



Legal Studies Paper No. 2013-14

“FIXING THAT”:
LINES AT THE POLLING PLACE

Professor Justin Levitt

“FIXING THAT”: LINES AT THE POLLING PLACE

Justin Levitt*

Abstract

“I want to thank every American who participated in this election, whether you voted for the very first time or waited in line for a very long time. [Pause.] By the way, we have to fix that.” With that ad-lib on Election Night, 2012, President Barack Obama put excessive wait times at the polls back onto the policy agenda. Lines stretched to ten hours in 2004, eleven hours in 2008, and seven hours in 2012; while most voters’ experience was relatively speedy, the system is visibly failing others.

We need not wait any longer to ensure that we need not wait any longer. This short symposium piece adapts lessons from queuing theory, long applied to private-sector customer service and public-sector transportation problems, to present a brief overview of the possible means to adjust the three primary causes of excessive bottlenecks. This short review is offered not as an endorsement of any particular intervention, but rather as the ready elaboration of a policy menu for reducing wait time.

* Visiting Associate Professor of Law, Yale Law School; Associate Professor, Loyola Law School, Los Angeles. B.A., Harvard University, 1995; M.P.A., Harvard Kennedy School, 2002; J.D., Harvard Law School, 2002. I would like to thank Renata Strause for her research assistance. All errors, of course, are my own.

INTRODUCTION

“I want to thank every American who participated in this election, whether you voted for the very first time or waited in line for a very long time. [Pause.] By the way, we have to fix that.”¹

Early in the morning of November 7, 2012, President Barack Obama addressed the nation, celebrating the electoral tally that had just confirmed his re-election, and gesturing to the work of the anticipated term ahead. Much of his speech displayed the familiar cadence of public rhetoric — hurdle and aspiration, juxtaposition and contrast, short parallel phrases delivered in the distinct meter of political poetics. But after acknowledging the burdens borne by voters asked to stand for hours in snow, rain, and even gloom of night in order to exercise the franchise, Obama seemed troubled by the notion that this existing state of affairs served as mere rhythmic counterpoint in a passing gesture of gratitude, as if it were an inevitable inconvenience. His next line, a break from the carefully constructed pattern of the speech, appeared to be an ad-lib occasioned by reflecting on the written text: “By the way, we have to fix that.”

The President has since returned to his election night exhortation. In both his Inaugural Address² and the State of the Union Address,³ he noted the imperative to ensure that no citizen waits for many hours in order to

¹ Barack Obama, President, Obama’s Victory Speech (Nov. 6, 2012), *available at* <http://blogs.wsj.com/washwire/2012/11/07/transcript-obamas-victory-speech/>.

² Barack Obama, *Obama’s Second Inaugural Speech*, N.Y. TIMES, Jan. 21, 2013, *available at* <http://www.nytimes.com/2013/01/21/us/politics/obamas-second-inaugural-speech.html> (“Our journey is not complete until no citizen is forced to wait for hours to exercise the right to vote.”).

³ Barack Obama, *State of the Union 2013: President Obama’s Address to Congress (Transcript)*, WASH. POST, Feb. 12, 2013, *available at* http://articles.washingtonpost.com/2013-02-12/politics/37059380_1_applause-task-free-enterprise (“We must all do our part to make sure our God-given rights are protected here at home. That includes one of the most fundamental rights of a democracy, the right to vote. . . . When any American — no matter where they live or what their party — are denied that right because they can’t wait for five or six or seven hours just to cast their ballot, we are betraying our ideals. . . . So, tonight, I’m announcing a nonpartisan commission to improve the voting experience in America. And it definitely needs improvement. I’m asking two long-time experts in the field -- who, by the way, recently served as the top attorneys for my campaign and for Governor Romney’s campaign -- to lead it. We can fix this. And we will. The American people demand it, and so does our democracy.”).

cast a ballot. The ad-lib has become a significant press for policy change: at least rhetorical, and possibly more.

The increased attention to excessive lines at the polls is both welcome and overdue. Two years ago, I wrote about the excessive lines of the 2008 cycle.⁴ Since then, policy changes in many states have increased, not reduced, the stress on election day polling operations.⁵

Excessive Election Day lines stretched to ten hours in 2004,⁶ eleven hours in 2008,⁷ and seven hours in 2012.⁸ Even when they do not prove outcome-determinative, such waits exact a real toll on real voters. Some lines become the tools of outright disenfranchisement when pollworkers unlawfully shut the doors prematurely, with timely and eligible voters left standing in the cold.⁹ Other voters are not physically able to remain on line,¹⁰ or are forced to contend with hours of lost wages¹¹ or child care

⁴ Justin Levitt, *Long Lines at the Courthouse: Pre-Election Litigation of Election Day Burdens*, 9 ELECTION L.J. 19 (2010).

⁵ See, e.g., Justin Levitt, *Election Deform: The Pursuit of Unwarranted Electoral Regulation*, 11 ELECTION L.J. 97, 101-02 (2012) (discussing unjustified legislation restricting counties' ability to provide early voting opportunities).

⁶ Michael Powell & Peter Slevin, *Several Factors Contributed to "Lost" Voters in Ohio*, WASH. POST, Dec. 15, 2004.

