

Pennsylvania Department of State Advisory Task Force on Implementation of the National Voter Registration Act of 1993 (1993-1994).

3. This declaration is based upon personal knowledge.

4. There are not always long lines during election day in Philadelphia, but there are many reasons why lines may be long at an election. The most significant source of delay at Philadelphia's polling places, in recent history, is the time it takes to check voters through the poll book at the check-in table. Philadelphia is implementing new poll official assignments and procedures this year under which the poll officials will process two lines of voters divided, generally with half of the alphabet (by last name) in one, and half in the other, as the Election District Register in all 1,681 Divisions is split into two books by last name. In a few election districts there will be four pollbooks allowing for the processing of four lines. This is expected to ameliorate delays stemming from the poll book check-in process, which is the usually the most significant bottleneck point at the polling place. It takes more time for people to get through the sign-in table than to vote on the machines.

5. The length of the ballot is a significant component that can cause lines to lengthen. For the upcoming November 2008 general election, the ballot is very short. There are just six or seven offices (depending upon the senatorial district) on the ballots used in the City of Philadelphia.

6. In contrast, the longest lines that have been reported in the last 20 years occurred at the 2003 Municipal General Election. In that year, there were over 30 judges up for retention. The way the ballot was laid out that year, each such retention was posed as a separate question, with the judge's name embedded in the question; the voter than voted "yes" or "no" for

each judge. It took a long time for voters to read the ballot with that layout and to complete their voting. There are no such retention races on this year's ballot. The ballot is straightforward.

7. We will be deploying more electronic voting machines this year than ever before, a total of approximately 3525.

8. As a result, while turnout is expected to be high for the upcoming General Election, I do not believe lines will pose any problems other than the typical lines at peak hours.

9. Philadelphia has had a good experience with our Danaher DRE electronic voting machines, which have been in use since May 2002. We have no desire to reduce the use of our electronic voting machines or increase the use of paper.

10. The electronic voting machines do occasionally stop working for various periods of time. This is sometimes referred to as a breakdown, although most of the time the problem is due to voter or operator error and not an actual problem with the machine.

11. While I do not concede that the information plaintiffs cite is correct, I note that even if plaintiffs are correct that at least one machine was "inoperable" in 35 polling places in Philadelphia in April 2008, then given that we have 1681 polling places, this means that only approximately 2% of polling places had at least one machine that was inoperable for some portion of the day.

12. I understand that plaintiff Richard Brown asserts that there was a problem in April 2008 in the 49th Ward, 7th District ("49-07", and I will refer to other wards/divisions in this manner), specifically that both machines were non-operational there and that he speculates that some individuals were disenfranchised as a result. Citywide turnout in April 2008 was 46.4%, with 478,474 persons voting out of 1,030,726 voters registered. Based on records kept by the Commonwealth through the S.U.R.E. system, pertinent pages of which are attached hereto

as Exhibit A ("Vote Count by Precinct and Party for Election," showing voter turnout for the April 2008 primary) and Exhibit B ("Qualified Voters by Precinct," showing the number of registered voters for the April 2008 primary), in 49-07, turnout was 52.2%. In nine adjacent or nearby voting districts (49-20, 49-22, 49-23, 49-24, 17-13, 17-20, 17-26, 61-02, 61-17), turnout ranged from 49.3% to 57%.

13. Over the years we have learned from our experiences with electronic voting machines and our plan for responding to problems continues to improve. We are more prepared than ever before for this year's election when it comes to responding to voting machine breakdown.

14. For the 2008 general election, we will have a central phone bank in the City's radio room where there are 15 operators standing by to take calls regarding problems in the field on Election Day. Additionally we have 5 employees assigned to the Voter Registration Office main registration phone bank to answer poll official voting machine procedural questions, if necessary.

15. During the April 22, 2008 Primary Election, the central voting machine phone bank received 460 calls before and during the time the polls were open. As is typical in our experience, many of the problems reported on these calls were able to be fixed very quickly and over the phone, as they were not actual "breakdowns" of the machines. For example, sometimes a machine is simply not plugged in, or a poll worker has forgotten how to do a simple task. The phone bank operators resolved 248 of the 460 calls on the phone on April 22, 2008.

