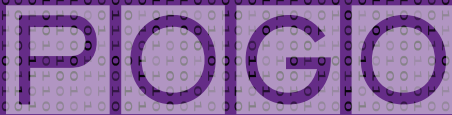SECURING OUR ELECTIONS

How States Can Mitigate the Potential Damage of Hacked Voter Registration Rolls

November 16, 2018

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POGO

About

THE PROJECT ON GOVERNMENT OVERSIGHT (POGO) IS A NONPARTISAN INDEPENDENT WATCHDOG that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing.

WE CHAMPION REFORMS to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

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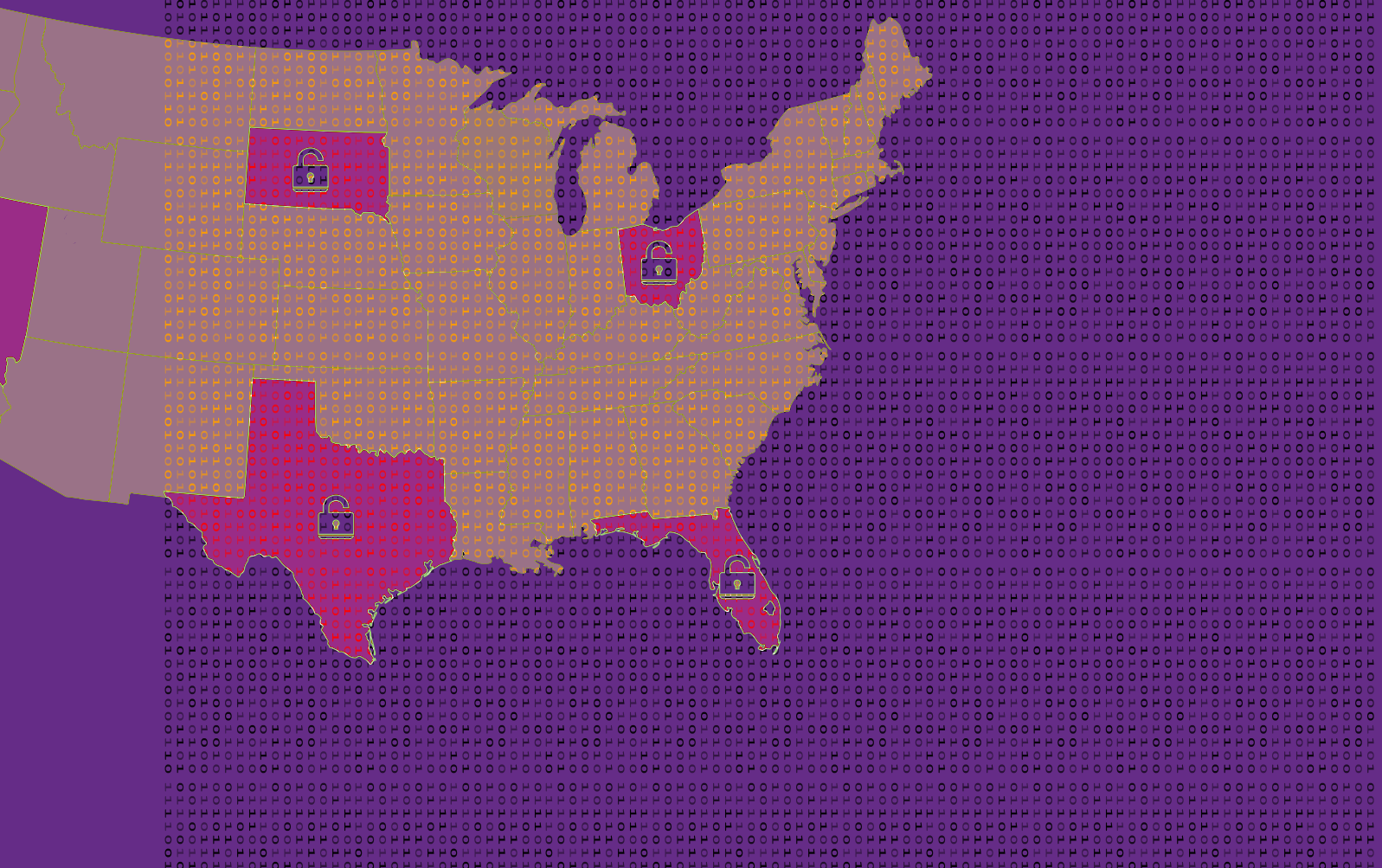
Introduction

Our nation is working in a variety of ways to address election security and integrity. From the halls of the Capitol to hacker conferences like DEF CON, malicious exploitation of voting machines and websites has become a much-watched issue. The nation's largest social media companies are scrambling to find ways to respond to bots, false stories, and foreign propaganda that is infecting discourse on their sites.

Yet one critical area of election security has received far less attention: protection of voter registration rolls. If state registration databases were hacked and compromised, it could have a catastrophic effect on elections, because for most states, only the weak safety net of provisional voting is in place to serve as a backup if the worst should occur.

While backups using best security practices and making potential structural changes to election systems offer greater potential for preventing or limiting the harms of database hacks than does provisional voting, it is nonetheless important to examine how well this final backstop could serve following a successful breach.

The Constitution Project at the Project On Government Oversight conducted a state-by-state analysis to determine this by examining states' legal requirements for provisional ballots and their ballot capacity. Of the 29 states examined,[1] **15 have laws that would prohibit provisional voting** by anyone whose registration status cannot be determined, **6 states' laws contain legal ambiguities** that create uncertainty about whether provisional ballots could be broadly used, and **3 maintain a number of ballots below necessary capacity for broad use**. Based on these findings, we set forth recommendations for decreasing the likelihood of needing to resort to broad use of provisional ballots, and for ensuring that in the event that states must resort to provisional ballots as a final safety net, it would be possible for them to do so.

Risks of an Attack on Registration Systems

Combating election interference and protecting the integrity of our voting system is a critical policy goal receiving growing attention in the wake of increasing threats and attempted interference by foreign adversaries. Successful meddling in our election system could result in a variety of harms: such efforts could tip election results, create the specter of elections being "stolen" or "rigged" even if actual impact was minimal, or cause disorder and delays that prevent elections from occurring at all.

There are numerous means for achieving these nefarious aims. But one of the most dangerous is attacking registration databases, an area we have said "may be our election system's greatest vulnerability."[2] In fact, according to the Senate Select Committee on Intelligence, Russia successfully penetrated state registration databases in 2016, which "in a small number of cases" provided it with the potential ability to alter and delete registration data.[3] In June this year, mere printer and computer errors related to registration systems on the eve of California's and Maryland's primary elections forced tens of thousands of voters in each state to cast provisional ballots,[4] demonstrating how problems related to registration databases can hamper voting on a mass scale. And in July this year, indictments of Russian military intelligence officers by Special Counsel Robert S. Mueller III's office indicated Russia penetrated the computer systems of a vendor that supplied voter registration equipment, and used its infiltration of the vendor's systems to launch spear phishing attacks[5] against its clients.[6]

Tampering with registration can be just as influential in swinging an election's outcome as targeting voting machines themselves.

As we have previously highlighted, "tampering with registration can be just as influential in swinging an election's outcome as targeting voting machines themselves."[7] Select removal of several thousand individuals who reliably vote for one party from registration rolls in a single state could alter the outcome of Congressional races, or even a presidential election.[8] If an espionage operation successfully destroyed the registration database in just a single state—or tampered with records to a sufficient degree to render most records unreliable—it could cause irreparable damage. We might be left with insufficient votes in the electoral college to decide the presidency, control of one or both chambers of Congress could be put into limbo, or problems completing elections for state governments.

Yet in most states, should a centralized attack on registration rolls occur on the eve of an election, it would likely leave provisional voting as the sole means for citizens to cast a ballot. In light of the emerging threats of election interference, reliance on provisional ballots as a safeguard to mitigate the harms of a successful attack is wholly insufficient.