⁷ Dan Hardy & Nancy Petersen, *Long Lines for Lincoln University Students*, PHILA. INQUIRER, Nov. 5, 2008; *Movie Star Among Voters Running Into Problems*, CNN.com, Nov. 4, 2008, at <http://www.cnn.com/2008/POLITICS/11/04/voting.problems/index.html>.

⁸ Frances Robles et al., *Miami-Dade Will Not Have Full Results Until Wednesday*, MIAMI HERALD, Nov. 7, 2012.

⁹ See *id.*; Our Vote Live, Report #65450, <http://electionawareness.appspot.com/report/65450> (“Voter was in line in Indiana at 5pm, polls closed at 6, and she was not allowed to vote at 7pm.”); Our Vote Live, Report #64694, <http://electionawareness.appspot.com/report/64694> (“Voter arrived at polling place at 6:53, got in line, and was told at 7pm that everyone outside of the door had to go home.”).

¹⁰ See, e.g., Our Vote Live, Report #62092, <http://electionawareness.appspot.com/report/62092> (“Voter is not able to stand for long period of times and her polling place constantly had long lines.”); Our Vote Live, Report #62801, <http://electionawareness.appspot.com/report/62801> (“Said three different people fainted at three different times in three different parts of the room. . . . I asked if the room is warm, and was told it is not overly warm, and the monitor believes that the issue is just long lines.”). Indeed, some voters are told that they must remain on line without any opportunity to use the facilities in a multi-hour wait. Our Vote Live, Report #62623, <http://electionawareness.appspot.com/report/62623> (“Voter was told by the supervising clerk at the polling location that she could not leave the line to use the restroom. She was able to successfully vote after waiting in line for more than 3 hours.”).

expenses (if, indeed, child care is available).¹² And although excessive lines have aggrieved Democrats,¹³ Republicans,¹⁴ and those in nonpartisan races,¹⁵ this toll is not evenly shared. Seniors and individuals with medical conditions or disabilities are likely to feel the pain of lines more keenly,¹⁶ and preliminary research indicates that excessive lines arise disproportionately in minority areas, where voters are already underserved in other ways.¹⁷

Most Americans — fortunately — do not experience these extended waits. Surveys indicate that most voters perceive that they experience lines of 15 minutes or less on Election Day.¹⁸ These sporadic minor delays are inevitable and of minimal concern. But the comparative speed of most voters’ experience mitigates neither the burden on those Americans who are forced to wait for hours nor the collective

¹¹ Although many states require employers to grant employees a given amount of time to vote, few grant more than two hours — and no state requires that employees be fully compensated for this time. Levitt, *supra* note 4, at 22.

¹² *Id.*

¹³ See, e.g., Complaint, Ohio Democratic Party v. Blackwell, Case No. 2:04-cv-01055 (S.D. Ohio Nov. 2, 2004) (doc. 1); Democratic Party of Guilford County v. Guilford County Bd. of Elections, 342 N.C. 856, 857 (1996).

¹⁴ See Complaint, Fleming v. Gutierrez, Case No. 1:13-cv-00222 (D.N.M. Mar. 7, 2013) (doc. 1).

¹⁵ See, e.g., Stuart v. Anderson County Election Comm’n, 2009 WL 499524 (Tenn Ct. App. 2009); Parsons v. Huffman, 2008 WL 2262314 (Tenn. Ct. App. 2008); In re Election Contest as to Watertown Special Referendum Election of October 26, 1999, 628 N.W.2d 336, 338–39 & n.1 (S.D. 2001).

¹⁶ Our Vote Live, Report #65404, <http://electionawareness.appspot.com/report/65404> (“Cases of seniors waiting six hours in line and being taken to hospitals due to exhaustion.”).

¹⁷ See, e.g., *id.* at 23; Michael C. Herron & Daniel A. Smith, Early Voting in Florida, 2012, Nov. 7, 2012, at <http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf>.

¹⁸ See Pew Charitable Trusts, New Data on Lines at the Polls, Dec. 10, 2012, <http://www.pewstates.org/research/analysis/new-data-on-lines-at-the-polls-85899435524>; Charles Stewart III, *Waiting to Vote in 2012*, __ J. L. & POL. __ (forthcoming 2013). The vast majority of jurisdictions do not keep reliable estimates of their own wait times; in the absence of reliable third-party measurements, surveys constitute the most reliable data available.

That said, one limitation of current surveys is that most present national averages or the average experience state-by-state; it may be that the sample size of such surveys is too small to permit reliable comparisons among smaller jurisdictions. In a large jurisdiction, an unremarkable statewide average may well mask egregious lines in a particular county or precinct.

responsibility of all within the relevant jurisdiction to ensure equitable access to the electoral process.¹⁹

Moreover, even apart from the incremental instrumental harm, the persistence of multi-hour lines amount to a national embarrassment — or, rather, should amount to a national embarrassment, if we expect that a baseline attribute of responsible government is the capacity to accommodate its own constituent public. It is inspiring that so many have the fortitude to wait for so long to exercise a basic responsibility of citizenship. It is appalling that we require us to do so.²⁰

We need not wait any longer to ensure that we need not wait any longer. In commercial settings, scientists and analysts have developed a sophisticated understanding of lines, with interventions tailored to the bottleneck or bottlenecks in any given context. “Queuing theory” is the name given to this study of lines and wait times: similar problems show up in managing vehicular and telecommunications traffic, in product assembly lines, and in lines to procure or purchase services (like the DMV) or goods (like the latest iPhone).²¹ The basic contours apply to lines at the polls just as they do to these other queues: the more people or items arriving for a given transaction within a given window of time, the fewer points of service, and the longer each transaction, the longer the line.