16. If the problem cannot be handled on the phone, a dispatch is made via the city radio service to a technician in the field. In the April 22, 2008 Primary Election we dispatched techs by radio car on 212 of the 460 calls to the phone bank. On 25 of the calls the

techs reported either no problem at all or that the machines were plugged in to a non-working power outlet.

17. At all times during Election Day, we will have 64 certified technicians available to handle problems with the machines. We have 64 technicians because there are 66 wards in the City of Philadelphia, and two of the wards are small enough that one technician can cover two wards. Most of these technicians were trained and certified by a private contractor. The rest are civil servants who have been trained and certified. Each of the 64 technicians is deployed and paired in the field with a driver and car in order to move them to the locations where they are needed during the day.

18. In the April 22, 2008 Primary Election the technicians resolved the problem more than 92% of the time. Our records indicate that techs were required to replace less than 15 batteries and approximately 20 printers. Usually, they can complete the repair in approximately 1 hour after being contacted by the radio dispatch process.

19. If the technician cannot resolve the problem, arrangements are made to provide a substitute machine from a warehouse in Philadelphia where extra machines are kept. We will have 197 machines in the warehouse for the November 4, 2008 Election. In the April 22, 2008 Primary Election we replaced 15 machines with a spare from our voting machine warehouse and we have never had to replace more than 17 on any single election day. In preparation for the November 4, 2008 Election, we have increased the number of trucks on standby at the warehouse for delivery of replacement machines from three to five. We also have five drivers with cars on standby at the warehouse to deliver replacement machine memory cartridges, which contain the ballot style configuration, should any cartridge fail in the morning.

20. The Secretary's September 3, 2008 Directive that is at issue in this case ("Directive") on the use of emergency paper ballots makes sense. I will refer to the portion of the Directive restricting use of emergency paper ballots to those times when all machines in the precinct are down as the "100% Standard."

21. We have been planning to follow the Directive's 100% Standard. Because the directive requires immediate usage of paper ballots when all machines in a division are not operating, there should no longer be situations in which all machines are down and paper back-up ballots are not being used. In the past, there was some ambiguity as to whether, even if all machines in a division were inoperable, whether or not the division pollworkers should have waited for a repair to be attempted before using emergency back-up ballots. The Secretary's directive cures that ambiguity and directs the use of the back-up ballots right away.

22. In addition, the 100% Standard is in accordance with the sound decision to avoid the use of pure paper ballot systems unless absolutely necessary in the City of Philadelphia; this not only the City of Philadelphia's decision, but the national policy preference expressed in federal policy through in the Help America Vote Act, 42 U.S.C § 15301 *et seq* (which requires various things of jurisdictions that insist on using purely paper based systems). There are several concerns with the plaintiffs' preferred 50% failure rate standard ("50% Standard"), many of which concern general problems with paper ballots.

23. First, while the occasional person required to vote on paper via provisional ballot does not cause great harm to voter privacy, it will be very difficult to secure privacy for voters if many voters in the polling place are using emergency paper ballots. There is no separate booth for the use of emergency paper ballots. There are times when the use of paper ballots cannot be avoided, but privacy could be compromised when paper ballots are used in

Philadelphia's precincts. This is a reason to avoid using them unless it is necessary.

Philadelphia simply has not been planning for the widespread use of paper ballots.

24. Second, under the requested 50% Standard, there would be confusion, chaos and delays.

25. For example, if only one machine were down in a precinct having two machines, or if two machines were down in a precinct with three machines, under the requested 50% Standard, some voters would continue to use the functioning machine and some voters would be voting on paper. We have not trained poll workers on how to handle a situation in which voters at the polling place are voting via two different methods at the same time. The assignment of duties to poll officials is based upon a single voting system for all voters at the polls. There would be an insufficient number of Poll Officials if they had to administer both machine and paper ballot systems, yet still try to process two lines of voters checking in at the table, possibly resulting in incomplete documentation on eligibility determinations. Normally there are 5 poll officials assigned to each voting district – one Judge of Elections who oversees the operations of the polls and assists either the machine inspector or clerk when necessary; one majority inspector who will be assigned to process voters to determine eligibility in one of the two district register - pollbook, containing the names of eligible voters; one minority inspector who will process voters to determine eligibility in the second district register pollbook; and one clerk who is assigned to maintain the Number 2 & 4 Books, list of voters in order of appearance. In heavy turnout elections, all of these officials are very busy during their respective tasks using a single system. If any of these poll officials are pulled from these tasks to handle and process paper ballots for some voters, while the machine inspector is busy activating the machine for other voters it will slow down the process and increase the waiting time ,At the very least