Provisional Voting is Ill-Suited to Address Modern-Day Threats

Purpose of Provisional Ballots

Provisional ballots are largely a modern phenomenon, designed to be a fail-safe for individualized situations when a voter's records were unclear due to small-scale errors or events such as an unregistered change of address.[9] In 2001, only 17 states offered provisional ballots.[10]

This was changed by the Help America Vote Act (HAVA) of 2002, which required all states to create a provisional ballot system.[11] According to the National Conference of State Legislatures, "the most common reasons [for casting a provisional ballot], as identified by the EAC [Election Assistance Commission], are:

- The voter's name is not on the poll or registration list

- The voter's eligibility cannot be otherwise established

- The voter's identity and/or eligibility to vote has been challenged by a poll-worker or election official

- The voter does not have identification as required by that state

- The voter requested an absentee ballot but claims he or she either didn't receive it or didn't cast it

- The voter's address or name has changed but their voter registration information does not reflect the change

- For primaries, the voter registration reflects an error in party listing."[12]
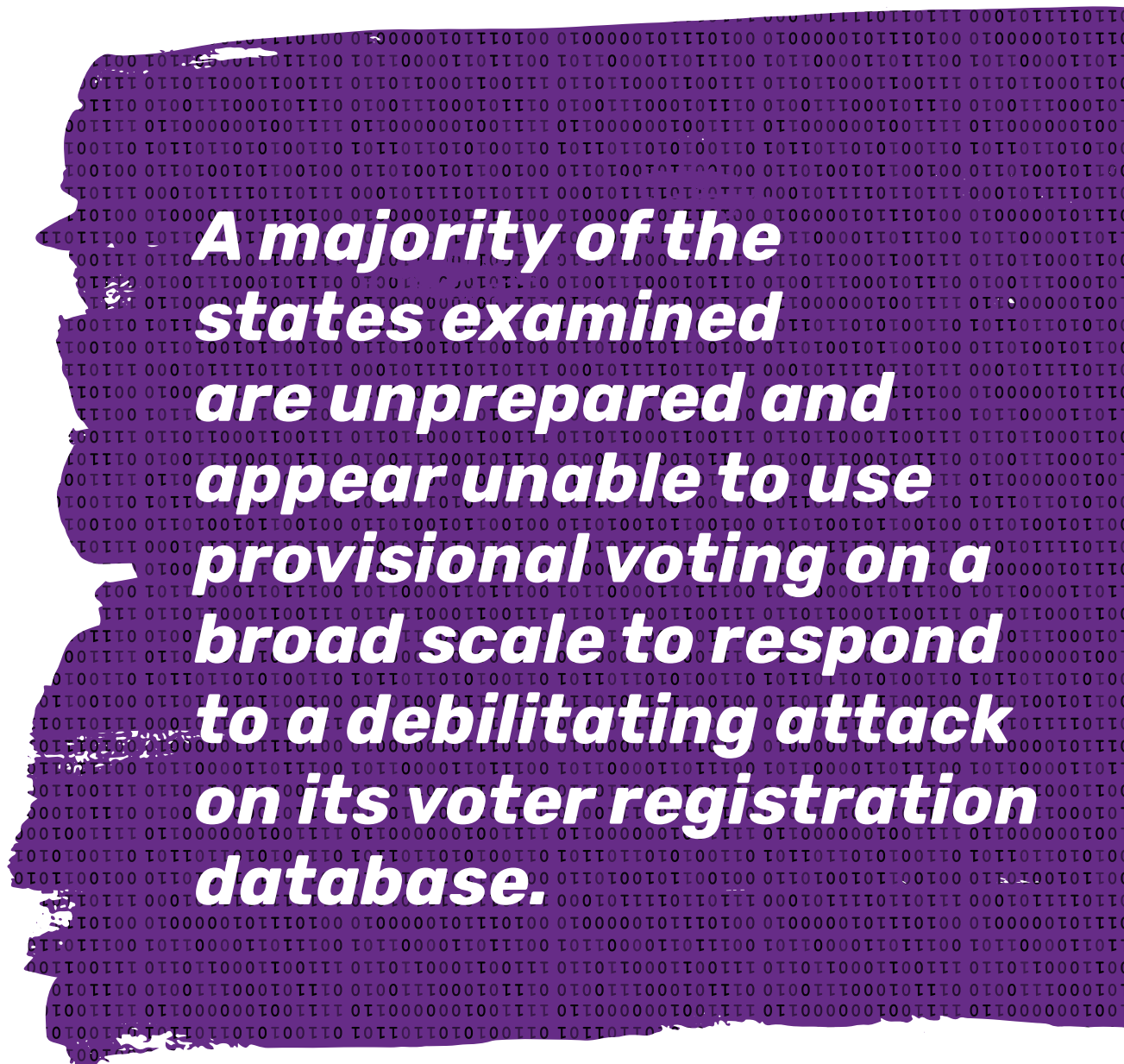
A majority of the states examined are unprepared and appear unable to use provisional voting on a broad scale to respond to a debilitating attack on its voter registration database.

As a result, provisional ballots typically represent only a small portion of ballots cast. According to the Election Assistance Commission, between 2006 and 2016, provisional ballots ranged between 1.6 and 2.1 percent of ballots cast in presidential elections, and 1.0 and 1.2 percent of ballots cast in midterm elections.[13] Overall, the rate of rejection is approximately 21 percent in midterm elections and approximately 31 percent in presidential elections.[14] Rejection rates vary significantly between states, which have vastly differing standards for accepting and rejecting provisional ballots. Rejection rates in 2016 ranged from 1.4 percent (Alaska) to 92 percent (Delaware).[15] According to the MIT Election Data + Science Lab, "[states] with high provisional ballot usage rates tend to have low rejection rates and vice versa."[16]

The threat of nation-state cyberattacks against our election systems is relatively new to our public policy discourse.[17] In 2002, the notion that malicious hacks could destroy an entire voter database was not under consideration by federal lawmakers as they passed HAVA, nor was it a chief concern of the state

lawmakers who responded to the law by establishing provisional voting systems. Thus, while many of the systems we encountered presented problems for broad use of provisional voting as a fail-safe against attacks on our registration rolls, these problems are not due to states' indifference to modern threats. Most election laws present provisional balloting as an option only when individual registration status cannot be confirmed at the polls. These systems simply were not designed to operate as a backstop to a surreptitious purge of thousands of voter registration records.

States Are Unable or Unprepared to Use Provisional Voting as Broad Contingency If a Malicious Hack Compromised Registration Databases

A majority of the states examined are unprepared and appear unable to use provisional voting on a broad scale to respond to a debilitating attack on its voter registration database. This is due to the operation of state law governing provisional voting, as well as logistical challenges that would likely accompany any wide-scale use of provisional ballots.

First, many state laws are designed in a manner that would not even allow most voters to cast provisional ballots following destruction or compromise of their registration databases. **Fifteen of the 29 states examined have laws that would prohibit provisional votes**

The right to vote is a cornerstone of our democracy.

by anyone whose registration status cannot be determined from being counted.[18] Additionally, **in 6 states, legal ambiguities create uncertainty** about whether provisional ballots could be broadly counted. In states with these legal ambiguities, statutes set conditions for both accepting and rejecting provisional ballots based on a determination of registration status, with no clear default rule about how to act if such a determination cannot be made.

Multiple states examined also do not have the logistical capacity to allow broad voting by provisional ballot because they do not print enough materials to suffice in the event of an election attack that required resorting to provisional ballots. Three of the 29 states studied maintain a number of ballots below that level. Seventeen of the 29 states either did not provide sufficient information on

practices regarding the number of provisional ballots prepared for elections, or did not have centralized control of printing provisional ballots.[19]

Even in states that have the most effective laws for permitting provisional voting following destruction of registration records—and that have full capacity in terms of having sufficient provisional ballot materials on hand—provisional voting is problematic in a number of ways. Generally, states require individualized review of provisional ballots that is not typical for a standard ballot; this would dramatically slow the process of tabulating election results in cases where these ballots were needed broadly. Further, despite this additional verification, it is likely that broad use of provisional ballots would lead to mistrust and accusations of fraud. Therefore, although maintaining effective state laws and balloting systems would do much to minimize damage, a situation requiring broad use of provisional ballots would unavoidably harm election integrity.