This means that there are three basic levers to reduce peak wait times: reduce the number of people arriving at any one time, increase the points of service, or decrease the length of the transactions. The opportunities to mitigate lines by relieving these pressure points span the breadth of the “election ecosystem,”²² from voter registration to pollworker training. In

¹⁹ Although comparatively few areas in any given election suffer from truly excessive lines, the list is not merely a catalog of repeat offenders. Addressing these few recidivist jurisdictions will help, but not solve, the overall problem.

²⁰ This piece largely concerns lines to vote on Election Day, not during an early voting period, though many of the policy levers mentioned below have the potential to address lines forming during early voting as well. Lines during early voting have a different normative valence, given the voter’s opportunity to leave the line and return on Election Day.

²¹ See, e.g., DONALD GROSS ET AL., FUNDAMENTALS OF QUEUEING THEORY (4th Ed. 2008); G.F. NEWELL, APPLICATIONS OF QUEUEING THEORY (2d ed. 1982).

²² The phrase, developed by faculty at the Moritz School of Law, is an apt description of the interconnected sphere of election regulation. STEVEN F. HUEFNER ET AL., FROM

any particular jurisdiction, certain policies will be more likely to contribute to bottlenecks than others; certain interventions will therefore bear more immediate fruit than others in different jurisdictions.²³

The remainder of this piece offers a brief overview of the possible means to adjust the three primary causes of excessive bottlenecks. Scholars and advocates have elsewhere described most of these options in far greater detail: the point here is not comprehensive description. Moreover, I do not intend in this piece to endorse any particular measure. Many of these specific interventions cost money, involve nontrivial policy tradeoffs, or both. Some will be well worth the trade (and may well have positive externalities in correcting longstanding problems that unnecessarily impair equity and efficiency even when they do not lead to excessive lines). Some will not. And some will be worth the trade in some jurisdictions but not others, depending on local context.

Instead of a comprehensive recommendation, then, this short review is offered as the ready elaboration of a policy menu for reducing wait time, structured through the lens of the queueing theory deployed successfully in other contexts. Some combination of some of the elements below should be deployed in jurisdictions that have suffered excessive lines in the past, and should likely be adopted prophylactically in those that have not. A modern republic should be able to allow its constituent citizens to vote without standing for eleven hours.

A. REDUCING ARRIVAL CLUSTERS

One of the basic levers to reduce wait times is policy that reduces the number of people who arrive at the polls at any one time. I take as a basic presumption that the electorate will continue to grow, and that candidates will at various times find it in their interest to increase the raw volume of turnout, by engaging eligible members of the electorate who may not have participated regularly in the past. I also take as a normative presumption that a principal goal of the election system is to accommodate eligible voters who wish to participate.²⁴ The trick, therefore, is to manage ever-

REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES 11 (2007).

²³ Indeed, most of the interventions will work best in combination.

²⁴ I have discussed this presumption at greater length before. See Justin Levitt, *Resolving Election Error: The Dynamic Assessment of Materiality*, 54 WM. & MARY L. REV. 83, 95-97 & n.73 (2012).

increasing numbers of eligible electors while ensuring that they do not all arrive at the polls at the same time.

Increased opportunities to vote by mail. When more individuals vote absentee, there are fewer people in the pool of voters who may be forced to wait at the polls. Beyond its ability to reduce lines, there are both benefits and risks to expanded voting by mail. Access to absentee ballots may increase turnout in low-salience, off-cycle elections²⁵ — particularly if absentee ballots are delivered automatically — and may offer voters the opportunity to consider their ballot choices at greater length.²⁶ On the other hand, there are valid concerns about the security of absentee ballots,²⁷ about the enhanced possibility of coercion in voting beyond the polling place,²⁸ about the potential for voter or official error and the reduced ability to resolve that error successfully,²⁹ about late-breaking news arriving after absentee ballots are cast,³⁰ and about the administrative costs of processing and tallying absentee ballots after election day.

For jurisdictions that nevertheless wish to expand the use of absentee ballots as a means to reduce the potential for lines, there are several ways to do so. For example, though most states permit no-excuse absentee voting, 21 states allow only certain voters to vote absentee.³¹ Allowing any

²⁵ See Robert M. Stein & Greg Vonnahme, *Early, Absentee, and Mail-In Voting*, in THE OXFORD HANDBOOK OF AMERICAN ELECTIONS AND POLITICAL BEHAVIOR 182, 185-86 (Jan E. Leighley ed., 2010).

²⁶ See Priscilla L. Southwell, *Voting Behavior in Vote-By-Mail Elections*, 10 ANAL. OF SOC. ISS. & PUB. POL. 106, 107 (2010).

