



128 DORRANCE STREET, SUITE 400
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org | info@riaclu.org

ACLU of Rhode Island
2016 General Election Day Poll Monitoring Report
January 2017

Prior to the 2016 general election, the ACLU of Rhode Island prepared a few dozen volunteers to serve as poll monitors on November 8th. The goal was to examine what problems, if any, voters encountered at the polling place, and to see if any changes in election laws, policies or practices were called for as a result. The ACLU had organized a similar examination for the 2012 election, and in February 2013, presented to the House Committee on Oversight detailed testimony on polling place issues presented during that election. This report summarizes what our poll workers found in 2016. It is our hope that, in highlighting continuous issues and burdens that some Rhode Islanders face when it comes to voting, it will prompt meaningful and positive changes.

Many of the issues reflected in our report on the 2012 election, such as problems caused by the state's voter ID law, polling place location confusion, and various technical issues, did not dissipate this year. This makes the frustration felt by some voters, and the disenfranchisement of others, all the more disconcerting.

Implementation of Voter ID

A key element in the state's voter ID law, and one that has made it less susceptible to legal challenge than the laws of many other states, is its so-called fail-safe provision: anybody not presenting authorized ID at the polls is supposed to be offered a provisional ballot which they can fill out. If the signature on the ballot application matches that on the voting rolls, the ballot is counted just like one cast at the polling place. But as in 2012, we continued to see in 2016 – the first Presidential election when photo ID was required of voters – that this fail-safe is sometimes ignored by poll workers.

In Warwick, for example, an elderly woman was turned away for lack of identification and was not offered a provisional ballot at all.¹ After the woman left very upset, the ACLU poll monitor spoke to the moderator about the issue at hand. The moderator then spoke to the poll worker who had rejected the woman and informed him that such voters should be provided provisional ballots. However, for that specific voter, and anyone else before her, this inexcusable lack of knowledge on the poll worker's part caused them to lose their right to vote.

Similarly, in at least one polling location in Providence people without acceptable identification were not being told about their right to receive a provisional ballot.² The supervisor who was approached about the issue by the ACLU poll monitor became argumentative and defensive. The monitor had to show the supervisor the state-prepared signs posted right at the polling place that highlighted the provisional ballot requirement. Only then did the supervisor make sure to inform the other poll workers about it in order to prevent future incidents.

Polling Location Confusion

People who allegedly arrived at the wrong polling place had two options under the law, but were not always told about them. The most effective option was to go to their correct polling place, which the poll workers could point out to them. But if time or other factors prevented that, they should have been advised of their right to cast a provisional ballot, where it would be likely that at least their votes for federal office would be counted. But in one polling place in Central Falls, these options were not provided to voters.³

Likewise, during the early morning rush in Providence, a woman was turned away from the polling place at the Martin Luther King Jr. School and told to go to a different one.⁴ The woman said that this location had always been her polling place and was not aware of the change. While the poll workers provided her with directions to the other polling place, they failed to offer her a provisional ballot, even though she mentioned to the poll monitor that she would not have an

¹ Report of ACLU Poll Monitor – Sparrows Point III, Warwick. November 8, 2016.

² Report of ACLU Poll Monitor – DaVinci Center, Providence. November 8, 2016.

³ Report of ACLU Poll Monitor – Central Falls High School, Central Falls. November 8, 2016.

⁴ Report of ACLU Poll Monitor – Martin Luther King Jr. Elementary School, Providence. November 8, 2016.

opportunity to go to the other polling location. As a result, she was likely deprived of any opportunity to vote.

A similar issue that popped up in a few locations being monitored involved individuals who went in to vote without being registered previously, or who could not be found in the system at all. Locations in Warwick⁵ and Scituate⁶ successfully accommodated those individuals by either providing them a provisional ballot or advising them to go to City Hall where, if unregistered, they would at least be able to cast a vote for President and Vice-President.