Other Remedies Would Be More Effective to Prevent or Mitigate the Harms of Attacks on Registration Databases

In terms of facing the modern risk of large-scale attacks on registration systems, methods other than resorting to broad use of provisional ballots would be more effective in terms of resources, maintaining election integrity, and preventing subsequent election-meddling.[20] Most notably, secure backups of registration databases are an effective method of negating the harms of an attack on a registration database.[21]

However, in order to serve as an effective safeguard, backups need to be properly designed and protected. If a malicious hacker can access and alter backups in the same manner as main databases—or prevent knowledge of changes for prolonged periods of time and thereby taint subsequent backups—backups provide no security benefit at all. Many states we contacted responded that they do maintain backup databases; we intend to conduct additional research on whether states employ a variety of specific best practices to ensure that backups can effectively withstand an attack and to guarantee mitigation of harms.

There are several distinct structural systems that could minimize or prevent the damage of altering or deleting voter databases: same-day registration, mail-in

voting, and decentralized registration databases. Same-day registration may provide an alternative to provisional ballots, mail-in voting could offer an early warning of a malicious hack, and decentralized databases[22] could make a large-scale attack on registration data significantly more difficult by diluting targets. However, additional factors need to be evaluated to see if these systems could be effective at scale in responding to an attack on registration databases. Therefore, we do not include states with same-day registration, mail-in voting, or decentralized databases in this study of provisional ballot systems. A later phase of The Constitution Project at POGO's research on election security will seek to determine whether these systems could effectively prevent or mitigate the harms of an attack on states' registration databases.

Recommendations

Our primary recommendation is to develop effective backup systems to ensure that resorting to broad use of provisional ballots is never necessary. However, we also provide recommendations on how to ensure that a provisional-ballots system can act as a last resort in response to a successful attack compromising registration data.

States should develop effective backups for registration databases, with features such as access limits and auditing systems recommended by security experts. Such measures may take time to fully develop; furthermore, best practices and necessary protocols change over time, and a component of strong election and cybersecurity preparedness involves contingencies, including for worst-case scenarios. Thus, even if a state has taken all proper measures to protect registration databases, it should be as prepared as possible for a scenario where its database is nonetheless breached and compromised.

In light of these factors, states should be prepared for the eventuality of a database compromise, and for the need for large-scale provisional ballot use. States' laws and election policies should be designed to maximize the ability to use provisional ballots in such a situation with as little disruption to the election process as possible. However, in more than half the states examined, the provisional balloting system in place is not equipped for use on a broad scale, and laws and policies governing that use are not equipped to serve as a backstop to malicious hacking.

The right to vote is a cornerstone of our democracy. Because the federal government has a critical role in supporting access to this right—as previously seen in broad bipartisan consensus in passing HAVA in 2002—and because federal aid is particularly appropriate when foreign adversaries threaten this right, there are also measures the federal government ought to undertake in order to support provisional ballot use in the states. Therefore, Congress should update HAVA's requirement that states maintain provisional ballot processes to also require that their provisional ballot laws do not invalidate provisional votes in situations where the state is unable to confirm registration status. Moreover, when providing states with funding for election operations and security, Congress should include funds to aid states in maintaining a full contingency of provisional ballots.

STATES SHOULD:

1. Develop effective backups for registration databases, with features such as access limits and auditing systems recommended by security experts.

2. Clarify in their provisional ballot laws that inability to confirm registered status does not invalidate provisional votes. At minimum, states should eliminate this requirement if the number of provisional ballots needed or cast reaches a certain threshold.

3. Replace discretionary review standards for counting provisional ballots with clear and objective criteria. At minimum, states should establish a uniform, objective standard for counting provisional votes if the number of provisional ballots reaches a certain threshold.

4. Maintain a full contingency of provisional ballots—meaning enough provisional ballots to be used by all registered voters—or maintain a system where a full contingency can be printed in the days before an election or on election day.

CONGRESS SHOULD:

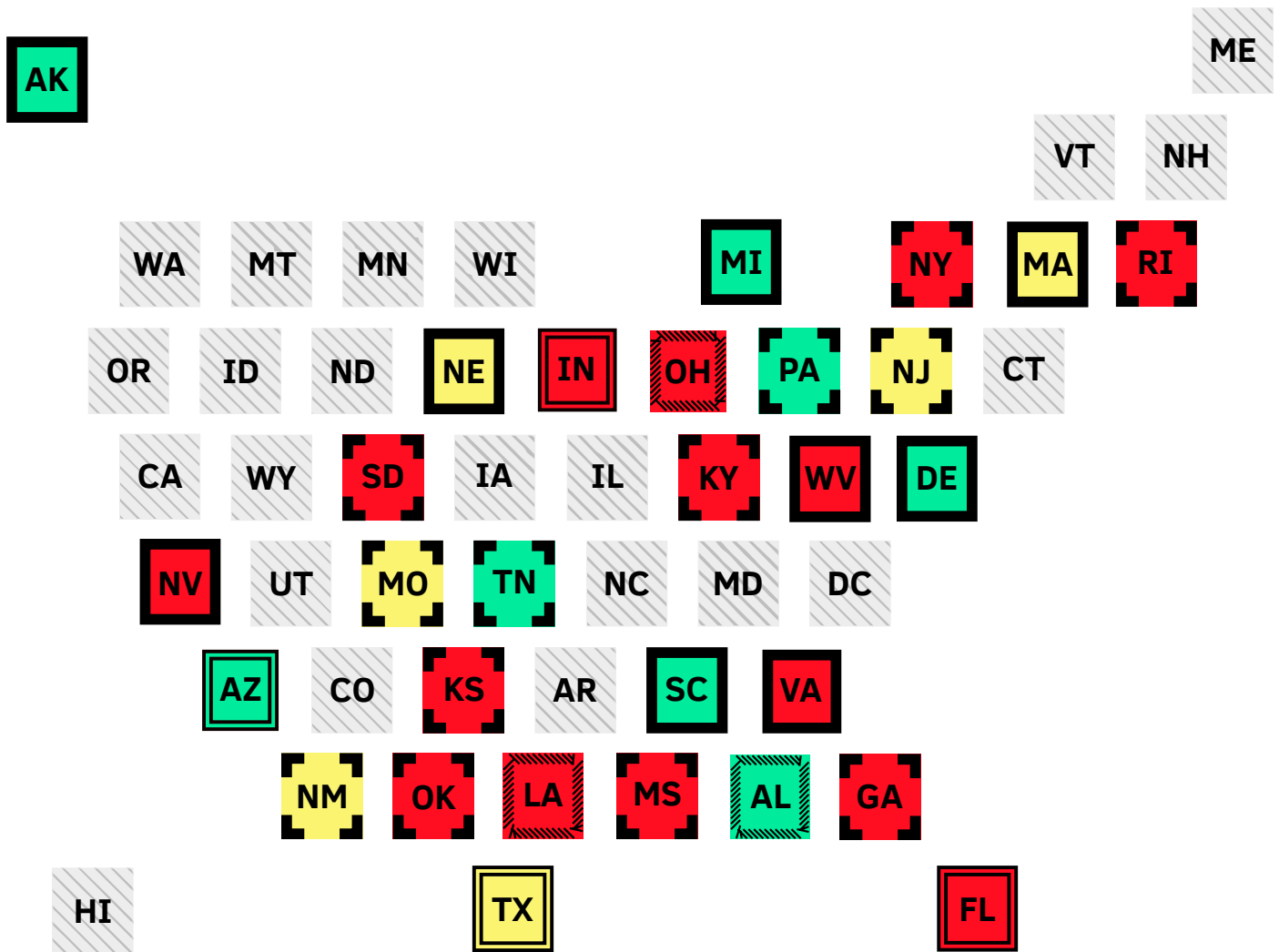1. Update HAVA's requirement that states maintain provisional ballot processes to also require that their provisional ballot laws do not invalidate provisional votes in situations where the state is unable to confirm registration status.