²⁷ See, e.g., *Marks v. Stinson*, 19 F.3d 873, 877 (3d Cir. 1994); *In re The Matter of the Protest of Election Returns and Absentee Ballots in the November 4, 1997 Election for the City of Miami*, 707 So.2d 1170, 1171-72 (Fla. Ct. App. 1998); *Newark Man Indicted on Election Fraud Charges*, NEWARK STAR-LEDGER, Mar. 23, 2009.

²⁸ See, e.g., Jessica A. Fay, *Elderly Electors Go Postal*, 13 ELDER L.J. 453, 454, 464-65 (2005).

²⁹ See, e.g., Levitt, *supra* note 24, at 90; LAWRENCE NORDEN, THE MACHINERY OF DEMOCRACY 103-04 (2006); Bob von Sternberg, *Minn. Race Spotlights National Problem*, WASH. POST, Dec. 21, 2008. A national study of the 2008 election estimated that absentee ballots were deemed invalid at a rate twice as large as the rate for in-person votes. See R. Michael Alvarez et al., 2008 Survey of the Performance of American Elections 59-60 (2008), available at <http://www.pewcenteronthestates.org/uploadedFiles/Final%20report20090218.pdf>.

³⁰ See, e.g., Tim Jones, *Hand Count Latest Wrinkle in Close, Bizarre, and Vital Race*, CHI. TRIB., Nov. 6, 2002; Scott Martelle, *Taking Initiative: Early-Bird Voters Can Get Burned*, L.A. TIMES, Feb. 5, 2008.

³¹ NCSL, Absentee and Early Voting, at <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>.

eligible voter to cast an absentee ballot would encourage more voting by mail.

It is also possible to smooth the absentee application process. Rather than ask voters to apply for an absentee ballot in each cycle, allowing voters to request “permanent” absentee status³² will encourage voting by mail. The process could be made smoother still by allowing such a request on the same form as an application for voter registration, much like the single registration-and-absentee form for military and overseas citizens.³³

Some states have been even more proactive. In 2012, Ohio officials sent all eligible electors an application for an absentee ballot.³⁴ Note that many states currently restrict the circumstances under which a voter may vote in person after receiving an absentee ballot; if states begin proactively sending absentee ballot applications (or, even more aggressively, absentee ballots) to all, these statutes may need revision in order to preserve voters’ ability to choose to vote at the polling place instead.

Increased opportunities to vote early, in person. More individuals voting before Election Day also means fewer people in the pool of voters who may be forced to wait at the polls on Election Day. When Florida reduced the available days for early voting in 2011, it headed in precisely the wrong direction with respect to anticipated lines at the polls.³⁵ And perhaps it is unsurprising that Florida “featured” the worst reported lines in the country in 2012. Because early voting essentially mimics the Election Day experience, albeit in consolidated polling centers, it raises few of the security and usability concerns with respect to absentee ballots. The primary downside appears to be cost.

Election Day as a holiday. Lines are generally the longest at the beginning of the day and the end of the day, because voters are trying to vote before

³² Seven states currently offer voters the opportunity to become “permanent” absentee voters. *See id.*

³³ Federal Post Card Application (FPCA) Voter Registration and Absentee Ballot Request, at <http://www.fvap.gov/resources/media/fpca.pdf>; *see also* 42 U.S.C. § 1973ff(b)(2) (setting forth the legal requirement for a single combined form).

³⁴ Ohio Sec’y of State, Press Release, Secretary of State Husted: Ohio Voters to Receive Statewide Absentee Ballot Applications Just After Labor Day, Aug. 30, 2012, at <http://www.sos.state.oh.us/mediaCenter/2012/2012-08-30.aspx>.

³⁵ *See, e.g.,* Levitt, *supra* note 5, at 101-02.

going to work or after coming from work. If voters need not work on the day of the election, they may more naturally spread out their arrival time. With an Election Day holiday (or holidays), it may also be possible to suggest that certain groups of voters vote within a certain window, much like some amusement parks do for popular rides,³⁶ to nudge the electorate toward a dispersed arrival time. The major caveat to the suggestion to make Election Day a holiday is that most holidays are, typically, not truly holidays for a substantial portion of the eligible electorate — if those on holiday can buy goods or services on the holiday, the sellers and providers are working. An Election Day holiday would create the prospect of a distinct electoral skew if the holiday were not meaningfully enjoyed by all, equally.

B. INCREASING POINTS OF SERVICE

The second basic lever to reduce wait times is policy that increases the functional points of service for the voters who do arrive, to process more voters in parallel. The trickiest issue here is the need to preserve efficiency: undercapacity causes the lines, overcapacity wastes money, and some precincts may be over capacity at some points of the day and under capacity at others. That said, with the will to spend resources, there are several opportunities to increase the points of service for the voters arriving.

Increased numbers of polling places. In an era of cost squeezes, it is unsurprising to find interest in consolidating polling place operations into “vote centers.”³⁷ However, consolidated polling places mean that more people are arriving in the same place. The more polling places there are, the fewer voters each location will serve, and the shorter the lines confronting any given individual.

