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Testimony of Cook County Clerk David Orr before the United States Election Assistance Commission June 3, 2004

Good afternoon. First let me thank the members of the Election Assistance Commission for the opportunity to testify here today. Implementing provisional voting was an important undertaking for us in suburban Cook County. It enabled nearly one thousand registered voters who may have otherwise been disenfranchised to cast ballots.

It also challenged us to revisit our election procedures and devise strategies to improve them. I am sure that some of the practices we adopted will be useable by other jurisdictions.

I would like to address those practices, as well as the Election Day outcome, and identify a few problem areas with provisional voting.

PREPARATION/BEST PRACTICES

To appreciate our task, it is useful to have a sense of Cook County's size and complexity. This past election, we had 12,000 election judges. In 2003, there were 2,465 precincts with 795 ballot styles in the suburbs alone.

We began provisional voting in a primary on March 16, 2004. Our preparation for provisional voting broke down into four major categories: Materials Development, Election Judge¹ Training, Public Education and Technological/Interagency Coordination.

Materials

We knew that introducing provisional voting and adding more forms and envelopes in the polling place had great potential to confuse election judges and voters. So we strove to simplify provisional voting procedures and make the materials stand out. That enabled judges to find them easily and not use them for the wrong purpose.

We also had to design them to accommodate three languages. In addition to English, all materials were printed in Spanish and Chinese.

All of our provisional materials were assigned an *identifiable purple color* and given *special numeric codes*. To simplify and reduce the number of provisional materials, *we printed the voter affidavit on the provisional ballot*

¹ Poll worker

envelope so that the affidavit could not be separated from the envelope. Plus, the judges were less likely to forget to fill out the form.

Our new materials also included:

- Two posters for polling places in English/Spanish and English/Chinese.
- Three affidavit envelopes in English/Spanish/Chinese.
- One statement of ballots.
- One purple carrier pouch.
- Three instruction cards for voters in English/Spanish/Chinese.
- A separate provisional ballot card.
- A brochure explaining the new procedures.

Judge Training

A key step that we took in preparing for our March primary was to create a new category of judges -- Technical Judges. Although all 12,000 of our election judges were trained on provisional voting prior to the election, our goal with the Technical Judges was to ensure that we had at least one judge in each precinct with a extremely thorough understanding of provisional voting. To that end:

- We conducted an additional training for the Technical Judges.
- The extra training took place on a separate day for an hour and a half.
- The Technical Judges were paid a premium for the training and serving on Election Day.
- The content of the training focused on the provisional voting process as well as other new procedures, including the new ID requirement for voters who registered by mail. We explained the purpose and procedures for provisional voting and the Technical Judges examined all the new forms.
- We also sent out a notice about the new procedures in a newsletter that goes to all of our election judges.

Public Education

We used a variety of means to inform the public and media that provisional voting would begin with the 2004 primary:

- We distributed the brochure through elected officials, committeemen, community and voting rights groups.
- We posted the content of the brochure on our website.
- We sent press releases about the provisional voting process to Chicago and Cook County suburban papers.
- We made clear to the press and public that provisional voting was not a means of same-day registration.
- We briefed individual reporters about provisional voting, and received a substantial amount of press coverage. In the polling place itself, we had a card printed up for voters who had to vote provisionally, giving them instructions and answers to commonly asked questions about the provisional voting process.

- We added *an extra step to our record-keeping*, to minimize any confusion with the media over election results in close races. Judges keep track of the number of provisional ballots cast in each precinct by political party. That way, we could tell reporters if a race was too close to call until all provisional ballots were reviewed and counted.

Technological Issues/Interagency Coordination

The main technological issue – accessing the Secretary of State’s (SOS) database in order to verify registration for a provisional voter -- was resolved long before the election. In previous elections, it became apparent that there were problems with the SOS transmitting voter registration applications to our office. Some applications just didn’t get through, and before provisional voting was implemented, these people simply were not eligible to vote.

Therefore, we joined with the Secretary of State to develop a system that would enable us to verify whether any provisional voters had in fact registered to vote when they got a driver’s license. Even though some provisional voters were not found in our own voter registration system, if the SOS’s database showed that they registered to vote, we were able to count their provisional ballot.