2. Include funds to aid states in maintaining a full contingency of provisional ballots when providing states with funding for election operations and security.

State-by-State Analysis

The following state-by-state description details whether provisional ballots could be used broadly if necessary in response to a major attack on registration databases based on two critical factors: provisional ballot law and provisional ballot capacity.

In terms of provisional ballot law, we examine whether each state's law would permit voters to cast provisional ballots if the state's registration database had been deleted or otherwise compromised by a hack.[23] If the law does permit this, the state's law is marked as "operative." If it doesn't—typically because the law explicitly requires an affirmative determination that the individual casting a provisional ballot is in the registration database, or because of vague or subjective standards—the state's law is marked as "inoperative." If there is ambiguity or conflicting rules about how the law would be applied in such a situation and therefore about whether it would restrict provisional voting, the state's law is marked "unclear if operative."

In terms of provisional ballot capacity, we examine whether each state could produce enough provisional ballots to allow all registered voters to cast a provisional vote if necessary in the wake of a successful attack on the state's registration database. If the state does not require separate materials (some states use a distinct ballot for provisional voting, some use distinct envelopes, and some states don't use either), has a full supply of necessary materials, or could rapidly acquire a full supply of necessary materials, state capacity is marked as "full capacity." [24] If the state allows counties or precincts to control production of provisional ballot materials, state capacity is marked as "locally controlled." If the state does not maintain a full supply of necessary materials or does not have plans to rapidly acquire them, state capacity is marked as "below full capacity." If the state did not respond to our inquiries, it is marked as "no responsive data." For this report, we sent all states we reviewed mail and electronic letters requesting relevant information on provisional ballot capacity, and called election offices for states that did not reply. Information on provisional ballot capacity is based on correspondence received and telephone conversations, with exceptions where public information was available.

AK · ME · VT · NH · MI · NY · MA · RI · WA · MT · MN · WI · OR · ID · ND · NE · IN · OH · PA · NJ · CT · CA · WY · SD · IA · IL · KY · WV · DE · NV · UT · MO · TN · NC · MD · DC · AZ · CO · KS · AR · SC · VA · NM · OK · LA · MS · AL · GA · HI · TX · FL

Provisional Ballot Law

- 🟩 Operative
- 🟥 Inoperative
- 🟨 Unclear if operative

Provisional vote analysis not applicable; state uses unique election system

Provisional Ballot Capacity

- ▢ Full capacity
- ▢ Below full capacity
- ▢ Locally controlled
- ⌞⌝ No responsive data

Alabama

Provisional Ballot Law: Operative

Alabama law defaults to accepting provisional ballots when registration status cannot be determined. In such situations, it accepts the provisional ballot and updates registration lists with information provided in affirmations of identity and voting status included along with such a ballot.[25] The law does create a system whereby proactive voter action is required after voting,[26] but such action is only required in response to an individualized challenge. This likely could not create large-scale problems if a hack compromised the state registration database, making it necessary to use provisional ballots on a broad scale.

Provisional Ballot Capacity: Below Full Capacity

According to the Alabama Administrator of Elections, Alabama uses normal ballots for provisional voting. However, other supplies are necessary, such as affidavits, and "the vast majority of counties provide enough supplies for 15 provisional ballots per precinct. However, some counties, particularly larger counties, may print enough materials for 30-100 provisional ballots per precinct." If there is an expectation of higher than normal need for provisional ballots, the ballot printing company can distribute additional provisional ballot supplies, but only to 6 of the state's 67 counties for use regionally. In such a situation, "each of these counties would receive a supply of provisional balloting materials sufficient for 1,000 provisional ballots that could be used in their own counties or in neighboring counties as the need arises."[27] Therefore, if broad use of provisional ballots were necessary, there could be a shortage of ballot supplies at polling places.

Alaska

Provisional Ballot Law: Operative

Alaska law requires that provisional ballots be rejected only if the voter either fails to execute a certificate required to be signed as part of the provisional ballot process, or fails to provide documents verifying identification.[28] The required identification documents match those required for regular voting, and the requirement can be satisfied with a variety of government issued ID forms, utility bills, bank statements, or paychecks.[29]

Provisional Ballot Capacity: Full Capacity

According to the Director of the Division of Elections, Alaska does not use specialized provisional ballots, but does "use provisional ballot envelopes, which [the state has] several thousand on hand at one time."[30] The Director of the Division of Elections also stated the state could produce significantly more provisional ballot envelopes, as needed, on the eve of an election if it appeared that broad use of provisional ballots would be required.[31]

Arizona

Provisional Ballot Law: Operative

Arizona law does not preempt provisional ballots from being counted if voter registration status cannot be determined.[32] A signature comparison to existing voter records is required, but only for the separate scenario in which a voter's status is undetermined due to a recent change in address.

Provisional Ballot Capacity: Locally Controlled

The number of provisional ballots to be printed is determined at the local level; according to Arizona's Election Services Division, county elections departments, rather than the state office, maintain data related to provisional ballot printing.[33] It is unclear if sufficient ballots would be available if a hack of the state registration database made broad use of provisional ballots necessary.

Delaware

Provisional Ballot Law: Operative

Delaware law accepts provisional ballots when registration status cannot be determined, and updates registration lists with the affidavit included along with such a ballot.[34]

Provisional Ballot Capacity: Full Capacity

According to its State Elections Commissioner, Delaware determines the number of provisional ballots to print based on the number of registered voters by precinct, and, as needed, can have additional ballots printed in an emergency.[35]

Florida

Provisional Ballot Law: Inoperative

Florida does not have a default standard for accepting or rejecting provisional ballots, but rather requires review by county election officials, with decisions based on a "preponderance of the evidence."[36] The system lacks any objective criteria and gives too much discretionary authority to these officials in assessing whether to count such ballots. This could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that could compromise the integrity of the process if used on a mass scale.

Provisional Ballot Capacity: Locally Controlled

According to the state Program Administrator for the Division of Elections, the number of provisional ballots to be printed is determined at the local level.[37] It is unclear if sufficient ballots would be available if a hack of the state registration database made broad use of provisional ballots necessary.

Georgia

Provisional Ballot Law: Inoperative

Georgia law explicitly requires that provisional ballots not be counted in the event that voters' registration status cannot be determined, making a provisional ballot system inoperative if a hack compromises the state registration database.[38]

Provisional Ballot Capacity: No Responsive Data

Georgia does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed by the state prior to elections.

Indiana

Provisional Ballot Law: Inoperative

Indiana law requires an affirmative determination that a voter is registered in order for their provisional ballot to be counted, and that such determination be made by comparing information provided to the state registration database, making a provisional ballot system inoperative if a hack compromises that database.[39]

Provisional Ballot Capacity: Locally Controlled

According to the Co-Director of the Indiana Election Division, the number of provisional ballots to be printed is determined at the county level.[40] It is unclear if sufficient ballots would be available if a hack of the state registration database made broad use of provisional ballots necessary.

Kansas

Provisional Ballot Law: Inoperative

Kansas law requires an affirmative determination that a voter is registered in order for their provisional ballot to be counted, and that such determination be made by comparing information provided by the voter to data included in the state registration database, making a provisional ballot system inoperative if a hack compromises the state registration database.[41]

Provisional Ballot Capacity: No Responsive Data

Kansas does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Kentucky

Provisional Ballot Law: Inoperative

Kentucky law does not have a default standard for accepting or rejecting provisional ballots, but rather leaves acceptance or rejection of provisional ballots to the discretion of county boards based on whether "the individual is eligible to vote in the precinct in the election."[42] This system is vague and lacks clear standards; if the system were used on a mass scale, it could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that compromise the integrity of the process.