confusion among voters and pollworkers as to which system each voter is to use would slow down the line, thereby frustrating the very problem this proposed 50% Standard is supposed to alleviate. In contrast, under the Secretary's 100% Standard, all eligible voters that are confirmed at the sign-in table would be voting on one system only. The 100% Standard improves administration, and smooth administration is important in securing voters' ability to vote.

26. Further, in the aforementioned circumstances, some voters will try to express a preference for voting via one method or the other. Pollworkers have not been trained on how to handle such requests. What if some or all the voters insist on using the voting machines? What if some or all the voters insist on using the paper? This could cause chaos and delays, at the very least, and possibly anger, frustration and arguing among voters and pollworkers. None of this seems to advance the voters' right to vote, and the delays would, again, erase the supposed benefit of the 50% Standard. Again, with the Secretary's 100% Standard, pollworkers would not be faced with requests by voters to use their preferred system.

27. Paper ballots inherently pose additional concerns. Philadelphia's voters have not voted on paper ballots at the polls for decades, except the occasional Provisional Ballot when required. Paper based voting systems allow voters too much deviance in the manner in which they may mark their selections. Voters are much more likely to spoil a paper ballot; a voter can spoil a paper ballot by making erroneous marks, cross-outs, or by overvoting (casting more votes in a particular race than are permitted). If a voter does not catch this mistake on the spot before casting the erroneously marked vote, the mistake cannot be corrected and the vote will not count. Similarly, voters' intent as expressed on paper can be misinterpreted during the count. The electronic voting machines used in Philadelphia allow no deviance in the manner in which voters make their selections. The machines do a much better job of capturing the voters'

intent and of counting the votes. Voters merely press a numbered button in their candidate's position box and cast their ballot by pressing a large green vote button. These are important considerations when it comes to securing a voters' right to vote.

28. Further, if a voter makes an errant mark or otherwise spoils a paper ballot, and the voter does notice his or her mistake, the voter is entitled to another ballot. In fact, if the second ballot is also spoiled, the voter is entitled to a third try. This slows down the voting process and lengthens lines. This slowdown does not occur on the electronic voting machines. Also, while we hope pollworkers understand how to handle this situation, in which a voter asks for a new ballot, it could cause confusion. A pollworker may erroneously place the first spoiled ballot with ballots that are to be counted, for example. This is another reason to try to limit the use of paper ballots.

29. Further, paper is subject to very simple manipulations, alterations, frauds, forgeries, duplications, and thefts that are difficult to detect. Similarly, dealing with a significantly increased amount of paper, as could possibly be the case under plaintiffs' requested 50% Standard compared to the Directive's 100% Standard, poses increased risks that paper would be lost or destroyed.

30. Putting aside the aforementioned concerns with the implementation of the 50% Standard, it would be chaotic to change to a new standard so late in the election cycle, with likely less than a week to go before the 50% Standard is directed.

31. Significantly, it would not be possible for Philadelphia to retrain the approximately 8,500-9,000 pollworkers on the new 50% Standard in time for the election. All pollworker training has concluded, with the exception of two make-up sessions on Saturday, November 1, 2008 and Sunday, November 2, 2008. Our normal, scheduled 315 pollworker

training sessions began on the Tuesday after Labor Day and were conducted on three weekdays and Saturdays each week over a six week period, concluding on Saturday, October 18, 2008. Part of the training included a handout and oral instruction on the Directive, that is, that paper backup ballots are not to be used unless all machines are down. Pollworkers were in fact trained on the 100% Standard. All pollworker training has concluded, with the exception of two make-up sessions on Saturday, November 1, 2008 and Sunday, November 2, 2008. Any attempt to retrain officials at the hectic make-up sessions, usually attended by 1600 – 1800 poll officials, would result in contradictory information at the last minute for only about 20-30% of officials that will serve resulting in non-uniform application of any standard. In effect, there would be no standard at all with some applying the 50%, others the 100%, and others no discernable standard at all.