The Board of Elections reports that in the 2016 election, 3,910 provisional ballots were cast. Of those, 1,107 were counted in full while 826 were partially counted – 743 were counted for all federal offices, while 83 were counted only for the presidential candidates. A total of 1,977 ballots – more than half of those submitted – were disqualified in full, suggesting some significant issues that need to be explored in more depth.

Long Lines & Faulty Equipment

Since 2012, as a result of a change in state law, numerous districts across the state have decreased the number of polling places available. During that election year, it caused confusion and long lines due to lack of proper notice from state and municipal officials. This year, unfortunately, was no exception. In addition, prior to the 2016 election cycle, the Secretary of State's Office unveiled 600 new state of the art voting machines.⁷ During the primary election, things ran smoothly since voter turnout was low, as expected. However, on Election Day, major malfunctions and a shortage of equipment created frustration and chaos in some polling locations.

While some machine errors and breakdowns may have been due to improper or incorrect filling of the ballots by voters, the delays between the time a technician was called and the machine was

⁵ Report of ACLU Poll Monitor – Warwick Armory, Warwick. November 8, 2016.

⁶ Report of ACLU Poll Monitor – Hope Elementary School, Scituate. November 8, 2016.

⁷ Bogdan, Jennifer. "RI Primary: New Voting Machines Seem to pass Test". Providence Journal, September 13, 2016.

<http://www.providencejournal.com/news/20160913/ri-primary-new-voting-machines-appear-to-pass-test>

up and running sometimes was close to an hour. Voters in Warwick,⁸ North Kingstown,⁹ Providence¹⁰ and Pawtucket¹¹ experienced several technical difficulties with broken scanners or – what turned out to be worse – the lack of more than one scanner for a large polling place. All of these difficulties and hurdles resulted in many voters having to wait over an hour in line or being forced to leave their ballots in emergency boxes – which many individuals were hesitant to do.

In some locations glitches went further than just machines. They also included lack of adequate paperwork and equipment, such as an insufficient number of affirmation forms in North Kingstown.¹² In a Providence location with over 20 booths, there were not enough privacy folders for all voters to use, since long lines and wait times filling out and scanning ballots proved to be too much for what they had at hand. In a span of nearly two hours, at least ten people left the line due to the length of time waiting.¹³ It is not known if those individuals had the opportunity to go back and cast their vote.

One major problem that elections officials should have been prepared for was the extra time the new machines took to scan and accept ballots. Out of all the cities and towns that saw complications and malfunction with equipment and long waits, Pawtucket by far exceeded the rest. At Varieur School in Pawtucket, one of our poll monitors observed that after 12pm there were about 200 people snaked around the building waiting up to 2 hours.¹⁴ Inside the building, the one ballot scanner available broke down multiple times, with no backup or technicians on site. When the machine was down, voters were offered the choice of putting their ballots in an emergency box, a blue plastic bin with masking tape, or waiting in line until the machine was back in service. Very few voters opted to place their ballots into the emergency box since they did not feel comfortable or confident about whom would have access to the ballots or who would count them.

⁸ Report of ACLU Poll Monitor – Sparrows Point III, Warwick. November 8, 2016.

⁹ Report of ACLU Poll Monitor –Stony Lane Elementary School, North Kingstown. November 8, 2016.

¹⁰ See note 4.

¹¹ Report of ACLU Poll Monitor – Varieur School, Pawtucket. November 8, 2016.

¹² See note 10.

¹³ See note 4.

¹⁴ See note 12.

Days after the election was over, Pawtucket City officials, the Board of Elections, and the Secretary of State had prepared statements on what went wrong on November 8th at the local and state level as it pertained to the issues in Pawtucket. According to Board of Elections Chairman Richard R. Dubois, once the BOE became aware of problems in two Pawtucket locations (Varieur School and Fallon School), they sent out additional DS-200 scanning units.¹⁵ However, while the additional machines may have alleviated some of the stress, it did not eliminate it.