Larger polling places with more space. Though vote centers may attempt to serve more voters at the same time, they do tend to be located in larger physical spaces, which allows for a flexible polling place layout that can be

³⁶ See, e.g., Disney FASTPASS Service, <http://disneyland.disney.go.com/plan/guest-services/fastpass/> (last visited Mar. 14, 2013).

³⁷ See Dr. Raymond H. Scheele et al., *Improving Election Administration With Vote Centers: Toward a National Model* 2-4, 14-24 (Bowen Ctr. For Public Affairs, Paper prepared for delivery at W. Pol. Sci. Ass’n, Mar. 19, 2009), <http://cardinalsolar.bsu.edu/bitstream/123456789/194945/1/wpsa09VancouverPaper.pdf>.

far more tailored to efficient voter service. Acknowledging that election officials rarely have their pick of optimal locations on Election Day, careful site selection even outside of the vote center context may help mitigate the constraints that a smaller space imposes. When a polling place is sited in a small building — or part of a building, like a citizen’s garage — there may be limited space for multiple voting machines or booths to fill out ballots, which decreases the ability to have multiple electors voting at once. Larger polling places avoid that problem (and, as public buildings or commercial sites, may also be more likely to be ADA-compliant).

More pollworkers. The shortage of qualified and reliable pollworkers is a perennial complaint, for good reason.³⁸ One of the recurring opportunities for a bottleneck is in the process for checking voters in to the polling place. In the 2012 election, several counties were identified by international observers as having difficulty recruiting a sufficient number of pollworkers to facilitate check-in;³⁹ it is likely that many more shared difficulty recruiting qualified staff. Nebraska allows counties to require pollworker service, much like jury service;⁴⁰ Ohio recently considered the idea.⁴¹ Such proposals might go a long way toward increasing the salience of elections more generally, particularly for off-cycle elections or primaries. Short of requiring pollworker service, there are multiple other ways to facilitate recruitment, including better pay, shorter shifts, course credit for students, or — counterintuitively — allowing pollworkers to forego payment, to avoid any possibility that service might interfere with volunteers’ pensions.⁴²

³⁸ In 2010, 30% of all local election officials said that it was “somewhat difficult” or “very difficult” to recruit sufficient poll workers; in 2008, the number was 33%. U.S. ELECTION ASSISTANCE COMM’N, 2010 ELECTION ADMINISTRATION AND VOTING SURVEY 75-76 (2011), http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf; U.S. ELECTION ASSISTANCE COMM’N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY 68-69 (2009), <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>.

³⁹ OSCE, Statement of Preliminary Findings and Conclusions 4 n.7 (Nov. 2012), <http://www.osce.org/odihr/96960>

⁴⁰ NEB. REV. STAT. § 32-221(2).

⁴¹ Solving the Epidemic of Disappearing Poll Workers – Part 2: A Poll Worker Draft?, State of Elections.com, Apr. 21, 2010, <http://electls.blogs.wm.edu/2010/04/21/solving-the-epidemic-of-disappearing-poll-workers-%E2%80%93-part-2-a-poll-worker-draft/>.

⁴² NCSL, Poll Workers: Everybody’s Concern, The Canvass (May 2012), <http://www.ncsl.org/legislatures-elections/elections/the-canvass-may-2012.aspx>.

Tailored pollbooks. It is standard operating procedure in many precincts to equip one check-in station with a single printed pollbook containing all of the voters in the precinct. By deploying multiple pollbooks⁴³ or splitting the pollbook (e.g., last names A-I, J-Q, R-Z), it may be possible to create several lines moving at the same time, instead of just one. The downside of split pollbooks is that it may be substantially more difficult to locate a name variation: if Gabriel Garcia Marquez is listed under “Garcia,” rather than “Marquez,” he may be in a different pollbook — and when he arrives at the front of the wrong line, it will not be immediately apparent that the problem is the listing of his name and (therefore) his choice of line, rather than a more fundamental registration flaw.

Electronic pollbooks can mitigate this issue: each of several linked stations contains the full pollbook, and allows for splitting the lines just as if multiple print pollbooks were involved. And in an improvement over print, the electronic pollbooks can often be centrally networked, avoiding any potential for multiple check-in. However, if the electronic pollbooks fail — temporarily or permanently, as some county systems did in 2012 — it may be even more difficult to continue processing voters with a smooth and secure check-in operation; when electronic pollbooks fail, it is more difficult to stop lines from growing. And either a split pollbook or several electronic pollbooks will require additional pollworkers to staff them.

More machines/voting stations/scanners. Sometimes the check-in process is smooth, but a bottleneck forms in the process of casting a ballot. In some polling places, there are simply too few voting machines, or privacy stations for paper ballots, or optical scanners to scan those paper ballots. Lines develop as voters wait for an available machine or voting station. If the physical space exists within the polling station, more voting stations (or scanning machines to process the ballots) will help move more voters through at one time.