32. We have no way to contact all the many thousands of our pollworkers by telephone. To inform them of the new 50% Standard, we would have to try to mail out a notice of the change. It is not likely that this notice could be drafted, approved by the appropriate city officials, printed and mailed out in time to reach pollworkers if this Court were to issue an order to the Secretary of the Commonwealth even as early as the conclusion of the scheduled hearing late in the day on Tuesday, October 28, 2008.

33. Indeed, we mailed out a notice to pollworkers on Wednesday, October 22, 2008, reminding them of the 100% Standard and that they are not to use paper backup ballots unless and until all machines are down. A true and correct copy of the October 22 mail communication to pollworkers is attached hereto as Exhibit C.

34. Even if pollworkers in fact somehow were able to receive a communication that we issued later this week regarding the new 50% Standard, it would cause

confusion, because it would contradict the prior training pollworkers received and the prior notices we sent out only days earlier. In fact, we would not be able to obtain compliance throughout the city with a standard that changed so close to Election Day. Further, it is necessary to have clear and consistent training communications to the pollworkers in order to better administer the election, which helps move lines along and enable voters to vote.

35. Overall, the increased use of paper called for by the 50% Standard would result in increased spoiled ballots, cause confusion, slow down lines, and possibly create chaos in many polling places. We cannot even adequately communicate the new standard to our pollworkers prior to the election; and even if we could, the mere change to a different procedure would be harmful.

36. We use provisional ballots as our system for emergency paper backups, as is permitted by the Secretary's Directive.

37. We will not have paper backup ballots in an amount equal to 20% of the registered voters at each precinct as is requested by the plaintiffs (the "20% Mandate"). That has not been our plan for this election.

38. We will have 100 provisional ballots at each polling place. In the past, we have supplied 45-60 provisional ballots to each polling place. We are therefore significantly increasing the number of provisional ballots that will be available at each polling place.

39. We have based this number by examining historical use of provisional ballots, plus our projection of a high turnout this year.

40. Since our implementation of the Provisional Balloting requirements in the Spring 2004, only ten locations have ever reported running out of these paper provisional ballots; and after dispatching a driver to the locations with additional ballots, it turned out that eight of

those reports were erroneous as poll officials said they did not call in the request and that they still had more than enough ballots available at the location. In the two exceptions, one of which involved an individual getting behind the machines and closing the machines down so they were inoperable, we delivered additional ballots to the poll location within 20 minutes.

41. We can print additional provisional ballots, but it is far easier for us to do this on an as-needed basis on Election Day as compared to printing up thousands of additional ballots less than a week before the election, for the following reasons.

42. There are 93 different ballot layouts in Philadelphia for this election, due to legislative races. If we need to supply additional ballots to a location, we can make copies of that particular ballot and deliver it.

43. If the 20% Mandate goes into effect, however, we would need to make additional ballots in varying amounts due to the fact that "20%" of the registered voters is a different total in each of the 1,681 voting districts comprising every one of the 93 different ballot layouts and provide them to the 1,681 divisions in the city.

44. It is simply too late to accomplish this. Beginning Saturday, November 1, 2008 at 8:00 AM, our Polling Place Officials begin appearing at one of 18 locations in the City to pickup an Election Materials Box designated for their Division. The Election Materials Box contains all of the mandated official documents, materials and supplies needed to conduct the election on election day at their polling place, including the paper Provisional Ballots. The preparation of the documents, ballots, materials and supplies begins months before the election. Because it is imperative that we not have paper ballots floating around unsecured, we print them, band them, and pre-pack them for each division about 3 – 4 weeks in advance of Election Day. On Saturday, October 25, 2008 our personnel began packaging all of the documents, ballots and

