noon the day before election.	YES	25-1801(b)(1) 25-1802(a)	New resident may vote only on U.S. president race.
2	Registered voter moved out of KS within 45 days before election. Filed form PF in county of former residence in KS by noon the day before election.	YES 25-1801(b)(2), 25-1802(b)	Former resident may vote only on U.S. president race.	
3	Registered voter moved anywhere within KS not more than 20 days before election. Filed Form PR in county of new residence by noon the day before election.	YES	25-1801(b)(3) 25-1802(c) Relocated resident may vote only on U.S. president race.	
G	Voter Identification			
1	First-time voter in the county fails to provide valid identification, votes provisional ballot.	NO	25-2908(e) 25-3002(b)(8)	The law requires a first-time voter to provide ID in order to have ballot counted. However, if voter provides valid identification to CEO after voting provisional ballot and before county canvass, ballot should count.

regulation, and the election official would provide copies of the matrix to the media and candidates and post it on the jurisdiction's Web site. The election official can use the provisional ballot decision matrix as a guide for the media, candidates, and voters during the canvass.

Determining voter eligibility is the most time-consuming part of the provisional ballot counting process. To be eligible to vote, the voter needs to be registered on Election Day. If the voter is not legally registered, the ballot will not count. When making the determination of a voter's eligibility, an election official will double-check whether the voter has changed his or her name since registering to vote.

If the voter was registered, the election official can examine whether the voter had moved within the jurisdiction. In some States, the provisional ballot must be cast in the voter's home precinct. In other States, the provisional ballot can be cast anywhere in the county or State and still contain valid votes. An election official will review State law to determine whether the voter cast the ballot in the correct "jurisdiction." If State law allows voters to cast a provisional ballot anywhere in the county or State, the voter is still only eligible to cast a vote in the races and on the issues included on the ballot in his or her home precinct. In these circumstances, the election official must count only the eligible portion of the ballot. In most States, this situation will require a local election official in the provisional voter's home jurisdiction to create a duplicate ballot that includes votes only on those races for which the voter was eligible to cast a ballot.

For a special subset of provisional ballots set aside due to a court-ordered extension of polling place hours during a Federal election, an election official may need to wait before counting these ballots. In many cases, the court-ordered extension may be challenged in court after the election. If that is the case, the election official must secure these provisional ballots separately from other ballots until he or she receives official word of a judicial resolution.

The election official will document the reasons for rejecting any provisional ballots. Two staff members will review and initial each rejected provisional ballot, or they will act accordingly as the law requires. The staff may indicate the reason for rejection on the ballot envelope. Later, if the provisional ballot was cast for a Federal contest, the voter can

access this information about the rejection through the free access system.

States use provisional ballots for numerous other reasons, not all of which are outlined in the *Election Management Guidelines*. These reasons may include voter registration updates and poll worker challenges. An election official will need to create policies and procedures to deal with all the potential reasons a voter might cast a provisional ballot in his or her jurisdiction.

If the voter cast a provisional ballot because he or she did not provide sufficient identification on Election Day, State law might allow the voter to prove his or her identity after Election Day. State laws vary widely about the window during which the identification may be provided and where identification must be presented, but, to resolve a provisional ballot's validity, an election official must create a process for verifying identification presented to the elections office after Election Day, if required by law.

tip

Develop a checklist and train staff to use the checklist to process each provisional ballot. To provide an auditable history of the research process, attach a checklist to the front of each provisional ballot envelope. Provide a space for staff initials to validate the processing of each step of the provisional ballot counting process.

Completing the Election Cycle

An election official should collect provisional ballot data for several reasons. The data are best when stratified by reason for casting the provisional ballot, ballots cast by precinct, and ballots cast by polling place. The data should also include the reasons for casting and, if necessary, for rejecting any provisional ballots.

One important reason for collecting the data is to understand more about election administration in the jurisdiction. After each election, a local election official might prepare a written summary of the provisional ballot data to send to the State elections office. The election official could use these reports to develop projections for provisional ballot usage in subsequent elections to more efficiently deploy

resources and reduce the number of provisional ballots cast in the future.

The election official could also use this information to conduct post-election debriefing sessions in local elections offices. The sessions could result in recommendations for necessary modifications to forms, supplies, poll worker training, processing procedures, and voter outreach.

The Election Assistance Commission (EAC) also compiles provisional voting data in its biennial Election Administration & Voting Survey⁸. Election officials at the local, State, and Federal levels can use the results of this survey to identify successes and improvements in election administration and to learn from other States' best practices.

⁸ To read details about election data, see the Election Administration & Voting Survey on the EAC Web site at www.eac.gov.