Provisional Ballot Capacity: No Responsive Data

Kentucky does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Louisiana

Provisional Ballot Law: Inoperative

Louisiana law does not provide any standards for acceptance or rejection of provisional ballots. According to the Louisiana Secretary of State, provisional ballots may only be accepted based on a determination that a voter is registered and cast their ballot in the parish where they are registered,[43] making a provisional ballot system inoperative if a hack compromises the state registration database.

Provisional Ballot Capacity: Below Full Capacity

According to the state Commissioner of Elections, Louisiana prints "10 ballots per precinct with the exception of the larger parishes," for which the state prints "20 provisional ballots per precinct."[44]

Massachusetts

Provisional Ballot Law: Unclear if Operative

Massachusetts law does not have a default status for counting provisional ballots if registration status cannot be determined. Rather, the law states that such ballots shall be counted if the "city or town clerk determines that the individual is eligible to vote in the precinct," and such ballots shall not be counted if the "city or town clerk determines that the individual is ineligible to vote in the precinct"; no clear standard exists if registration status cannot be determined, as would be the case if a hack compromised the state registration database.[45]

Provisional Ballot Capacity: Full Capacity

According to a state Elections Division official, Massachusetts does not print separate ballots for provisional voters. "Rather, poll workers write the word 'Provisional' at the top of a regular ballot and provide it to the voter along with an envelope in which to enclose it."[46] These provisional envelopes "are simply envelopes with a line on them for the ward and precinct and the provisional ballot number,"[47] so a sufficiently large number of envelopes could be quickly obtained in the event a hack compromises the state registration database and the broad use of provisional ballots is required.

Michigan

Provisional Ballot Law: Operative

Michigan law requires provisional ballots to be counted if the identity and residence of the voter is established using identification documents and "current utility bill, bank statement, paycheck, government check, or other government document."[48] The law explicitly states that establishing identity in this manner is sufficient to count a provisional ballot even if registration status cannot be determined, making it effective in response to a hack that compromises the state registration database.[49]

Provisional Ballot Capacity: Full Capacity

According to the Director of Program Development in the Secretary of State's office, in Michigan, "provisional ballots are issued from regular ballot stock which is ordered at 100% of registered voters for the November election."[50]

Mississippi

Provisional Ballot Law: Inoperative

Mississippi law does not have a default standard for accepting or rejecting provisional ballots, but rather only states that "election commissioners in other [i.e., non-primary] elections, shall examine the records and allow the ballot to be counted, or not counted as it appears legal."[51] This system is vague and lacks clear standards; if the system were used on a mass scale, it could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that compromise the integrity of the process.

Provisional Ballot Capacity: No Responsive Data

Mississippi does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.[52]

Missouri

Provisional Ballot Law: Unclear if Operative

Missouri law does not have a default standard for counting provisional ballots if registration status cannot be determined. Rather, the law states that such ballots shall be counted if "the election authority [determines that] the voter is registered and eligible to vote"; no clear standard exists if registration status cannot be determined, as would be the case if a hack compromised the state registration database.[53]

Provisional Ballot Capacity: No Responsive Data

Missouri does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Nebraska

Provisional Ballot Law: Unclear if Operative

Nebraska law does not have a default system for counting provisional ballots if registration status cannot be determined. Rather, the law states that a provisional ballot shall be counted if "credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election," and that such a ballot shall be rejected if "the voter was not properly registered in the county before the deadline for registration for the election."[54] Because both acceptance and rejection of provisional ballots require a determination of registration status, it is unclear whether the law would permit or prevent counting provisional ballots from voters of unknown registration status, as would be the case if a hack compromised the state registration database and the registration status of voters could not be determined.

However, the fact that the law requires "credible evidence" for a provisional ballot to be accepted could result in the law being read as defaulting towards rejection, which would be problematic should the broad use of provisional ballots be required because the registration rolls were compromised.

Provisional Ballot Capacity: Full Capacity

According to the state Elections Coordinator, Nebraska does not use specialized ballot materials for provisional voting. Normal ballots are used, and then sealed in a provisional ballot envelope. "It would not be difficult to order generic provisional ballot envelopes for 100% of registered voters in the state in less than a week, because it does not take a special printer to generate."[55]

Nevada

Provisional Ballot Law: Inoperative

Nevada law requires an affirmative determination that a voter is registered in order for the provisional ballot to be counted, making a provisional ballot system inoperative if a hack compromises the state registration database.[56]

Provisional Ballot Capacity: Full Capacity

According to Nevada's Deputy Secretary of State for Elections, in all but one of the state's counties, "provisional ballots are cast using a voting machine at the polling location," which ensures there is no limit to the number of ballots that can be cast in these locations. "In the one remaining county, Carson City, provisional ballots are" paper ballots but are not printed on the type of official ballot paper that is needed for the ballots to be run through a digital scanner, ensuring that as many additional provisional ballots as necessary can be quickly printed using a regular office copier.[57]

New Jersey
Provisional Ballot Law: Unclear if Operative
New Jersey law requires that provisional ballots be accepted so long as the voter completes an affirmation of their status as a registered voter.[58] However, a separate section of the law requires comparison of signature and address information with "information that the commissioner of registration has in the Statewide voter registration system" as part of processing provisional ballots.[59] The law does not elaborate on how to proceed if such a comparison cannot be made due to lack of information, so it is unclear whether the lack of registration information would have any effect on the acceptance of provisional ballots if a hack compromises the state registration database.

Provisional Ballot Capacity: No Responsive Data
New Jersey does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

New Mexico
Provisional Ballot Law: Unclear if Operative
According to New Mexico law, provisional ballots should not be counted "If there is no record of the voter ever having been registered in the county."[60] Defaulting to not counting provisional ballots in such a situation should make a provisional ballot system inoperative if a hack compromises the state registration database. However, New Mexico law also states that if "the county clerk determines that the [voter's registration status] cancellation was in error," provisional ballots should be counted.[61] It is unclear whether this provision could be invoked in response to a malicious hack that compromised the state registration database if officials claimed such a hack constituted "cancellation in error," thereby overriding the provision that requires provisional ballots not be counted when registration records cannot be found. Thus, it is unclear if a provisional ballot system would be operative in the event of a malicious hack.

Provisional Ballot Capacity: No Responsive Data
New Mexico does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

New York

Provisional Ballot Law: Inoperative

New York law does not have a default standard for accepting or rejecting provisional ballots, but rather establishes a system whereby research and evaluations at the county-board level are used to determine whether the oath on the ballot envelope is valid and the ballot should be counted.[62] This would require potentially significant individual work to achieve verification, which would likely not be possible following a mass compromise of registration data and broad use of provisional ballots. Additionally, the law lacks any clear and objective standards; if the law were applied on a mass scale, it could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that compromise the integrity of the process.

Provisional Ballot Capacity: No Responsive Data

New York does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Ohio

Provisional Ballot Law: Inoperative

Ohio law requires an affirmative determination that a voter is registered in order for their provisional ballot to be counted, and that such determination be made by comparing "the elector's information in the statewide voter registration database" to the information in a written affirmation executed by the voter, making a provisional ballot system inoperative if a hack compromises the state registration database.[63]

Provisional Ballot Capacity: Below Full Capacity

According to the Ohio Elections Manual, "The board [of elections] must provide ballots and envelopes in the quantity of at least 5 percent more than the number of provisional ballots cast in that precinct at the previous like election."[64] Therefore, if significantly more provisional ballots were needed than the state had on hand, there could be a shortage of ballots at polling places.