The City's ballots were three pages long, with 11 local questions – all translated in Spanish. The BOE and the Secretary of State opined that the length of the ballot had a lot to do with the delays and technical issues during the day. According to Chairman Dubois, “multiple-page ballots generate a number of issues, including: a more complex ballot which takes longer to scan; delay at the DS-200 since each page must be inserted separately; increased possibility of jams; and causing the DS-200 ballot box to reach capacity which will cause it to jam and disrupt voting.” Also not taken into account was the fact that the new machines take longer to process ballots generally.

This was the second presidential election since the number of polling locations was reduced across the state. According to Secretary Gorbea, polling locations in Pawtucket were not laid out efficiently, leading to confusion and unacceptable waiting lines.¹⁶ All of these factors were ones that could have been foreseen, making some of these significant inconveniences unnecessary.

The issues with the mechanical equipment did not just affect Pawtucket, however. Although this is not a problem that was disclosed through our poll monitoring efforts, it is worth mentioning in light of its seriousness. In North Kingstown, Election Day results indicated that 99.9% of voters had rejected one of the local ballot questions regarding the borrowing of funds to expand the expenses of septic system upgrades in that town, with only five individuals voting for it. The error was obvious. Two days after the election, Town Manager Thomas J. Mulligan announced

¹⁵ Dubois, Richard R. Letter to Pawtucket City Council. Dec. 7, 2016.

¹⁶ Gorbea, Nellie M. Letter to Pawtucket City Council. Nov. 14, 2016

that a recount would be conducted the following Tuesday. He also announced that the error occurred “after the ballot-reading machines were calibrated, a slight change in the font used on the printed ballot changed the alignment of some circles filled in by voters. The machines didn’t read them as votes.”¹⁷

Recommendations

Many of the recommendations that follow below are not new. They largely mirror those that were presented in our 2013 report to the House Oversight Committee, and highlight the consistent nature of the issues that deserve being addressed and serving, we hope, as a stronger call to action.

Training Poll Workers

Regrettably, it is nothing new, but during this year’s general election – as seems to be true every election – it was obvious that too many poll workers across the state were not aware of basic standards, including the voter ID and provisional ballot laws, which ended up infringing on the rights of voters across the state. Having a short training and a manual to go along does not help all poll workers understand or be prepared for the different scenarios that they will encounter on Election Day. More extensive and focused training should take place prior to this important volunteering commitment.

Additionally, new poll workers should be paired up with seasoned volunteers who may be able to prepare and mentor them better for the different issues that they will need to expect on Election Day.

Repeal Voter ID Law

This was the first presidential election since the law’s photo ID requirement took effect. The ACLU believes that voter ID continues to be a barrier for many elderly, disabled, minority, and low-income voters across the state. While voters without proper identification may be able to

¹⁷ Naylor, Donita. “Full Recount Planned After N. Kingstown Ballot Problem Discovered” November 10, 2016. <http://www.providencejournal.com/news/20161110/full-recount-planned-after-n-kingstown-ballot-problem-discovered>

receive free voter identification cards from the Secretary of State's Office, even that process in itself can be a burden since a lot of the documentation needed to receive a free ID requires that the voter obtain or find documents that they might not have readily available at all times, if at all.

Just as pertinent are the practical problems we have seen each election since voter ID has taken effect. This past November, we again saw voters who were not able to cast their vote due to their lack of proper identification and failure by some poll workers to implement the law's "fail safe" provision, demonstrating that the voter ID law continues to disenfranchise Rhode Islanders at the micro, as well as the macro, level. Repealing this law is the only way to safeguard against any infringement on the right to vote of hundreds of individuals, who are all affected first hand by the decisions and results of local and federal elections.

Practices around Provisional Ballots

In Rhode Island, in accordance with controversial Board of Elections regulations, voters who are given provisional ballots because they go to the wrong voting station only have their votes for federal offices counted. We concur with the disappointment expressed by one of those voters to our poll monitor on Election Day,¹⁸ especially when the reason for receiving a provisional ballot is simply for being at the wrong polling precinct in the right municipality.

The ACLU believes that individuals who go to the wrong polling precinct within the city or town that they reside in should still have the opportunity to have their ballot counted for municipal-wide elections and issues, not just votes for federal offices. Simply because an individual is in the wrong location shouldn't mean that their votes should get ignored for offices or ballot questions for which there is no question about the validity of their residency.