In the case of provisional voting, the process was taken one step further. A new state law, the Help Illinois Vote Act, directs that the provisional *voting affidavit does double duty and serves as a registration form*. Therefore, even those provisional voters whose ballots did not count in the primary were then registered via our office for future elections.

ELECTION DAY OUTCOME

Prior to March 16th, we could not estimate how many provisional voters to expect. Here is a quick overview:

Our jurisdiction, suburban Cook County, had the second highest number of provisional ballots in Illinois. The City of Chicago, our neighboring jurisdiction, had more – 5,234 – over half of Illinois’ provisional ballots, while 56 of the state’s 110 jurisdictions didn’t report a single provisional voter. So, this is an issue that varies widely in its impact from place to place.

- Roughly four thousand of the 400,000 people who voted in the primary in the Cook County suburbs cast provisional ballots. That’s one percent. They went from a high of 706 in one township (Thornton) to a low of 20 in another (River Forest).
- In Cook County, we ended up accepting 950 of those ballots, about 25 percent. Roughly 3,000 were rejected.
- To put this in context, Chicago accepted less than 9 percent of their provisional ballots.
- Of the provisional ballots that were rejected (i.e. did not count) some people were not registered to vote, or voted in the wrong precinct, or had changed their name.

The following chart breaks down ballot rejections into major categories.

Major Categories of Provisional Rejections in Cook County

<i>Reason</i>	<i>Number</i>
Cancelled after four years of being dropped via canvass	90
Invalid addresses	36
Affidavit not signed	24
Invalid signature	13
ID not provided	16
Registered under different name	52
Not registered in precinct (either no registration found or voted at wrong precinct)	2,839
Election judge's error	40
Underage	1
Total	3,111

Some of the glitches that cropped up were human errors, which will be training issues for the future. There was a misconception on the part of some voters, and some judges as well, that provisional ballots gave voters the right to vote anywhere. They thought it didn't matter if it was in the right polling place, let alone the right precinct and ballot style. They thought the vote would ultimately count if they were registered. In more than one instance, residents of other counties voted in Cook.

Of course, these kinds of human errors are inevitable. But we wanted to minimize them and had trained our judges to avoid them in two ways:

- Each precinct had a street locator, so judges could check to see if they lived in that precinct.
- Judges were told to call our office to verify registrations, but they often did not.

However, in the rush of Election Day, these procedures were sometimes overlooked. Clearly, we will be re-emphasizing all of this in future election judge training.

PROBLEM AREAS

Finally, I will summarize a few problem areas.

There were a number of difficulties with provisional voting that cropped up because of the peculiarities of Illinois law; other states probably had their own trouble spots. For us, they related to *casting ballots in the correct precinct and to absentee voting*.

For a provisional ballot to count, Illinois law requires a voter both to be registered to vote, and to cast their vote in the correct precinct. As I noted earlier, ballots cast in the wrong precinct or by people who were not registered was our biggest category of rejections.

Additionally, Illinois election law specifies procedures for obtaining and casting provisional ballots *only* at the polling place. It makes no reference whatsoever to absentee voters, and most local election officials have interpreted that to mean that there is not such thing as a provisional absentee ballot in

Illinois – with one exception. Section 303 (b) of HAVA (Requirements For Voters Who Register By Mail) specifically states that a mail registrant who desires to vote by mail but who has not yet satisfied the ID requirement may cast a provisional ballot by mail.

Illinois, unfortunately, still requires voters who register by mail to vote in person the first time. The Illinois State Board of elections has not seen fit to remove this requirement even though HAVA now has new identification requirements. So, in our state, the only absentee provisional ballots that are issued are to *in-person* absentee voters who registered by mail, have not met the ID requirement, and do not have ID at the time of voting.

Because HAVA left these issues to the states to sort out, some voters are treated differently than others – not only from state to state, but depending on whether they vote in person, or absentee. This is a serious problem. Voters should be treated uniformly.

Provisional voting allowed a thousand additional voters in suburban Cook County to participate in the last election. We look forward to making whatever legal and procedural changes we can in order to extend the vote to thousands more in November and the future.

Thank you for your time.

Respectfully submitted,
David Orr
Cook County Clerk