Oklahoma

Provisional Ballot Law: Inoperative

Oklahoma law only allows provisional ballots to be counted "if evidence of the provisional voter's valid voter registration, or of the voter's identity, is found" based on an investigation by the secretary of the county election board.[65] However, there is no clarity as to what evidence of voters' identity would be sufficient to meet this requirement in the absence of registration data. Such a system lacks clear standards and gives too much discretion to secretaries of each county election board; if the system were used on a mass scale, it could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that could compromise the integrity of the process.

Provisional Ballot Capacity: No Responsive Data

Oklahoma does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Pennsylvania

Provisional Ballot Law: Operative

Pennsylvania law states that "If it is determined that the individual voting the provisional ballot was not registered," the ballot shall be rejected.[66] However, the law does not make specific reference to the treatment of provisional ballots when registration status cannot be determined, as would be the case if the registration database was compromised. On the contrary, the law requires provisional ballots to be counted unless the ballot is set aside for a disqualifying feature enumerated in the law—none of which relate to indeterminate registration status—or for an individualized challenge upheld by the county board of elections.[67]

Provisional Ballot Capacity: No Responsive Data

Pennsylvania does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Rhode Island

Provisional Ballot Law: Inoperative

Rhode Island law requires that, for the provisional ballot to be certified, voter identification information provided in the provisional ballot registration form must match the information in the state's voter registration database,[68] making its provisional ballot system inoperative if a hack compromises the database.

Provisional Ballot Capacity: Insufficient Responsive Data

According to the State Deputy Director of Elections, Rhode Island does not use specialized ballots for provisional voting. Normal ballots are used, and then sealed in an envelope and marked as a provisional ballot.[69] However, the state did not respond to a follow-up inquiry about whether there are any limits to how many of these envelopes are available.

South Carolina

Provisional Ballot Law: Operative

South Carolina law establishes that provisional ballots shall be counted unless the ballot is challenged and the individual initiating the challenger "is present at the hearing, produces witnesses in support of the challenge, or provides evidence in writing to support the challenge prior to the hearing."[70] Thus, in the absence of mass challenges, the provisional ballot system will be operative. And it is not logistically feasible that people could carry out individual challenges of ballots on a scale large enough to disrupt vote tallying. Further, even selective efforts to quash provisional voting in such a situation likely could not occur as the burden is on the challenger to provide evidence that the voter is not eligible, and a registration database hack would destroy rather than create evidence that could support a challenge.

Provisional Ballot Capacity: Full Capacity

South Carolina law states that the number of provisional ballots printed "should not exceed 10 percent of the registered voters in a precinct."[71] However, each county has a ballot-on-demand printer to produce additional official paper ballots as needed on or before election day. And in the event a sufficient number of ballots cannot be made available, South Carolina law requires election managers to provide ballots "made as nearly as possible" to official ballots, which are to be treated as official ballots.[72]

South Dakota

Provisional Ballot Law: Inoperative

South Dakota law requires that any provisional ballot be rejected unless evidence affirmatively proves prior registration status,[73] making its provisional ballot system inoperative if a hack compromises the state registration database.

Provisional Ballot Capacity: No Responsive Data

South Dakota does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Tennessee

Provisional Ballot Law: Operative

Tennessee law defaults to accepting provisional ballots when registration status cannot be determined, creating a general policy whereby the state accepts the provisional ballot and updates its registration lists based on affirmations included with the provisional ballots.[74] The law does require voters to present verification of their address[75]; this is not an unreasonable requirement for updating registration status, but could create logistical challenges and delays if a hack compromises the state registration database, making the broad use of provisional ballots necessary.

Provisional Ballot Capacity: No Responsive Data

Tennessee does not make publicly available online any data regarding the number of provisional ballots it prints, and did not respond to our request for information regarding how many provisional ballots are or could be printed.

Texas

Provisional Ballot Law: Unclear if Operative

Texas law generally requires that provisional ballots be counted so long as the voter completes an affidavit and all requirements for normal voting are met. However, the law also requires the early voting ballot board to determine that, "from the information in the affidavit or contained in public records, the person is eligible to vote in the election,"[76] but provides no clarity as to whether registration status must be affirmatively confirmed to determine eligibility. If a hack compromised the state registration database and the registration status of voters could not be determined, it is unclear if this requirement would preclude the broad use of provisional ballots.

Provisional Ballot Capacity: Locally Controlled

The number of provisional ballots to be printed is determined at the local level.[77] It is unclear if sufficient ballots would be available if a hack of the state registration database made broad use of provisional ballots necessary.

Virginia

Provisional Ballot Law: Inoperative

Virginia law requires an affirmative determination that a voter is registered in order for their provisional ballot to be counted, making a provisional ballot system inoperative if a hack compromises the state registration database.[78]

Provisional Ballot Capacity: Full Capacity

Virginia uses specialized materials for provisional voting. Although normal ballots are used, they are then sealed in a specialized provisional ballot envelope. According to election officials, these envelopes can be photocopied to quickly create as many as are needed.[79]

West Virginia

Provisional Ballot Law: Inoperative

West Virginia law does not have a default standard for accepting or rejecting provisional ballots, but rather requires county commissions to review ballots without providing any objective criteria for how to do so.[80] This system is vague and lacks clear standards, which could lead to broad rejection of ballots, inconsistent standards for acceptance and rejection across the state, or allegations of unfairness that could compromise the integrity of the process if used on a mass scale. Additionally, a separate provision of West Virginia law requires that provisional ballots be accepted only after "comparing that individual's signature to the current signature on file with the election authority," which would require use of the state registration database and make a provisional ballot system inoperative if the database was hacked.[81] However, it is unclear whether this requirement applies generally or only when a voter has to cast a provisional ballot because they do not have the required voter ID.

Provisional Ballot Capacity: Full Capacity

West Virginia does not use specialized ballots for provisional voting. Normal ballots are used, and then sealed in a normal envelope. Therefore, if necessary, provisional ballots could be used broadly without concern of a shortage.[82]

Endnotes

1   See part III, section c for basis for choosing to examine particular states.

2   Jake Laperruque and Paul Rosenzweig, "How to secure US elections from future hacking," CNN, July 18, 2018. https://www.cnn.com/2018/07/18/opinions/securing-our-next-election-against-hacking-leperruque-rosenzweig/index.html (Downloaded October 23, 2018)

3   Senate Select Committee on Intelligence, Russian Targeting of Election Infrastructure During the 2016 Election: Summary of Initial Findings and Recommendations, May 8, 2018, p. 1. https://www.burr.senate.gov/imo/media/doc/RussRptInstlmt1-%20 ElecSec%20Findings,Recs2.pdf (Downloaded October 23, 2018)

4   Los Angeles County Registrar-Recorder/County Clerk, "Election Day Polling Locations Affected By Roster Printing Issue," June 5, 2018. https://www.lavote.net/docs/rrcc/ news-releases/06052018_E-Day-Release.pdf; Erin Cox and Michael Dresser, "Maryland voter registration snafu affects 80,000, four times as many as initially announced," The Baltimore Sun, June 25, 2018. http://www.baltimoresun.com/news/maryland/politics/ bs-md-voting-snafu-update-20180625-story.html (Both downloaded October 23, 2018)

5   Spear phishing attacks are a sophisticated form of "phishing" in which hackers take over an individual's computer system by sending an email containing a malicious link or attachment. While phishing attacks are generally sent to a mass of people, spear phishing involves a precision attack on a single target, with an email personally designed to appear real to that individual. Spear phishing attacks often employ publicly available information, imitate colleagues, or use systems and information from already-hacked colleagues.