Improved voting system maintenance. On occasion, polling places are allocated adequate numbers of voting machines or scanners — and then those systems jam or break (or are left unplugged). In every cycle, there are

⁴³ Using multiple non-split pollbooks at, for example, the same check-in table does pose a potential risk that someone will seek to check in using the pollbook in one line, and then attempt to vote a second ballot using the pollbook in another line. Such a scheme seems unlikely, given the risk that a neighboring pollworker would notice a repeat customer — but a more empirical assessment of the prevalence of such problems is difficult to conduct given existing aggregate data records.

many reports of machine failures on Election Day: sometimes the failures are temporary and sometimes they linger all day; sometimes they affect just one machine and sometimes several.⁴⁴ When the machines are down, lines get longer. Investing in proper maintenance may help keep machines operational. But it is also important to minimize user error: better pollworker training — or selecting machines with simple design resistant to pollworker mistakes — may help keep machines running.

Paper ballots as alternative to machines. When electronic pollbooks break down, it can be cumbersome to transition to paper pollbooks (particularly because it is difficult to account for those voters who have already been checked in using the machines). But when voting machines break down, paper ballots serve as a ready alternative to keep voters moving through the polls at a convenient clip. And when scanners break down, the paper ballots that have already been completed can simply be stored for later scanning. Technological solutions may well be superior when the technology is functioning — but there is little downside to being legally and logistically prepared to use older technology as a backup for when the technology fails.

More ballots. Finally, sometimes the resource constraint at the point of service is itself paper. Several polling stations in 2012 simply ran out of either regular ballots, or provisional ballots, or both — or the pens to mark them.⁴⁵ This is not a new problem. And it is not excusable. When there are no more ballots or pens, voters must wait in line until more supplies are procured, and when voters continue to arrive during the wait, lines grow ever larger. The marginal cost of the incremental paper or pens to serve the jurisdiction is surely a cost that an advanced democracy can afford. Or, if extra paper supplies are a concern, particularly at centralized polling sites with many different ballot styles for many consolidated precincts, it may be worth investing in ballot-on-demand printers: printers that can print the appropriate ballot right at the moment, for any given precinct configuration given the voter's street address.

⁴⁴ See, e.g., ELECTION PROTECTION, OUR BROKEN VOTING SYSTEM AND HOW TO REPAIR IT 38-39 (2013),

<http://www.866ourvote.org/newsroom/publications/document/EP-2012-Full-Report.pdf>; Our Vote Live, Search Reports: Voting Equipment Problem, <http://bit.ly/YgQNzV> (last visited Mar. 15, 2013).

⁴⁵ See, e.g., Karen Herzog, *Racine Ran Out of Ballots at Several Locations*, *Poll Observers Report*, MILWAUKEE J.-SENTINEL, Nov. 6, 2012; Mary Vorsino & Gregg K. Kakesako, *Ballot Shortages Turn Voters Away From Polls*, HONOLULU STAR-ADVERTISER, Nov. 7, 2012.

C. DECREASING THE TIME REQUIRED FOR EACH TRANSACTION

The third basic lever to reduce wait times is policy reducing the amount of time that each voter spends at the polls. The longer each transaction, the more the lines grow. Some of the opportunities here can be addressed at the polls themselves, but some of them are opportunities existing far upstream.

Better information for voters. One of the most common calls that nonpartisan election protection hotlines receive is a simple informational call from a voter wanting to know where her polling place is or whether she is registered.⁴⁶ Many of the voters who do not call the hotline arrive at their local polling place with similar questions, and find that they are not registered, or that they have come to the wrong precinct. When pollworkers don’t immediately see a voter on the pollbook, and have to work to resolve the problem, that encounter takes time. Better information for voters — ensuring that people knew readily how to get registered, whether they are registered at their current address, and where their local polling place is located — would help save substantial time for each voter arriving.

A modernized voter registration system. In many ways, the problems above are best attributed to an antiquated, 19th-century system of voter registration that depends primarily on repeated private efforts to get registered and stay registered despite data-entry and other mistakes. Every registration lapse or mistake leads to an extended interaction at the polls, as pollworkers with partial information attempt a limited forensic investigation into the source of the problem. As they scramble, lines grow. We have the means, instead, to modernize the voter registration system, tying citizens’ individual interactions with government more closely to the rolls, so that people can be registered easily and accurately whenever they interact with public systems, and stay registered when they move. Such modernized systems keep the rolls more up to date, minimizing opportunities for fraud, and are significantly cheaper than the cumbersome and error-laden system in place in most jurisdictions today.⁴⁷

⁴⁶ See, e.g., Our Vote Live, Search Reports: Polling Place Inquiry, <http://http://bit.ly/ZWwhYY> (last visited Mar. 15, 2013).

⁴⁷ See, e.g., Voter Empowerment Act of 2012, H.R. 5799/S. 3608, 112th Cong., Title I, available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s3608is/pdf/BILLS->

And when they work well, citizens go to the polls and quickly find themselves correctly registered, which cuts down on the time that they spend checking in.

Electronic pollbooks with smart search. Without fixing the registration system, the rolls will contain errors — and when “John Smith” is listed in an alphabetized pollbook as “John Wmith” or “John Smoth,” it can be very difficult (and time-consuming) to find the right place to sign in. Electronic pollbooks can be designed with “smart searches,” to pull up the correct name corresponding to the correct address, with signature or other verification to ensure that the voter is the right person. These smart search technologies — most readily seen in engines like Google, which compensates for minor typographical error — can cut down on time and confusion. The downside: as mentioned above,⁴⁸ if the electronic pollbooks fail, substitute check-in systems may actually take more time.