Make the BOE subject to Administrative Procedures Act

The RI State Board of Elections is virtually the only major state agency that is exempt from the rule-making provisions of the Administrative Procedures Act. That is, the Board can adopt rules and regulations affecting the voting process without having to go through a public notice or

¹⁸ Report of ACLU Poll Monitor – Hope Elementary School, Scituate. November 8, 2016.

hearing process. This includes significant policies like which provisional ballots are counted when cast by a voter at an incorrect precinct.

Although the BOE voluntarily holds public hearings on its rules as a matter of practice, it remains at their discretion, and disputed rules cannot be formally contested through the formal APA process. There is no legitimate rationale for exempting such an important agency from this oversight, and legislation should make their rule making process formally subject to this important open government law.

Increase number of polling locations and urgency for early voting

By having an average of 3,000 voters in one location and a moderate to high voter turnout during presidential elections, it is no wonder that we sometimes witness chaos, confusion, and long lines during Election Day. By increasing the number of polling locations, especially in the most densely populated cities, it would become more manageable to properly serve all voters and help alleviate machine malfunctions.

During this presidential election more than forty thousand Rhode Islanders took advantage of early voting. However, many of those who decided to wait until Election Day still had difficulties, whether due to some of the cited mechanical problems at certain polls or for other reasons. Continuing to push and expand the educational efforts to promote early voting will be essential from here on out so that as many Rhode Islanders as possible can take advantage of their right to vote without the headaches and hassles that sometimes arise when going to the polling place.

More Technicians and Scanners

In 2016 the state of Rhode Island began using new voting machines. With anything that is new, errors and confusion happen. Several mechanical errors in cities and towns across the state created long lines and short tempers. The events that took place in Pawtucket are a perfect example of why more technicians and more scanning machines are necessary, especially when one polling precinct serves so many voters.

Establish auditing process and manual recounts authorization

In our 2013 report, the ACLU recommended that the State of Rhode Island authorize manual recounts and establish an auditing process for all elections due to issues that took place during that election year with a State Representative race in Pawtucket. This past year's election did nothing to change these recommendations.

Amending state law to allow for manual recounting during close elections would enable the public to feel more secure about all ballots being counted. While the BOE argues that hand counted ballots are more fallible than those that are counted by scanners, this reasoning does not completely make sense, especially when there are other ballots that are subject to manual review such as absentee ballots.

Several other states have already established random auditing processes for all elections in order to promote more confidence in the final vote counts, and Rhode Island should do the same. The event that took place in North Kingstown this past election cycle provides clear proof that the state and the BOE must reconsider their stance on the use of audits if we are to promote confidence in the integrity of the machine process.

Conclusion

The 2016 election year was an important one for Rhode Island as the state implemented new laws and used new technology. While laws such as early voting were a step in the right direction to further engage and protect the right to vote of every Rhode Islander, it cannot be denied that improper implementation of the voter ID law led to the disenfranchisement of legitimate voters.

As this report outlines, some individuals were prevented from exercising their right to vote either because they did not provide appropriate identification or due to the lack of knowledge and attention of poll workers to provide them with provisional ballots. These situations should never take place and must be prevented by repealing the voter ID law – whose necessity, in our view, has never been demonstrated – and by properly training poll workers.

We would be remiss in not making one final point. In noting and examining the flaws and problems that were reported by some of our poll monitors, we fully recognize and appreciate that in many, if not most, polling locations across the state – including some in which ACLU poll monitors were stationed – voting took place smoothly with no problems to report. However, as a state and a nation we must continue to protect *everyone's* right to vote. Rhode Island has taken some steps in the past years to do this, but more can and should be done. It is important that we acknowledge the deficiencies so that they may be properly addressed for the next election cycle.¹⁹

¹⁹ This report was prepared by ACLU of Rhode Island Policy Associate Marcela Betancur. The ACLU is grateful to the many volunteers who took the time on Election Day to monitor polling places and to assist in the preparation of this report.