6   Indictment, United States of America v. Netyksho et al., No. 1:18-cr-00215-ABJ (D.D.C.); Paul Rosenzweig, "Further Reflections on the Russian Hacking Indictment," Lawfare, July 21, 2018. https://www.lawfareblog.com/further-reflections-russian-hacking-indictment

7   Jake Laperruque, "Election Security Needs to Begin Long Before Ballots Are Cast," Project On Government Oversight, March 1, 2018. https://www.pogo.org/ analysis/2018/03/election-security-needs-to-begin-long-before-ballots-are-cast (Hereinafter "Election Security Needs to Begin Long Before Ballots Are Cast")

8   "Election Security Needs to Begin Long Before Ballots Are Cast"

9   National Conference of State Legislatures, "Provisional Ballots," October 15 2018. http://www.ncsl.org/research/elections-and-campaigns/provisional-ballots. aspx (Downloaded October 23, 2018) (Hereinafter "NCSL Provisional Ballots")

10   The Constitution Project and the Election Reform Information Project, "Election Reform Briefing: The Provisional Voting Challenge," December 2001. https:// web.archive.org/web/20060601222613/http:/www.electionline.org/Portals/1/ Publications/Provisional%20Voting.pdf (Downloaded October 23, 2018)

11   52 U.S.C. § 21082.

12 "NCSL Provisional Ballots"

13 U.S. Elections Assistance Commission, EAVS Deep Dive: Provisional Ballots, June 7, 2018, p. 2. https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/ (Downloaded October 23, 2018) (Hereinafter EAVS Deep Dive: Provisional Ballots)

14 EAVS Deep Dive: Provisional Ballots, p. 2.

15 MIT Election Data + Science Lab, "Provisional Ballots." https://electionlab.mit.edu/research/provisional-ballots (Downloaded October 23, 2018) (Hereinafter "MIT Provisional Ballots")

16 "MIT Provisional Ballots"

17 Ed Felten, "Lessons of 2016 for U.S. Election Security," Freedom To Tinker, June 19, 2017. https://freedom-to-tinker.com/2017/06/19/lessons-of-2016-for-u-s-election-security/ (Downloaded October 24, 2018) ("[N]ation-state adversaries may be more aggressive than we had thought. … Attacks on legitimacy could take several forms. An attacker could disrupt the operation of the election, for example, by corrupting voter registration databases so there is uncertainty about whether the correct people were allowed to vote.")

18 See part III, section c for basis for choosing to examine particular states.

19 In states that do not have centralized control, assessing ballot capacity would have required contacting dozens or hundreds of local election boards and officials in each state, which was beyond our capacity for current research.

20 See e.g., Danielle Root et al, Election Security in All 50 States: Defending America's Elections, February 12, 2018. https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/ (downloaded October 24, 2018) (Hereinafter Defending America's Elections)

21 Defending America's Elections Report, p. 1. ("[A]ll states should have a backup voter registration database available in case emergencies arise").

22 Sean Greene, "Statewide Voter Registration Systems," U.S. Elections Assistance Commission, August 31, 2017. https://www.eac.gov/statewide-voter-registration-systems/ (Downloaded October 23, 2018)

23 All state statute and regulation citations are current as of November 15, 2018.

24 In evaluating state responses, we rated situations where provisional ballot capacity matched or was indistinct from normal ballot capacity as "full capacity." Our research does not assess whether states maintain sufficient normal ballots for all voters.

25 Ala. Code § 17-10-2(a) (LexisNexis, Lexis Advance through the end of the 2018 Regular Session (Act 2018-579)). ("A voter shall be required to cast a provisional ballot when: (1) The name of the individual does not appear on the official list of eligible voters for the precinct or polling place in which the individual seeks to vote, and the individual's registration cannot be verified while at the polling place by the registrar or the judge of probate….")

26 Ala. Code § 17-10-2(e). ("When verifying a provisional ballot based upon the challenge of an inspector, the board of registrars shall promptly contact the voter by first class mail and provide an explanation of how the provisional voter may

respond to the challenge. After determining that the provisional voter has had notice and an opportunity to be heard, the board of registrars shall verify by a certification attached to the challenge statement whether the provisional ballot is due to be counted and, if not, why it should not be counted.")

27   Ed Packard, email message to POGO Senior Counsel Jake Laperruque, "Reply to Inquiry," September 12, 2018.

28   Alaska Stat. § 15.15.198; § 15.20.207 (Lexis Advance through 2018 SLA, chapter 106).

29   Alaska Stat. § 15.15.220; § AS 15.15.225. ("(1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or (2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this paragraph must show the name and current address of the voter.")

30   Josie Bahnke, email message to POGO Senior Counsel Jake Laperruque, "RE: Provisional Voting Data," September 5, 2018.

31   Josie Bahnke, email message to POGO Senior Counsel Jake Laperruque, "RE: Provisional Voting Data," October 24, 2018.

32   Ariz. Rev. Stat. §16-584(B). (LexisNexis, Lexis Advance through the Second Regular Session of the Fifty-Third Legislature (2018)). ("A qualified elector whose name is not on the precinct register, on presentation of identification verifying the identity of the elector that includes the voter's given name and surname and the complete residence address that is verified by the election board to be in the precinct or on signing an affirmation that states that the elector is a registered voter in that jurisdiction and is eligible to vote in that jurisdiction, shall be allowed to vote a provisional ballot.")

33   Election Services Division, email message to POGO Senior Counsel Jake Laperruque, "RE: Contact Form Submission - Provisional Voting Data," September 11, 2018.

34   Del. Code Ann. tit. 15, §4948 (i)(2) (Lexis Advance through 81 Del. Laws, ch. 450). ("The Department shall use the provisional ballot affidavit as authority to register a person to vote who voted by provisional ballot in an election and who is not already registered to vote providing that the minimum information required to register a person to vote is provided. The provisional ballot envelope shall be used to transfer a registered voter's address and/or update the registered voter's name when the address and/or name is different than the information on the person's voter registration record.")

35   Elaine Manlove, email message to POGO Program Associate David Janovsky, "DELAWARE ELECTIONS," August 28, 2018.

36   Fla. Stat. Ann. §101.048(2)(a) (LexisNexis, Lexis Advance through the 2018 Second Regular Session of the 25th Legislature). ("The county canvassing board shall examine each Provisional Ballot Voter's Certificate and Affirmation to determine if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election and that the person had not already cast a ballot in the election. In determining whether a person casting a provisional ballot is entitled

to vote, the county canvassing board shall review the information provided in the Voter's Certificate and Affirmation, written evidence provided by the person pursuant to subsection (1), any other evidence presented by the supervisor of elections, and, in the case of a challenge, any evidence presented by the challenger. A ballot of a person casting a provisional ballot shall be counted unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote.")

37   Alexander N. Mosca, email message to POGO Senior Counsel Jake Laperruque, "RE: Provisional Voting Data," September 4, 2018.

38   Ga. Code Ann. §21-2-419(c)(3) (Lexis Advance through the 2018 Regular Session of the General Assembly). ("If the registrars…shall be unable to determine within three days following such primary or election whether such person timely registered to vote…such ballot shall not be counted.")

39   Ind. Code § 3-11.7-5-2(a) (Burns, Lexis Advance through the end of the Special Session of the 120th General Assembly). ("…if the county election board determines that all the following apply, a provisional ballot is valid and shall be counted…. Based on all the information available to the county election board, including: (A) information provided by the provisional voter; (B) information contained in the county's voter registration records; and (C) information contained in the statewide voter registration file; the provisional voter registered to vote at a registration agency under this article on a date within the registration period.")

40   Angie Nussmeyer, email message to POGO Senior Counsel Jake Laperruque, "RE: Provisional Voting Data," September 4, 2018.

41   Kan. Admin. Regs. § 7-36-7(g) (Lexis Advance through Kansas Register Volume 37, Number 42, October 18, 2018). ("The county election officer shall present each provisional advance voting ballot to the county board of canvassers for a determination of validity. If the voter provided additional information, an updated signature, or an additional photocopy upon request by the county election officer and if the information, signature, or photocopy is consistent with the voter registration list, the ballot shall be counted unless the ballot is determined to be invalid for another reason.")