Election-day registration. Election-day registration is a sort of failsafe procedure for the registration system: it never supplants regular registration, but it does offer a procedure for correcting problems without a last-minute scramble. Jurisdictions that are set up for election-day registration usually have a separate check-in station for voters that need to register anew or correct their registration information. This provides, without meaningful loss of security or jeopardy to the franchise, a separate but equally valid track for the relatively few people whose registration has been snagged in some way and will require the most time for check-in. And as a result, it speeds the voting process for everyone else in line.

Pollworker training. Pollworkers are the backbone of the American electoral system: without the volunteer or quasi-volunteer efforts of these citizens, elections simply would not function. But the vast majority of pollworkers do not live and breathe the election code, and are brought in for just a few hours of training before any given election. When unusual situations arise, many pollworkers are not sufficiently trained to handle the situation with accuracy. Disputes with voters or observers about the proper application of the law take time, holding up the voting process for all. The better trained that pollworkers are, the better they will be able to address — accurately — unusual concerns that may arise.

112s3608is.pdf; Brennan Center for Justice, Voter Registration Modernization, http://www.brennancenter.org/content/pages/voter_registration_modernization.

⁴⁸ See *supra* text accompanying note 43.

Accessibility. Pollworkers are likely to be less familiar with less standardized interactions, including service for eligible voters with disabilities or limited English proficiency. As a result, ensuring that these citizens are readily able to vote may end up requiring extra time to the extent that pollworkers do not have alternative procedures top of mind. The more thought that is put into pollsite design to accommodate persons with disabilities, or providing readily accessible translated materials (via paper or electronically) before an election, the smoother these procedures are likely to be on Election Day. And far more generally, the more user-friendly the election systems and procedures, the less time that each voter will need in the polls.

Simplified pollsite procedural design. Even the best training could use an assist from election procedures that are better designed to promote simplicity without sacrificing any other electoral value. Some “extra” steps are not extra at all: they improve security or promote flexibility so that ineligible persons are excluded and eligible voters are not unnecessarily shut out of the process. But some procedures are unduly complex, without any good reason. Professionals have devoted a great deal of attention to physical design characteristics that improve both accuracy and speed for filling out registration forms and ballots, but these principles are still too seldom adopted.⁴⁹ And most jurisdictions have only just begun, for example, to experiment with cues like color-coding to help pollworkers manage the flow of procedural paper. Far more could be done to make the process at the polls easier — and therefore quicker — for both voters and pollworkers alike.

Sample ballots. Ballots vary tremendously in length and complexity; in some of the Florida precincts where voters waited longest, the ballots were many pages long.⁵⁰ Voters who examine the ballots for the first time in the voting booth may, understandably, take a long time to decide on their choices, particularly if the ballot includes lengthy initiatives. Providing voters with sample ballots, and encouraging voters to mark those ballots ahead of time and bring their sample ballots to the polling

⁴⁹ See, e.g., MARCIA LAUSEN, DESIGN FOR DEMOCRACY: BALLOT + ELECTION DESIGN (2007); LAWRENCE NORDEN, BETTER DESIGN, BETTER ELECTIONS (2012); LAWRENCE NORDEN ET AL., BETTER BALLOTS (2008).

⁵⁰ See, e.g., Miami-Dade County Elections Department, Official Sample Ballot, General Election, Nov. 6, 2012, at http://www.miamidade.gov/elections/s_ballots/11-6-12_sb.pdf.

place as a guide, may help speed the voting process and compensate for the length of the ballot in extreme circumstances.

C. THE STRUCTURE OF POLICY CHANGE

It is unlikely that a one-size-fits-all solution to the problem of excessive lines will be appropriately tailored to every jurisdiction, from the smallest rural Wisconsin municipality to the 7.4 million voting-age citizens of Los Angeles County. Many combinations of the above ideas will help relieve congestion at the polls, but some combinations will be more suited to certain jurisdictions than others. Several legal regimes will encourage jurisdictions to determine the appropriate mix for themselves, allowing flexibility and local variation to be an engine of positive change.

Carrots. Though vanishingly few jurisdictions currently enjoy ample budget surplus, 10-hour lines to cast a ballot ought to be beyond the pale even in lean times. Local, state, or federal legislators might offer resources for strapped administrators: budget allocations for more machines or ballots, or roomier polling places, or pollworker recruiting and training, or cash incentives for meeting predetermined thresholds like a set number of machines per hundred voters. Jurisdictions with particular foresight might even be persuaded to invest in some of the changes that require more significant upfront outlays for more significant downstream returns, like modernizing the voter registration system. This mirrors the approach of the federal Help America Vote Act, which provided resources for local jurisdictions to purchase voting systems replacing punchcard ballots, and to upgrade paper registration files to statewide registration databases;⁵¹ the FAST Voting Act proposed in late 2012 would similarly provide funds for programs expediting voting at the polls.⁵²

Sticks. Another model of policy change relies on legal requirements, with or without dedicated resources. Some jurisdictions purport to require that lines be no longer than a prescribed amount of time.⁵³ Some, instead, provide minimum resource thresholds.⁵⁴ Still others provide procedures,

⁵¹ Pub. L. No. 107-252, 116 Stat. 1666 (2002) (codified at 42 U.S.C. §§ 15301 et seq.).

