

Contact: Barbara Peck
614.292.0283
peck.5@osu.edu
electionlaw.osu.edu

Illinois Election System Receives Poor Marks

COLUMBUS, OHIO – A new nonpartisan study finds serious problems with how elections are administered in Illinois. Researchers at *Election Law @ Moritz* at The Ohio State University Moritz College of Law conducted a comprehensive study of the election administration systems in five key Midwestern states – Ohio, Illinois, Michigan, Wisconsin and Minnesota, focusing on how voters register, ballots are cast, and recounts are conducted.

“The biggest problem we found in Illinois is that the administration system in Illinois is decentralized with insufficient state-level leadership or guidance,” said Edward Foley, director of *Election Law @ Moritz*. “The consequence is inconsistencies in the administration of elections across the state, and these inconsistencies could serve as the basis of a lawsuit, especially in a fight over a tight statewide election.”

In addition, the study shows the state’s history of election fraud has led to distrust and a general lack of cooperation among local election officials. While election fraud in Illinois is diminishing overall, there remains a risk of purposeful efforts to subvert the integrity of the voting process. Recently, the greatest number of illegal activities involve absentee ballots. Although the state has undertaken measures to thwart election fraud, including audits of vote counts, it would benefit from further rules and practices designed to secure the transparency, accuracy and fairness of elections.

“Our primary recommendation to improve the Illinois system is to replace the state board of elections with a nonpartisan elections director that has the power to establish and enforce regulations,” Foley said. “It is important that this official have the stature in the community to command the respect of the governor and the legislature, yet at the same time remain independent from them and other partisan forces.”

The study also recommends that Illinois set up special tribunals to handle election disputes, which would bypass the state’s judiciary system. To date, the state’s judiciary has struggled to handle cases involving election administration. For example, despite more than 20 cases involving the handling of ineligible ballots that cannot be separated from legitimate ballots, no rule of law has developed and, as a result, jurisdictions treat this predicament differently.

“Illinois has made considerable progress since the problems it had in the

1982 governor's election," Foley said, "but those reforms remain incomplete, and our assessment is that Illinois still would have great difficulty handling a dispute over the results of a close statewide vote like the one in 1982."

Each of the five states included in the report has a unique election system, and collectively they represent the variety of systems used across the nation.

"What really stood out is that states with strong, nonpartisan oversight had significantly fewer problems," said Dan Tokaji, associate director of *Election Law @ Moritz*. "The registration process still functions as a barrier to participation in some states. On the other hand, Minnesota and Wisconsin have great Election Day Registration systems that increase turnout while reducing the need for provisional ballots."

The study makes several key recommendations for election systems across the country:

1) **Enhance registration options.** States should work to improve access to voting by relaxing barriers to voter registration. Both Minnesota and Wisconsin allow Election Day Registration and the study found no increased fraud under these systems. Other states reluctant to embrace this reform might consider Michigan's system of affidavit voting, which protects voters whose names are not on the voter rolls even though they have attempted to register.

2) **Favor early voting.** States should consider in-person early voting instead of expanded absentee voting. Absentee voting is the area of election administration most vulnerable to fraud, with serious allegations occurring in Michigan and Illinois.

3) **Clarify provisional voting standards.** States should provide clear guidance on when provisional ballots should be cast and counted. In many states, including Ohio and Illinois, individual counties hand out and count provisional ballots using different rules, calling into question the integrity and equality of the state's system.

4) **Improve poll worker programs.** Poll worker recruitment and training should be enhanced. This area was a problem in all five states studied and can lead to long lines at the polls, polling places opening late, and the mishandling of ballots and electronic voting machine memory cards.

5) **Reform post-election dispute processes.** The process for evaluating post-election disputes, including recounts, should be reviewed. None of the five states had a final arbiter of disputes in place that was perceived as fair and evenhanded. While disputes should be rare in a solid system, they do occur in close races, when tensions are running high. In these situations, a trustworthy system for handling these disputes is ideal. In addition, Congress should

consider giving states more time to evaluate and settle disputes in presidential elections. The current timeline of 35 days is not enough time for most disputes to work their way through a state's legal system.

The study was conducted with the financial support of The Joyce Foundation. The full analysis and recommendations are available in the book *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*. To read the book and a state-by-state breakdown of the analysis, visit www.electionlaw.osu.edu.

Election Law @ Moritz, an award-winning program of The Ohio State University Moritz College of Law, has rapidly become one of the country's premier centers of election law expertise. The program provides nonpartisan information and insight on election law and administration, and on important issues, developments and trends within the field. Through its web site (www.electionlaw.osu.edu), faculty scholarship, annual conferences, speaker series and participation in academic and government sponsored examinations of election law, *EL@M* has become a resource to which the public, academics and government officials turn for accurate and non-partisan information and analysis concerning election law and administration. *EL@M* has also become a resource to which the media has turned repeatedly for assistance in its attempt to educate the public on election law and administration facts, issues and developments.

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Summary of Illinois Findings and Recommendations

Election Law @ Moritz at The Ohio State University Moritz College of Law recently completed an in-depth analysis of the election administration systems in five key states, including Illinois. During the analysis, Illinois was found to have significant problems in election administration. Key findings and recommendations for Illinois include:

Findings:

- 1) Illinois has a weak and decentralized election administration system, with many of the 110 election jurisdictions operating almost entirely independent of the state board of elections. This has led to inconsistencies across counties and states in almost every area, including provisional voting.
- 2) Illinois has a significant history of fraud, including over 50 prosecutions in the last 25 years. While overall fraud has diminished and the voter registration system has been improved, the state's history has led to distrust and a lack of cooperation among election officials. In addition the area of absentee voting is an area with the potential for foul play.
- 3) There are two huge, separate election jurisdictions in Illinois – Chicago and Cook County – that must manage very complex elections and operate very independently. The state has exempted these areas from certain laws, including voter registration laws. In contrast, Illinois also has many small election jurisdictions that lack resources and legal counsel.
- 4) Because of the inconsistencies in the application of election laws among jurisdictions, there is a significant risk of litigation, especially Equal Protection claims, should there be a close election. To date, Illinois courts have struggled with election cases. For example, despite over 20 separate cases involving the treatment of ineligible ballots, no clear rule of law has emerged.

Recommendations:

- 1) Replace the state board of elections with a nonpartisan statewide elections director. This board was created in 1970 when election oversight was transferred from the secretary of state, but has proven weak and incapable of making and enforcing consistent regulations.
- 2) Increase the trust in the integrity of state elections by making local elections officials more accountable. Illinois is one of a few states that allow local

election boards to be dominated by one political party or another, which jeopardizes the credibility of the boards' work. Audits are also often poorly executed by local boards because of the lack of accountability.

3) Create nonpartisan tribunals to resolve election disputes.