42   31 Ky. Admin. Regs. 6:020(4)(13) (Lexis Advance through the regulation process).

43   Louisiana Secretary of State, "Voting Provisionally." https://www.sos.la.gov/ ElectionsAndVoting/Vote/FrequentlyAskedQuestions/Pages/VotingProvisionally. aspx?OwnershipName=VotingProvisionally&faqid=0&PF=1&PF=1&PF=1 (Downloaded October 22, 2018)

44   Sherri Wharton Hadskey, email message to POGO Senior Counsel Jake Laperruque, "Response to your questions," August 27, 2018.

45   Mass. Ann. Laws. ch. 54, §76C(d), (g) (LexisNexis, Lexis Advance through Act 268 of the 2018 Legislative Session). ("(d)A provisional ballot shall not be counted if the city or town clerk determines that the individual is ineligible to vote in the precinct in the election under the law of the commonwealth…. (g)The city or town clerk must determine persons to be entitled to vote a provisional ballot whenever

those persons have registered to vote in that city or town in the past….")

46   Debra O'Malley, email message to POGO Senior Counsel Jake
      Laperruque, "RE: Provisional Voting Data," August 27, 2018.

47   Debra O'Malley, email message to POGO Senior Counsel Jake Laperruque,
      "RE: Provisional Voting Data," September 6, 2018.

48   Mich. Comp. Laws § 168.813(1) (2018).

49   Mich. Comp. Laws § 168.813(1).

50   Terri Williams, email message to POGO Senior Counsel Jake Laperruque,
      "RE: Provisional Voting Data," September 10, 2018.

51   Miss. Code Ann. § 23-15-573(3)(c) (Lexis Advance through the 2018 Regular Session).

52   Mississippi law requires that "The Secretary of State shall print and distribute a
      sufficient number of affidavit ballot envelopes to the registrar of each county for use in
      elections." Miss. Code Ann. § 23-15-573(6). Without more information it is impossible
      to know if this is interpreted to require sufficient provisional ballots for all registered
      voters, or merely an estimate based on the typical number of provisional voters.

53   Mo. Rev. Stat. § 115.430(5)(1) (2006). ("Prior to counting any provisional
      ballot, the election authority shall determine if the voter is registered
      and eligible to vote and if the vote was properly cast.")

      54 Neb. Rev. Stat. § 32-1002(4)(a) and (5)(a).

55   Andrew Buller, email message to POGO Senior Counsel Jake
      Laperruque, "RE: Provisional Voting Data," August 28, 2018.

56   Nev. Rev. Stat. § 293.3085(3) (2017). ("…a provisional ballot must be counted if:
      (a) The county or city clerk determines that the person who cast the provisional
      ballot was registered to vote in the election, eligible to vote in the election and
      issued the appropriate ballot for the address at which the person resides.")

57   Wayne Thorley, email message to POGO Senior Counsel Jake
      Laperruque, "RE: Provisional Voting Data," August 28, 2018.

58   N.J. Stat. § 19:53C-3(g). ("If the voter's registration information is missing, the voter
      shall be permitted to vote by provisional ballot after completing the affirmation
      statement attached to the envelope provided with the provisional ballot.")

59   N.J. Stat. 19:53C-13.

60   N.M. Stat. Ann. § 1-12-25.4(C) (LexisNexis, Lexis Advance through all
      2018 Regular Session enactments of the 53rd Legislature).

61   N.M. Stat. Ann. § 1-12-25.4(D).

62   N.Y. Elec. Law § 9-209 (Consol., Lexis Advance through 2018 Chapters 1-321).

63   Ohio Rev. Code Ann. § 3505.183(B)(3). ("If, in examining a provisional ballot affirmation
      and additional information under divisions (B)(1) and (2) of this section and comparing the

information required under division (B)(1) of this section with the elector's information in the statewide voter registration database, the board determines that all of the following apply, the provisional ballot envelope shall be opened, and the ballot shall be placed in a ballot box to be counted: (a) The individual named on the affirmation is properly registered to vote…")

64   Ohio Secretary of State, Ohio Election Official Manual, August 1, 2018, pp. 4-22. https://www.sos.state.oh.us/globalassets/elections/directives/2017/dir2017-10_eom.pdf (Downloaded October 22, 2018)

65   Okla. Stat. tit. 26, § 7-116.1(C) (2017). ("Information provided by a person who votes a provisional ballot shall be investigated by the secretary of the county election board after the election. A provisional ballot shall be counted only if it is cast in the precinct of the voter's residence and if evidence of the provisional voter's valid voter registration, or of the voter's identity, is found….")

66   25 Pa. Stat. § 3050(a.4)(6) (West 2012).

67   25 Pa. Stat. § 3050.

68   410-20 R. I. Code R. § 00-13.7(C) (Lexis Advance through September 28, 2018).

69   Miguel J. Nunez, email message to POGO Senior Counsel Jake Laperruque, "RE: Provisional Voting Data," August 27, 2018.

70   South Carolina Election Commission, Poll Managers Handbook, Revised April 2016, p. 28. https://www.scvotes.org/files/PMHandbook/SEC%20MNL%201100-201604%20Poll%20Managers%20Handbook.pdf ("Unless the challenger is present at the hearing, produces witnesses in support of the challenge, or provides evidence in writing to support the challenge prior to the hearing, the provisional ballot will be counted. The challenger should make every effort to be in attendance at the hearing. Nothing prohibits the county board from continuing any challenge administratively as long as it has evidence to sustain the challenge.") (Downloaded October 22, 2018)

71   S.C. Code Ann. § 7-13-430(A) (2018).

72   S.C. Code Ann. § 7-13-430(B).

73   S.D. Codified Laws § 12-20-5.1 (2018). ("If there is no evidence that a voter registration form had been completed by the person showing a residence address in that precinct and returned to an official voter registration site prior to the deadline to register to vote for the election, the provisional ballot is invalid.")

74   Tenn. Code Ann. § 2-7-112(a)(3)(A)(i) (Lexis Advance through the 2018 Regular Session). ("If the election official cannot determine that the voter's name should have been placed on the precinct's computer signature list, then the voter shall complete an original voter registration application. At the time of registration and pursuant to subsection (d), the voter shall present verification of the residential address under which the person desires to vote.")

75   Tenn. Code Ann. § 2-7-112(a)(3).

76   Tex. Elec. Code § 65.054(b)(1) (2017).

77   Representative of the office of the Secretary of State of Texas Elections Division, in
      phone interview with POGO Senior Counsel Jake Laperruque, September 2018.

78   Va. Code Ann. § 24.2-653(B) (2018). ("…provisional vote shall be counted if (a) such
      person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the Department
      of Elections or the voter presents proof that indicates the voter submitted an application
      for registration to the Department of Motor Vehicles or other state-designated voter
      registration agency prior to the close of registration pursuant to § 24.2-416 and the
      registrar determines that the person was qualified for registration based upon the
      application for registration submitted by the person pursuant to subsection A.")

79   Representative of the Richmond, Virginia, Office of the General Registrar, in phone
      interview with POGO Senior Counsel Jake Laperruque, September 2018.

80   W. Va. Code Ann. § 3-1-41(e) (LexisNexis, Lexis Advance through all 2018 Regular Session
      Legislation). ("The county commission shall, on its own motion, at the time of canvassing of
      the election returns, sit in session to determine the validity of any challenges [to provisional
      ballots] according to the provisions of this chapter. If the county commission determines that
      the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise
      valid, shall be counted and tallied together with the regular ballots cast in the election. The
      county commission, as the board of canvassers, shall protect the privacy of each provisional
      ballot cast. The county commission shall disregard technical errors, omissions or oversights
      if it can reasonably be ascertained that the challenged voter was entitled to vote.")

81   W. Va. Code Ann. § 3-1-34(a)(5)(A).

82   Representative of the West Virginia Secretary of State's Office, in phone
      interview with POGO Senior Counsel Jake Laperruque, September 2018.