⁵² S. 3635, 112th Cong. (2012), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112s3635is/pdf/BILLS-112s3635is.pdf>.

⁵³ *See, e.g.*, 9 NYC Reg. § 6210.19(c)(1).

⁵⁴ Some jurisdictions set guidelines for the maximum voters per precinct. *See, e.g.*, CAL. ELEC. CODE § 12223; 10 ILL. COMP. STAT. 5/11-2, -3; IND. CODE § 3-11-1.5-3; KY. REV. STAT. § 117.055; LA. REV. STAT. §18:532; NEB. REV. STAT. § 32-903; NEV. REV. STAT. §

like no-excuse absentee voting or early voting, designed to draw demand away from Election Day in order to reduce lines. The Count Every Vote Act of 2007, proposed but never passed, adopted a blend of all three approaches;⁵⁵ the SIMPLE Voting Act proposed in late 2012 adopts the first and third approach.⁵⁶

Heavier sticks. The most intriguing concept is one not yet seen in practice. A jurisdiction might well attempt to reduce wait time by coupling available resources with a heavy stick realigning local incentives: a private cause of action, with liquidated damages, for every voter forced to wait more than a certain amount of time. Imagine, for example, a cause of action affording every successful eligible voter forced to wait for more than an hour, \$20 per hour of wait time. Such damages would partially compensate for the financial and physical harm of an excessive wait, but would function even more strongly as an incentive for jurisdictions to ensure adequate service.⁵⁷ As a defense to such an action, jurisdictions might offer evidence that they had provided a threshold amount of resources, so as to preclude liability for officials caught not only unawares but with no reasonable ability to foresee an excessive line.

Most jurisdictions — the many areas where wait time is regularly minimal⁵⁸ — would have nothing to fear from such a proposal. But it would create a natural and rather firm incentive for every jurisdiction to at

293.207; 25 PA. STAT. § 2702; TEX. ELEC. CODE § 42.006; VA. CODE § 24.2-307; REV. CODE WASH. § 29A.16.040; W.V. CODE § 3-1-5. Others set guidelines for the number of voters per machine, *see* ALA. CODE § 17-6-3; ARIZ. REV. STAT. § 16-430; DEL. CODE tit. 15, § 5004; GA. CODE § 21-2-323; 10 ILL. COMP. STAT. 5/24-1, -6; IOWA CODE § 49.25; LA. REV. STAT. § 18:1363; ME. REV. STAT. tit. 21-A, § 811; MICH. COMP. LAWS §§ 168.661, 168.796A; NEB. REV. STAT. § 32-903; N.J. STAT. § 19:4-12; N.M. STAT. § 1-9-5; N.Y. ELEC. § 7-203; OHIO REV. CODE § 3506.22; 25 PA. STAT. §§ 2730, 3031.5(B); S.C. CODE § 7-13-1680; TENN. CODE ANN. § 2-3-104; VA. CODE § 24.2-627; the number of voters per privacy booth, *see* ME. REV. STAT. tit. 21-A, § 629; NEB. REV. STAT. § 32-906; or the minimum numbers of ballots, *see* ARK. CODE § 7-5-210; CAL. ELEC. CODE § 14102; IND. CODE § 3-11-3-1; OKLA. STAT. TIT. 26, § 6-104; S.C. CODE § 7-13-430; TEX. ELEC. CODE § 51.005.

⁵⁵ S. 804, 110th Cong. (2007), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-110s804is/pdf/BILLS-110s804is.pdf>.

⁵⁶ H.R. 6591, 112th Cong. (2012), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr6591ih/pdf/BILLS-112hr6591ih.pdf>.

⁵⁷ Such an award is properly conceived as compensation for harm rather than incentive to vote: if a jurisdiction properly accommodates its constituents, as most will in the normal course, the damages action would provide no recovery.

⁵⁸ *See supra* text accompanying note 18.

least think creatively about their resources and procedures, in order to avoid a direct fiscal hit when lines reached excessive levels. And it would allow jurisdictions to experiment with whichever policies *they* thought best able to avoid lines at the end of the day, in order to achieve the final objective.

CONCLUSION

In many ways, excessive lines at the polls are symptoms of greater electoral dysfunction; as Professor Charles Stewart suggests, they often serve a "canary in the coal mine." Excessive lines may grow out of far broader problems with voter registration or check-in procedures, faulty or inadequate information provided to electors, or poor logistical planning and execution. In some cases, excessive lines will be the most visible manifestation of other lurking problems that risk jeopardizing the basic integrity of an election. But when voters are forced to wait on line for hours in order to participate in our most fundamental civic rite, that is also a problem in its own right. There are available solutions to this issue, at many different points in the election ecosystem, and there is at least political attention to the problem that may well yield actual political will. With respect to eliminating the most excessive of lines, we have already waited more than long enough.